



Chapter 8: Exceptions

In this chapter we will cover the following exceptions that are set out in the Ordinance:

- [General exceptions](#)
- [Goods, services or facilities](#)
- [Education](#)
- [Clubs and associations](#)
- [Accommodation](#)
- [Health](#)

The Ordinance sets out a number of exceptions where it is lawful to discriminate on a Protected Ground, some of which are general and the others which are specific to the different kinds of organisations.

This section of the Guidance sets out in what circumstances those exceptions will apply.

8.1 General exceptions

The Ordinance provides for 15 general exceptions where it is lawful to discriminate because of a Protected Ground – the titles of which are as follows:

- Positive action
- Act done under legislative or judicial authority
- Compliance with law of another country
- National security
- Freedom of expression see [Chapter 1.5 Freedom of speech](#)

- Immigration
- Population Management
- Crown employment, etc
- Protection from harm
- Race: act done pursuant to States' policy
- Charities and non-profit organisations
- Acts of worship
- Religious organisations
- Tribunal members
- Animals

This section of the guidance does not seek to cover all of these exceptions, but it does cover some of the more common ones that are not covered elsewhere. For those that are covered elsewhere within the guidance these can be accessed from the hyperlinks embedded in the list above.

Positive action

Positive action has a strict legal definition within the Ordinance and can apply differently depending upon the context in which it arises. The Ordinance recognises that certain groups who share a Protected Ground may be disadvantaged, or may be affected by the consequences of past or present discrimination. The Ordinance therefore contains provisions which enable service providers to take action with the aim of ensuring equality, or a greater degree of equality on any of the Protected Grounds in order to address these matters. This is known as 'positive action'.

Unlike the UK, it is not necessary to demonstrate positive action is a proportionate means of achieving a legitimate aim, but rather positive action must have the aim of achieving one of the following:

- the prevention, compensation for or removal of any disadvantage or inequality connected with a protected ground;
- the promotion of equality of opportunity on any of the protected grounds, including in relation to recruitment and promotion; or
- the catering for the special needs of persons, or a category of persons, who, because of a protected ground, may require facilities,

arrangements, services or assistance not required by persons who do not have those special needs.

Positive action can include:

- providing additional or bespoke services,
- providing separate facilities,
- giving accelerated access to services, and
- targeting resources or induction or training opportunities to benefit a particular disadvantaged group.

Provided the action falls within the stated aims set out in the Ordinance, it will not amount to discrimination. In particular, positive action is often used by organisations in both the public and private sector in order to improve their services or to increase take-up or participation by particular groups within the community. Where action does not fall within one of the options set out above, for instance by setting quotas, then that would amount to positive discrimination, which is unlawful.

Example

In monitoring users of its facilities, a leisure centre has noted that members of the Polish community use these facilities far less than other groups, proportionate to the size of the local Polish community.

In meetings with members of the Polish community, the leisure centre identifies that many have never been to a leisure centre at all, and are concerned about attending as they don't believe they would be welcomed and have concerns over language.

The leisure centre decides to arrange a special open day for the Polish community and also provides separate swimming and gym taster sessions for groups, with a trainer who speaks Polish. This would be considered to be positive action as it amounts to the promotion of equality of opportunity.

Act done under legislative or judicial authority

The Ordinance provides an exception for acts done for the purpose of complying with:

- an enactment (any Law, Ordinance or subordinate legislation, and also any UK legislation which has effect in Guernsey or any convention which is extended to Guernsey);
- a requirement or condition imposed under an enactment; or
- an order of a court or tribunal.

Example:

As a result of UK Sanctions which have effect in Guernsey, it is prohibited to provide accountancy services to an individual who is ordinarily resident in Russia. The refusal to provide services to an individual based on where they are ordinarily resident could amount to indirect discrimination on the grounds of race. However, in these circumstances as the provision of those services is not permitted under an enactment it is deemed exempt, therefore there is no discrimination.

