

# STATES OF JERSEY



## DRAFT DISCRIMINATION (JERSEY) LAW 201-

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Lodged au Greffe on 15th January 2013  
by the Minister for Social Security

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STATES GREFFE





Jersey

## **DRAFT DISCRIMINATION (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Social Security has made the following statement –

In the view of the Minister for Social Security the provisions of the Draft Discrimination (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator F. du H. Le Gresley**

*Minister for Social Security*

Dated: 15th January 2013

# REPORT

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## BACKGROUND

### Summary

A decision of the States of Jersey in July 2011<sup>1</sup> transferred the responsibility for preparing discrimination legislation to the Minister for Social Security ('the Minister') and directed the Minister to lodge a draft Discrimination Law with the States.

Draft legislation had been developed during 2005 to 2010 by the former Chief Minister, and subsequently by the Minister for Home Affairs. A great deal of work was undertaken by those Departments in preparing draft legislation and undertaking extensive public consultation. The history of the development of the principles and the legislation is set out at **Appendix 1** to this Report.

Since that time, the UK's Equality Act 2010 ('the Equality Act') came into force which consolidated a number of pieces of discrimination and equality legislation. The Minister reviewed Jersey's draft Discrimination Law (dated April 2010) with the intention of taking into account any important changes introduced via the Equality Act, as well as Guernsey's experience of sex discrimination legislation<sup>2</sup>, whilst keeping the legislation as simple as possible.

The proposals set out in the draft Discrimination (Jersey) Law 201- ('the draft Law') have also been refined as a result of consultation with stakeholders during 2012, as summarised at **Appendix 2** to this Report.

The draft Law is an overarching law that provides a framework for protection against discrimination and it includes 'race' as the first protected characteristic. It is considered that introducing protection against discrimination on the grounds of race does not entail the same complexity as sex, age or disability discrimination. Further consultation will be undertaken with stakeholders before introducing Regulations relating to other characteristics.

### Why do we need a discrimination Law?

In jurisdictions worldwide, it is taken for granted that laws exist to protect people against discrimination. There has been consistent and overwhelming support for the introduction of legislation in Jersey to address discrimination issues generally.

The introduction of discrimination legislation will have wide-ranging implications for Jersey as a whole and for the States of Jersey, both as an employer and as a provider of services. However, Jersey must have the necessary legislation in place in order to command respect internationally as a jurisdiction that promotes modern standards of respect for individuals' rights and equality.

Jersey has obligations under a number of international conventions and covenants to ensure protection from discriminatory behaviour:

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<sup>1</sup> Discrimination Law and delay on pension reform (P.118/2011)

<sup>2</sup> The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004, and The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005

- The International Covenant on Civil and Political Rights (ICCPR)<sup>3</sup> requires legislation that prohibits discrimination and guarantees effective protection against discrimination.
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>4</sup> includes a requirement to prohibit race discrimination in the enjoyment of certain rights.

Introducing the draft Law will help Jersey to achieve compliance with the requirements of the ICCPR and the ICERD. In failing to prohibit discrimination of this sort, Jersey falls short of widely recognised international standards.

Discrimination legislation is also essential in terms of a number of other international treaties, including; the Convention on the Elimination of All Forms of Discrimination Against Women<sup>5</sup>, the International Convention on the Rights of Persons with Disabilities<sup>6</sup>, the United Nations Convention on the Rights of the Child<sup>7</sup> and the International Covenant on Economic, Social and Cultural Rights<sup>8</sup>.

Existing protection is very limited and relates only to certain circumstances. For example, the Sex Disqualification (Jersey) Law 1957 provides that a woman cannot, by reason of her sex or marital status, be excluded from a profession or vocation or be exempted from liability to serve as a juror. The Human Rights (Jersey) Law 2000 gives effect to Article 14 of the European Convention on Human Rights, which prohibits discrimination in relation to the enjoyment of Convention Rights. This protection applies only where there is discrimination in the way that the enjoyment of another Convention Right is secured and a breach of Article 14 is only actionable against the State and public authorities as defined by the Human Rights (Jersey) Law 2000<sup>9</sup>.

### **Is there any evidence of discrimination in Jersey?**

Proposals to introduce anti-discrimination legislation have been widely supported, however, during consultation, some stakeholders have requested evidence that discriminatory behaviour exists in Jersey and evidence that legislation will remove or reduce inequalities. It is not realistic to expect the draft Law to prevent all discrimination or eliminate inequality entirely. What legislation can realistically achieve, however, is to provide legal protection where a person has, for example, been refused a job, turned away from a restaurant or prevented from renting a house because of their race.

In the absence of legislation that prohibits discriminatory acts from taking place, it is difficult to assess the prevalence of unacceptable discriminatory acts. Without a legal benchmark against which behavioural standards can be assessed and with no recourse to justice or compensation, it is probable that acts of discrimination do not currently come to light. However, there is some evidence that discrimination occurs in Jersey. The following sections summarise statistics and data relating to discrimination in Jersey.

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<sup>3</sup> The UK ratified the Covenant on 29th June 1976 in respect of Jersey

<sup>4</sup> The UK ratified the Convention on 7th March 1969 in respect of Jersey

<sup>5</sup> Not yet extended to Jersey

<sup>6</sup> Not yet extended to Jersey

<sup>7</sup> Not yet extended to Jersey

<sup>8</sup> The UK ratified the Convention on 20th May 1976 in respect of Jersey

<sup>9</sup> For the definition of public authority see Article 7 of that Law

### *Jersey Annual Social Survey*

The States of Jersey Statistics Unit included questions about discrimination in the 2012 Jersey Annual Social Survey (JASS). The findings included the following:

