

# PROJET DE LOI

ENTITLED

## **The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. XIII of 2005.

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## **The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004**

### ARRANGEMENT OF SECTIONS

1. Power to make Ordinances as to prevention of discrimination.
2. Implementation of international agreements relating to discrimination.
3. Interpretation.
4. General provisions as to subordinate legislation.
5. Citation.

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## **The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004**

**THE STATES**, in pursuance of their Resolution of the 25<sup>th</sup> September, 2003<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### **Power to make Ordinances as to prevention of discrimination.**

1. (1) The States may by Ordinance make such provision as they think fit in relation to the prevention of discrimination.

(2) In this Law "**discrimination**" means discrimination against any person by reason of race, colour, sex, sexual orientation, language, religion, belief, political or other opinion, national or social or ethnic origin, association with a national minority, age, disability, gender reassignment, property, birth, or marital, family or other status.

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### **NOTE**

*The following Ordinances have been made under section 1:*

*Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005;*

*Sex Discrimination (Employment) (Guernsey) Ordinance, 2005;*

*Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016;*

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<sup>a</sup> Article XIV of Billet d'État No. XXI of 2003.

*Prevention of Discrimination (Guernsey) Ordinance, 2022;*  
*Prevention of Discrimination (Miscellaneous Amendments)*  
*(Guernsey) Ordinance, 2023.*

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**Implementation of international agreements relating to discrimination.**

2. An Ordinance under this Law may, without limitation, make provision for the implementation of any international agreement relating to the prevention of discrimination or any aspect thereof.

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**NOTE**

*The following Ordinance has been made under section 2:*

*Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016;*  
*Prevention of Discrimination (Guernsey) Ordinance, 2022;*  
*Prevention of Discrimination (Miscellaneous Amendments)*  
*(Guernsey) Ordinance, 2023.*

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**Interpretation.**

3. (1) In this Law, unless the context requires otherwise –

**"Bailiwick"** means the Bailiwick of Guernsey,

**"discrimination"** has the meaning given by section 1,

**"enactment"** includes any Law, Ordinance, Act of Parliament and Order in Council,

**"implementation"**, in relation to any international agreement relating to the prevention of discrimination or any aspect thereof, includes the enforcement or enactment thereof, and the securing of the administration, execution, recognition, exercise or enjoyment thereof, in or under domestic law,

**"international agreement"** means –

- (a) any convention, treaty, protocol or other international instrument, or any provision thereof, and
- (b) any Community provision within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>b</sup>,

whether or not binding upon the Bailiwick or any part thereof, and includes any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international agreement,

**"persons"** includes groups of persons and institutions,

**"prevention of discrimination"** includes –

- (a) the prohibition and elimination of discrimination, and
- (b) the promotion of –
  - (i) equality of status, opportunity and treatment, and
  - (ii) the equal enjoyment of rights and freedoms,

**"States"** means –

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<sup>b</sup> Order in Council No. III of 1994.

- (a) in relation to the Bailiwick apart from Alderney and Sark, the States of Deliberation,
- (b) in relation to Alderney, the States of Alderney, and
- (c) in relation to Sark, the Chief Pleas of Sark.

(2) The Interpretation (Guernsey) Law, 1948<sup>c</sup> applies to the interpretation of this Law throughout the Bailiwick.

(3) Any reference in this Law to an enactment is a reference thereto as amended, re-enacted (with or without modification), extended or applied.

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**NOTE**

*The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.*

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**General provisions as to subordinate legislation.**

4. (1) An Ordinance under this Law –
- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
  - (b) may contain such transitional, consequential, incidental, supplementary and savings provisions as the States think fit, including (without limitation) provision repealing, amending or disapplying any enactment.

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<sup>c</sup> Ordres en Conseil Vol. XIII, p. 355.