Compliance with law of another country

In addition to the exemption above which provides an exception for domestic legislation, there is a further exception for acts which are done in Guernsey which are for the purposes of complying with the law of, or order of a court or Tribunal of, another country, territory or jurisdiction.

Protection from harm

The Ordinance provides an exception in relation to protecting people or property from harm. The exception relates to things done to any person who has a tendency to commit a criminal offence punishable with imprisonment, if the act done is a proportionate way of achieving the aim of protecting people or property from harm.

Example

If a person with a drug addiction and mental health condition and a proven tendency to steal from neighbours is not offered a tenancy in a particular housing development next door to a vulnerable, elderly resident, this refusal is not discrimination arising from disability as it can be justified by the accommodation provider as a proportionate way to protect the elderly resident from harm.

Example

If a sixth form pupil with additional needs had a proven tendency towards violence (as assault is a criminal offence), then provided any protective measures introduced by a school or college were proportionate, this would not be considered discrimination arising from a disability. What those steps would be and whether they would be proportionate will obviously depend upon the circumstances.

For the purposes of this exception, the phrase, “proportionate means” will cover an organisation taking steps which are both appropriate and necessary. In the context of the example the school or college would need to have considered alternatives to exclusion and reasonable adjustments that would avoid the risk.

Charities and non-profit organisations

The Ordinance provides a specific exception for charities and non-profit organisations in respect of allowing them to restrict the provision of benefits to persons who share a Protected Ground. That action must be done in accordance with the governing instrument of that body and the provision of benefits be either a proportionate means of achieving a legitimate aim, or for the purpose of preventing or compensating for a disadvantage linked to the Protected Ground.

For the purposes of the Ordinance charities and non-profit organisations have the same meaning as under the Charities etc. (Guernsey and Alderney) Ordinance, 2021 See [Legislation page Number 15](#). In the case of non-profit organisations,

they must be established solely or principally for the purpose of preventing or compensating for a disadvantage linked to a Protected Ground to fall under this exception.

Example

A charity is established for the purposes of providing respite care for parents with a disabled child. As part of the benefits provided by the charity, not only do they provide care services for the child, they also arrange for the parents to stay in a local hotel for free to ensure they have a proper break.

The parents with a disabled child will have the Protected Ground of carer status if the disability is of a nature which requires continuing or frequent care or support. Provided that the provision of respite care in this way is in accordance with the governing instrument of the charity and it is a proportionate means of achieving a legitimate aim, the fact that the provision of these benefits is limited to carers, or even a particular class of carers (in this example parents with disabled children) then this will not amount to discrimination.

Religious organisations

The Ordinance provides a specific exception for religious organisations in relation to membership of, or registration with the organisation, or appointment to a board or committee of the organisation, when there is a requirement to be of a particular religion. For these purposes a religious organisation means any organisation with an ethos based on religion.

Example

In order to join a bible reading study club, it is a requirement of the group that members must be practising Christians. As the club has an ethos based on religion, it would not be discrimination to refuse to admit non-Christians to the group.

Animals

The Ordinance provides an exception such that it would not be indirect discrimination or discrimination arising from disability to not allow, or put restrictions in place in respect of animals, unless that animal is a dog trained by a prescribed organisation to:

- guide a visually-impaired person;
- assist a hearing-impaired person;
- assist a person with epilepsy or diabetes; or
- assist a disabled person who has an impairment that affects the person's mobility, manual dexterity, physical co-ordination or ability to move everyday objects.

Other animals or dogs working for different reasons are allowed to be restricted or disallowed.

What is a prescribed organisation for training purposes is set out in regulations.

It should be noted that animals other than dogs or for assistance with other types of disability can be added through regulations at a later date.

Example

A landlord has a strict no animals policy in all of the flats they rent out. The policy regarding animals would amount to a provision, criterion or practice. In the case of a visually impaired person who had a guide dog, the landlord would be required to either objectively justify its policy or make an exception for the guide dog. However, if the potential tenant had an emotional support animal that was not trained by a prescribed organisation specifically to assist an individual who has anxiety and depression, then this would fall within the exception and so the landlord would not have to allow the tenant to keep the animal in the flat, even if they could not objectively justify the policy.