- A quarter (25%) of adults reported having been discriminated against in the previous 12 months.
- Nationality – 9% of adults reported that they had been discriminated against on grounds of nationality in the previous 12 months. 37% of those born in Portugal or Madeira, 28% of those born in Poland, 21% of those born in another European country and 6% of those born in Jersey or elsewhere in the British Isles reported having been discriminated against in Jersey on grounds of race or nationality in the previous 12 months.
- Age – 9% of adults reported that they had been discriminated against on grounds of age.
- Gender – 9% of women and 2% of men reported having been discriminated against on the grounds of gender.
- The most frequently cited place at which discrimination was reported to have occurred was at work (36% of those who reported being discriminated against), followed by in States departments or parishes (27%) and when applying for a job (23%).
- For those who reported experiencing discrimination (on single grounds) at work, discrimination was reported to be on grounds of race for a third (34%), and on grounds of age for a fifth (18%).
- For those who reported experiencing discrimination (on single grounds) when applying for a job, discrimination was reported to be on grounds of age for half (51%), and on grounds of race for a fifth (22%).
- For those who reported experiencing discrimination (on single grounds) at States departments or parishes, discrimination was reported to be on grounds of marital status for a quarter (28%), age for a sixth (17%) and race for a sixth (16%).

### *Jersey Citizens Advice Bureau*

The Jersey Citizens Advice Bureau (CAB) records data about client contacts. Where a client feels that they have suffered discrimination, or seeks advice or information relating to discrimination, CAB staff record this as a potential discrimination issue. It should be noted that the grounds for the perceived discrimination (e.g. race, age, sex, disability) are not recorded and the discrimination may or may not be an act of discrimination that is prohibited by the draft Law. During 2012, CAB recorded 46 issues relating to discrimination (see **Table 1**). The majority of these (43.5%) related to employment, which reflects the experience in the UK; that complaints of employment-related discrimination are more common than complaints of discrimination in other areas. When the draft Law is in force, enquiries related to discrimination in all areas are expected to increase.

*Table 1 – Discrimination issues recorded by CAB during the year 2012*

Employment	20
Relationships	9
Legal	4
Housing	3
Other	3
Benefits	2
Consumer	2
Financial	1
Health	1
Tax	1
	<b>46</b>

***Jersey Advisory and Conciliation Service***

The 2011 Annual Report of the Jersey Advisory and Conciliation Service (JACS) reported that one area of ongoing concern has been the number of JACS clients who believe they are suffering from bullying or harassment at work. JACS dealt with 238 bullying-related issues in 2010, 280 issues in 2011 and 260 issues in 2012. JACS believes that, whilst a discrimination Law will not directly address the question of bullying, until Jersey introduces protection against discrimination, including protection from harassment, the extent of and damage caused by bullying will not be tackled.

During 2012, JACS recorded 47 clients with issues relating to discrimination. Nine issues were recorded as race discrimination, 10 as sex discrimination and the remaining 28 were recorded as “general” which includes discrimination on other grounds, including age, disability and religion.

***Jersey Community Relations Trust***

Workplace surveys undertaken by the Jersey Community Relations Trust<sup>10</sup> have shown that age, sex, disability and race feature largely in bullying and harassment.

During 2011, the Jersey Community Relations Trust (JCRT), in conjunction with the Jersey Employers’ Network on Disability, surveyed local employers to find out how they would like to see discrimination legislation being introduced, if at all. Sixty organisations from various sectors responded to the survey with businesses employing 100 employees or more representing the majority of responses received. The majority of local employers surveyed (82%) believed that there is a need for discrimination legislation and supported its introduction. Employers considered the characteristics of age, nationality, gender and race to be the most important issues to be covered by legislation and just over half (52%) favoured the idea of characteristics being brought into force in stages rather than simultaneously.

<sup>10</sup> [www.jerseycommunityrelations.org/bluebox/download.cfm?attachment=1FFE](http://www.jerseycommunityrelations.org/bluebox/download.cfm?attachment=1FFE)

## THE DRAFT LAW

### What is discrimination?

The draft Law defines direct discrimination (Article 6) and indirect discrimination (Article 7):

- A person **directly** discriminates against another person if he or she treats that person less favourably than another person because of a particular characteristic.

It would, therefore, be direct discrimination for an employer to refuse to employ someone because he or she was of Portuguese descent. It would also be direct discrimination for a landlord to refuse to lease out a property because the prospective tenants were Polish.

In either of these scenarios an exception might apply, for example, if the discrimination was necessary to comply with other legislation in Jersey, the action would not be discriminatory.

- A person **indirectly** discriminates against another person where they apply a provision, criterion or practice, which the person cannot show to be a proportionate means of achieving a legitimate aim, that disadvantages (or would, if applied, disadvantage) people with a particular characteristic.

An employer who specifies that job applicants must speak fluent English could potentially face a claim because the requirement would indirectly discriminate against people from countries where English is not generally spoken. However, there would be no discrimination if the employer could show that the requirement to speak English was proportionate in the circumstances because it met a business need, such as a requirement for employees to communicate effectively with predominantly English-speaking customers.

It could also be indirect discrimination to require a job applicant to have attended University in the UK. In most cases, it would be unlikely that such a requirement could be justified. The employer should instead focus on who is genuinely the best person for the job, irrespective of where he or she was educated.

Avoiding direct and indirect discrimination never means that an employer is prevented from offering a job to the best qualified or most suitable candidate.

Victimisation (Article 27) and Harassment (Article 28) are also defined as forms of discrimination:

- **Victimisation** – the draft Law is intended to protect those who raise a complaint of discrimination (or assist others in doing so) from suffering less favourable treatment as a result. An employee who is dismissed because he or she queries whether a promotion decision was based on race will be able to complain of victimisation as if the dismissal were itself an act of discrimination.

Protection against victimisation does not extend to false allegations made in bad faith. An employee who deliberately makes false allegations of racial harassment, for example, can still be dismissed for gross misconduct.



