



Jersey

DISCRIMINATION (JERSEY) LAW 2013

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DISCRIMINATION (JERSEY) LAW 2013

Arrangement

Article

PART 1	7
INTERPRETATION AND APPLICATION	7
1 Interpretation.....	7
2 Application of Law	9
PART 2	9
KEY CONCEPTS: PROTECTED CHARACTERISTICS	9
3 Protected characteristics.....	9
4 Exceptions to prohibited acts	9
5 Power to amend Law	9
6 What constitutes direct discrimination.....	10
7 What constitutes indirect discrimination	10
8 Irrelevance of alleged discriminator's characteristics.....	10
PART 3	11
PROHIBITED ACTS OF DISCRIMINATION – PAID WORK	11
9 Selection for employment	11
10 Employees.....	11
11 Contract workers	11
12 Partnerships.....	11
13 Professional or trade organizations	12
14 Professional bodies	13
15 Vocational training.....	13
16 Employment agencies	13
PART 4	14
PROHIBITED ACTS OF DISCRIMINATION – VOLUNTARY WORK	14
17 Selection for voluntary work	14
18 Voluntary workers	14
19 Organizations for voluntary workers	14
20 Volunteer bureaux.....	15

PART 5	15
PROHIBITED ACTS OF DISCRIMINATION IN OTHER AREAS	15
21 Education	15
22 Goods, facilities and services	15
23 Access to and use of public premises	15
24 Disposal or management of premises	16
25 Clubs	17
26 Requests for information	17
PART 6	18
OTHER PROHIBITED CONDUCT	18
27 Discrimination by way of victimization	18
28 Harassment	18
29 Relevant relationships that have ended.....	19
30 Instructions or pressure to commit prohibited act	19
31 Aiding prohibited acts.....	20
32 Liability of employee and employer.....	20
33 Liability of agent and controller	20
PART 7	21
ENFORCEMENT	21
34 Functions of Secretary of Tribunal under this Law	21
35 Functions of JACS under this Law	21
36 Functions of Tribunal under this Law	21
37 Making a complaint	21
38 Conciliation in employment-related complaints by conciliation officer	22
39 Conciliation in other complaints.....	23
40 Restrictions on contracting out	23
41 Referral to Tribunal	23
42 Remedies available	23
43 Enforcement of recommendations of Tribunal.....	24
PART 8	25
MISCELLANEOUS AND CLOSING	25
44 Application to police.....	25
45 JACS fees and charges.....	25
46 Codes of practice	25
47 Regulations and Orders.....	25
48 Citation	25
SCHEDULE 1	26
PROTECTED CHARACTERISTICS	26
1 Introduction.....	26
2 Race	26

SCHEDULE 2	27
PART 1	27
GENERAL EXCEPTIONS TO PROHIBITED ACTS	27
1 Act done under legislative or judicial authority.....	27
2 Compliance with law of another country	27
PART 2	27
EXCEPTIONS TO PROHIBITED ACTS: RACE	27
3 Race: act done pursuant to States' policy or Ministerial decision	27
4 Race: national security	28
5 Race: pre-selection by employment agency	28
6 Race: sport and competitions	28
7 Race: financial and insurance arrangements	28
8 Race: selection for domestic employment or work.....	28
9 Race: genuine occupational requirement	29
10 Race: training in skills for exercise outside Jersey	29
11 Race: vocational training	30
12 Race: provision of care in carer's home	30
13 Race: private disposal of premises.....	30
14 Race: clubs for members of one race	32

Supporting Documents

ENDNOTES	33
Table of Legislation History.....	33
Table of Renumbered Provisions	33
Table of Endnote References	33



Jersey

DISCRIMINATION (JERSEY) LAW 2013

A **LAW** to prohibit certain kinds of discrimination and for connected purposes, and to further amend the Employment (Jersey) Law 2003, the Jersey Advisory and Conciliation (Jersey) Law 2003 and the Employment Relations (Jersey) Law 2007.

Commencement [[see endnotes](#)]

PART 1

INTERPRETATION AND APPLICATION

1 Interpretation

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

“conciliation officer” means a person designated by JACS under Article 5 of the Jersey Advisory and Conciliation (Jersey) Law 2003¹;

“contract worker” means an individual who is supplied by an employment agency to do work for another person (the “principal”) under a contract or other arrangement between the employment agency and the principal;

“discriminate” and “discrimination” shall be construed in accordance with Articles 6 and 7;

“employee” and “employer” have the meaning given in Article 1A of the Employment Law and “employment” shall be construed accordingly;

“employment agency” means any person or body that, whether or not for payment, assists persons to find employment or assists employers to find employees;

“Employment Law” means the Employment (Jersey) Law 2003²;

“facilities” includes –

- (a) facilities by way of banking, fund management, insurance, the provision of grants, loans, credit or finance and other financial services;
- (b) facilities for transport or travel;

- (c) facilities for entertainment, recreation or refreshment;
- (d) accommodation and facilities in a hotel, boarding house or other similar establishment;

