



## Chapter 3: Duty to make reasonable adjustments

This chapter seeks to explain:

- [What is an adjustment?](#)
- [What is considered reasonable?](#)
- [What is the duty to consult?](#)
- [Who pays for adjustments?](#)
- [What is the proactive duty to make reasonable adjustments?](#)
- [What are the consequences of a failure to make reasonable adjustments?](#)
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The Ordinance recognises that achieving equality for disabled people may mean changing the way that the services are provided in order to create a level playing field for all. This could be amending policies, removing physical barriers or providing extra support for a service user.

The Ordinance introduces a duty on all organisations to take steps to remove, reduce or prevent the obstacles that a disabled person may face in receipt of services, where it is reasonable to do so. This is known as the duty to make reasonable adjustments and where an organisation fails to comply with this duty, this constitutes discrimination under the Ordinance.

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**A person (A) is under a duty to make reasonable adjustments:**

- **where a provision, criterion or practice of A puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage;**
- **where a physical feature puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, for A to take such steps as it is reasonable to have to take to avoid the disadvantage;**
- **where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.**

See section 32 of the Ordinance

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The phrase “substantial disadvantage” simply requires there to be a disadvantage that is more than minor or trivial. This is not intended to be a high bar.

In addition to the general duty of reasonable adjustments, service providers and education providers (but not clubs and associations and accommodation providers) are under an additional proactive duty to make reasonable adjustments.

The duty to make reasonable adjustments insofar as this relates to the provision of education will not come into force until 1 September 2025. Schools and education providers will need to make reasonable adjustments for employees and if providing another service to the public from 1 October 2023.

The duty in respect of physical features will not come into force until 1 October 2028. There are separate rules relating to landlords which do not come into force immediately, the majority of which will come into force no earlier than 1 October 2028. See [the table of implementation dates](#).

Finally, it should be remembered that when dealing with information relating to a disability that this constitutes special category data, and particular care should be taken when using and storing this kind of information in order for organisations to

comply with their duties under the [Data Protection \(Bailiwick of Guernsey\) Law, 2017](#). For further information please refer to the website of the [Office of the Data Protection Authority](#)

### **3.1 What is an adjustment?**

Where it is identified that a disabled person is put at a substantial disadvantage when compared with someone who does not have that disability, then the Ordinance places a duty on organisations to make reasonable adjustments.

The organisation may have to change the way things are done, make changes to a physical feature of a building, or provide aids such as special computer software to help that person.

Changes to the physical feature of a building will not need to be made until 1 October 2028.

This process of change is a two-stage process, in that the organisation must:

- first, consider what adjustments could be made; and
- secondly, whether those adjustments are reasonable.

The purpose of an adjustment is that it must avoid the disadvantage. As such, the Ordinance does not require an organisation to make an adjustment if it will have little or no impact on the disadvantage that they are seeking to resolve.

The need for an adjustment may arise where there is substantial disadvantage which is:

- caused by a provision, criterion or practice;
- caused by a physical feature; or
- able to be removed by an auxiliary aid.

#### **Provision, criterion or practice**

The term provision, criterion or practice is also used in indirect discrimination, and in broad terms means any form of policy or rule that applies to everyone (such as an admission policy for an education provider or a club or association, opening hours for a service provider, or housing allocation policy for an accommodation

provider), but places a disabled person at a substantial disadvantage. It is irrelevant whether the organisation intended the policy to discriminate against a person with a disability or not.

When considering reasonable adjustments in relation to a provision criterion or practice, it is important to remember they are not always related to physical issues. It, might, for example, be about a policy about how to provide information in an accessible format like manuals in bigger typeface or in braille or may involving changing a process or procedure, or adjustments to opening hours, or how a service is provided.

The point is whether a person has been placed at a substantial disadvantage by the policy. If they have, then the duty of reasonable adjustments arises. Where a person with a disability is placed at a disadvantage by a provision, criterion or practice, this may also amount to indirect discrimination. For further information on indirect discrimination please refer to [Chapter 1- Discrimination and other prohibited conduct](#).