- **Harassment** is unlawful in the same situations (such as the workplace or the provision of goods and services) as those in which direct and indirect discrimination are prohibited. Harassment involves unwanted conduct which relates to a protected characteristic. A wide variety of conduct can amount to harassment, the test being whether it violates the dignity of the victim or creates, for example, an intimidating or offensive environment.

Typical examples of harassment include subjecting an individual to racial abuse or other hostile treatment based on the victim's race or ethnic origin. The draft Law makes it clear that conduct will only be harassment if it is sufficiently serious that a reasonable person could regard it as having the prohibited effect.

### **How is the protected characteristic of race defined?**

Race is currently the only characteristic that is protected under the draft Law. A person has the protected characteristic of race if they fall within a particular racial group. We all belong to one or more racial groups, so the draft Law protects everyone. Schedule 1 of the draft Law provides that 'race' includes:

- Colour
- Nationality
- Ethnic origin
- National origin, which includes being of Jersey origin.

A 'racial group' is a group of people who have or share a colour, nationality, ethnic origin or national origin. For example, a racial group could be 'British' people, or it could be 'non-British' people. People often belong to a number of racial groups, for example, a white, British person, who is a Jersey resident but was born in Scotland.

Nationality is about a person's citizenship of an existing or recognised state through birth or naturalisation. National origin is distinct from nationality; there must be identifiable elements, both historic and geographic, which indicate the existence (or previous existence) of a nation. For example, as England and Scotland were once separate nations, English and Scottish people are regarded as having separate national origins.

An ethnic group is usually distinguished from its surrounding community by certain characteristics including a long-shared history (for example, Sikhs) and a cultural tradition of its own. An ethnic group may also have a common geographical origin, language, literature, social customs or religion.

### **In what areas is race discrimination prohibited?**

Parts 3 to 5 of the draft Law set out the following areas in which discriminatory acts are prohibited:

1. Paid work including recruitment, the terms on which employment is offered and the termination of employment (Articles 9 and 10)
2. Contract workers (Article 11)
3. Partnerships (Article 12)
4. Professional or trade organisations (Article 13)

5. Professional bodies (Article 14)
6. Vocational training (Article 15)
7. Employment agencies (Article 16)
8. Voluntary work (Articles 17 to 20)
9. Education (Article 21)
10. Goods, facilities and services (Article 22)
11. Access to and use of public premises (Article 23)
12. Disposal or management of premises, e.g. letting property (Article 24)
13. Clubs (Article 25).

### **Are there any exceptions?**

The draft Law (Schedule 2) provides certain exceptions; these are instances where an act that might otherwise amount to prohibited discrimination will not be treated as such under the draft Law.

Some of the exceptions are likely to apply to all protected characteristics, for example, acts done under legislative or judicial authority (Schedule 2, Part 1, paragraph 1), whereas other exceptions will be relevant to specific characteristics, for example, it will not be a prohibited act of race discrimination to recruit someone of a specified nationality to play in a national football team (Schedule 2, Part 2, paragraph 6).

Further exceptions are likely to be introduced with each set of Regulations that introduces a new protected characteristic. For example, when protection against sex discrimination is introduced, there is likely to be an exception relating to pregnancy and maternity to ensure that employers can discriminate appropriately (in favour of women) so as to make provision for their needs.

### **How will the Law be enforced?**

The draft Law reforms the Employment Tribunal as the Employment and Discrimination Tribunal ('the Tribunal'). The Tribunal will have the jurisdiction to hear complaints about acts of discrimination that occur in all areas, whether in the workplace or otherwise (Article 36). An amendment to the Employment Tribunal (Jersey) Regulations 2005 will be prepared to ensure that the Tribunal's constitution, membership and administration will reflect this change.

A complaint must be made to the Tribunal within 8 weeks of the act of discrimination complained of. Where there is a series of discriminatory acts, the complaint must be made within 8 weeks of the last act (Article 37).

All complaints will be referred for conciliation or mediation, if both parties agree:

- If the complaint relates to employment, the Secretary to the Tribunal (the 'Secretary') will refer it to JACS for conciliation (Article 38). The role of Secretary is the responsibility of the Judicial Greffier and is currently fulfilled by 2 part-time officers who are employed by the Judicial Greffe (the Registrar of Appeals and Tribunals).
- If the complaint does not relate to employment, the Secretary will refer it to a person who is qualified in conducting conciliation or mediation (Article 39).

The intention is that the Community Mediation service will be utilised, which is arranged by the Jersey Legal Information Board and administered by CAB.

If the parties do not agree to conciliation, or if conciliation is not successful, a complaint is referred to the Tribunal (Article 41). A complainant will need to demonstrate to the Tribunal that, on the balance of probabilities, he or she has been discriminated against.

### **What remedies will be available?**

If the Tribunal finds that a complaint has been proved, it may do any, or all, of the following 3 things (Article 42):

1. Make an order declaring the rights of the complainant and the respondent;
2. Order compensation of up to a maximum of £10,000 for any financial loss and up to a maximum of £5,000 for hurt and distress, subject to an overall limit of £10,000 covering the entirety of the award of compensation; and
3. Recommend that the respondent takes certain action within a specified period of time for the purpose of reducing the adverse effect of the act of discrimination on the particular complainant.

It was suggested by respondents during the latest consultation, as well as during consultation undertaken in 2006, that the £10,000 limit of compensation is too low. According to the UK Employment Tribunal and Employment Appeal Tribunal statistics for 2011–2012<sup>11</sup>, the median compensation awarded by UK Tribunals in cases with race discrimination jurisdictions was £5,256 and in 70% of cases the compensation was less than £10,000. The Minister is satisfied with the proposed cap on compensation of £10,000 as an appropriate starting point, but it may be subject to review in the future. The States may, by Regulations, amend the maximum level of compensation payable or introduce different levels of compensation for financial loss, or for hurt and distress.

### **What is the timetable for implementing the Law?**

The Minister has agreed to a request of the Health, Social Security and Housing Scrutiny Panel that the draft Law be listed for States debate in mid-May 2013 in order to allow the Panel time to conduct a review of the draft Law.

