



Jersey

## **DISCRIMINATION (SEX AND RELATED CHARACTERISTICS) (JERSEY) REGULATIONS 2015**

### **Arrangement**

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*Coming into force*

*2nd June 2015*  
*1st September 2015*

**THE STATES**, in pursuance of Articles 1(2), 5 and 47 of the Discrimination (Jersey) Law 2013<sup>1</sup>, have made the following Regulations –

### **1 Amendment of the Discrimination (Jersey) Law 2013**

The Discrimination (Jersey) Law 2013<sup>2</sup> is amended in accordance with these Regulations.

### **2 Article 1 amended (definitions)**

In Article 1(1) –

- (a) after the definition “facilities” there shall be inserted the following definition –  
“‘gender reassignment’ shall be construed in accordance with paragraph 5 of Schedule 1;”;
- (b) in the definition “race” after the words “in accordance with” there shall be inserted the words “paragraph 2 of”;
- (c) after the definition “services” there shall be inserted the following definitions –  
“‘sex’ shall be construed in accordance with paragraph 3 of Schedule 1;  
‘sexual orientation’ shall be construed in accordance with paragraph 4 of Schedule 1;”.

### **3 Article 6 amended (direct discrimination)**

After Article 6(2) there shall be added the following paragraphs –

- 
- “(3) In relation to the protected characteristic of sex, for the purposes of Part 5, direct discrimination includes treating a woman less favourably because she is breast feeding a child.
  - (4) In relation to the protected characteristic of sexual orientation direct discrimination includes treating people in a civil partnership less favourably than married people and vice versa.
  - (5) In relation to the protected characteristic of gender reassignment, direct discrimination includes treating a transgender person’s absence from work because he or she is undergoing any part of the process mentioned in paragraph 5(2) of Schedule 1 less favourably than if the absence were due to sickness or injury.
  - (6) In relation to the protected characteristics of pregnancy and maternity, for the purposes of Part 3 and 4 direct discrimination includes treating a woman less favourably (other than in relation to pay) because of –
    - (a) any illness suffered by her as a result of the pregnancy during the protected period;
    - (b) her being on compulsory maternity leave;
    - (c) her exercising or seeking to exercise, the right to ordinary maternity leave.
  - (7) For the purposes of paragraph (6) the protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends –
    - (a) if she has the right to ordinary maternity leave, when her ordinary maternity leave ends or (if earlier) when she returns to work after the pregnancy; or
    - (b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.
  - (8) In relation to the protected characteristics of pregnancy and maternity, for the purposes of Parts 3, 4 and 5 and where the subject is not a woman, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.
  - (9) In relation to the protected characteristic of maternity, for the purposes of Part 5, direct discrimination includes treating a woman who has given birth within the previous 26 weeks less favourably because she is breast feeding.
  - (10) In this Article ‘compulsory maternity leave’, ‘compulsory maternity leave period’, ‘ordinary maternity leave’ and ‘ordinary maternity leave period’ have the same meaning as in Article 55A of the Employment (Jersey) Law 2003<sup>3</sup>.”

#### **4 Article 7 amended (indirect discrimination)**

- (1) In Article 7(1) and (2) for the words “protected characteristic” there shall be substituted the words “relevant protected characteristic”.

- (2) After Article 7(2) there shall be inserted the following paragraph –
- “(2A) For the purposes of paragraph (2)(d) an employer’s long-term objective of reducing inequality in employment in respect of the protected characteristics of race or sex is always to be regarded as a legitimate aim.”.
- (3) After Article 7(3) there shall be added the following paragraph –
- “(4) For the purposes of this Article the relevant protected characteristics are –
- (a) race;
  - (b) sex;
  - (c) sexual orientation;
  - (d) gender reassignment.”.