“JACS” has the meaning given in the Jersey Advisory and Conciliation (Jersey) Law 2003³;

“Jersey” includes the territorial waters adjacent to Jersey;

“Jersey ship” has the meaning given in Article 2 of the Shipping (Jersey) Law 2002⁴;

“lease” means a lease of any duration;

“manager” means a person for whom a voluntary worker does voluntary work;

“Minister” means the Minister for Social Security;

“premises” includes –

- (a) a structure, building, vessel or vehicle;
- (b) a place (whether or not enclosed or built); and
- (c) a part of premises (including premises of a kind referred to in subparagraph (a) or (b));

“prescribed” means prescribed by the Minister by Order;

“principal” means a person for whom a contract worker does work under a contract or other arrangement between the employment agency who supplies the contract worker and that person;

“race” shall be construed in accordance with Schedule 1;

“school” has the meaning given in the Education (Jersey) Law 1999⁵;

“Secretary of the Tribunal” is the person appointed under Article 85 of the Employment Law;

“services” includes –

- (a) the services of any profession, trade or business;
- (b) services provided by the States or any administration of the States;
- (c) services provided by a company or other body corporate in which the States have a controlling interest;
- (d) services provided by any parochial authority;
- (e) the provision of scholarships, prizes or awards;
- (f) the provision of higher education within the meaning of the Education (Jersey) Law 1999⁶;

“student” means any person who receives instruction at a school;

“Tribunal” means the Jersey Employment and Discrimination Tribunal established by Article 81 of the Employment Law;

“voluntary worker” means a person who does voluntary work for another person;

“volunteer bureau” means an organization providing guidance on the availability of voluntary work and services of introducing persons seeking voluntary work to managers.

- (2) The States may by Regulations amend the definitions in paragraph (1).
- (3) In this Law a reference to an act which is prohibited by this Law is, subject to any exceptions in this Law, a reference to an act which is prohibited by any provision of Parts 3 to 6.
- (4) In this Law a reference to the doing of an act by reason of a particular matter shall be construed as including a reference to the doing of such an act by reason of 2 or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for the doing of the act.

2 Application of Law

- (1) This Law applies to acts of discrimination committed in Jersey.
- (2) Without prejudice to the generality of paragraph (1), this Law applies to an employment which requires the person to work wholly or mainly in Jersey.
- (3) This Law also applies to –
 - (a) an employment on a Jersey ship unless –
 - (i) the employment is wholly outside Jersey, or
 - (ii) the employee is not ordinarily resident in Jersey;
 - (b) facilities for travel on a Jersey ship; and
 - (c) benefits, facilities or services provided on a Jersey ship.

PART 2

KEY CONCEPTS: PROTECTED CHARACTERISTICS

3 Protected characteristics

Schedule 1 has effect and a reference in this Law to a characteristic shall be taken to be a reference to a protected characteristic.

4 Exceptions to prohibited acts

Schedule 2 has effect and sets out the circumstances in which it shall not be prohibited to discriminate in relation to a characteristic.

5 Power to amend Law

The States may by Regulations –

- (a) amend protected characteristics under Schedule 1;

- (b) amend what constitutes direct or indirect discrimination under Part 2;
- (c) amend acts of discrimination that are prohibited under Parts 3, 4, 5 or 6;
- (d) amend the circumstances in which an act of discrimination is not prohibited under Schedule 2.

6 What constitutes direct discrimination

- (1) A person discriminates against another person (the “subject”) if, because of a protected characteristic, the person treats the subject less favourably than the person treats or would treat others.
- (2) In relation to the protected characteristic of race, less favourable treatment includes segregating the subject from others.

7 What constitutes indirect discrimination

- (1) A person discriminates against another person (the “subject”) if the person applies to the subject a provision, criterion or practice which is discriminatory in relation to the subject’s protected characteristic.
- (2) For the purposes of paragraph (1), a provision, criterion or practice is discriminatory in relation to a subject’s protected characteristic if –
 - (a) a person applies, or would apply it to other persons who do not share that subject’s characteristic;
 - (b) it puts, or would put, persons with whom the subject shares the characteristic at a particular disadvantage when compared with other persons who do not share the characteristic in question;
 - (c) it puts, or would put the subject at that disadvantage; and
 - (d) a person cannot show it to be a proportionate means of achieving a legitimate aim.
- (3) In determining whether the application of a provision, criterion or practice can be shown to be proportionate for the purposes of paragraph (2)(d), the matters to be taken into account shall include –
 - (a) the nature and extent of the resultant disadvantage;
 - (b) the feasibility of overcoming or mitigating the disadvantage; and
 - (c) whether the disadvantage is disproportionate to the result sought by the person applying that provision, criterion or practice.

8 Irrelevance of alleged discriminator’s characteristics

For the purposes of establishing the commission of an act prohibited by this Law by virtue of Article 6(1) or Article 7(1), it does not matter whether the person committing the act has the protected characteristic.

PART 3

PROHIBITED ACTS OF DISCRIMINATION – PAID WORK

9 Selection for employment

An employer shall not discriminate against a person –

- (a) in the arrangements made for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment; or
- (c) in the terms or conditions on which employment is offered.