Subject to the States adopting the draft Law in May 2013 and Privy Council assent being granted, an Appointed Day Act will be required to bring the Law into force. Anticipating up to one year for Privy Council approval means that legislation to introduce protection against race discrimination is likely to be proposed to come into force in the second half of 2014. This will give sufficient time for employers, organisations and other individuals to make any necessary preparations.

Regulations for other protected characteristics will be introduced in a phased approach. The Minister expects that protection from discrimination is likely to be proposed in the following order:

- Race
- Sex
- Age
- Disability.

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<sup>11</sup> [www.justice.gov.uk/statistics/tribunals/employment-tribunal-and-eat-statistics-gb](http://www.justice.gov.uk/statistics/tribunals/employment-tribunal-and-eat-statistics-gb)

This enables a consistent and equitable approach to different types of discrimination and simplifies the complexity that has resulted in other jurisdictions as a consequence of having separate and different Laws. This will also enable full public consultation to be undertaken at each stage and to spread any potential administrative burden for employers, organisations and other individuals over a period of time. The Minister is committed to ensuring that the legislation is extended in a way that is sympathetic to the difficulties faced by businesses, particularly small businesses.

The proposed phases take into consideration the priorities determined by the States; the need to reflect the proportion or number of people likely to be affected by the particular protection; the anticipated cost implications of compliance and the importance of co-ordinating the work with other States' policies as far as possible. For example, protection against age discrimination would be prepared in co-ordination with changes to the State pension age and protection against sex discrimination would be prepared in conjunction with family-friendly legislation.

The Proposition adopted by the States in July 2011 (P.118/2011, as amended), required that within 2 months of the discrimination Law being registered in the Royal Court, draft Regulations covering disability, age, sex and race must be lodged *au Greffe*. The Minister believes, however, that further Regulations should not be taken to the States within 2 months of the primary Law being registered. It is likely that, once the draft Law is in force, lessons will be learned from the characteristic of race. Further Regulations should be therefore be drafted in stages with the benefit of that experience, rather than rushing to prepare and lodge 3 additional sets of Regulations in 2013, when no States commitment was given to a date of enactment for those Regulations.

#### **What advice and training is available?**

It is vital that the legislation is properly understood and implemented. During early consultation, the need for training was highlighted and, in particular, the potential cost to business of ensuring that employees are aware of their responsibilities.

Where a discrimination issue relates to employment, JACS will provide the advisory service. Where a discrimination issue does not relate to employment, such as education, housing or services, an advisory service will be provided by CAB.

In anticipation of legislation coming into force, JACS has been providing public and in-house training on the principles of employment related discrimination since 2008. Many organisations have supported these courses; approximately 900 delegates have taken advantage of this training to date. JACS noted in its 2011 Annual Report that *“attendance has given managers an opportunity to explore the positive benefits of a non-discriminatory approach to the employment of their staff”* and noted that *“many employers already set high standards that are reflected in their profitability, low staff turnover and their overall success.”*

The Minister is confident that responsible employers will not have to devote time and money to complying with the Law. Many larger business organisations already have the necessary procedures in place to avoid discriminatory practice. Whilst consultation demonstrated that employers are concerned about introducing new employee rights in a difficult economic climate, it did not reveal any practical difficulties that avoiding race discrimination entails. Employers' concerns related primarily to dealing with the cost of Tribunal claims. However, the potential cost is intentionally restricted in terms of the compensation that is available.

Literature and training on general discrimination issues are already available, and detailed guidelines will be provided by JACS and CAB prior to the draft Law coming into force. JACS noted in its 2011 annual report that it “*appreciates the impact new legislation has, especially on small businesses, and will actively update its training programmes to help both employers and employees understand the implications and to provide timely and impartial assistance in interpreting the Laws.*”.

JACS will continue to provide public training courses on the draft Discrimination Law and the Minister has allocated funds so that JACS can provide its public discrimination law course at no cost to delegates during 2013 and 2014.

### **Financial and manpower implications**

**Policy** – It is anticipated that, in 2013 and 2014, the cost of continuing to develop and prepare legislation for further characteristics and making the necessary preparations for the enactment and enforcement of the draft Law will be a maximum of £100,000 in each year.

**Advice, conciliation and enforcement** – In 2015, costs are estimated to be £200,000, which includes the full year cost of enforcing the Law via the Tribunal (including Tribunal members pay for additional hearings and the increased usage of the service generally), the advisory services provided by JACS and CAB, and the costs of continuing to develop and prepare legislation for further characteristics. In subsequent years, enforcement and advisory costs are expected to increase slightly as each new characteristic is introduced, up to a maximum cost of £300,000 once all of the Regulations are in place.

The above costs will be met from within resources approved in the Medium Term Financial Plan (MTFP) and carry-forward funds.

**States Human Resources** – There is an expectation that the States will be an exemplary employer. During 2013 and 2014, data will be collected for the entire States workforce to provide a comprehensive record of the ethnic and racial background of States employees. A comprehensive training programme will be provided to all staff to support non-discriminatory behaviour. States human resources policies will be assessed and re-written to take into account the protected characteristics. Whilst there will be costs associated with these exercises, they will be undertaken as part of the Public Sector Reform programme.

The potential cost to the Human Resources Department in defending discrimination complaints made to the Tribunal against the States will be met from within existing resources initially and monitored as further characteristics are introduced.

It is difficult to predict the future costs in terms of the Law Officers’ Department time. In addition to the cases which reach the Tribunal and complaints which can be dealt with without reference to the Tribunal, there are likely to be other requests for legal advice on the interpretation of the Law from States Human Resources and other Departments. This advisory work may be expected to be more significant in the first year or so after the Law comes into force and that pattern may be repeated after the Law is extended to cover additional grounds for discrimination.

