

Proposals for a new Discrimination Ordinance



Committee *for*
Employment & Social Security

June 2020

What is the Committee proposing?

- Phased development of a new multi-ground discrimination Ordinance.
- The proposed Ordinance will:
 - make all forms of discrimination unlawful,
 - cover multiple grounds of protection, and
 - apply in the fields of employment, the provision of goods and services, education and in the membership of clubs and associations.
- The expansion of the Employment Relations Service to create an Employment and Equal Opportunities Service.
- The expansion and development of the existing Employment and Discrimination Tribunal.

Phase 1



Disability



Carer
status

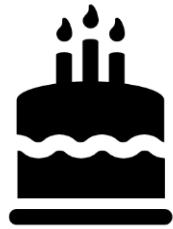


Race

Phase 2



Religion



Age

Phase 3



Sex



Sexual
orientation



Gender
reassignment



Marital
status



Pregnancy
& maternity

Types of unlawful discrimination

- Direct discrimination
- Indirect discrimination
- Discrimination by association
- Discrimination arising from disability
- Denial of a reasonable adjustment

Other prohibited conduct

- Harassment
- Sexual harassment
- Discriminatory advertisements
- Victimisation
- Instructions or pressure to commit a prohibited act
- Failing to provide equal pay for equal work

Lawful different treatment

- There is an explanation not related to a protected ground
- Positive action
- Objective justification
 - Indirect discrimination
 - Discrimination arising from disability
 - Genuine and Determining Occupational Requirements
- A person cannot do the essential functions of a role
- Exceptions for well justified or necessary circumstances.

Definition of 'disability'

- A person would fall within the protected ground of 'disability' if the person has one or more long-term physical, mental, intellectual or sensory impairments.
- A 'long-term' impairment is an impairment which has lasted, or is expected to last, for not less than 6 months; or is expected to last until the end of the person's life.
- This time period would not exclude potentially relapsing/reoccurring conditions where the person is in a period of remission (e.g. cancer, multiple sclerosis, mental health conditions) or where treatment is controlling the condition (e.g. HIV, diabetes).

Definition of 'disability' (2)

- Similar to Jersey definition of disability (with a 6 month time limit) with the following changes:
 - 'Impairment' is defined - based on the definition of disability in several other countries - Ireland, Australia, Hong Kong.
 - Clarification that if the existence of a condition, impairment or illness or the prognosis is in doubt, medical, or other expert, evidence may be required.
 - Exclusions from the Jersey definition of disability are instead covered as a more targeted exception to protect people and property from harm.
 - Without the unique and untested phrase "which can adversely affect a person's ability to engage or participate in any activity in respect of which an act of discrimination is prohibited under this Law." Internationally it is uncommon to have a limit on functioning like this in the definition of disability.

The Employment & Equal Opportunities Service

- Employment Relations Service to be expanded and developed into an Employment & Equal Opportunities Service (EEOS)
 - Free impartial advice and guidance available to both parties
 - Focus on informal dispute resolution - pre- and post-complaint conciliation offered in all cases.
 - Proactive education and awareness raising.
- Led by a Statutory Official to ensure operational independence of complaints handling.
- Relocated away from core civil service functions.

Employment & Discrimination Tribunal

- Increased staff capacity.
- Larger Tribunal Panel – mix of expertise and balance of interests.
- Legally qualified Chairs.
- Rolling programme of training.

Proposed service developments



- An additional £370,000 p.a. in the long term (plus survey costs)

What does this mean for people who have experienced discrimination?

- ✓ Preventative approach – invest in attitude change
- ✓ Evidence base
- ✓ Flexible
- ✓ Relatively easy to implement
- ✓ Meets immediate needs – increased capacity

What does this mean for people who have experienced discrimination?