10 Employees

An employer shall not discriminate against an employee –

- (a) in the terms or conditions of employment that the employer affords the employee;
- (b) by denying the employee access or limiting the employee's access to opportunities for promotion, transfer or training or to any other benefit associated with employment;
- (c) by dismissing the employee;
- (d) in selecting the employee for redundancy; or
- (e) by subjecting the employee to any other detriment.

11 Contract workers

A principal shall not discriminate against a contract worker –

- (a) in the terms or conditions on which the principal allows the contract worker to work;
- (b) by not allowing the contract worker to work or continue to work;
- (c) by denying the contract worker access or limiting the contract worker's access to any benefit associated with the work done by the contract worker; or
- (d) by subjecting the contract worker to any other detriment.

12 Partnerships

- (1) Persons who are proposing to form themselves into a partnership shall not discriminate against another person –
 - (a) in determining who should be invited to become a partner in the partnership; or
 - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.

- (2) A partnership shall not discriminate against another person –
 - (a) in determining who should be invited to become a partner in the partnership; or
 - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (3) A partnership shall not discriminate against another partner in the partnership –
 - (a) by denying the partner access or limiting the partner's access to any benefit arising from being a partner in the partnership;
 - (b) by expelling the partner from the partnership; or
 - (c) by subjecting the partner to any other detriment.
- (4) This Article applies to –
 - (a) a limited partnership established in accordance with the Limited Partnerships (Jersey) Law 1994⁷;
 - (b) a limited liability partnership established in accordance with the Limited Liability Partnerships (Jersey) Law 1997⁸;
 - (c) an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 2011⁹;
 - (d) a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 2011¹⁰;
 - (e) a partnership established under the customary law of Jersey; and
 - (f) any other partnership operating in Jersey that is established under the law of a country or territory outside Jersey.

13 Professional or trade organizations

- (1) An organization, the committee of management of an organization, or a member of the committee of management of an organization, shall not discriminate against a person who is not a member of the organization –
 - (a) by refusing or failing to accept the person's application for membership; or
 - (b) in the terms or conditions on which the organization is prepared to admit the person to membership.
- (2) An organization, the committee of management of an organization, or a member of the committee of management of an organization, shall not discriminate against a member of the organization –
 - (a) by denying the member access or limiting the member's access to any benefit provided by the organization;
 - (b) by depriving the member of membership or varying the terms of membership; or
 - (c) by subjecting the member to any other detriment.
- (3) In this Article "organization" means an association or organization of employers or employees or any other organization whose members carry on a particular profession or trade for the purposes of which the organization exists.

14 Professional bodies

An authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorization or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation shall not discriminate against a person –

- (a) by refusing or failing to confer, renew or extend the authorization or qualification;
- (b) in the terms or conditions on which it is prepared to confer, renew or extend the authorization or qualification;
- (c) by revoking or withdrawing the authorization or qualification or varying the terms or conditions on which it is held; or
- (d) by subjecting the person to any other detriment.

15 Vocational training

- (1) A person who provides or makes arrangements for vocational training shall not discriminate against an individual seeking or undergoing such training –
 - (a) in the terms on which the person affords the individual access to any training course or other facilities concerned with such training;
 - (b) by refusing or intentionally omitting to afford the individual such access;
 - (c) by terminating the individual's training; or
 - (d) by subjecting the individual to any detriment in the course of his or her training.
- (2) "Vocational training" includes apprenticeship schemes.

16 Employment agencies

- (1) An employment agency shall not discriminate against a person –
 - (a) by refusing or intentionally omitting to provide the person with any of its services;
 - (b) in the terms or conditions on which it offers to provide the person with any of its services;
 - (c) in the manner in which it provides the person with any of its services; or
 - (d) by subjecting the person to any other detriment.
- (2) For the purposes of this Law references to the services of an employment agency include guidance on careers and any other services related to employment.

PART 4

PROHIBITED ACTS OF DISCRIMINATION – VOLUNTARY WORK

17 Selection for voluntary work

A manager shall not discriminate against a person –

- (a) in the arrangements made for the purpose of determining who should be offered voluntary work;
- (b) in determining who should be offered voluntary work; or
- (c) in the terms or conditions on which voluntary work is offered.

18 Voluntary workers

A manager shall not discriminate against a voluntary worker –

- (a) in the terms or conditions on which the worker is to do the voluntary work;
- (b) by denying the voluntary worker access or limiting the voluntary worker's access to opportunities for development, transfer or training or to any other benefit associated with the voluntary work;
- (c) in asking the voluntary worker to cease doing the work; or
- (d) by subjecting the voluntary worker to any other detriment.