### **Example**

A student has a disability that results in reduced productivity in the afternoons, and they are making a large number of errors due to tiredness.

Their timetable is a provision, criterion or practice, and this places students with such a condition at a disadvantage, compared with students who do not have the condition. The education provider may wish to consider adjustments such as:

- a specifically adapted timetable;
- changing tasks or the pace of work to avoid exacerbating the condition; and/or
- more frequent and/or longer breaks

### **Adjustment to physical features**

The duty to make reasonable adjustments in relation to physical features will not come into force until 1 October 2028 at the earliest, and it will not be possible to

bring a claim of indirect discrimination due to a physical feature unless the discrimination takes place after this date.

The purpose of this chapter of the guidance therefore is to allow organisations to understand what adjustments they will need to make with respect to physical features once this aspect of the Ordinance comes into force.

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**A physical feature means:**

- **a feature arising from the design or construction of a building;**
- **a feature of an approach to, exit from or access to a building;**
- or
- **a fixture or fitting in or on premises.**

See section 32(8) of the Ordinance

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It should be noted that the terms “fixture or fittings” are not defined under the Ordinance, but they would have their normal meanings, so a fixture would include items such as light fittings or doors, whereas fittings would cover items such as office furniture.

Where it is identified that a physical feature causes a substantial disadvantage then an organisation should consider what adjustments it can make to avoid that disadvantage. In the context of a physical feature this may mean:

- removing the physical feature in question;
- altering it; or
- providing a reasonable means of avoiding it.

## **Example**

A person had a stroke several years ago and as a result, has a number of impairments, including being partially sighted and reduced mobility. The person is a customer of a bank and needs to come in for a meeting to discuss a mortgage application. The meeting rooms for the bank are up a flight of stairs and through a corridor which is dimly lit, both of which place the person at a disadvantage, and they struggle to gain access to the building.

Both the stairs and lighting within the building are physical features. The service provider should consider whether it is possible to remove, alter or provide means to avoid it.

**Remove:** consider whether it is possible to install a lift so that there is step free access to the room; \*

**Alter:** the employer could install a handrail on the stairs and improve the lighting in the corridor; \*

**Avoid:** consider if there is another way the person can gain access to the building, such as a rear entrance to avoid both the stairs and corridor, or if there is an option to conduct the meeting virtually or at another location.

\* The duty to make reasonable adjustments to physical features does not come into force until 1 October 2028 at the earliest

## **Auxiliary aids**

The Ordinance also places a positive obligation on organisations to provide auxiliary aids, which will avoid a disabled person being put at a substantial disadvantage.

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**For these purposes an auxiliary aid means equipment or a service that:**

- **is used by a disabled person; and**
- **provides assistance which compensates for or removes any disadvantage or inequality connected with their disability.**

**but does not include any item of personal equipment which the person would reasonably be expected to own.**

See section 32(4) of the Ordinance

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The duty in relation to auxiliary aids can often overlap to some extent where there is a provision, criterion or practice that puts a disabled person at a particular disadvantage, although it is important it is still considered separately. Auxiliary aids could include the provision of a specialist piece of equipment such as an adapted keyboard, chair or text to speech software. Whereas auxiliary services could include the provision of a sign language interpreter or a support worker for a disabled person. Obviously, whether these are reasonable adjustments is a separate consideration.

### **Example**

An academically able student has autism. The extent of their condition is such that they would be at a substantial disadvantage in school compared to children without autism. In order to address those disadvantages, the school deploys additional resources to support them.

One point to note is that whilst the obligation to make adjustments to physical features does not come into force until 1 October 2028 at the earliest, the duties in relation to any provision, criterion or practice, or auxiliary aids are in force immediately with the exception of education providers when it is expected to apply from 1 September 2025 onwards.