## **5 Article 25 amended**

For Article 25(3) and (4) there shall be substituted the following paragraphs –

- “(3) A club, the committee of management of a club, or a member of the committee of management of a club, shall not discriminate against a person –
- (a) by refusing to invite, or not permitting the person to be invited, as a guest;
  - (b) in the terms or conditions on which the club is prepared to invite, or permit the person to be invited, as a guest.
- (4) A club, the committee of management of a club, or a member of the committee of management of a club, shall not discriminate against a guest it has invited or permitted to be invited (whether expressly or by implication) –
- (a) by denying the guest access, or limiting the guest’s access, to any benefit provided by the club; or
  - (b) by subjecting the guest to any other detriment.
- (5) For the purposes of this Law, ‘club’ means any association of persons, however described, whether or not incorporated and whether or not carried on for profit, other than one to which Article 13 or 19 applies –
- (a) that has at least 25 members; and
  - (b) admission to membership of which is regulated by the club’s rules and involves a process of selection.
- (6) The Minister may by Order amend the number in paragraph (5)(a).”.

## **6 Article 28 amended (harassment)**

- (1) In Article 28(2) the words “towards the subject” shall be deleted.

- (2) After Article 28(2) there shall be inserted the following paragraphs –
- “(2A) A person also harasses the subject if the person engages in unwanted conduct of a sexual nature and which has the purpose or effect referred to in paragraph (2)(a) or (b).
- (2B) A person also harasses the subject if –
- (a) the person or another person engages in unwanted conduct of a sexual nature or that is related to sex, sexual orientation or gender reassignment and which has the purpose or effect referred to in paragraph (2)(a) and (b); and
  - (b) because of the subject’s rejection of or submission to the conduct, the person treats the subject less favourably than the person would have done if the subject had not rejected or submitted to the conduct.”.

## 7 Schedule 1 amended (protected characteristics added)

After paragraph 2 of Schedule 1 there shall be added the following paragraphs –

### “3 Sex

- (1) Sex is a protected characteristic.
- (2) In relation to the protected characteristic –
  - (a) a reference to a person who has that characteristic is a reference to a man, a woman or a person who has intersex status;
  - (b) a reference to persons who share the characteristic is a reference to persons who are of the same sex.
- (3) In this paragraph, a person has intersex status if the person has physical, chromosomal, hormonal or genetic features that are –
  - (a) neither wholly male or female;
  - (b) a combination of male or female; or
  - (c) neither male nor female.

### 4 Sexual orientation

- (1) Sexual orientation is a protected characteristic.
- (2) The protected characteristic refers to a person’s sexual orientation towards –
  - (a) people of the same sex as the person;
  - (b) people of a different sex from the person; or
  - (c) people of both the same sex as, and different from, the person.
- (3) In relation to the protected characteristic –

- (a) a reference to a person who has that characteristic is a reference to a person who is of a particular sexual orientation;
- (b) a reference to persons who share the characteristic is a reference to persons who are of the same sexual orientation.

## **5 Gender reassignment**

- (1) Gender reassignment is a protected characteristic.
- (2) A person has the protected characteristic if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's gender by changing the person's physiological or other attributes that are associated with a particular gender.
- (3) A person who has the protected characteristic is known as a transgender person and persons who share the characteristic are known as transgender people.
- (4) A person is a transgender person whether or not the person has or intends to have any medical intervention in order to change any attributes that are associated with a particular gender.

## **6 Pregnancy and maternity**

Pregnancy and maternity are protected characteristics.”.

## **8 Schedule 2 amended (exceptions to prohibited acts)**

- (1) Schedule 2 is amended as follows.
- (2) In Part 1 after paragraph 2 there shall be inserted the following paragraphs –

### **“2A National security**

An act of discrimination is not prohibited by this Law if it is done for the purpose of safeguarding national security, if the discrimination was justified by that purpose.

### **2B Positive action**

- (1) An act of discrimination is not prohibited by this Law if it is a proportionate means of achieving an aim mentioned in sub-paragraph (2) because the person doing it reasonably thinks that –
  - (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic;

- (b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it; or
- (c) participation in an activity by persons who share a protected characteristic is disproportionately low.