19 Organizations for voluntary workers

- (1) An organization, the committee of management of an organization, or a member of the committee of management of an organization, shall not discriminate against a person who is not a member of the organization –
 - (a) by refusing or failing to accept the person's application for membership; or
 - (b) in the terms or conditions on which the organization is prepared to admit the person to membership.
- (2) An organization, the committee of management of an organization, or a member of the committee of management of an organization, shall not discriminate against a member of the organization –
 - (a) by denying the member access or limiting the member's access to any benefit provided by the organization;
 - (b) by depriving the member of membership or varying the terms of membership; or
 - (c) by subjecting the member to any other detriment.
- (3) In this Article "organization" means an association or organization of voluntary workers.

20 Volunteer bureaux

A volunteer bureau shall not discriminate against a person –

- (a) by refusing or intentionally omitting to provide the person with any of its services;
- (b) in the terms or conditions on which it offers to provide the person with any of its services;
- (c) in the manner in which it provides the person with any of its services; or
- (d) by subjecting the person to any other detriment.

PART 5**PROHIBITED ACTS OF DISCRIMINATION IN OTHER AREAS****21 Education**

- (1) A person shall not discriminate against another person (the “subject”) –
 - (a) by refusing or failing to accept the subject’s application for admission as a student to a school; or
 - (b) in the terms or conditions on which the person is prepared to admit the subject as a student to a school.
- (2) A person shall not discriminate against a student –
 - (a) by denying the student access, or limiting the student’s access, to any benefit provided by the person;
 - (b) by expelling the student; or
 - (c) by subjecting the student to any other detriment.

22 Goods, facilities and services

A person who provides goods or services, or makes facilities available to the public or a section of the public (whether for payment or not), shall not discriminate against another person (the “subject”) –

- (a) by refusing to provide those goods or services or make those facilities available to the subject;
- (b) in the terms or conditions on which the person provides those goods or services or makes those facilities available to the subject; or
- (c) in the manner in which the person provides those goods or services or makes those facilities available to the subject.

23 Access to and use of public premises

A person shall not discriminate against another person (the “subject”) –

- (a) by refusing to allow the subject access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not);
- (b) in the terms or conditions on which the person is prepared to allow the subject access to, or the use of, any such premises;
- (c) in relation to the provision of means of access to such premises;
- (d) by refusing to allow the subject the use of any facilities in or on such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not);
- (e) in the terms or conditions on which the person is prepared to allow the subject the use of any such facilities; or
- (f) by requiring the subject to leave such premises or cease to use such facilities.

24 Disposal or management of premises

- (1) A person who has the right to dispose of premises must not discriminate against another person (the “subject”) –
 - (a) as to the terms on which the person offers to dispose of the premises to the subject;
 - (b) by not disposing of the premises to the subject;
 - (c) as to the manner in which the person treats the subject with regard to things done in relation to other persons seeking those premises.
- (2) Subject to paragraph (3), a person whose permission is required for the disposal of premises must not discriminate against the subject by not giving permission for the disposal of the premises to the subject.
- (3) Paragraph (2) does not apply to anything done in the exercise of a judicial function.
- (4) A person who manages premises must not discriminate against a subject who occupies the premises –
 - (a) by denying the subject access or otherwise limiting his or her access to a benefit or facility;
 - (b) by evicting the subject (or taking steps for the purpose of securing the subject’s eviction);
 - (c) by causing the subject to suffer any other detriment.
- (5) For the purposes of this Article and paragraph 13 of Part 2 of Schedule 2 –
 - (a) a reference to disposing of premises includes, in the case of premises subject to a tenancy, a reference to –
 - (i) assigning the premises,
 - (ii) sub-letting them, or
 - (iii) parting with possession of them;
 - (b) a reference to disposing of premises also includes a reference to –
 - (i) granting a right to occupy them, or

- (ii) a transaction to which the Taxation (Land Transactions) (Jersey) Law 2009¹¹ applies;
- (c) a reference to a tenancy is a reference to a tenancy created (whether before or after the coming into force of this Law) –
 - (i) by a lease or sub-lease,
 - (ii) by an agreement for a lease or sub-lease,
 - (iii) by a tenancy agreement, or
 - (iv) in pursuance of an enactment.

25 Clubs

- (1) 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 who is not a member of the club –
 - (a) by refusing or failing to accept the person's application for membership; or
 - (b) in the terms or conditions on which the club is prepared to admit the person to membership.
- (2) 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 member of the club –
 - (a) in the terms or conditions of membership that are afforded to the member;
 - (b) by refusing or failing to accept the member's application for a particular class or type of membership;
 - (c) by denying the member access, or limiting the member's access, to any benefit provided by the club;
 - (d) by depriving the member of membership or varying the terms of membership; or
 - (e) by subjecting the member to any other detriment.
- (3) 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, but does not include any association or organization –
 - (a) to which Article 13 or 19 applies; or
 - (b) whose membership does not exceed 24 and admission to membership of which is regulated by the club's rules, and involves a process of selection.
- (4) The Minister may by Order amend the number in paragraph (3)(b).

26 Requests for information

A person shall not discriminate against another person by requesting or requiring information (whether by way of completing a form or otherwise) in

connection with, or for the purpose of performing, an act which is or would be prohibited by this Law.

