



Jersey

DISCRIMINATION (AGE) (JERSEY) REGULATIONS 2016

Arrangement

Regulation

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*Made**24th May 2016**Coming into force**in accordance with Regulation 7*

THE STATES, in pursuance of Articles 5 and 47 of the Discrimination (Jersey) Law 2013¹, have made the following Regulations –

1 Amendment of the Discrimination (Jersey) Law 2013

The Discrimination (Jersey) Law 2013² is amended in accordance with Regulations 2 to 5.

2 Article 6 amended

After Article 6(8) there shall be inserted the following paragraph –

“(8A) In relation to the protected characteristic of age a person does not directly discriminate against another person (the ‘subject’) if the person can show his or her treatment of the subject to be a proportionate means of achieving a legitimate aim.”.

3 Article 7 amended

In Article 7(4), after sub-paragraph (d) there shall be added the following sub-paragraph –

“(e) age.”.

4 Schedule 1 amended

In Schedule 1 after paragraph 6 there shall be added the following paragraph –

“7 Age

(1) Age is a protected characteristic.

(2) In relation to the protected characteristic of age –

- (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;
 - (b) a reference to persons who share a protected characteristic is a reference to persons of the same age group.
- (3) A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages.”.

5 Schedule 2 amended

- (1) In Part 1 of Schedule 2, in paragraph 2G –
- (a) in sub-paragraph (2) the word “and” in clause (c) shall be deleted and after clause (d) there shall be inserted the following clause –
 - “(e) Articles 17 and 18.”;
 - (b) in sub-paragraph (3) after the words “contract work” there shall be inserted the words “, voluntary work”.
- (2) After Part 3 there shall be added the following Part –

“PART 4

EXCEPTIONS TO PROHIBITED ACTS: AGE

25 Age: act done pursuant to States’ policy or Ministerial decision

An act of discrimination is not prohibited by this Law if it is done pursuant to a policy adopted by the States or by Ministerial decision where the implementation of that policy or decision applies criteria based upon a person’s age, for the purposes of –

- (a) promoting employment or other opportunities; or
- (b) providing access to facilities and services.

26 Age: immigration

- (1) An officer of the Jersey Customs and Immigration Service does not contravene Article 22, in relation to the protected characteristic of age, in the exercise of any immigration functions.
- (2) In sub-paragraph (1) ‘immigration functions’ means any functions exercisable in relation to immigration –
- (a) under any enactment; or
 - (b) under any Act of the United Kingdom extended to Jersey (whenever it was so extended) except for sections 28A to 28K of the Immigration Act 1971.

27 Age: education

Article 21 shall not prohibit a person discriminating against a student, or a person applying for admission as a student, on grounds of the student's or applicant's age.

28 Age: employment benefits

- (1) The provision of benefits to employees based on their length of service does not constitute indirect discrimination under this Law in relation to the protected characteristic of age.
- (2) An employer who makes arrangements for, or affords access to, the provision of insurance or a related financial service to employees only while they are under pensionable age does not contravene this Law in relation to the protected characteristic of age.
- (3) Sub-paragraph (2) applies only where the insurance or related financial service is, or is to be, provided to the employees or a class of employees –
 - (a) in pursuance of an arrangement between the employer and another person; or
 - (b) where the employer's business includes the provision of insurance or financial services of the description in question, by the employer.
- (4) An employer who provides, makes arrangements for or facilitates the provision of care for children of particular ages does not contravene this Law in relation to the protected characteristic of age.
- (5) In this paragraph –
 - (a) 'care' includes supervision;
 - (b) 'child' means a person under the age of 18;
 - (c) 'employee' includes a partner of a partnership to which Article 12 applies, a contract worker and a voluntary worker;
 - (d) 'employer' includes a partner of a partnership to which Article 12 applies and a manager;
 - (e) facilitating the provision of care includes –
 - (i) paying for some or all of the cost of providing care for a child,
 - (ii) helping a parent of a child to find a suitable person to provide care for the child,
 - (iii) enabling a parent of a child to spend more time providing care for the child or otherwise assisting the parent with respect to the care that the parent provides for the child;
 - (f) 'pensionable age' has the same meaning as in Article 1A of, and Schedule 1AA to, the Social Security (Jersey) Law 1974³.

29 Age: minimum wage

- (1) An employer who pays a person less than a rate of the minimum wage where the person does not qualify for that rate does not contravene this Law in relation to the protected characteristic of age.
- (2) In this paragraph ‘minimum wage’ shall be construed in accordance with Article 16(3) of the Employment (Jersey) Law 2003⁴.