(2) The aims are –

- (a) enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage;
- (b) meeting those needs; or
- (c) enabling or encouraging persons who share the protected characteristic to participate in that activity.

(3) This paragraph does not apply to the treating of a person ('the subject') more favourably in the decision as to whom to recruit or promote in relation to employment.

(4) In sub-paragraph (3) –

- (a) 'recruit' means to offer employment to an individual as an employee, contract worker, voluntary worker or as a partner in a partnership;
- (b) 'promote' means to offer employment to an individual as mentioned in clause (a) that is, in the context of the employer's business, more senior than the individual's current employment, whether or not accompanied by increased remuneration.

## **2C Charities**

(1) A person does not commit an act of discrimination prohibited by this Law only by restricting the provision of benefits to persons who share a protected characteristic if –

- (a) the person acts in pursuance of a constitution; and
- (b) the provision of the benefits is within sub-paragraph (2).

(2) The provision of benefits is within this sub-paragraph if it is –

- (a) a proportionate means of achieving a legitimate aim; or
- (b) for the purpose of preventing or compensating for a disadvantage linked to the protected characteristic.

(3) If a constitution enables the provision of benefits to persons of a class defined by reference to colour, it has effect for all purposes as if it enabled the provision of such benefits –

- (a) to persons of the class which results if the reference to colour is ignored; or
- (b) if the original class is defined by reference only to colour, to persons generally.

(4) It is not a contravention of Article 22 for a person, in relation to an activity that is carried on for the purpose of promoting or



supporting a charity, to restrict participation in the activity to persons who share a protected characteristic.

- (5) The Commissioner does not contravene this Law only by exercising a function in relation to a charity in a manner which the Commissioner thinks is expedient in the interests of the charity, having regard to the constitution.
- (6) Sub-paragraph (1) does not apply to a contravention of Articles 9, 10, 11 or 16.
- (7) This paragraph does not apply to the protected characteristic of race in as far as it relates to colour.
- (8) In this paragraph –
  - ‘charity’ means an entity that meets the charity test under Article 5 of the Charities (Jersey) Law 2014<sup>4</sup>;
  - ‘Commissioner’ has the meaning assigned by Article 1 of that Law;
  - ‘constitution’ has the meaning assigned by Article 2(4) of that Law.

## **2D Clubs restricted to persons who share a protected characteristic**

- (1) Article 25 shall not prohibit discrimination in relation to a club that has as its principal object providing benefits to people who share a protected characteristic by –
  - (a) restricting its membership to those people;
  - (b) restricting the access by associates to a benefit, facility or service to those people; or
  - (c) allowing as guests only those people.
- (2) In deciding what the principal object of the club is for, regard shall be had to –
  - (a) the essential character of the club;
  - (b) whether the people mainly enjoying the benefits of membership share the protected characteristic stated in the principal object; and
  - (c) any other relevant circumstance.
- (3) In respect of the protected characteristic of race sub-paragraph (1) does not apply if the persons who share a characteristic are described –
  - (a) by reference to colour; or
  - (b) in a way that has the effect of excluding some members of that race on the basis of colour.

**2E Pre-selection by employment agency**

- (1) An act of discrimination done by an employment agency, in selecting persons as suitable for a job vacancy, is not prohibited by this Law if it would not have been prohibited had it been done by the proposed employer.
- (2) It shall be sufficient, for the purposes of sub-paragraph (1), for an employment agency to prove –
  - (a) that in so acting, it relied upon a statement made to it by the proposed employer that, by virtue of sub-paragraph (1), the act would not be prohibited; and
  - (b) that it was reasonable to rely upon the statement.

**2F Selection for domestic employment or work**

Articles 9(b) and 11(b) shall not prohibit a person discriminating against another person in connection with a position as an employee or contract worker where the duties of the position involve the performance of domestic duties (which may consist of the care of a person, whether adult or child) on premises where the first-mentioned person resides.