PART 6

OTHER PROHIBITED CONDUCT

27 Discrimination by way of victimization

- (1) Victimization is an act of discrimination prohibited by this Law, where it occurs in any circumstances where an act is prohibited under Parts 3 to 5.
- (2) A person victimizes another person (the “subject”) if, in the circumstances described in paragraph (1), the person treats the subject less favourably than that person would treat other persons, and does so by reason that the subject has –
 - (a) made a complaint under this Law;
 - (b) instituted proceedings against the person or any other person under this Law;
 - (c) given evidence or information in connection with proceedings brought by any person against the person or any other person under this Law;
 - (d) otherwise done anything for the purposes of or in connection with this Law in relation to the person or any other person;
 - (e) alleged that the person or any other person has committed an act which (whether or not the allegation so states) is prohibited by this Law,or by reason that the person believes that the subject intends to do any of those things, or suspects that the subject has done, or intends to do, any of them.
- (3) Paragraph (2) does not apply to treatment of a subject by reason of him or her giving false evidence or information, or making a false complaint or allegation if the evidence or information is given, or the complaint or the allegation is made, in bad faith.

28 Harassment

- (1) Harassment is an act of discrimination prohibited by this Law, where it occurs in any circumstances where an act is prohibited under Parts 3 to 5.
- (2) A person harasses another person (the “subject”) if, in the circumstances described in paragraph (1), the person engages in unwanted conduct towards the subject that is related to a protected characteristic and which has the purpose or effect of –
 - (a) violating the subject’s dignity; or
 - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the subject.

- (3) In deciding whether conduct has the effect described in paragraph (2)(a) or (b) each of the following must be taken into account –
 - (a) the perception of the subject;
 - (b) the circumstances of the case; and
 - (c) whether a reasonable person could regard the conduct as having that effect.

29 Relevant relationships that have ended

- (1) This Article applies where there used to be a relationship between one person (the “relevant person”) and another person in circumstances where an act of discrimination would if it had occurred during the relationship be prohibited under this Law (the “relevant relationship”).
- (2) The relevant person must not discriminate against another person with whom the relevant person has had a relevant relationship by subjecting that person to a detriment where the discrimination arises out of and is closely connected to the relevant relationship.
- (3) It does not matter whether the relationship ends before or after the commencement of this Law.

30 Instructions or pressure to commit prohibited act

- (1) This Article applies where there is a relationship between one person (the “relevant person”) and another person in circumstances where conduct prohibited under Parts 3, 4, and 5 or Articles 27, 28, 29 or 31 may occur (the “relevant relationship”).
- (2) The relevant person shall not cause, instruct or induce directly or indirectly another person to do in relation to a third person (the “subject”) an act which is prohibited by this Law.
- (3) For the purposes of this Law, it does not matter whether the instruction or inducement actually leads to an act which is prohibited by this Law.
- (4) A complaint may be made to the Tribunal against the relevant person by –
 - (a) the person with whom there is a relevant relationship with the relevant person; or
 - (b) the subject,where either is subject to a detriment as a result of the relevant person’s conduct.
- (5) A reference in this Article to causing or inducing another person to do something includes a reference to attempting to cause or induce the person to do it.

31 Aiding prohibited acts

- (1) A person who knowingly aids (the “aider”) another person to do any act which is prohibited by this Law shall be treated, for the purposes of this Law, as personally doing the act.
- (2) The aider does not knowingly aid another person to do any act which is prohibited by this Law if –
 - (a) the other person made a statement to the aider that the act, by reason of any provision of this Law, would not be prohibited;
 - (b) the aider relied on that statement; and
 - (c) it is reasonable for the aider to have relied on the statement.

32 Liability of employee and employer

- (1) Anything done by an employee in the course of his or her employment which is prohibited by this Law shall be taken as having been done by his or her employer as well as by the employee, whether or not it was done with the employer’s knowledge or approval.
- (2) For the purposes of paragraph (1), an act that is done by an employee in the course of his or her employment, which is an act that his or her employer is prohibited from doing under this Law, shall be taken to be an act that the employee is also prohibited from doing under this Law.
- (3) In a complaint made under this Law against an employer in respect of any act alleged to have been done by the employer’s employee, it shall be a defence for the employer to prove that they took such steps as were reasonably practicable to prevent the employee from doing that act or from doing, in the course of the employment, acts of that description.
- (4) In a complaint made under this Law against an employee for anything done in the course of his or her employment –
 - (a) it does not matter if the employer is found not to have committed an act prohibited by this Law by virtue of paragraph (3);
 - (b) it shall be a defence for the employee to prove that –
 - (i) the employer made a statement to him or her that the act, by reason of any provision of this Law, would not be prohibited,
 - (ii) in doing the act, he or she relied on that statement, and
 - (iii) it was reasonable for him or her to rely on the statement.
- (5) In this Article, “employee” shall be taken to include “contract worker”, and “employer” shall be taken to include “principal”.

33 Liability of agent and controller

- (1) Anything done by a person (the “agent”) in the course of doing something on the authority (express or implied) of another person (the “controller”) which is prohibited by this Law, shall be taken as having been done by his or her controller as well as by the agent, whether or not it was done with the controller’s knowledge or approval.