The three grounds for reasonable adjustments are not intended to be mutually exclusive, so for example one adjustment can both relate to a physical feature and be the provision of an auxiliary aid. Even if the provider's obligations in relation to the physical feature are delayed, they would be under a duty to supply

the auxiliary aid.

### **Example**

A student has seasonal affective disorder and is allocated a fitted desk for a particular lesson that is in a dark corner of a classroom with no natural daylight. Their desk itself is a fixture and so constitutes a physical feature. Accordingly, moving their actual desk (i.e. the physical feature) would strictly not be a requirement until 1 October 2028. However, from 1 September 2025 the school would still need to consider whether the duty to make reasonable adjustments arises in respect of either a provision, criterion or practice or the provision of an auxiliary aid.

Accordingly, the requirement for the student to sit at a specific desk may be considered a provision, criterion or practice, so allowing the student to sit at a different desk with natural daylight may be considered a reasonable adjustment, if the location of the current desk puts the student at a substantial disadvantage.

Alternatively, the provision of a light box, which replicates natural daylight could be considered an auxiliary aid, and so could also be considered a reasonable adjustment.

### **3.2 What is considered reasonable?**

If a substantial disadvantage does exist, and the organisation is aware or should be aware the person is disabled, then they must make “reasonable” adjustments.

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#### **A person (A) does not discriminate against a disabled person if:**

- **it fails to make an adjustment to avoid a disadvantage to a disabled person if to do so would be a disproportionate burden**



**on A; or**

- **A does not know and could not reasonably be expected to know that the person was a disabled person.**

See section 32(6) of the Ordinance

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At a practical level there are various factors that determine whether a particular adjustment is considered reasonable. This is ultimately an objective test and not simply a matter of what the organisation or the disabled person may personally think is reasonable. These factors can include:

- how effective the adjustment will be to reduce or remove the disadvantage that the disabled person will otherwise experience;
- its practicality;
- the cost;
- the organisation's resources and size; or
- the availability of financial support.

On occasion, the duty to make reasonable adjustments may require a service providers to treat a disabled person "more favourably" than they would treat someone else, as this is what is needed to remove the disadvantage and create equality of opportunity for the disabled person. Making an adjustment in this way is not discrimination against a person who does not have a disability.

The cost of the many adjustments will either be nothing, or a minimal amount and so where this is the case, as long as the adjustment is workable and effective, then it would be considered reasonable.

If the cost of the adjustment is more significant, the size and resources of the organisation will be a relevant factor. If an organisation is a small business with limited resources and an adjustment costs a significant amount, then it is less likely to be reasonable for the organisation to be able to make the requested changes. However, costs should never be looked at in isolation; an organisation should always consider the other factors too, including the availability of financial and other support.

### **Example**

A mortgage broker leases an office on the first floor of an old building with no lift. A new customer wants to have a meeting with the broker but is unable to use the stairs. In the circumstances it would be unlikely that the installation of a lift would be considered reasonable, although the service provider should still consider other alternatives such as whether they could meet with the disabled person at another location or they could conduct a virtual meeting.

### **Example**

An insurance provider sets out the terms and conditions of the policies that it sells in written documentation. As a reasonable adjustment for a disabled service user who has a visual impairment, the service provider should make the terms and conditions available in different formats.

## **When can an organisation be assumed to know about disability?**

Where a member of staff or an agent knows of a person's disability or they are aware of circumstances which may indicate a person may have a disability, the organisation will not usually be able to claim that they do not know of the disability. [See Chapter 2 for the definition of disability.](#) They will therefore be under a duty to make reasonable adjustments. Organisations should ensure that where information about a disabled person may come through different channels, there is a route for the sharing of that information in order to comply with their duties. This should be done with the consent of the disabled person and respecting confidentiality.