(2) Any power conferred by this Law to make an Ordinance may be exercised –

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised –

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law –

(a) may make provision for its enforcement, including (without limitation) provision as to –

(i) modes of civil enforcement,

- (ii) modes of criminal enforcement,
- (iii) remedies in respect of breaches of its provisions, and
- (iv) the establishment of a tribunal to deal with complaints relating to discrimination (and with any other matters specified in the Ordinance or in any other enactment, whether or not relating to the prevention of discrimination) and a panel of persons from whom the members of the tribunal are to be drawn,

and otherwise as to the administration of justice in relation to the prevention of discrimination,

- (b) may provide for the establishment of an office of a Commissioner (by whatever name called, and whether as an office of a department or committee of the States or as a separate legal entity) with responsibility relating to the prevention of discrimination and the administration of any Ordinance under this Law, and with such rights, liabilities, powers, functions and capacity as may be specified by Ordinance,
- (c) may provide for the vesting of any right, liability, power and property in the Commissioner or his office,
- (d) may amend the meaning of "discrimination" given by section 1,

- (e) may make provision for the jurisdiction and powers of the courts of the Bailiwick, and the constitution and procedure of those courts, in relation to the prevention of discrimination,
- (f) may make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences and may (for the avoidance of doubt) specify penalties which may be imposed by the Magistrate's Court, the Court of Alderney or the Court of the Seneschal which exceed the limits of jurisdiction for the time being imposed upon those Courts by, respectively, section 10 of the Magistrate's Court (Guernsey) Law, 1954<sup>d</sup>, section 13 of the Government of Alderney Law, 1987<sup>e</sup> and section 23 of the Reform (Sark) Law, 1951<sup>f</sup>,
- (g) may provide for exceptions and derogations from the enforcement and applicability of provisions for the prevention of discrimination, on social, community, economic and other grounds,
- (h) may direct that any provision of –

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<sup>d</sup> Ordres en Conseil Vol. XVI, p. 103; Vol. XXVII, p. 170; Vol. XXVIII, p. 5; and No. V of 1989.

<sup>e</sup> Ordres en Conseil Vol. XXX, p. 37; and No. VI of 1989.

<sup>f</sup> Ordres en Conseil Vol. XV, p. 215; Vol. XXIII, p. 200; Vol. XXIX, p. 27; No. VII of 1989; and No. XII of 1991.

*Consolidated text*

- (i) any international agreement relating to the prevention of discrimination or any aspect thereof, or
- (ii) any enactment or any order, rule, regulation, scheme, warrant, byelaw or other instrument made under any enactment,

shall have effect in the part of the Bailiwick to which the Ordinance applies with such exceptions, adaptations and modifications as may be specified in the Ordinance,

- (i) without prejudice to the provisions of paragraph (h), may make provision by reference to, and may adopt or incorporate (by reference, annexation or otherwise), any provision described in paragraph (h), which provision shall (subject to any exceptions, adaptations and modifications specified in the Ordinance) thereupon have the same force and effect as an Ordinance under this Law,
- (j) may make provision for the purpose of dealing with matters arising out of or related to –
  - (i) the prevention of discrimination, or
  - (ii) any provision described in paragraph (h),
- (k) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,

- (l) may empower any department or committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, and any other body (including, without limitation, the Royal Court and any other court of the Bailiwick), to make orders, rules or regulations, and
  
- (m) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by *Projet de Loi* (including provision amending any enactment), but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

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**NOTES**

*The following Ordinances have been made under section 4:*

*Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005;*  
*Sex Discrimination (Employment) (Guernsey) Ordinance, 2005;*  
*Prevention of Discrimination (Guernsey) Ordinance, 2022;*  
*Prevention of Discrimination (Miscellaneous Amendments) (Guernsey) Ordinance, 2023.*

*The Magistrate's Court (Guernsey) Law, 1954 has since been repealed by the Magistrate's Court (Guernsey) Law, 2008, section 46(b), with effect from 1st September, 2009, subject to the savings and transitional provisions in section 47 of the 2008 Law.*

*The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.*

*The Reform (Sark) Law, 1951 has since been repealed by the Reform (Sark) Law, 2008, section 66(2), Schedule 2, with effect from 1st September, 2008, subject to, first, the general savings and, second, the specific savings and transitional provisions in, respectively, section 66(3) and section 67 of the 2008 Law.*

**Citation.**

5. This Law may be cited as the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004.

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**NOTE**

*The Law received Royal Sanction on 19th July, 2005 and was registered on the Records of the Island of Guernsey and came into force on 5th September, 2005.*

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