30 Age: redundancy payments

- (1) The provision of redundancy payments by employers to employees, whether in compliance with or in excess of the statutory minimum, does not constitute discrimination under this Law in relation to the protected characteristic of age provided that the payments are calculated using the same formula for all employees regardless of age.
- (2) In this paragraph –
 - (a) ‘employee’ includes a partner of a partnership to which Article 12 applies and a contract worker;
 - (b) ‘employer’ includes a partner of a partnership to which Article 12 applies.

31 Retirement age

- (1) An employer who dismisses an employee who has reached pensionable age or, if higher, the retirement age set by the employer, does not commit an act of direct discrimination in relation to the protected characteristic of age if the employer has a policy of requiring employees to retire at such an age.
- (2) The fact that an employer may, from time to time, allow an employee to remain in post beyond pensionable age or, if higher, the retirement age set by the employer shall not of itself be taken to mean that the employer does not have a policy of requiring employees to retire at such an age.
- (3) In this paragraph –
 - (a) ‘employee’ includes a partner of a partnership to which Article 12 applies, a contract worker and a voluntary worker;
 - (b) ‘employer’ includes a partner of a partnership to which Article 12 applies and a manager;
 - (c) ‘pensionable age’ has the same meaning as in Article 1A of, and Schedule 1AA to, the Social Security (Jersey) Law 1974.
- (4) This paragraph applies only to a dismissal where the effective date of termination (within the meaning of Article 63 of the Employment (Jersey) Law 2003) is before 1st September 2018.

32 Persons nearing retirement age

- (1) An employer who takes into account that a person is nearing retirement age in deciding on –
 - (a) who to recruit;
 - (b) who to promote;
 - (c) who to move to another position; or
 - (d) what training is to be provided to any employee,does not contravene this Law in relation to the protected characteristic of age.
- (2) In this paragraph a person is nearing retirement age if the person's age is not less than 6 months (or such longer period as is reasonable in the circumstances) short of pensionable age or, if higher, the retirement age set by the employer.
- (3) However, in the case of a training course that lasts more than 6 months there is no contravention of this Law under sub-paragraph (1) if the employee's retirement age (as determined by sub-paragraph (2)) is within 6 months of the date on which the training is due to be completed.
- (4) In this paragraph –
 - (a) 'employee' includes a partner of a partnership to which Article 12 applies, a contract worker and a voluntary worker;
 - (b) 'employer' includes a partner of a partnership to which Article 12 applies and a manager;
 - (c) 'pensionable age' has the same meaning as in Article 1A of, and Schedule 1AA to, the Social Security (Jersey) Law 1974.
- (5) This paragraph applies only where the act of discrimination occurs before 1st September 2018.

33 Age: pension schemes

- (1) The provision and the terms of an occupational pension scheme, or any personal or group personal pension scheme, do not contravene this Law in relation to the protected characteristic of age.
- (2) In this paragraph 'group personal pension scheme' means arrangements administered on a group basis under a personal pension scheme that are available to employees of the same employer or of employers within a group.

34 Age: financial and insurance arrangements

- (1) Parts 3 and 5 shall not prohibit a person discriminating against a person on grounds of age, in relation to the terms on which an annuity or policy of insurance is offered to, or may be obtained by, that person, if the discrimination is reasonable in the

circumstances, having regard to any statistical or actuarial data on which it is reasonable for the person to rely.

- (2) Article 22 shall not prohibit the provision of a relevant financial service, so far as it relates to the protected characteristic of age, if the provision is in pursuance of arrangements made by an employer for the service-provider to provide the service to the employer's employees, and other persons, as a consequence of the employment.
- (3) In this paragraph 'relevant financial service' means –
 - (a) insurance or a related financial service; or
 - (b) a service relating to membership of or benefits under a personal pension scheme.

35 Age: goods, facilities and services

Article 22 does not prohibit a person discriminating against another person on grounds of age if the subject of the discrimination is under the age of 18.

36 Age-related concessions

- (1) A person does not contravene Article 22, so far as it relates to the protected characteristic of age, by giving a concession in respect of a service to persons of a particular age group.
- (2) A club does not contravene Article 25, in so far as it relates to the protected characteristic of age, by giving a concession on admission to membership or on access to a benefit, facility or service, for –
 - (a) persons of a particular age group; or
 - (b) persons who have been members of the club for more than a number of years specified by the club for this purpose.
- (3) A club does not contravene Article 25, in so far as it relates to the protected characteristic of age, by giving a concession on invitations, or access to a benefit, facility or service, for guests of a particular age group.
- (4) For the purposes of this paragraph –
 - (a) affording only persons of a particular age group access to a benefit, facility or service for a limited time is to be regarded as a concession;
 - (b) 'concession' means, in respect of a service, a benefit, right or privilege that is provided on such terms or in such a manner that is more favourable than the terms on which, or the manner in which, it is usually provided to a more general group of persons.