- (2) In a complaint made under this Law against an agent for anything done as agent for the controller it shall be a defence for the agent to prove that –
 - (a) the controller made a statement to him or her that the act, by reason of any provision of this Law, would not be prohibited;
 - (b) in doing the act, he or she relied on that statement; and
 - (c) it was reasonable for him or her to rely on the statement.

PART 7

ENFORCEMENT

34 Functions of Secretary of Tribunal under this Law

The Secretary of the Tribunal shall discharge the functions conferred by this Law.

35 Functions of JACS under this Law

JACS shall discharge the duties imposed on it by this Law.

36 Functions of Tribunal under this Law

- (1) The Tribunal shall discharge the duties imposed and exercise the powers conferred on it by this Law.
- (2) The Tribunal shall have jurisdiction to determine a complaint relating to any conduct prohibited by this Law.
- (3) Subject to the provisions of this Part, Articles 83, 84, 89, 90, 91, 92, 93, 94 and 95 of the Employment Law shall apply to the Tribunal and to proceedings before it when it is exercising the jurisdiction conferred on it by or under this Law as they apply to the Tribunal and to proceedings before it when it is exercising the jurisdiction conferred on it by or under the Employment Law.

37 Making a complaint

- (1) A person (the “complainant”) may present a complaint to the Tribunal that another person (the “respondent”) has committed an act, or is treated as having committed an act, which is prohibited by this Law.
- (2) The Tribunal shall not consider a complaint –
 - (a) where the act complained of occurred entirely before the coming into force either of this Law, or of Regulations made under Article 5, amending this Law;
 - (b) unless it is presented to the Tribunal –

- (i) before the end of the period of 8 weeks beginning with the date of the act, or the last act, to which the complaint relates, or
 - (ii) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 8 weeks.
- (3) For the purposes of this Article –
 - (a) any act prohibited by this Law which extends over a period is to be treated as done at the end of the period;
 - (b) any act which occurs before the coming into force of –
 - (i) this Law, or
 - (ii) Regulations made under Article 5,and which continues to occur on the date this Law or such Regulations come into force, is to be treated as having occurred on the relevant coming into force date;
 - (c) where an act consists of a failure to do something, that failure is to be treated as occurring when the person in question decided on it.
- (4) The States may by Regulations amend the period specified in paragraph (2)(b).

38 Conciliation in employment-related complaints by conciliation officer

- (1) The Secretary of the Tribunal shall refer a complaint which concerns, or is done in connection with, employment or work, whether paid or voluntary, to JACS and inform the complainant and respondent of the referral.
- (2) If the complainant and respondent so agree, JACS shall appoint a conciliation officer to deal with a complaint referred to it under paragraph (1), and the conciliation officer shall endeavour to resolve the complaint by conciliation.
- (3) Notwithstanding paragraph 2(1) of the Schedule to the Jersey Advisory and Conciliation (Jersey) Law 2003¹², the conciliation officer shall have regard, in conducting the conciliation, to any code of practice approved by the Minister under Article 46.
- (4) A conciliation officer appointed to deal with a complaint, who resolves the complaint by conciliation, shall report the outcome to the Secretary of the Tribunal.
- (5) The Minister may, for the purposes of paragraphs (1), (2) and (4) prescribe a timescale within which the Secretary of the Tribunal or the conciliation officer (as the case may be) shall do any of the matters referred to in those paragraphs.

39 Conciliation in other complaints

- (1) This Article applies to a complaint which does not concern, and is not done in connection with, employment or work.
- (2) If the complainant and respondent so agree, the Secretary of the Tribunal shall refer the complainant and respondent to a person qualified in conducting conciliation or mediation who shall endeavour to resolve the complaint and report the outcome to the Secretary of the Tribunal.
- (3) The Minister may for the purposes of paragraph (2) prescribe a timescale within which the Secretary of the Tribunal or the person qualified in conducting conciliation or mediation (as the case may be) shall do any of the matters referred to in that paragraph.

40 Restrictions on contracting out

- (1) A provision in a contract (whether a relevant agreement within the meaning of the Employment Law, or not) shall be void in so far as it purports –
 - (a) to exclude or limit the operation of any provision of this Law; or
 - (b) to preclude a person from bringing any proceedings under this Law before the Tribunal,except as permitted by this Law.
- (2) Paragraph (1) shall not apply to an agreement to refrain from instituting or continuing proceedings before the Tribunal –
 - (a) where a conciliation officer appointed under Article 38(2) or a person described in Article 39(2) (as the case may be), has succeeded in resolving the complaint by conciliation; or
 - (b) if the conditions regulating compromise agreements under the Employment Law are satisfied in relation to the agreement.

41 Referral to Tribunal

Where a complainant and respondent do not agree to conciliation, or the complaint is not resolved by conciliation, a reference to the Tribunal shall be made in accordance with the procedures prescribed under Article 91(4) of the Employment Law.