Any costs which cannot be met from existing cash limits, including growth approved in the MTFP 2013–15, will need to be funded by the Council of Ministers from Contingency.

**Manpower** – It is anticipated that the Judicial Greffe (which is responsible for the administration costs of enforcing the draft Law via the Tribunal) will require one additional part-time administrative post, at a maximum of Grade 8, to deal with the additional Tribunal workload and hearings from 2015. One full-time equivalent fixed-term administrative post (at a maximum of Grade 6) is expected to be required to collect data on the States workforce during 2013 and 2014. The Law Officers' Department will try to manage the extra work within existing manpower resources; but should the extra work involved exceed that capacity, extra manpower would be requested.

### **Human Rights**

The notes on the human rights aspects of the draft Law in **Appendix 3** to this Report have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**Summary of the history of the development of protection against discrimination in Jersey**

**1991 – 1993: Codes of Practice:** A number of Codes of Practice were introduced by the States and States Committees dealing particularly with the issue of sex discrimination, sexual harassment and maternity rights to establish guidelines and raise awareness of what amounted to acceptable practice.

**1998: Employment legislation:** In 1998, the former Employment and Social Security Committee issued “Fair Play in the Workplace” which consulted on a range of topics connected with the workplace, including discrimination. The research culminated in the Committee taking a proposal to the States on Employment Legislation (P.99/2000, adopted by the States (as amended) on 12th December 2000) which advocated that issues surrounding discrimination in the workplace should be dealt with through a separate all-encompassing discrimination Law to be championed by the then Policy and Resources Committee.

**1999: Race Relations Working Party:** The former Legislation Committee established a Race Relations Working Party which consulted on the issues of race relations and racial hatred in 1999.

**November 2000: Racial Discrimination Forum:** The Racial Discrimination Forum, led by the then Policy and Resources Committee was established. Members were from the public and private sectors, and their work culminated in the States adopting a Proposition to set up the Jersey Community Relations Trust (P.120/2003 adopted (as amended) on 20th January 2004).

**March 2002: Legislation Committee:** The Legislation Committee lodged a proposal for the preparation of a Race Discrimination Law (P.32/2002), based upon the recommendations of the Working Party (published as R.C.46/1999). In May 2002, the States voted overwhelmingly in favour of the proposal. However, the Committee then reviewed the lack of legislation in Jersey aimed at eliminating discrimination on grounds other than race. It concluded that it would be desirable to take the opportunity to bring forward legislation that would promote not only the elimination of racial discrimination, but also other forms of discrimination.

**2004: Jersey Advisory and Conciliation Service (JACS):** JACS was established as part of the phased development of employment legislation and opened in 2004. The service advises employers and employees on employment issues.

**2005: Jersey Community Relations Trust (JCRT):** The JCRT was established in 2005. It aims to “eliminate discrimination on any ground ... and to encourage mutual respect among all people in the Island”.

**July 2006: First consultation on the draft Law:** The Chief Minister’s Department consulted on draft legislation and proposed ‘race’ as the first protected characteristic in furtherance of the commitment made by the States in 2002. Forty-one responses were received, of which 100% were in favour of introducing a Law to protect against discriminatory acts. There were some requests for greater clarification or adjustment to certain sections of the draft legislation, and these were taken into account in the preparation of a further draft of the Law.

**2007: Ministerial responsibility:** Responsibility for the draft Law was transferred from the Chief Minister to the Minister for Home Affairs.

**September 2007: JCRT discrimination conference:** The JCRT held a major Island-wide conference on discrimination issues that was attended by nearly 300 people from a wide section of the community, including many who might be affected by discrimination. It revealed clear support for the introduction of discrimination legislation in Jersey.

**February – March 2008: Second consultation on draft legislation:** The former Minister for Home Affairs consulted on the changes that had been made to the draft legislation as a result of the 2006 consultation. Only 8 responses were received, which were generally of a technical nature relating to the terminology and application of the draft Law.

**March 2009: Enforcing the Law:** During discussions with stakeholders in 2008 about the most appropriate method of enforcing the Law, it was proposed that the Employment Tribunal should hear all discrimination complaints, not only those that are employment-related. This was proposed instead of options that would involve a Discrimination Panel and the Petty Debts Court, which could be confusing and potentially inconsistent.

**April – July 2010: Scrutiny:** The Minister for Home Affairs reviewed the draft Law and prepared a revised draft that included the protected characteristic of race (rather than being provided in separate Regulations). The draft Law was presented to the Education and Home Affairs Scrutiny Panel.

**2011: Funding:** The Home Affairs Department's budget for Discrimination Legislation (£100,000) was agreed as a saving under the Comprehensive Spending Review and so the draft Law was not progressed.

**July 2011: Ministerial responsibility:** The States adopted the Proposition "Discrimination Law and delay on pension reform" (P.118/2011), on 22nd July 2011, as amended by the Council of Ministers. Responsibility for the Discrimination Law transferred to the Minister for Social Security, with sufficient funding allocated by the Minister for Treasury and Resources for the implementation of discrimination legislation for 2013 and beyond.

**May 2012: Law Drafting:** The Minister for Social Security submitted the first Law Drafting instructions to the Law Draftsman and drafting continued during 2012.

**September – October 2012:** Consultation on the draft Law was undertaken with stakeholders, including representatives of the Tribunal, JACS, CAB, Chamber of Commerce and Institute of Directors. In view of the comments received, the Minister requested further amendments to the draft legislation.

**December 2012:** The draft Law was presented to the Council of Ministers, Corporate Management Board and the Health, Social Security and Housing Scrutiny Panel.



**Changes to the draft Law during 2012**

The Minister has reviewed the draft Law and consulted with stakeholders during 2012, resulting in a number of changes to the draft Law. The main changes are summarised below.