Particular care should be taken when using and storing this kind of information in order for organisations to comply with their duties under the Data Protection (Bailiwick of Guernsey) Law, 2017. For further information please refer to the website of the [Office of the Data Protection Authority.](#)

### **Example**

Before the start of term, a primary school's special educational needs co-ordinator (SENCO) meets with the parents of a new child to discuss their disability and the reasonable adjustments that are required. The SENCO does not pass that information on to the teacher. If the teacher then fails to make the reasonable adjustment because they were unaware of the disability, the school would still be liable in these circumstances.

### **3.3 The duty to consult**

There is no requirement on a disabled person to either make a request for reasonable adjustments, or even when asked to suggest what adjustments should be made, however, the Ordinance does introduce a specific duty on organisations to consult.

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**Before a person (A) makes a reasonable adjustment, it must consult the disabled person to ask their view as to what steps would avoid the disadvantage, and may also consult such other persons as A considers appropriate.**

See section 32(3) of the Ordinance

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The duty to consult a disabled person over reasonable adjustments is different to the position in the UK and Jersey, where it is only considered good practice. There is no specific form or duration of consultation required under the Ordinance, but it is recommended that this should take place in a meeting, with minutes kept and any agreed outcomes recorded.

Whilst many adjustments will be straightforward and can be agreed directly with the individual, from time to time it might be useful to consult with third parties, including medical professionals, as well as charities and other third sector organisations. There is no requirement to do so, but this might be helpful and might be free, or available at minimal cost. Wherever advice is sought, it is recommended that this also form part of the consultation process with the

disabled person and must be compliant with data protection legislation.

It should be noted that the duty to consult does not apply to the proactive duty to make reasonable adjustments, although it might be useful to include disabled people in the considerations of these proactive adjustments (see [Chapter 3.5](#) for the proactive duty).

### **3.4 Who pays for adjustments?**

Whilst many adjustments either have no or minimal cost, the Ordinance makes it clear that it is the organisation's responsibility to pay for any adjustments, and these costs cannot be passed on to the disabled person (with the exception of landlords and tenants in very limited circumstances - see landlords duties).

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**A person (A) may not require a disabled person to pay any or all of A's costs of complying with a duty to make reasonable adjustments.**

See section 32 (7) of the Ordinance

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When assessing cost, and whether an adjustment is reasonable, whether it is cost-effective should be assessed in overall terms. For example, changing the access for a patient to access the second floor of a doctor's surgery may appear expensive, but this may be less expensive in the long-term than providing services at/from an alternative location.

There may be financial support available to some organisations towards the cost of making an adjustment. As such, it may be unreasonable to decide not to make an adjustment based on its cost before finding out whether financial assistance for the adjustment is available.

There are specific rules in relation to adjustments to physical features for rented property. For further information see [Chapter 7.4](#).

### **3.5 What is the proactive duty to make reasonable adjustments?**

Service providers and education providers have an additional proactive duty to make reasonable adjustments for disabled persons generally, rather than an identified disabled person. This does not apply to clubs and associations or accommodation providers in relation to the disposal of premises unless they are also service providers.

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**A person (A) is under a proactive duty to make reasonable adjustments:**

- **where a provision, criterion or practice of A puts disabled persons at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage;**
- **where a physical feature puts disabled persons at a substantial disadvantage in comparison with persons who are not disabled, for A to take such steps as it is reasonable to have to take to avoid the disadvantage;**
- **where disabled persons would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.**

See section 33 of the Ordinance

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**Example**

A shop provides a quiet hour for customers with sensory impairments. This is an anticipatory change in the service to provide an environment which suits those with different disabilities. A reasonable adjustment can also be about changing how a service is provided.

The proactive duty operates in a similar fashion as the standard duty but with the following key differences:

- In the case of service providers, where the disadvantage is caused by a physical feature the duty is to take such steps as it is reasonable from 1 October 2028 to either avoid the disadvantage or adopt a reasonable alternative method of providing the service. Education providers also have a duty to take reasonable steps to avoid such a disadvantage

caused by a physical feature, but the duty is to remove, alter or provide a means of avoiding the physical feature rather than adopting a reasonable alternative means of providing the service.