42 Remedies available

- (1) Where the Tribunal finds that a complaint is well-founded, it may do one or more of the following –
 - (a) declare the rights of the complainant and the respondent in relation to the act to which the complaint relates;
 - (b) order the respondent to pay to the complainant compensation for any –
 - (i) financial loss, in an amount not exceeding £10,000, and

- (ii) hurt and distress, in an amount not exceeding £5,000, provided the sum of any award made under sub-paragraph (b)(i) and (b)(ii) does not exceed £10,000;
 - (c) recommend that the respondent take, within a specified period, action appearing to the Tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination to which the complaint relates.
- (2) Where there is more than one respondent, the Tribunal may order that the payment of compensation be apportioned in such amounts as it considers just and equitable.
- (3) The Minister may prescribe the following –
- (a) the matters which the Tribunal may take into consideration in determining amounts of compensation under paragraph (1)(b), including having regard to any award made in an employment dispute to which Article 86 of the Employment Law applies, which was founded on the same facts as those in respect of which compensation is being sought under this Law;
 - (b) the circumstances in which interest may be added to amounts of compensation, and the rates of interest that may be applied;
 - (c) the circumstances in which costs may be awarded and their amount.
- (4) The States may by Regulations amend paragraph (1)(b) so as to –
- (a) amend the maximum amounts of compensation that may be ordered by the Tribunal;
 - (b) introduce different maximum amounts that may be so ordered in respect of the elements of compensation for financial loss or for hurt and distress;
 - (c) remove any limit on any amount that may be so ordered, being a limit on the amount of compensation or on the amount of any element of compensation for financial loss or for hurt and distress.

43 Enforcement of recommendations of Tribunal

- (1) If, without reasonable justification, a respondent does not comply with a recommendation made under Article 42(1)(c), the Tribunal may, if it thinks it just and equitable to do so –
- (a) increase the amounts of compensation ordered under Article 42(1)(b) to be paid to the complainant, subject to the maximum amounts specified under that Article; or
 - (b) make an order under Article 42(1)(b) where such an order has not already been made.
- (2) An order of the Tribunal to take any action or to refrain from taking any action under Article 93(3) of the Employment Law shall not be taken to include a recommendation made under Article 42(1)(c).

PART 8**MISCELLANEOUS AND CLOSING****44 Application to police**

- (1) A member of the States of Jersey Police Force shall be treated, for the purposes of this Law, as the employee of the Chief Officer of the States of Jersey Police Force.
- (2) Anything done by a member of the States of Jersey Police Force in the performance or purported performance of his or her functions shall be treated as done in the course of the employment described in paragraph (1).

45 JACS fees and charges

Notwithstanding paragraph 11 of the Schedule to the Jersey Advisory and Conciliation (Jersey) Law 2003¹³, JACS shall not charge any fee, or make any other charge, in respect of the discharge of its functions under this Law.

46 Codes of practice

Articles 2A and 2B of the Employment Law shall apply for the purposes of –

- (a) the Minister approving by Order any code of practice containing guidance for the purposes of this Law; and
- (b) a person failing to observe any code of practice issued in connection with this Law.

47 Regulations and Orders

- (1) The States may by Regulations make such amendments to any enactment as appear to the States to be expedient –
 - (a) for the general purposes, or any particular purpose, of this Law;
 - (b) in consequence of any provision made by or under this Law; or
 - (c) for giving full effect to this Law or any provision of it.
- (2) The power to make Regulations or Orders includes power to make any supplementary, incidental, consequential, transitional, transitory or saving provision which appear to the States or the Minister, as the case may be, to be necessary or expedient for the purposes of the Regulations or Order.

48 Citation

This Law may be cited as the Discrimination (Jersey) Law 2013.

SCHEDULE 1

(Article 3)

PROTECTED CHARACTERISTICS**1 Introduction**

This Schedule prescribes the characteristics which are protected from discrimination under this Law.

2 Race

- (1) Race is a protected characteristic.
- (2) Race includes –
 - (a) colour;
 - (b) nationality;
 - (c) national origins;
 - (d) ethnic origins.
- (3) In relation to the protected characteristic of race –
 - (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;
 - (b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.
- (4) A racial group is a group of persons defined by reference to race, and a reference to a person's racial group is a reference to a racial group into which the person falls.
- (5) The fact that a racial group comprises 2 or more distinct racial groups does not prevent it from constituting a particular racial group.
- (6) For the purposes of this Law, "national origins" includes being of Jersey origin.

SCHEDULE 2

(Article 4)

PART 1**GENERAL EXCEPTIONS TO PROHIBITED ACTS****1 Act done under legislative or judicial authority**

- (1) An act of discrimination is not prohibited by this Law if it is done necessarily for the purpose of complying with –
 - (a) any enactment;
 - (b) any condition or requirement lawfully imposed pursuant to any enactment; or
 - (c) any order of a court or tribunal.
- (2) In this paragraph “enactment” includes an enactment of the United Kingdom having effect in Jersey.