8.2 Goods, services or facilities - exceptions

The Ordinance provides for seven specific exceptions where it is lawful to discriminate on a Protected Ground in relation to the provision of goods, or services or facilities – the titles of which are as follows:

- Financial services involving an assessment of risk
- Financial services arranged by an employer and personal pension schemes
- Financial services: religious mutual organisations
- Television, radio and online broadcasting and distribution
- Information society services
- Dramatic performances
- Goods and services: religion or belief

This section of the Guidance does not seek to cover all of these specific exceptions, but it does cover some of the more common ones that are not covered elsewhere.

Financial services involving an assessment of risk

The Ordinance recognises that a key aspect of providing certain financial services such as insurance, pensions or annuities will inevitably involve an assessment of risk posed based on the health of the individual, that could otherwise be considered either direct or indirect discrimination on the Protected Ground of disability. In addition, other financial services businesses are under a regulatory obligation to undertake risk assessments (whether from the Guernsey Financial Services Commission or elsewhere) that often involves assessments based on the nationality of an individual, which would otherwise be considered either direct or indirect discrimination on the Protected Ground of race.

Accordingly, the Ordinance provides for an exception for decisions based on these Protected Grounds as part of a risk assessment by a financial services provider provided it is done from a source on which it is reasonable to rely.

Example

A financial services business receives an approach from a new client who is a Russian national to establish a new structure. Whilst the business is satisfied that what is proposed by the potential client is entirely lawful and not contrary to any sanctions, nonetheless, having undertaken a risk assessment (in line with its regulatory obligations), which includes utilising risk screening tools, it is determined the structure is too high risk, and therefore the service provider declines to provide services to the individual.

Whilst the decision not to provide services to this individual could fall within the definition of direct discrimination on the grounds of race, in these circumstances, because it would fall within the exception the actions of the service provider would not be unlawful.

Financial services arranged by an employer and personal pension schemes

The Ordinance also creates another exception for service providers in relation to payments made under a pensions scheme (whether that be an employer or a personal pension scheme) or under policies of insurance that are provided by employers as benefits in kind to their employees (such as permanent health or private medical insurance).

This exception applies where the payment is made to a disabled person in respect of their disability and it might be said that the service provider treats the person more favourably than another disabled person to whom a payment has not been made. In these circumstances, in recognition that pensions and insurance policies have terms and conditions which allow payment in certain circumstances but not others, such as in the case of permanent health insurance, whether someone is considered fit to return, it clarifies this would not be considered discrimination on the grounds of a disability.

Dramatic performances

The Ordinance provides for an exception, in relation to service providers and clubs and associations, in relation to the Protected Grounds of disability and race for things done (for example, a casting decision) that are reasonably required for reasons of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment.

Example

A local amateur dramatics group is putting on a play which involves a character who has a particular skin colour and the story is about the racism they experience. It would be reasonable and lawful to require that the person playing that role should have the relevant skin colour.

Goods and services: religion or belief

The Ordinance provides an exception in relation to service providers who either:

- Restrict the provision of goods or services which are for the purposes of a particular religion or belief to persons of that religion or belief, or
- Restricting the use of religious premises (which broadly means any building which is used for a religious purpose) by a person on the grounds that allowing the use would not comply with the doctrine of the religion or belief.

Example

A local mosque allows some of its rooms to be used for free by members of the community. If a group of individuals wanted to use the room and bring alcohol on to the premises, it would not be unlawful on the part of the mosque to refuse to permit this, as it would not comply with the doctrine of the Islamic religion.