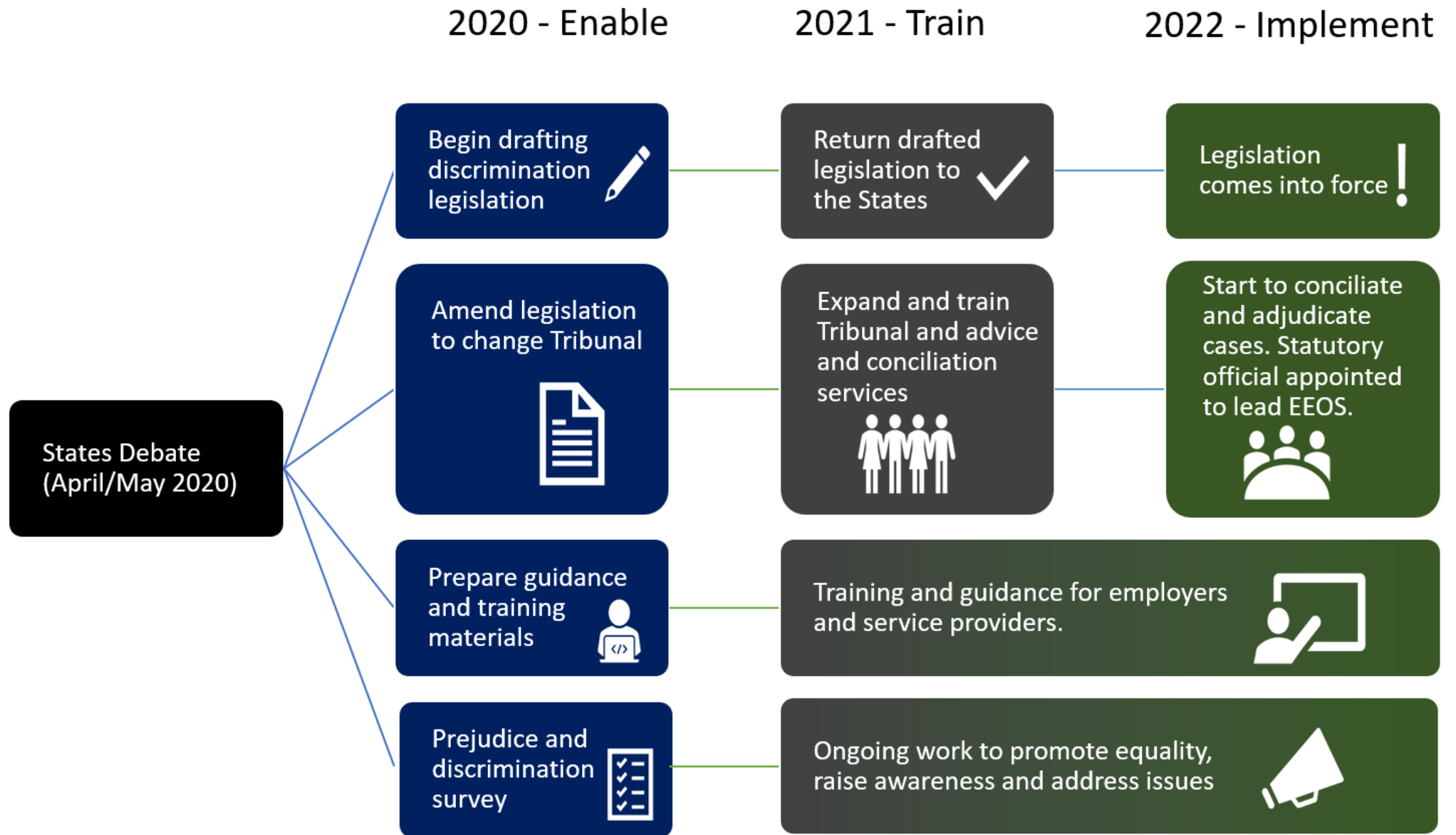
- ✓ Brings Tribunal up to standard in comparator jurisdictions
- ✓ More opportunity for early resolution
- ✓ Improve experience of people bringing Employment Protection complaints
- ✓ Greater degree of independence/better governance

Some key disadvantages:

