

# **The Prevention of Discrimination (Miscellaneous Amendments) (Guernsey) Ordinance, 2023**

THE STATES, in pursuance of their Resolutions of the 17<sup>th</sup> July 2020<sup>a</sup> and 4<sup>th</sup> November 2021<sup>b</sup>, and in exercise of the powers conferred on them by sections 1 and 4 of the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004<sup>c</sup> and all other powers enabling them in that behalf, hereby order :-

## **Amendment of the Preferred Debts (Guernsey) Law, 1983.**

1. In section 1 of the Preferred Debts (Guernsey) Law, 1983<sup>d</sup>, insert the following subsection-

"(10) The provisions of this section are subject to the provisions of section 70 of the Prevention of Discrimination (Guernsey) Ordinance, 2022 ("awards to be recoverable as preferred debts")."

## **Amendment of the Sex Discrimination Ordinance.**

2. (1) The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005<sup>e</sup> is amended as follows.

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<sup>a</sup> Article XV of Billet d'État No. XV of 2020.

<sup>b</sup> Article XIV of Billet d'État No. XX of 2021.

<sup>c</sup> Order in Council No. XIII of 2005.

<sup>d</sup> Ordres en Conseil Vol. XXVIII, p.184; this enactment has been amended.

<sup>e</sup> Ordinance No. XXXI of 2005; this enactment has been amended.

(2) After section 37, insert -

**"Pre-complaint conciliation."**

37A. (1) If a person ("A") considers that another person ("B") has committed an act by which A's rights under this Ordinance are infringed, A must, before making a complaint under this Ordinance, notify the Employment and Equal Opportunities Service of the intended complaint.

(2) On being notified under subsection (1), the Employment and Equal Opportunities Service shall ask A and B if they wish to engage in pre-complaint conciliation; and if A and B wish to engage in pre-complaint conciliation, the Employment and Equal Opportunities Service shall facilitate it.

(3) In this section, "**pre-complaint conciliation**" means a voluntary process in which the Employment and Equal Opportunities Service uses its best endeavours to settle the potential complaint by giving such advice and assistance as it thinks necessary or expedient, or by conciliation, and which ends when either -

- (a) a settlement has been reached, or
- (b) the Employment and Equal Opportunities Service, being of the opinion that the complaint cannot be settled by those methods, issues a certificate to that effect to A."

(3) For section 39, substitute -

**"Time limit for presenting complaints.**

39. (1) The Tribunal shall not hear and determine a complaint under this Ordinance unless it is presented to the Secretary -

(a) subject to subsections (2) to (4), within a period of three months beginning on the day when the act complained of was done, or

(b) within such further time as the Tribunal (constituted by a single member of the Panel) may, on the application of the complainant presented to the Secretary, allow in a case where -

(i) it is satisfied that it was not reasonably practicable for the complaint to be presented within three months, or

(ii) that it would be just and equitable in the circumstances of the case to allow the further time.

(2) In subsections (3) and (4) -

(a) "Day A" is the day on which the complainant complies with the requirement in section 37A(1) to notify the Employment and Equal Opportunities Service of the intended complaint, and

(b) "Day B" is the day on which the complainant receives a certificate issued by the Employment and Equal Opportunities Service pursuant to section 37A(3)(b).

(3) In determining when the time limit set by subsection (1) expires, the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If the time limit set by subsection (1)(a) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires at the end of that period.

(5) The power conferred on the Tribunal by subsection (1)(b) to extend the time limit set by subsection (1)(a) is exercisable in relation to that time limit as extended by subsections (3) and (4).

(6) The Secretary, on receipt of an application for further time under subsection (1)(b), shall immediately transmit it to the Convenor of the Panel (or, if the Convenor is unavailable, the Deputy Convenor) to enable the appointment, from the membership of the Panel, of a Tribunal (constituted by a single member) to hear and determine the application.

(7) Where the Tribunal, on an application under subsection (1)(b), decides that further time should or should not be allowed for the presentation of a complaint -

(a) the Tribunal's decision is subject to appeal in accordance with section 48, and

(b) if the Tribunal (or the Royal Court on appeal) determines that further time should be allowed for the presentation of the complaint, the single member of the Tribunal who heard the application for further time shall not be appointed as one of the members of the Tribunal who are to hear and determine the complaint."

(4) In section 46 —

(a) for subsection (1), substitute -

"(1) Subject to the provisions of subsection (3) and section 47, the amount of an award of compensation under section 45, is an amount in the sum of —

(a) up to six months' pay, or where the complainant is paid on a weekly basis, up to one week's pay multiplied by 26, and

(b) an amount payable for injury to feelings, hurt or distress calculated by the Tribunal in accordance with regulations prescribed by the Committee up to a maximum of £10,000."