8.3 Education - exceptions

The Ordinance provides for four specific exceptions where it is lawful to discriminate on a Protected Ground for education providers:

- Disability: admission to schools
- Religion or belief: admission to schools
- Curricula
- Students with assessed needs

Disability: admission to schools

The Ordinance provides an exception in relation to arrangements for selective admission which provide for some or all of a school's students to be selected by reference to general or special ability or aptitude, with a view to admitting only students of high ability or aptitude, and that where such arrangements are in place this will not constitute discrimination on the Protected Ground of disability. Reasonable adjustments would need to be made to ensure that a disabled student is not placed at a substantial disadvantage during the admissions process.

Religion or belief: admission to schools

The Ordinance provides an exception in relation to admissions policies for schools based on a particular religion or belief, where that school has a religious ethos.

Example

A Catholic school can prioritise admissions for those who follow the Catholic faith and have been baptised.

Curricula

The Ordinance provides two specific exceptions in relation to school curricula which provide as follows:

- It is not discrimination for an education provider or school to develop, accredit, set or teach curricula which do not represent people of a particular protected ground; and
- It is not discrimination for a school with a religious ethos to teach a curriculum which focuses primarily on the religion of the school, provided that the curriculum also teaches that other religious beliefs exist and are deserving of respect.

Students with assessed needs

The Ordinance provides an exception that it is not discrimination for a school or education provider to put in place arrangements which provide for a student to receive additional or alternative educational services, where this is done in order to meet the assessed needs of that student.

8.4 Clubs and associations -exceptions

The Ordinance provides for two specific exceptions where it is lawful to discriminate on a Protected Ground for Clubs and Associations:

- Clubs - restricted membership; and
- Sport - disability and nationality

Clubs - restricted membership

The Ordinance allows clubs or associations who restrict membership to persons who share a particular ground, other than skin colour.

Example

A group of friends who have all moved to Guernsey from South Africa decide to establish an “ex pats” club who put on various networking events and help support others who are moving to Guernsey in the future. Even though it is a condition of the club that it is only open to South African nationals, this would not amount to race discrimination as it would fall within the exception.

Sport - disability and nationality

The Ordinance provides three exceptions for sports teams as follows:

- It is not discrimination to exclude a disabled person from participation in a sport because the person is unable to perform the actions required by the rules of the sport, after (if applicable) a reasonable adjustment has been made in respect of the person;

- It is not discrimination not to select a disabled person as part of a sports team or to participate in a sporting event where there has been a fair and reasonable selection process for the team or event which provides for participants to be selected by reference to skill or ability; and

- It is not discrimination where a sporting event is organised or sporting facilities are provided in relation to the disability, nationality or national origins of competitors, provided that the actions are an appropriate way of achieving a legitimate aim. For instance, where the selection process is undertaken in accordance with the rules regarding who may represent a country, place or area.

Sport includes a sport, game or other activity of a competitive nature.

Example

In order to be able to represent a country at a forthcoming sporting event the individual must be a national of that country. If an individual is not selected to represent Guernsey as they are not eligible to do so, this would not be discrimination on the grounds of race.

8.5 Accommodation - exceptions

The Ordinance provides for four specific exceptions where it is lawful to discriminate on a Protected Ground for accommodation providers:

- Private disposals of residential premises;
- Accommodation provided in a person's home;
- Social housing; and
- Specialist accommodation.

Private disposals of residential premises

The Ordinance provides an exception in relation to accommodation providers who make a private disposal of residential premises i.e. the accommodation provider does not either use the services of an estate agent or advertise the premises.

Accommodation provided in a person's home

The Ordinance provides an exception where the accommodation provider themselves or their close relative resides, and intends to continue to reside, in the premises as their only or main home. In this case the accommodation provider is free to do anything in relation to the disposal or occupation of rooms within the premises without committing an act of discrimination provided that:

- the rooms disposed of or occupied do not comprise separate and self-contained accommodation; and

- the premises does not comprise of a guest house or a house in multiple occupation. A house in multiple occupation is defined as a dwelling comprised of accommodation for three or more households (in addition to the person whose main home it is or their close relatives) where the accommodation is let on a separate tenancy or similar agreement .