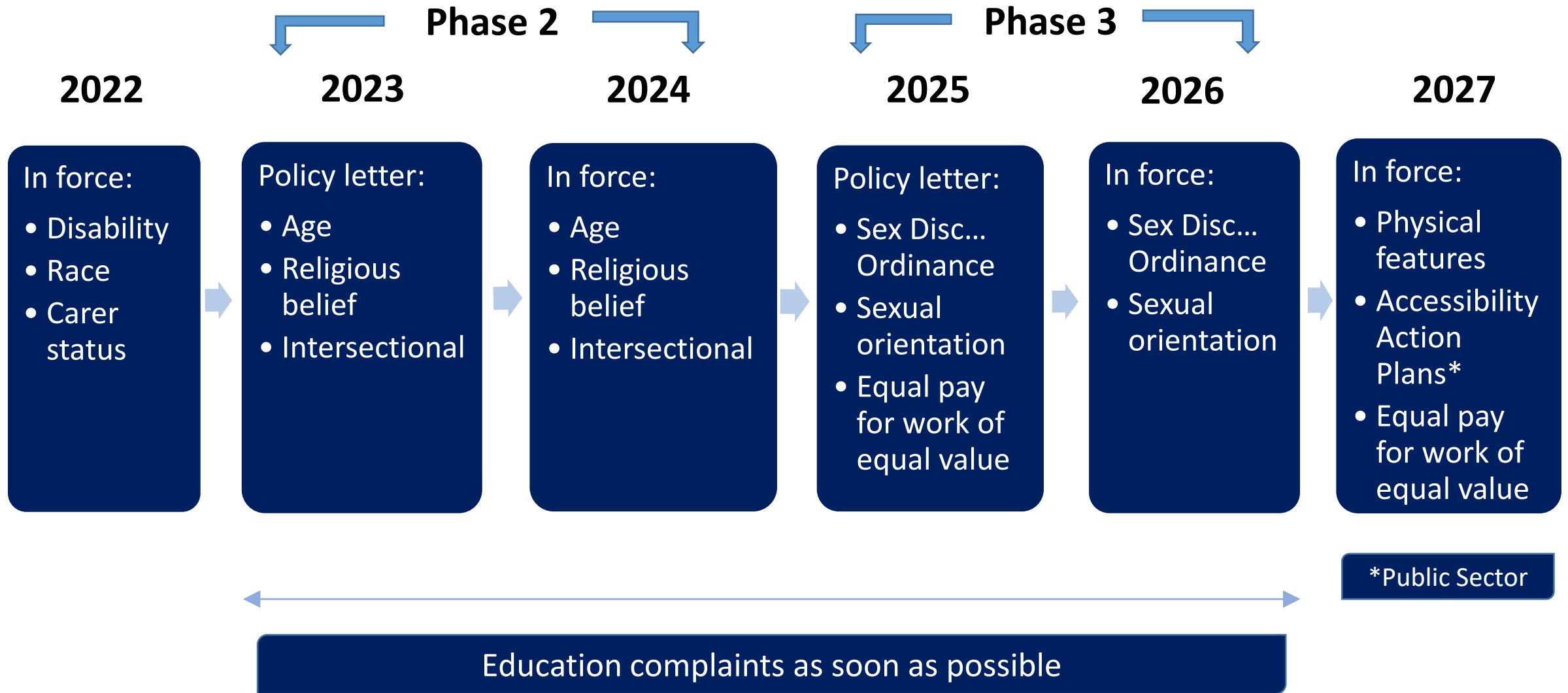
- x Does not further human rights monitoring
- x No 'Independent Monitoring Mechanism' (UNCRPD)
- x Still civil servants managing complaints against the States

The option is a compromise.

High level implementation plan



Future phases of development of the Ordinance



How can I find out more?

- Policy Letter - <https://gov.gg/article/176559/Proposals-for-a-New-Discrimination-Ordinance>
- Summary of proposals - www.gov.gg/discrimination
- Easy read - www.gov.gg/discrimination

Contact us:

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Discussion and questions