1. **Tribunal Secretary instead of Discrimination Officer** – this is now a neutral administration role which is undertaken by Officers of the Judicial Greffier, who perform the existing function of Secretary to the Employment Tribunal. The Secretary will not personally conciliate, but will refer the parties to mediation or conciliation. In addition, the Secretary cannot dismiss a complaint that appears to be trivial, frivolous or vexatious. As provided in early drafts of the Law, this role could have been viewed as contrary to Article 6 of the European Convention on Human Rights (the right to a fair trial) because it would involve making a determination of a person's rights without recourse to an independent and impartial tribunal.
2. **Non-discrimination notices** – The power for the Tribunal to serve non-discrimination notices has been removed from the draft Law, as it is considered inappropriate and disproportionate (particularly the associated criminal offence) in view of the Minister's intention to keep the Law as simple as possible. The equivalent provision in the UK is the responsibility of an independent commission rather than a tribunal. Similar provisions appear to be rarely used in the UK (around 7 notices in 35 years) and in Guernsey (zero notices in 7 years). It is considered that the best incentive not to discriminate will be the prospect of a discrimination complaint.
3. **Advertising** – Whilst former UK discrimination legislation included provisions relating to discriminatory advertisements, the Equality Act no longer includes these provisions. The best incentive not to place a discriminatory advert is likely to be the prospect of a discrimination complaint and outlawing the placement of discriminatory adverts is unlikely to significantly add to that incentive. A discriminatory advertisement is likely to provide strong proof of a person's intention to discriminate.
4. **Remedies** – The amount that the Tribunal may award for injury to feelings is capped, within the £10,000 overall cap, so that of the £10,000 maximum award, no more than £5,000 may be awarded by the Tribunal for 'hurt and distress'. This minimises the impact of a hurt and distress award without limiting any further the amount that can be awarded to a person who has suffered financial losses, which would be limited only by the overall £10,000 cap. Most UK Employment Tribunal awards for injury to feelings are assessed as falling within the lowest award band (up to £5,000).
5. **Time limit for making a complaint** – Rather than providing an 8 week time limit for complaints under the Employment Law and a 12 week time limit for complaints under the draft Law, it makes sense to apply the same time limit (8 weeks) for complaints to the Tribunal under both Laws, particularly given that, in employment-related cases, a complaint of unfair dismissal and discrimination will often be made together.
6. **Codes of practice** – Codes of practice may be prepared to provide guidance on any matter relating to the draft Law, and the same provision is made as in

the Employment Law for the Minister to consult on and formalise codes of practice by Ministerial Order.

7. **Protected characteristics** – As in the Equality Act, the draft Law now uses the term ‘protected characteristic’, rather than ‘attribute’, to refer to the particular characteristics that are protected from discrimination under the draft Law (e.g. race). Schedule 1 will be dedicated to setting out all of the protected characteristics with their definitions, which will provide a neat way of adding further protected characteristics in the future (e.g. sex, age and disability).
8. **Definition of ‘race’, National origin** – Whilst the inclusion of the words ‘national origin’ suggest that something more is intended than just ‘nationality’, the draft Law now provides that “national origins” includes being of Jersey origin. It is not necessary to set out an objective test of what ‘Jersey origin’ means. It will be for the individual complainant in any particular case to establish whether they were discriminated against on the basis that they were, or were perceived to be, of Jersey origin.
9. **Exceptions, Positive discrimination** – The draft Law no longer permits full and overt positive discrimination where the intention is to ensure equal opportunities. The provision as previously drafted was potentially controversial in that it was more sweeping than the UK equivalent and did not depend on a person being able to demonstrate that the measure relied upon meets a genuine need, e.g. that the needs of a particular group can only be met by a restricted or preferential allocation. Nor was there any requirement for the measure to be proportionate or reasonable in all of the circumstances. Guernsey’s Law does not include any provision for positive discrimination. The positive discrimination provisions have been removed from the draft Law to keep the Law as simple as possible at this stage.
10. **Exceptions, Genuine occupational qualifications** – Like the Equality Act, the draft Law now includes a general exception so that, having considered all the circumstances, a specific occupational requirement is proportionate and reasonable. There is no longer a list of specific circumstances in which certain occupational qualifications are considered genuine (e.g. for authenticity in restaurants or artistic modelling).
11. **Exceptions, States policy** – Where States policies or decisions of a Minister promote employment or access to services and apply criteria that relate to length of residency or place of birth, a person does not discriminate if they act in accordance with that policy or decision. The draft Law previously exempted only acts committed in order to comply with any legislative or judicial authority. Policies that have been created by Ministers and the States, rather than legislation, will continue to be introduced, as fiscal stimulus measures provide new initiatives that are timely, targeted and temporary, particularly relating to employment. Given the delay that the requirement for Privy Council Assent often brings, policy is often used in Jersey rather than legislation for short-term or temporary initiatives. The Social Security Department’s non-statutory ‘employment grant’ policy, for example, was created to enable and encourage businesses to provide permanent employment for locally qualified people who are long-term unemployed in a competitive job market. An employer who favours a locally qualified job applicant over a non-qualified applicant in order to be eligible for the grant must feel confident that this does not constitute discrimination on grounds of race.

**Human Rights Note on the Draft Discrimination (Jersey) Law 201-**

1. This Note has been prepared in respect of the Draft Discrimination (Jersey) Law 201- (“the draft Law”) by the Law Officers’ Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers’ Opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”). References below to “Articles” are to Articles contained in the draft Law unless otherwise specified.