(b) in subsection (2) -

(i) for "subsection (1)" substitute "subsection (1)(a)",

(ii) for "three month" substitute "six month", and

(iii) for "13" substitute "26".

(c) For subsection (3), substitute -

"(3) In a case where, in the opinion of the Tribunal, the basis set out in subsection (1)(a) as read with subsection (2), for calculating the element of the award based on pay is inappropriate because it results in an amount of a month's pay, or, as the case may be, a week's pay, which is more or less than the complainant's usual amount of pay over one month or one week, the award shall be calculated on such other basis as the Tribunal considers to be just and equitable in the circumstances of the case."

(5) In section 52 -

(a) in paragraph (a)(i) delete "and",

(b) in paragraph (a)(ii) at the end insert "and",

(c) after paragraph (a)(ii), insert -

"(iii) any award under section 49 of the  
Prevention of Discrimination  
(Guernsey) Ordinance, 2022",

(d) in paragraph (b) for "section 1(1)(a)" substitute "section 1(1)(za) or (a)".

(6) For section 54 substitute –

**"Tribunal may join complaints.**

54. (1) Subject to subsection (2), in any case where a person ("A") –

(a) has made a complaint to the Tribunal against a respondent ("B") under this Ordinance, and

(b) has also made a complaint to the Tribunal against B as employer under either or both of –

(i) section 16(1)(a), (b) or (c) of the Employment Protection (Guernsey) Law, 1998,

(ii) Part VIII of the Prevention of Discrimination (Guernsey) Ordinance, 2022 (including where A has made more than one such complaint against B or connected respondents which the Tribunal has decided to join under section 55 of that Ordinance),

the Tribunal may, where the complaints relate to the same facts or circumstances, decide that it shall join the complaints.

(2) Subject to subsection (3), where the Tribunal decides to join the complaints under subsection (1), the provisions of –

(a) the Employment Protection (Guernsey) Law, 1998 apply in relation to any complaint under that Law, and

- (b) the Prevention of Discrimination (Guernsey) Ordinance, 2022 apply in relation to any complaint under that Ordinance,

in all respects save that the maximum total award that can be made to a person in respect of the joined complaints is -

- (i) nine months' pay (or where the complainant is paid on a weekly basis, one week's pay multiplied by 39), and
- (ii) an amount payable for injury to feelings, hurt or distress calculated by the Tribunal in accordance with regulations prescribed by the Committee up to a maximum of £10,000.

(3) Where there is a complaint or complaints of victimisation under the Prevention of Discrimination (Guernsey) Ordinance, 2022 as part of the joined complaints under subsection (1), the maximum award limits in subsection (2) do not apply to the victimisation complaint, or complaints, as the case may be, in respect of which (regardless of how many victimisation complaints are made), the appropriate limit for a single claim as set out in section 50 of that Ordinance would apply."

(7) In section 63, in the appropriate places insert the following definitions -

""**Director**" has the same meaning as in the Employment and Equal Opportunities Service (Guernsey) Law, 2023," and

""**Employment and Equal Opportunities Service**" means the service which is headed by the Director,".

**Amendment and disapplication of the Industrial Disputes Law.**

3. In section 18(1) of the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993<sup>f</sup>, in the definition of "**industrial dispute**" after paragraph (c), insert -

", or,

- (d) a dispute under the Prevention of Discrimination (Guernsey) Ordinance, 2022 (being a complaint described in section 42 of that Ordinance that a person has committed or is to be treated as having committed an act which is prohibited by that Ordinance).".

**Amendment of the Employment Protection Law.**

4. (1) The Employment Protection (Guernsey) Law, 1998<sup>g</sup> is amended as follows.

(2) After section 9A insert the following section—

**"Dismissal on other discriminatory grounds.**

**9B.** The dismissal of an employee by an employer shall be regarded for the purposes of this Part of this Law as having been unfair if the dismissal

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<sup>f</sup> Ordres en Conseil Vol. XXXIV, p. 267; this enactment has been amended.

<sup>g</sup> Ordres en Conseil Vol. XXXVIII, p. 239; this enactment has been amended.

constituted an act against the employee prohibited by any provision of Part V of the Prevention of Discrimination (Guernsey) Ordinance, 2022."

(3) In section 12(4), after paragraph (f) insert -

", or

(g) the Prevention of Discrimination (Guernsey) Ordinance, 2022."

(4) In section 13(2A), for "an act of discrimination" to the end of the subsection substitute "an act against the employee prohibited by any provision of Part II of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 or any provision of Part V of the Prevention of Discrimination (Guernsey) Ordinance, 2022."