**2G Genuine occupational requirement**

- (1) A person (the ‘relevant person’) does not commit an act of discrimination to which this paragraph applies by applying in relation to work, a requirement for a person to have a protected characteristic, if the relevant person can show that, having regard to the nature or context of the work –
  - (a) it is an occupational requirement;
  - (b) the application of the requirement is a proportionate means of achieving a legitimate aim; and
  - (c) the person to whom the relevant person applies the requirement, does not meet it (or the relevant person has reasonable grounds for not being satisfied that the person meets it).
- (2) This paragraph applies to an act of discrimination prohibited by one or more of the following provisions –
  - (a) Article 9(a) and (b);
  - (b) Article 10(b) and (c);
  - (c) Article 11(b); and
  - (d) Article 12(1)(a) or (2)(a) or (3)(a) or (b).
- (3) The reference in sub-paragraph (1) to ‘work’ is a reference to employment, contract work or a position as a partner.
- (4) In the case of a requirement to be of a particular sex, sub-paragraph (1) has effect as if, in clause (c), the words from ‘(or’ to the end of the clause were omitted.

**2H Vocational training**

Article 15 shall not prohibit an act which is prohibited by Articles 9, 10 or 21 or would be prohibited by any of those Articles but for the operation of this Schedule.

**2I Provision of care in carer's home**

Articles 22 and 24(1) shall not prohibit a person from discriminating against another person in the arrangements under which the first-mentioned person (whether or not for reward) takes into his or her home, and treats as members of his or her family, children, elderly persons or persons requiring a special degree of care.

**2J Disposal, etc. of premises**

- (1) Article 24 shall not prohibit the private disposal of premises by an owner occupier, and for the purposes of this paragraph –
  - (a) a disposal is a private disposal only if the owner-occupier does not –
    - (i) use the services of an estate agent for the purpose of disposing of the premises, or
    - (ii) publish (or cause to be published) an advertisement in connection with their disposal.
- (2) In sub-paragraph (1) –
  - (a) 'estate agent' means a person who, by way of profession or trade, provides services for the purpose of –
    - (i) finding premises for persons seeking them, or
    - (ii) assisting in the disposal of premises; and
  - (b) 'owner-occupier' means a person who, whether solely or jointly with another person –
    - (i) owns the premises, and
    - (ii) occupies the whole of them.
- (3) Article 24 shall not prohibit anything done by a person in relation to the disposal, occupation or management of part of small premises if –
  - (a) the person or a relative of that person resides, and intends to continue to reside, in another part of the premises; and
  - (b) the premises include parts (other than storage areas and means of access) shared with residents of the premises who are not members of the same household as the resident mentioned in sub-paragraph (3)(a).
- (4) Premises are small if –
  - (a) the only other persons occupying the accommodation occupied by the resident mentioned in sub-paragraph (3)(a) are members of the same household;

