

Prevention of Discrimination - Reasonable Adjustments to Property

Update prepared by Laura Bougourd (Guernsey)

This legal update looks at the implications for Guernsey's commercial property owners and occupiers of the forthcoming anti-discrimination legislation.

What is happening?

Last year the States of Guernsey approved The Prevention of Discrimination (Guernsey) Ordinance, 2022 – a new piece of legislation, which will prohibit discrimination on the grounds of:

- disability,
- race,
- carer status,
- sexual orientation, and
- religion or belief.

This is to be Phase 1 of the new legislation, with Phase 2 intended to cover age-based discrimination and modernise the existing sex discrimination law.

When?

- 2020, July – the States of Guernsey debated and approved the preparation of the new legislation;
- 2022, September 30th – the draft legislation was approved by the States;
- 2023 – training is being provided by the Consortium (a group of organisations with complementary specialisms delivering a training and development programme to support the implementation of the law);
- 2023, October 1st – Phase 1 of the new legislation comes into force;
- 2024 – Phase 2 legislation due to be implemented (although this may now be pushed back due to delays in implementing Phase 1 against the original anticipated timetable);
- 2028 – the ability to bring discrimination complaints relating to physical features of buildings will come into effect.

How does this relate to commercial property?

The new legislation makes it unlawful to discriminate against people at work, when accessing goods or services as a consumer, when using public services or when buying or leasing property.

There will be a duty placed on employers and service providers (amongst others) to make **reasonable adjustments** to enable disabled people to have the same opportunities as others and to prevent a disabled person suffering a **substantial disadvantage** without such an adjustment. This applies to a provision, criterion or practice, provision of auxiliary aids and physical features of premises, regardless of whether the employer or service provider owns or is tenant of its premises.

There will be a duty on commercial landlords to make (and pay for) **minor improvements** to property for a disabled person who is their tenant (or, in the case of residential accommodation, otherwise lives in the accommodation) where the lack of minor improvement puts the disabled person at a **substantial disadvantage** in comparison with persons who are not disabled.

Denying someone such a reasonable adjustment or minor improvement would be unlawful discrimination unless making that adjustment or improvement would place a **disproportionate burden** on the employer, service provider or landlord.

For commercial landlords, there will also be a duty to allow **reasonable adjustments** to physical features for a disabled person who is their tenant, or an employee or service-user of their tenant, where: (i) that physical feature puts the disabled person at a substantial disadvantage in comparison with persons who are not disabled and (ii) the reasonable adjustment would compensate for or remove that disadvantage.

There will be a five year delay between the new legislation being implemented and people being able to register complaints which relate to the physical features of a building. However, accessibility and, in particular, physical accessibility should be a priority consideration of all proactive landlords, employers and service providers in relation to their premises, especially if renovations are likely to be carried out in the interim, with October 2028 ideally being the longstop date for such changes.

Examples of reasonable adjustments

Examples from other jurisdictions indicate that reasonable adjustments to physical features might include:

- installing a ramp and automatic doors at the entrance to a shop and/or making doorways wider;
- providing more lighting and clearer signs in public spaces;
- providing low-level cash machines in a bank;
- providing low level toilet and handwashing facilities in a restaurant; and
- providing auxiliary aids such as handrails.

What now?

Landlords, employers and service providers would be advised to be proactive and start considering potential issues around accessibility and associated reasonable adjustments before the new legislation comes into effect.

It is not anticipated that the whole island will comply with best practice standards by 2028, however making changes in advance will reduce the chances of a complaint being made in the future and minimise the risk of having to undertake further works at additional expense.

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