(5) In section 15(2)(b), for "an act of discrimination" to the end of the paragraph substitute "an act against the employee prohibited by any provision of Part II of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 or any provision of Part V of the Prevention of Discrimination (Guernsey) Ordinance, 2022."

(6) In Part III, before section 16, insert the following section—

**"Pre-complaint conciliation.**

**15M.** (1) If a person ("A") considers that another person ("B") has committed an act by which A's rights under this Law are infringed, A must, before making a complaint under this Law, notify the Employment and Equal Opportunities Service of the intended complaint.

(2) On being notified under subsection (1), the Employment and Equal Opportunities Service shall ask A and B if they wish to engage in pre-complaint conciliation, and if A and B wish to engage in pre-

complaint conciliation, the Employment and Equal Opportunities Service shall facilitate it.

(3) In this section, "**pre-complaint conciliation**" means a voluntary process in which the Employment and Equal Opportunities Service uses its best endeavours to settle the potential complaint by giving such advice and assistance as it thinks necessary or expedient or by conciliation, which ends when either -

- (a) a settlement has been reached, or
- (b) the Employment and Equal Opportunities Service, being of the opinion that the complaint cannot be settled by those methods, issues a certificate to that effect to A."

(7) In section 17 -

(a) in subsection (1) -

(i) in paragraph (a), immediately before "within a period of three months" insert "subject to subsections (1A) to (1C),"

(ii) for paragraph (b) substitute -

"(b) within such further time as the Tribunal (constituted by a single member of the Panel) may, on the application of the complainant presented to the Secretary, allow in a case where -

- (i) it is satisfied that it was not reasonably practicable for the complaint to be presented within three months, or
- (ii) that it would be just and equitable in the circumstances of the case to allow the further time.",

(b) after subsection (1), insert the following subsections—

"(1A) In subsections (1B) and (1C) -

- (a) "**Day A**" is the day on which the complainant complies with the requirement in section 15M(1) to notify the Employment and Equal Opportunities Service of the intended complaint, and
- (b) "**Day B**" is the day on which the complainant receives a certificate issued by the Employment and Equal Opportunities Service pursuant to section 15M(3).

(1B) In determining when the time limit set by subsection (1) expires, the period beginning with the day after Day A and ending with Day B is not to be counted.

(1C) If the time limit set by subsection (1)(a) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires at the end of that period.

(1D) The power conferred by the Tribunal by subsection (1)(b) to extend the time limit set by subsection (1)(a) is exercisable in relation to that time limit as extended by subsections (1B) and (1C)."

(8) In section 22, for subsection (2)(b) substitute—

"(b) in a case where, in the opinion of the Tribunal, the basis set out in subsection (1), as read with paragraph (a) of this subsection, for calculating the element of the award based on pay is inappropriate because it results in an amount of a month's pay, or, as the case may be, a week's pay, which is more or less than the complainant's usual amount of pay over one month or one week, the award shall be calculated on such other basis as the Tribunal considers to be just and equitable in the circumstances of the case."

(9) In section 23(4), for "an act of discrimination" to the end, substitute "an act against the employee prohibited by any provision of Part II of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 or Part V of the Prevention of Discrimination (Guernsey) Ordinance, 2022."

(10) In section 29 -

(a) in paragraph (a)(i) delete "and",

(b) in paragraph (a)(ii) at the end insert "and",

(c) after paragraph (a)(ii), insert —

"(iii) any award of compensation under section 49 of the Prevention of

Discrimination (Guernsey) Ordinance,  
2022,"

(d) in paragraph (b), for "section (1)(1)(a)" substitute  
"section 1(1)(za) or (a)".

(11) For section 30B substitute –

**"Tribunal may join complaints.**

**30B.** (1) Subject to subsection (2), in any case where a person  
("A") -

(a) has made a complaint to the Tribunal against a  
respondent ("B") under this Law, and

(b) has also made a complaint to the Tribunal  
against B as employer under either or both of -

(i) section 38(1)(a) of the Sex  
Discrimination (Employment)  
(Guernsey) Ordinance, 2005,

(ii) Part VIII of the Prevention of  
Discrimination (Guernsey) Ordinance,  
2022, or has made more than one such  
complaint against B or connected  
respondents which the Tribunal has  
decided to join under section 55 of that  
Ordinance,

the Tribunal may, where the complaints relate to the same facts or circumstances, decide that it shall join the complaints.

(2) Subject to subsection (3), where the Tribunal decides to join the complaints under subsection (1), the provisions of -

- (a) the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 apply in relation to any complaint under that Ordinance, and
- (b) the Prevention of Discrimination (Guernsey) Ordinance, 2022 apply in relation to any complaint under that Ordinance,

in all respects save that the maximum total award that can be made to a person in respect of the joined complaints is -

- (i) nine months' pay (or where the complainant is paid on a weekly basis, one week's pay multiplied by 39), and
- (ii) an amount payable for injury to feelings, hurt or distress calculated by the Tribunal in accordance with regulations prescribed by the Committee up to a maximum of £10,000.