37 Age-related holidays

- (1) A person does not contravene Article 22, so far as it relates to the protected characteristic of age, by providing a holiday service to persons of a particular age group.
- (2) In this paragraph –
 - ‘holiday service’ means a service –
 - (a) that involves the provision of at least 2 of the following together for a single price –
 - (i) travel,
 - (ii) accommodation,
 - (iii) access to activities or services not ancillary to travel or accommodation that form a significant part of the service or its cost;
 - (b) the provision of which is for a period of more than 24 hours or includes the provision of overnight accommodation;
 - (c) that the holiday service provider provides only to persons of the age group in question; and
 - (d) an essential feature of which is the bringing together of persons of that age group with a view to facilitating their enjoyment of facilities or services designed with particular regard to persons of that age group;

‘travel’ includes an option for an individual to make alternative travel arrangements to those included in the holiday service as standard.

38 Age-restricted services

- (1) A person does not contravene Article 22, so far as it relates to the protected characteristic of age, by refusing to provide a service the provision of which is prohibited by or under an enactment to persons under the statutory age, to a person who –
 - (a) appears to the person providing the service, or that person’s employee or agent, to be under the statutory age; and
 - (b) on being requested by that person to provide satisfactory identification, fails to do so.
- (2) In this paragraph –

‘satisfactory identification’, in relation to a person, means a valid document that includes a photograph of the person and establishes that the person has attained the statutory age in relation to the provision of the service;

‘statutory age’ means the age specified in or under the enactment whereby a person under that age is prohibited from doing any act.

39 Age: sport and competitions

- (1) A person does not contravene this Law in relation to the protected characteristic of age only by doing anything in relation to the participation of another as a competitor in an age-banded activity if it is necessary to do so –
 - (a) to secure, in relation to the activity, fair competition or the safety of competitors;
 - (b) to comply with the rules of a national or international competition; or
 - (c) to increase participation in that activity.
- (2) For the purposes of this paragraph, an age-banded activity is a sport, game or other activity of a competitive nature in circumstances in which the physical or mental strength, agility, stamina, physique, mobility, maturity or manual dexterity of average persons of a particular age group would put them at a disadvantage compared with average persons of another age group as competitors in events involving the activity.

40 Age: scholarships, prizes and awards

An act of discrimination is not prohibited by this Law in relation to the protected characteristic of age where scholarships, prizes or other awards are made available only to specified age groups.

41 Age: premises

An act of discrimination is not prohibited by Article 23 or Article 24 in relation to the protected characteristic of age.”.

6 Amendment of Employment (Jersey) Law 2003

- (1) The Employment (Jersey) Law 2003⁵ is amended in accordance with this Regulation.
- (2) After Article 64(2)(b) there shall be inserted the following subparagraph –
 - “(ba) is that the employee was required to retire;”.
- (3) For Article 74 there is substituted the following Article –

“74 Upper age limit

- (1) Article 61 shall not apply to the dismissal of an employee if on or before the effective date of termination the employee has attained –
 - (a) in a case where –
 - (i) in the undertaking in which the employee was employed there was a common retiring age for men and women holding the position held by the employee, and

- (ii) that retiring age was higher than pensionable age, that retiring age;
 - (b) in a case where –
 - (i) in the undertaking in which the employee was employed there were different retiring ages for men and women holding the position held by the employee, and
 - (ii) the higher of the retiring ages is greater than pensionable age, that higher retiring age; and
 - (c) in any other case, pensionable age.
- (2) Paragraph (1) does not apply if Article 65, 66, 67(1) or (2), 68(1), 69(1), 70 or 70A applies.
 - (3) In this Article ‘pensionable age’ has the same meaning as in Article 1A of, and Schedule 1AA to, the Social Security (Jersey) Law 1974.
 - (4) This Article applies only to a dismissal where the effective date of termination is before 1st September 2018.”.

7 Citation and commencement

- (1) These Regulations may be cited as the Discrimination (Age) (Jersey) Regulations 2016.
- (2) These Regulations shall come into force on 1st September 2016 apart from Regulation 6(2), which shall come into force on 1st September 2018.

DR. M. EGAN

Greffier of the States

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- 1 *chapter 15.260*
 - 2 *chapter 15.260*
 - 3 *chapter 26.900*
 - 4 *chapter 05.255*
 - 5 *chapter 05.255*