2 Compliance with law of another country

- (1) An act of discrimination done outside Jersey is not prohibited by this Law if it is done for the purpose of complying with the law of, or an order of a court or tribunal in, the country in which it is done.
- (2) An act of discrimination done in Jersey is not prohibited by this Law if it is done for the purpose of complying with so much of the law of a country as applies to –
 - (a) the performance of part of a person’s work in that country;
 - (b) the supply of goods, services or facilities in that country.
- (3) References to a country in this paragraph include the territorial waters of that country.

PART 2**EXCEPTIONS TO PROHIBITED ACTS: RACE****3 Race: 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 place of birth or length of residency in Jersey, for the purposes of –

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

4 Race: 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.

5 Race: 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.

6 Race: sport and competitions

An act whereby a person discriminates against another person on the grounds of the other person's nationality or place of birth or the length of time for which the person has been resident in a particular area or place is not prohibited by this Law if it is done –

- (a) in selecting one or more persons to represent a country, place or area, or any related association, in any country or game; or
- (b) in pursuance of the rules of any competition so far as they relate to eligibility to compete in any sport or game.

7 Race: financial and insurance arrangements

- (1) Article 22 shall not prohibit a person discriminating against another person (the “subject”) in the supply of facilities by way of banking or insurance or in the provision of grants, loans, credit or finance, where the facilities are, or the provision is, for a purpose to be carried out, or in connection with risks arising, wholly or mainly outside Jersey.
- (2) Parts 3 and 5 shall not prohibit a person discriminating against a subject in relation to the terms on which an annuity or policy of insurance is offered to, or may be obtained by, the subject, 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.

8 Race: 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 –

- (a) the performance of domestic duties on premises on which the first-mentioned person resides; or
- (b) the care of a child in the place where the child resides.

9 Race: genuine occupational requirement

- (1) A person (the “relevant person”) does not commit an act of discrimination prohibited by a provision listed in sub-paragraph (2) by applying in relation to work, a requirement for a person to have the protected characteristic of race, provided 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) The provisions are –
 - (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.

10 Race: training in skills for exercise outside Jersey

- (1) Articles 9 and 10 shall not prohibit an act done by an employer for the benefit of a person not ordinarily resident in Jersey, in or in connection with that person’s employment at an establishment in Jersey, where the purpose of the employment is to provide the person with training in skills which he or she appears to the employer to intend to exercise wholly outside Jersey.
- (2) For the purposes of sub-paragraph (1) –
 - (a) employment shall be regarded as being at an establishment in Jersey if the employee does his or her work wholly or mainly within Jersey;
 - (b) employment on board a Jersey ship shall be regarded as being at an establishment in Jersey; and
 - (c) employment on an aircraft or hovercraft operated by a person ordinarily resident in Jersey or whose principal place of business is in Jersey (disregarding any time when the aircraft or hovercraft is operated, pursuant to a contract, on behalf of a person ordinarily resident outside Jersey or whose principal place of business is

outside Jersey) shall be regarded as being at an establishment in Jersey.

- (3) Article 11 shall not prohibit an act done by a principal for the benefit of a contract worker not ordinarily resident in Jersey, in or in connection with allowing the contract worker to do work to which Article 11 applies, where the purpose of the contract worker being allowed to do that work is to provide the contract worker with training in skills which he or she appears to the principal to intend to exercise wholly outside Jersey.

11 Race: 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.

12 Race: provision of care in carer's home

Articles 22 and 24(1) shall not prohibit a person 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.

13 Race: private disposal 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

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- (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 relative within clause (c), (d), (e) or (f) whose relationship, arises as a result of marriage or civil partnership.
 - (7) In sub-paragraph (6), a reference to a partner is a reference to the other member of a couple consisting of –
 - (a) a man and a woman who are not married to each other but are living together as husband and wife; or
 - (b) two people of the same sex who are not 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.
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14 Race: clubs for members of one race

- (1) Article 25 shall not prohibit discrimination in relation to a club which has as its principal object providing benefits to persons of a stated race if those persons are described other than –
 - (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.
- (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 are of the race stated in the principal object; and
 - (c) any other relevant circumstance.

ENDNOTES**Table of Legislation History**

Legislation	Year and No	Commencement
Discrimination (Jersey) Law 2013	L.10/2013	1 September 2014 (R&O.28/2014)

Table of Renumbered Provisions

Original	Current
48	spent, omitted
49	48
Schedule 3	spent, omitted

Table of Endnote References

<i>1</i>	<i>chapter 05.400</i>
<i>2</i>	<i>chapter 05.255</i>
<i>3</i>	<i>chapter 05.400</i>
<i>4</i>	<i>chapter 19.885</i>
<i>5</i>	<i>chapter 10.800</i>
<i>6</i>	<i>chapter 10.800</i>
<i>7</i>	<i>chapter 13.500</i>
<i>8</i>	<i>chapter 13.475</i>
<i>9</i>	<i>chapter 13.370</i>
<i>10</i>	<i>chapter 13.780</i>
<i>11</i>	<i>chapter 24.980</i>
<i>12</i>	<i>chapter 05.400</i>
<i>13</i>	<i>chapter 05.400</i>