



Jersey

DISCRIMINATION (JERSEY) LAW 2013

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DISCRIMINATION (JERSEY) LAW 2013

Arrangement

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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;

“gender reassignment” shall be construed in accordance with paragraph 5 of Schedule 1;

“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 sub-paragraph (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 paragraph 2 of 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;

“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;

“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.⁷

- (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.
- (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.⁸
- (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.⁹
- (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.¹⁰
- (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.¹¹
- (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.¹²
- (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.¹³

- (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.¹⁴
- (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.¹⁵
- (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^{16, 17}

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 relevant protected characteristic.¹⁸
- (2) For the purposes of paragraph (1), a provision, criterion or practice is discriminatory in relation to a subject’s relevant 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.¹⁹
- (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.²⁰
- (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.
- (4) For the purposes of this Article the relevant protected characteristics are –
 - (a) race;

- (b) sex;
- (c) sexual orientation;
- (d) gender reassignment;
- (e) age.²¹

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 1994²²;
 - (b) a limited liability partnership established in accordance with the Limited Liability Partnerships (Jersey) Law 1997²³;
 - (c) an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 2011²⁴;
 - (d) a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 2011²⁵;
 - (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 2009²⁶ 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) 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.²⁷

-
- (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.²⁸
 - (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.²⁹
 - (6) The Minister may by Order amend the number in paragraph (5)(a).³⁰

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 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.³¹
- (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).³²
- (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.³³
- (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 2003³⁴, 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 2003³⁵, 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 1³⁶

(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.

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.

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.

SCHEDULE 2³⁷

(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.

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.

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- (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 2014³⁸;
 - “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);
 - (d) Article 12(1)(a) or (2)(a) or (3)(a) or (b);
 - (e) Articles 17 and 18.
- (3) The reference in sub-paragraph (1) to “work” is a reference to employment, contract work, voluntary 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.

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 so far as it relates to the protected characteristic of race, 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.

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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, so far as it relates to the protected characteristic of race, 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, so far as it relates to the protected characteristic of race, 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.

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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, so far as it relates to the protected characteristic of race, 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, so far as it relates to the protected characteristic of race, 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.

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PART 3

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 1989³⁹; 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 2003⁴⁰ 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.

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 1974⁴¹.

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 2003⁴².

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.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Discrimination (Jersey) Law 2013	L.10/2013	1 September 2014 (R&O.28/2014)
Discrimination (Sex and Related Characteristics) (Jersey) Regulations 2015	R&O.61/2015	1 September 2015
Discrimination (Age) (Jersey) Regulations 2016	R&O.58/2016	1 September 2016

Table of Renumbered Provisions

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

Table of Endnote References

¹	<i>chapter 05.400</i>
²	<i>chapter 05.255</i>
³	<i>chapter 05.400</i>
⁴	<i>chapter 19.885</i>
⁵	<i>chapter 10.800</i>
⁶	<i>chapter 10.800</i>
⁷ Article 1(1)	<i>amended by R&O.61/2015</i>
⁸ Article 6(3)	<i>added by R&O.61/2015</i>
⁹ Article 6(4)	<i>added by R&O.61/2015</i>
¹⁰ Article 6(5)	<i>added by R&O.61/2015</i>
¹¹ Article 6(6)	<i>added by R&O.61/2015</i>
¹² Article 6(7)	<i>added by R&O.61/2015</i>
¹³ Article 6(8)	<i>added by R&O.61/2015</i>
¹⁴ Article 6(8A)	<i>inserted by R&O.58/2016</i>
¹⁵ Article 6(9)	<i>added by R&O.61/2015</i>
¹⁶	<i>chapter 05.255</i>
¹⁷ Article 6(10)	<i>added by R&O.61/2015</i>
¹⁸ Article 7(1)	<i>amended by R&O.61/2015</i>
¹⁹ Article 7(2)	<i>amended by R&O.61/2015</i>
²⁰ Article 7(2A)	<i>inserted by R&O.61/2015</i>
²¹ Article 7(4)	<i>added by R&O.61/2015, amended by R&O.58/2016</i>
²²	<i>chapter 13.500</i>
²³	<i>chapter 13.475</i>
²⁴	<i>chapter 13.370</i>
²⁵	<i>chapter 13.780</i>
²⁶	<i>chapter 24.980</i>
²⁷ Article 25(3)	<i>substituted by R&O.61/2015</i>
²⁸ Article 25(4)	<i>substituted by R&O.61/2015</i>
²⁹ Article 25(5)	<i>added by R&O.61/2015</i>

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- ³⁰ *Article 25(6)* *added by R&O.61/2015*
³¹ *Article 28(2)* *amended by R&O.61/2015*
³² *Article 28(2A)* *inserted by R&O.61/2015*
³³ *Article 28(2B)* *inserted by R&O.61/2015*
³⁴ *chapter 05.400*
³⁵ *chapter 05.400*
³⁶ *Schedule 1* *amended by R&O.61/2015, R&O.58/2016*
³⁷ *Schedule 2* *amended by R&O.61/2015, R&O.58/2016*
³⁸ *chapter 15.070*
³⁹ *chapter 05.300*
⁴⁰ *chapter 05.255*
⁴¹ *chapter 26.900*
⁴² *chapter 05.255*