- (b) the premises also include accommodation for at least one other household;
    - (c) the accommodation for each of those other households is let, or available for letting, on a separate tenancy or similar agreement; and
    - (d) the premises are not normally sufficient to accommodate more than 2 other households.
  - (5) Premises are also small if they are not normally sufficient to provide residential accommodation for more than 6 persons (disregarding the resident mentioned in sub-paragraph (3)(a) and members of the same household).
  - (6) ‘relative’ of the resident referred to in sub-paragraph (3)(a) means –
    - (a) spouse or civil partner;
    - (b) partner;
    - (c) parent or grandparent;
    - (d) child or grandchild (whether or not legitimate);
    - (e) the spouse, civil partner or partner of a child or grandchild;
    - (f) brother or sister (whether of full blood or half-blood); or
    - (g) a person mentioned in clause (c), (d), (e) or (f) whose relationship is to the person mentioned in clause (a) or (b).
  - (7) In sub-paragraph (6), a reference to a partner is a reference to the other member of a couple consisting of two people who are not married to, or civil partners of, each other but are living together as if they were.
  - (8) The Minister may by Order amend sub-paragraph (4) or (5).
  - (9) Article 24 shall not prohibit a person discriminating against another in connection with the disposal of premises by –
    - (a) a religious body; or
    - (b) a charitable or voluntary body,to members who share the protected characteristic of race.
  - (10) The exception in sub-paragraph (9), does not apply in relation to colour.”.
- (3) In Part 2 –
- (a) in paragraph 3 after the word “Law”, in paragraph 7(1) after the word “finance,” in paragraph 7(2) after the words “the subject,” in paragraph 10(1) after the words “an establishment in Jersey,” and in paragraph 10(3) after the word “applies,” there shall be inserted the words “so far as it relates to the protected characteristic of race,”;
  - (b) paragraphs 4, 5, 8, 9, 11, 12, 13 and 14 shall be deleted.
- (4) After Part 2 there shall be added the following Part –

**“PART 3**

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**EXCEPTIONS TO PROHIBITED ACTS: SEX AND RELATED CHARACTERISTICS**

**15 Sex: admission to schools**

- (1) Article 21(1), so far as relating to the protected characteristic of sex, does not apply in relation to –
  - (a) a single-sex school; or
  - (b) admission as a boarder to a school to which this paragraph applies.
- (2) A single-sex school is a school that –
  - (a) admits pupils of one sex only; or
  - (b) on the basis of the assumption in sub-paragraph (3), would be taken to admit pupils of one sex only.
- (3) That assumption is that pupils of a different sex are to be disregarded if –
  - (a) their admission to the school is exceptional; or
  - (b) their numbers are comparatively small and their admission is confined to particular courses or classes.
- (4) In the case of a school that is a single-sex school by virtue of sub-paragraph (3)(b), Article 21(2)(a), so far as relating to the protected characteristic of sex, does not prohibit confining pupils of the same sex to particular courses or classes.
- (5) Article 21(2)(a), so far as it relates to the protected characteristic of sex, does not apply in relation to boarding facilities at a school to which this paragraph applies.
- (6) This paragraph applies to a school (other than a single-sex school) that has some pupils as boarders and others as non-boarders and which –
  - (a) admits as boarders pupils of one sex only; or
  - (b) on the basis of the assumption in sub-paragraph (7), would be taken to admit as boarders pupils of one sex only.
- (7) That assumption is that pupils of a different sex admitted as boarders are to be disregarded if their numbers are small compared to the numbers of other pupils admitted as boarders.

**16 Sex: single sex services**

- (1) A person does not contravene Article 22, so far as it relates to the protected characteristic of sex, by providing separate services for persons of different sexes if –
  - (a) a joint service for people of different sexes would be less effective; and

- 
- (b) the limited provision is a proportionate means of achieving a legitimate aim.
  - (2) A person does not contravene Article 22, so far as it relates to the protected characteristic of sex, by providing separate services differently for persons of different sexes if –
    - (a) a joint service for persons of different sexes would be less effective;
    - (b) the extent to which the service is required by one sex makes it not reasonably practicable to provide the service otherwise than as a separate service provided differently for different sexes; and
    - (c) the limited provision is a proportionate means of achieving a legitimate aim.
  - (3) A person does not contravene Article 22, so far as it relates to the protected characteristic of sex, by providing a service only to persons of one sex if –
    - (a) any of the conditions in sub-paragraph (4) is satisfied; and
    - (b) the limited provision is a proportionate means of achieving a legitimate aim.
  - (4) The conditions are that –
    - (a) only persons of that sex have need of the service;
    - (b) the service is also provided jointly for persons of different sexes and it would be insufficiently effective were it to be provided only jointly;
    - (c) a joint service for persons of more than one sex would be less effective and the extent to which the service is required by persons of different sexes makes it not reasonably practicable to provide separate services;
    - (d) the service is provided at a place which is, or is part of a hospital or another establishment for persons requiring special care, supervision or attention;
    - (e) the service is provided for, or is likely to be used by, 2 or more persons at the same time and the circumstances are such that a person of one sex might reasonably object to the presence of a person of a different sex;
    - (f) there is likely to be physical contact between a person to whom the service is provided and another person and that other person might object if they were not both of the same sex.
  - (5) This paragraph applies to a person exercising a public function in relation to the provision of a service as it applies to the person providing the service.