- There is no duty to consult with any one in relation to the adjustments and knowledge of a specific person's disability is irrelevant for proactive adjustments.

The duty to make proactive adjustments for most service providers comes into force on 1 October 2023. The duty in respect of schools and education providers for adjustments to either a provision, criterion or practice, or the provision of an auxiliary aid for students does not come into force until 1 September 2025.

The duty to make adjustments to physical features does not come in until 1 October 2028.

### **3.6 What are the consequences of a failure to make reasonable adjustments?**

A failure on the part of an organisation (including a landlord) to take steps to avoid a disadvantage to a disabled person is a failure to comply with a duty to make reasonable adjustments. The organisation is deemed to have committed an act of discrimination. This is why it is important to consult with the disabled person in respect of any reasonable adjustments and where appropriate to seek advice.

It may be that the conversation about reasonable adjustments did not take place. It is important to note that the complaints process starts with trying to realise the issues between the organisation and disabled person.

It may be that the organisation did not identify the disadvantage the disabled person was experiencing, or that the reasonable adjustment to avoid the disadvantage was not identified. In this case both parties are encouraged to find a resolution to the situation.

For schools, education providers and service providers where they fail to make reasonable adjustments for disabled persons generally, this also amounts to discrimination and a complaint could be made.

For more on the complaints process please see [Chapter 10](#).

### **3.7 Disability: Public sector accessibility action plans**

In addition to the proactive duty to make reasonable adjustments that applies to service providers and education providers, there is an additional duty for public sector service providers and public sector school or education providers to develop accessibility action plans. This will not come into effect before 1 October 2028.

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**"accessibility action plan"**

**means a reasonable and adequate plan, proportionate to the size and financial and other circumstances of the service provider, school or education provider, in which the service provider, school or education provider sets out how they will improve access for disabled people to their service**

**"public sector service provider"**

**means a service provider which is owned, maintained, managed, funded or under the authority of the States or any Committee thereof, but does not include a service provider who receives partial funding from the States by way of grant, loan or otherwise.**

**"public sector school or education provider"**

**means a school or education provider which is maintained by the States, and for the avoidance of doubt does not include:**

- **an independent school within the meaning given in section 1 of the Education (Guernsey) Law, 1970;**
- **a school in respect of which grants are made by the States; or**
- **a private education provider.**

See section 37(2) of the Ordinance

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Whilst the duty will not come into force before 1 October 2028, it is open to public service and education providers to develop a plan in advance of this date. The purpose of an accessibility action plan is to demonstrate how a service provider or education provider plans to improve access for disabled people. Any accessibility action plan will go beyond the consideration of reasonable adjustments for a specific disabled person. When developing an accessibility action plan, a key part of that should be consultation with all stakeholders, including the service users

themselves who may have a disability. Their personal experiences may identify barriers that the provider has never previously considered and may assist in coming up with solutions to those issues.

Whilst the goal for any service should be to make progress around inclusivity as soon as it can, it is recognised that resources and time are often limited, and so part of the plan should be about setting realistic timeframes for implementation as well as prioritising any issues that have been identified. Progress towards these goals should be subject to regular review, and if adequate progress is not being achieved, then the provider should seek to understand the issue and identify a solution.

### **Framework for an accessibility action plan**

The Ordinance does not prescribe any particular form of accessibility action plan that must be used and they are not one size fits all. An example framework accessibility action plan is attached at [Appendix III](#).

This example is not intended to be prescriptive, and it should only be used as a starting point to outline how the organisation intends to communicate the goals and targets of its accessibility action plan.

It is recommended that within any organisation, certain key staff members are delegated the responsibility over certain aspects of the accessibility action plan to ensure engagement in the process across all levels of the service.

### **3.8 Disability: Accessibility of the public highway**

The States of Guernsey is under a duty in relation to disabled people to consider how the section of public highway which is being constructed, altered or repaired could be made more accessible for disabled people and to make any changes the States considers appropriate to increase accessibility for disabled people.