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

Relationship between the draft Law and Article 14 of the ECHR

2. At present the draft Law prohibits discrimination because of race, but Article 5 enables the States, by Regulations, to amend the draft Law to extend its effect to prohibit discrimination because of other protected characteristics, including sex, age and religion. Such Regulations may also provide for additional circumstances in which it will be prohibited to discriminate or for exemptions in respect of any new or existing protected characteristics. Regulations made under Article 5 may have human rights implications that will need to be considered and addressed when they are brought forward.
3. Article 14 of the ECHR provides that:
 

*“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*
4. The European Court of Human Rights has interpreted “discrimination” for the purposes of Article 14 of the ECHR in a similar way to that set out in Articles 6 and 7 of the draft Law. However, the right provided by Article 14 of the ECHR is of a different scope to the rights provided by the draft Law. Article 14 of the ECHR covers a wider range of protected characteristics, but does not amount to a freestanding prohibition on discrimination. The right in Article 14 of the ECHR only applies to discrimination “*in the enjoyment of Convention rights*” and does not assist someone wishing to complain of discrimination who cannot establish that their complaint comes within the ambit of another ECHR right.
5. The draft Law enhances the rights of individuals and minorities by creating a freestanding right for individuals not to be discriminated against, victimised or harassed because of race. While the draft Law is supportive of the principles underlying the ECHR, it isn’t necessary to enact the draft Law in order for Jersey to comply with Article 14 of the ECHR.

The application of qualified ECHR rights

6. The draft Law prohibits either a specific class of persons (e.g. employers) or persons at large from discriminating because of race against other persons in particular circumstances. In so doing, it limits the freedom of individuals in

the way they live their lives or carry out their business. These limitations may amount to interference with those individuals' rights afforded under the ECHR, in particular the right to respect for private and family life, home and correspondence (Article 8 of the ECHR); freedom of expression (Article 10 of the ECHR); freedom of assembly (Article 11 of the ECHR); and the right to the peaceful enjoyment of possessions (Article 1 of Protocol 1 to the ECHR). Each of those rights is qualified in the ECHR. The qualifications provide that interference with those rights will be compatible with the ECHR provided that the interference in question is in accordance with the law and is necessary in a democratic society in pursuit of a legitimate aim (i.e. that it is proportionate to a legitimate aim).

7. Interference with the qualified ECHR rights of individuals arising from the provisions of the draft Law will be in accordance with law. Further, as the purpose of the draft Law is to prohibit discrimination and tackle racism, such interference can also be said to pursue the legitimate aim of promoting the values of plurality and tolerance that are hallmarks of a democratic society. Finally, including for the reasons set out briefly in paragraphs 8 to 22 of these notes, the draft Law strikes a fair and proportionate balance between the rights of individuals and its legitimate anti-discrimination aims. In some respects proportionality has been achieved by creating exceptions, set out in Schedule 2 to the draft Law, which describe circumstances in which it is not prohibited to discriminate.

#### Paid work

8. Articles 9, 10 and 11 prohibit discrimination against employees, applicants for employment and contract workers. Article 8(1) of the ECHR provides that:

*“Everyone has the right to respect for his private and family life, his home and his correspondence”.*

9. The Article 8 ECHR rights of an individual employer might be engaged in so far as the Law restricts their freedom in the selection of a domestic employee or worker, such as a carer or domestic cleaner. To cover these and other circumstances, some limited exceptions are provided in paragraphs 5, 8 and 9 of Schedule 2 to the draft Law. These help to ensure a fair balance is struck between the rights of individuals and the needs of society.

#### Professional or trade organizations

10. Article 13 prohibits discrimination against members of professional and trade organisations and applicants for membership of those organisations. Article 11(1) of the ECHR provides that:

*“Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”*

11. Article 13 may interfere with the Article 11 ECHR rights of individuals participating in trade unions, which include the right to choose the members of their union, draw up the rules of the union and administer its affairs. However, such interference as arises from Article 13 is no more than is necessary to protect the rights of members and prospective members of unions and professional organisations and does not curtail a union's ability to exercise its autonomy in any disproportionate fashion.

## Education

12. Article 21 makes it unlawful for a person to discriminate against a student or prospective student because of a protected characteristic. Article 2 of Protocol 1 to the ECHR provides that:

*“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.”*

13. Providing redress for a student or prospective student, who has been discriminated against because of their race, or that of their parent, is compatible with and supports the fulfilment of the rights in Article 2 of Protocol 1 to, and Article 14 of, the ECHR. As such, no question of ECHR compatibility arises from this provision at this time, though the introduction of other protected characteristics, in particular, religion, may raise issues for further consideration in due course.

## Goods, facilities or services

14. Article 22 prohibits discrimination in the provision of goods, facilities or services to the public or a section of the public. Article 1 of Protocol 1 to the ECHR (“A1P1”) provides that:

*“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*

15. A1P1 guarantees in substance the right to property, but recognises, inter alia, that states are entitled to control the use of property, provided that control is in accordance with the law and achieves a fair balance between the means employed and the general interest pursued. The A1P1 right to peaceful enjoyment of property includes the right to dispose of property and may be engaged by a restriction on who a person can sell their goods, services or premises to. The restrictions imposed by Article 22 of the draft Law may, therefore, amount to a control on the use of property.
16. It is important to note that the restrictions are only imposed on persons who provide goods or services to the public or to a section of the public. In most circumstances, placing controls on the provision of goods or services to the public to prevent discrimination will be proportionate, but there are also exceptions in Schedule 2 to the draft Law that help to balance the interests of those providing goods, facilities or services and the public interest. These include the exception in paragraph 12 of Schedule 2, concerning the provision of care within a family setting, which may be particularly important in the context of fostering. Therefore, in so far as Article 22 amounts to a control on the use of property, it is proportionate to the general interest pursued by the draft Law.

### Disposal or management of premises

17. Article 24(1) addresses discrimination in relation to the disposal or management (i.e. sale, letting, etc.) of premises. Article 24 might interfere with the right to property in A1P1. Further, in so far as it may affect the disposal or use of someone's home, it may amount to an interference with the right afforded by Article 8 of the ECHR.
18. A careful balance has been struck in the draft Law between the rights of individuals and the needs of society with regard to the disposal and management of premises. This is reflected in the exceptions in paragraph 13 of Schedule 2 to the draft Law in relation to owner-occupied premises and small premises. The owner-occupier exception lifts the prohibition on discrimination on an owner-occupier who is disposing of premises in the context of a private (i.e. non-advertised and without the use of an estate agent) disposal of premises. The small premises exception exempts disposers or managers of parts of premises from certain of the prohibitions if that person, or a relative, resides and intends to continue to reside elsewhere on the premises and the premises include certain shared parts. In view of these exceptions any interference with the rights in A1P1 and Article 8(1) of the ECHR arising from Article 24 will be proportionate to the legitimate anti-discrimination aims of the draft Law.