**17 Sex: segregation in religious services**

- (1) A minister of religion does not contravene Article 22, so far as it relates to the protected characteristic of sex, by providing religious services that satisfy sub-paragraph (2) and are –
  - (a) separate for people of different sexes;
  - (b) separate for people of different sexes and also different in content as between the sexes;
  - (c) for people of a particular sex only;
  - (d) services at which people of different sexes are treated differently in terms of where they may sit or stand or the way in which or extent to which they may participate.
- (2) The religious services mentioned in sub-paragraph (1) must –
  - (a) be provided for the purposes of an organised religion;
  - (b) be provided at a place that is (permanently or for the time being) occupied or used for those purposes; and
  - (c) be necessary to comply with the doctrines of the religion or to avoid conflict with the strongly-held religious convictions of a significant proportion of the religion's followers.
- (3) In this paragraph –

‘minister of religion’ means a person who –

  - (a) performs functions in connection with the religion; and
  - (b) holds an office or appointment in, or is accredited, approved or recognized for purposes of, a relevant organization in relation to the religion;

‘relevant organization’ means an organization, other than one with a sole or main purpose that is commercial, with one or more of the following purposes –

  - (a) to practise the religion;
  - (b) to advance the religion;
  - (c) to teach the practice or principles of the religion;
  - (d) to enable people of the religion to receive benefits, or to engage in activities, within the framework of that religion;
  - (e) to foster or maintain good relations between persons of different religions.

**18 Sex and certain related characteristics: recruitment to a role in organised religion**

- (1) An act of discrimination is not prohibited by Article 9 where an employer aims to recruit a person for the purposes of an organised religion and requires the person recruited –
  - (a) to be of a particular sex;
  - (b) to have a particular sexual orientation; or

(c) to be or not to be a transgender person.

(2) The discrimination permitted by this paragraph –

- (a) must be a proportionate way of complying with the doctrines of the religion or avoiding conflict with the strongly-held religious convictions of a significant proportion of the religion's followers;
- (b) must relate only to the recruitment of persons required to conduct religious services as an essential part of their role and not to the employment of other persons or the provision of services.

#### **19 Sex: financial and insurance arrangements**

- (1) Parts 3 and 5 shall not prohibit a person discriminating against a person, so far as it relates to the protected characteristic of sex, 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 sex, 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.

#### **20 Sex: communal accommodation**

- (1) An act of discrimination is not prohibited by this Law in relation to the protected characteristic of sex only because of anything done in relation to –
  - (a) the admission of persons to communal accommodation;
  - (b) the provision of a benefit, facility or service linked to the accommodation.
- (2) Sub-paragraph (1)(a) does not apply unless the accommodation is managed in a way that is as fair as possible to people of different sexes.
- (3) In applying sub-paragraph (1)(a), account must be taken of –
  - (a) whether and how far it is reasonable to expect that the accommodation should be altered or extended or that further accommodation should be provided; and