Social housing

The Ordinance provides an exception from discrimination on grounds of carer status, disability and race for social housing providers who seek to allocate social housing in accordance with a person's needs.. In the case of race, the social housing provider can only take into account a person's place of birth or length of residency in Guernsey.

Specialist accommodation

The Ordinance provides an exception in relation to accommodation providers who provide accommodation which:

- caters for the needs of persons who have a particular Protected Ground, where this constitutes a positive action on the part of the provider or
- where it is accommodation provided for people coming into the Island to aid recruitment where it is in the public interest to do so.

8.6 Health - exceptions

The Ordinance provides for six specific exceptions where it is lawful to discriminate on a Protected Ground for health providers:

- Infectious diseases;
- Blood donation services;
- Care within the family;
- Clinical judgement;
- Persons who lack capacity; and
- Preventative health services.

Infectious diseases

The Ordinance provides an exception in relation to infectious diseases. It applies where:

- a person is discriminated against on the grounds of disability;
- that person's disability is an infectious disease, or the person with the disability has an assistance animal and that animal has an infectious disease; and
- the discrimination is necessary to protect public health.

Example

A person has a guide dog. The dog is infected by rabies after it is bitten by another dog on the beach. Rabies is a virus that attacks the nervous system and is fatal in almost all cases. The guide dog requires medical attention, but the local taxi driver will not take the owner with partial sight nor the guide dog in their taxi. Under the Ordinance, an assistance guide dog is protected by the Ordinance and the refusal to prevent it from going in the taxi would be illegal. However, given the fact the guide dog now has an infectious disease, this refusal to transport it would be a permitted exemption.

Blood donation services

The Ordinance provides an exception in relation to blood donors. A person operating a blood donation service is allowed to refuse the blood of an individual where an assessment (based on clinical, epidemiological or other data) suggests that there is a risk to the public or to the individual.

Care within the family

The Ordinance provides an exception in relation to where the person with a Protected Ground is looked after by another person as a member of their family and within their home.

Example

A university student brings home their partner from university. The partner develops long-COVID and remains living in their partner's family home for over a year due to the illness. The student's parent looks after the student's partner. The effect of this exception is that the parent is not bound by the Ordinance as either a service provider or an accommodation provider. They therefore do not legally have to make reasonable adjustments to the house to take into consideration the partner's exhaustion and difficulties moving around the family home.

Clinical judgement

The Ordinance provides an exception in relation to clinical judgement for a person's treatment.

A registered health professional will not be acting unlawfully when treating a person where exercising clinical judgement solely in connection with the diagnosis of illness or medical treatment.

Example

A person is living in a residential care home. They are offered community nursing visits four times a week.

Another patient has recently diagnosed with the same condition. They live at home and have difficulties with transport. They are offered similar nursing visits but only once a week.

The difference in frequency of the treatment could be seen as discriminatory if the two patients differ with respect to a Protected Ground. However, if in the clinical judgement of a registered health practitioner the first patient needs more treatment than the second person who has recently been diagnosed, then this is not discrimination.

Persons who lack capacity

The Ordinance provides an exception in relation for treating a person differently where such person lacks capacity. The definition of capacity is described within the Capacity (Bailiwick of Guernsey) Law, 2020. [See Legislation page number 16](#)

Preventative health services

The Ordinance provides an exception to health care providers that offer or provide preventative public health service, where the service is offered or provided to the individual based on clinical, epidemiological or other relevant data.

Example

A person of Afro-Caribbean ethnicity is offered screening for sickle cell disease in pregnancy. Their friend who is of Western European descent is not offered the test. Sickle cell disease (SCD) is an inherited blood disorder. Anyone can be a carrier of haemoglobin disease but it's more common among people with ancestors from Africa, the Caribbean, the Mediterranean, India, Pakistan, south and southeast Asia, and the Middle East. It would not be unlawful to limit the screening test offer to people at highest risk.