(3) Where there is a complaint or complaints of victimisation under the Prevention of Discrimination (Guernsey) Ordinance, 2022 as part of the joined complaints under subsection (1), the maximum

award limits in subsection (2) do not apply to the victimisation complaint, or complaints, as the case may be, in respect of which (regardless of how many victimisation complaints are made), the appropriate limit for a single claim as set out in section 50 of that Ordinance would apply."

(12) In section 34, in the appropriate places insert the following definitions –

""**Director**" has the same meaning as in the Employment and Equal Opportunities Service (Guernsey) Law, 2023," and

""**Employment and Equal Opportunities Service**" means the service which is headed by the Director,".

**Amendment of the Prevention of Discrimination (Guernsey) Ordinance, 2022.**

5. (1) The Prevention of Discrimination (Guernsey) Ordinance, 2022<sup>h</sup>, is amended as follows.

(2) In section 28, after subsection (5) insert the following subsections-

"(6) This section does not apply to discrimination, harassment or victimisation -

- (a) that is prohibited by section 29 (education), 30 (clubs and associations) or 31 (accommodation),  
or

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<sup>h</sup> Ordinance No. XVIII of 2022.

(b) would be so prohibited but for an exception.

(7) Without prejudice to section 79 (commencement), and only for the purpose of, and to the extent necessary for, giving effect to subsection (6), section 29 shall be deemed to have effect on and after Commencement."

(3) In section 33, insert the following subsection -

"(4) For the avoidance of doubt, no proactive duty to make reasonable adjustments for disabled persons is imposed by this section on accommodation providers in relation to the disposal of premises."

(4) For section 34(5) substitute -

"(5) L does not discriminate against T if T fails to carry out minor improvements if -

(a) to do so would be a disproportionate burden on L, or

(b) L does not know and could not reasonably be expected to know that T is a disabled person."

(5) In section 40(1), for "section 28, 29, 30 or 31" substitute "section 28, 29, 30, 31 or 33".

(6) In section 43(2), at the end insert ".".

(7) In section 56(3) for "limit for single claim" substitute "limit for a single claim".

(8) In section 79 -

- (a) for the title substitute "**Commencement and saving provisions.**",
- (b) in subsection (3), after "school or education provider" insert "when the school or education provider is acting in relation to students as described in sections 29(1)(a) and (2)(a) to (d)",
- (c) after subsection (6), insert the following subsection –

"(7) Section 56 shall not apply to any complaint which, on Commencement, has been made to the Tribunal under section 38 of the Sex Discrimination (Guernsey) Ordinance, 2005 or section 16 of the Employment Protection (Guernsey) Law, 1998, and accordingly in relation to any such complaint (including, for the avoidance of doubt, any appeal in respect of such a complaint), the provisions regarding joined complaints in section 54 of the Sex Discrimination (Guernsey) Ordinance, 2005 and section 30B of the Employment Protection (Guernsey) Law, 1998 will continue to apply."

- (9) In the Schedule, for paragraph 46 substitute—

"**46.** A person ("P") does not contravene section 31 of this Ordinance only by providing accommodation which caters for the needs of persons who have a particular protected ground, where P takes this action –

- (a) in the circumstances set out in paragraph 1 of the Schedule, or
- (b) to assist in the recruitment of persons for employment from outside Guernsey where it is in the public interest to do so."

**Extent.**

6. This Ordinance has effect in Guernsey, Herm and Jethou.

**Citation.**

7. This Ordinance may be cited as the Prevention of Discrimination (Miscellaneous Amendments) (Guernsey) Ordinance, 2023.

**Commencement and saving provisions.**

8. (1) Subject to subsection (2), this Ordinance shall come into force on 1<sup>st</sup> October 2023 ("**Commencement**").

(2) The amendments made by section 2(4), 2(6), 4(8) and 4(11) shall not apply to any complaint which, on Commencement, has been made to the Tribunal under section 38 of the Sex Discrimination (Guernsey) Ordinance, 2005 or section 16 of the Employment Protection (Guernsey) Law, 1998, and in relation any such complaint (including, for the avoidance of doubt, any appeal in respect of such a complaint) the provisions of the Sex Discrimination (Guernsey) Ordinance, 2005 and the Employment Protection (Guernsey) Law, 1998 unamended by sections 2(4), 2(6), 4(8) and 4(11) of this Ordinance will continue to apply.