- (b) the frequency of the demand or need for use of the accommodation by people of different sexes.
- (4) Communal accommodation is residential accommodation that includes dormitories or other shared sleeping accommodation which for reasons of privacy should be used only by persons of the same sex.
- (5) Communal accommodation may include –
  - (a) shared sleeping accommodation for people of different sexes;
  - (b) ordinary sleeping accommodation;
  - (c) residential accommodation all or part of which should be used only by persons of the same sex because of the nature of the sanitary facilities serving the accommodation.
- (6) A benefit, facility or service is linked to communal accommodation if –
  - (a) it cannot properly and effectively be provided except for those using the accommodation; and
  - (b) a person could be refused use of the accommodation in reliance on sub-paragraph (1)(a).
- (7) This paragraph does not apply for the purposes of Part 3 unless such arrangements as are reasonably practical are made to compensate for –
  - (a) in a case where sub-paragraph (1)(a) applies, the refusal of use of the accommodation;
  - (b) in a case where sub-paragraph (1)(b) applies, the refusal of provision of the benefit, facility or service.

## **21 Sex and gender reassignment: sport and competitions**

- (1) An act of discrimination is not prohibited by this Law in relation to the protected characteristic of sex if it relates only to the participation of another as a competitor in a gender-affected activity.
- (2) A person does not contravene Articles 22 to 24 in relation to the protected characteristic of gender reassignment, only by doing anything in relation to the participation of a transgender person as a competitor in a gender-affected activity if it is necessary to do so to secure in relation to the activity –
  - (a) fair competition; or
  - (b) the safety of competitors.
- (3) A gender-affected activity is a sport, game or other activity of a competitive nature in circumstances in which the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage compared to average persons of another sex as competitors in events involving the activity.

- (4) In considering whether a sport, game or other activity is gender-affected in relation to children, it is appropriate to take account of the age and stage of development of children who are likely to be competitors.

## **22 Pregnancy and maternity: health and safety risk**

- (1) An employer who suspends without pay or reassigns to different duties an employee who has the protected characteristics of pregnancy or maternity for the reasons set out in sub-paragraph (2) does not contravene Article 10, so far as it relates to the protected characteristics of sex, pregnancy or maternity, unless the employer would have treated an employee without those protected characteristics suspended or reassigned for those reasons more favourably.
- (2) The reasons are that it is not reasonably practical –
- (a) for the employee to continue working in her usual employment according to a risk assessment undertaken in accordance with Article 3 of the Health and Safety at Work (Jersey) Law 1989<sup>5</sup>; and
  - (b) for the employer to allocate the employee to other duties, alter her duties or make appropriate changes to the working environment.
- (3) For the purpose of this paragraph a woman has the protected characteristics of pregnancy and maternity from the start of her pregnancy until 18 weeks after the birth of her child.
- (4) For the purpose of this paragraph the protected characteristics include breast feeding.

## **23 Pregnancy and maternity: recruiting to a limited-term contract**

An employer who fails to recruit a person does not contravene Article 9 so far as it relates to the protected characteristics of sex, pregnancy or maternity where –

- (a) the employer aims to recruit a person on a limited term contract to undertake a project of work that is required to be completed within a particular time frame and has no plans to renew the contract; and
- (b) the person who is not recruited is pregnant and the likely timing of her absence on maternity leave would interfere with completion of the project.

## **24 Pregnancy and maternity: maternity pay**

An employer who meets the employer's obligations under Part 5A of the Employment (Jersey) Law 2003<sup>6</sup> does not contravene Article 10 so far as it relates to the protected characteristics of sex, pregnancy or maternity by paying an employee less than she or another employee would have been entitled to for an equivalent absence on sick leave.”

**9 Gender Recognition (Jersey) Law 2010 amended**

Article 15 of the Gender Recognition (Jersey) Law 2010<sup>7</sup> is repealed.

**10 Citation and commencement**

These Regulations may be cited as the Discrimination (Sex and Related Characteristics) (Jersey) Regulations 2015 and shall come into force on 1st September 2015.

**L.-M. HART**

*Deputy Greffier of the States*

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- 1 *chapter 15.260*
  - 2 *chapter 15.260*
  - 3 *chapter 05.255*
  - 4 *chapter 15.070*
  - 5 *chapter 05.300*
  - 6 *chapter 05.255*
  - 7 *chapter 12.320*