### Private clubs

19. Article 25 prohibits discrimination by those managing a private club with regard to applications for membership and to the treatment of members. The prohibition on discrimination by private members' clubs potentially interferes with the Article 8 and 11 ECHR rights of the owners of the club and its members, who might argue that they should be free to associate with whoever they wish in their private lives. However, such interference as arises from Article 25 is proportionate to the legitimate anti-discrimination aims of the draft Law, in particular because the restriction only applies to clubs with 25 members or more and where membership is regulated by the rules of the club. This should ensure that it does not apply to small private or ad hoc gatherings (e.g. a book-club organised amongst friends).
20. Further, the prohibition in Article 25 is subject to the exception contained in paragraph 14 of Schedule 2 to the draft Law. By virtue of that paragraph a club is not in breach of Article 25 if the club has as its principal object the provision of benefits to persons of a particular race. For example, a club for the benefit of Chinese people would be lawful under that exception. This helps to balance the needs of society against the Article 8 and 11 ECHR rights of individuals who wish to associate with other persons sharing their particular race. It also recognises the important role that such clubs may play in developing cultural identity and promoting equality.

### Harassment

21. Article 28 provides the definition of harassment. Article 28(2) provides that harassment occurs where a person engages in unwanted conduct related to a relevant protected characteristic that has the purpose or effect of violating another's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. Article 10(1) of the ECHR provides that:

*“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...”*

22. Article 28 might interfere with an individual’s right under Article 10 ECHR in so far as it restricts their freedom to express their views. However, Article 10 ECHR is a qualified right and any interference may be justified as proportionate to the legitimate anti-discrimination aims of the draft Law and to protect the rights and freedoms of others. In this regard it may be noted that the definition of harassment is designed to ensure that a frivolous or vexatious complaint would not succeed. Specifically, Article 28(3) states that in deciding whether the conduct has the effect of violating a person’s dignity or creating an intimidating environment the courts must take into account whether a reasonable person could regard the conduct as having that effect.

#### Part 7 – Enforcement

23. Part 7 of the draft Law sets out the scheme for enforcement of obligations imposed by the draft Law. Part 7 provides a simple method of enforcing the obligations, namely by making a complaint to the Employment and Discrimination Tribunal established under Article 81 of the Employment (Jersey) Law 2003 as amended by the draft Law<sup>12</sup>. Article 6 ECHR guarantees procedural fairness in the course of civil proceedings and a right of access to an independent and impartial tribunal for the determination of civil rights and obligations at a fair and public hearing. The determination of any complaint of a breach of the rights not to be discriminated against provided by the draft Law will amount to the determination of a civil right for the purposes of Article 6 of the ECHR. The scheme for enforcement of the draft Law is compatible with Article 6 of the ECHR.

#### Other international obligations

24. The enactment of the draft Law will also help Jersey achieve compliance with the International Covenant on Civil and Political Rights (“ICCPR”)<sup>13</sup> and the International Convention on the Elimination of Racial Discrimination (“ICERD”)<sup>14</sup>.
25. Article 26 of the ICCPR provides a right to equality before the law and requires states to ensure that the law “*shall prohibit discrimination and guarantee to all persons effective protection against discrimination*”. The provisions of this draft Law are compatible with and supportive of this commitment. In due course, as the scope of the draft Law is extended to cover discrimination because of other protected characteristics it will further facilitate fulfilment of the commitments found in the ICCPR.
26. As regards ICERD, Articles 2 and 5 of that Convention require states to pursue a policy of eliminating racial discrimination and, more specifically, to undertake to prohibit discrimination in the enjoyment of certain rights (e.g. in the field of employment, housing and education). Therefore, the enactment of the provisions in the draft Law will fulfil commitments in ICERD.

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<sup>12</sup> Amended by paragraph 1(7) of Schedule 3 to the draft Law

<sup>13</sup> The UK ratified the Covenant on 29th June 1976 in respect of Jersey

<sup>14</sup> The UK ratified the Convention on 7th March 1969 in respect of Jersey

## Explanatory Note

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### *Part 1 – Interpretation and Application*

*Article 1* defines expressions used in the draft Law. The States may make Regulations amending the definitions set out in this Article. For example, to expand the definition of “facilities” or “services”.

*Article 2* provides for the territorial extent of the Law. The draft Law would apply to all acts of discrimination done in Jersey.

To the extent that the Law applies to employment, it will apply to employment which is wholly or mainly in Jersey. It will also apply to employment on a Jersey ship which is either registered in Jersey, or, if not so registered, is a small ship, other than a fishing vessel, that is wholly owned by a person ordinarily resident in Jersey or by a company incorporated in Jersey, and is not registered under the law of a country outside Jersey.

To the extent that the Law applies to the provision of benefits, facilities and services, it will also apply to facilities for travel on a Jersey ship and to benefits, facilities and services provided on the ship itself.

### *Part 2 – Key Concepts: Protected Characteristics*

*Article 3* gives effect to Schedule 1. In this Schedule, race is prescribed as a protected characteristic. Regulations made under *Article 5* may in due course amend Schedule 1 so as to add other protected characteristics.

*Article 4* gives effect to Schedule 2 which sets out the circumstances in which it is not prohibited to discriminate.

*Article 5* provides that Regulations may be made by the States, for example so as to add to the list of protected characteristics in Schedule 1, or to amend Schedule 2 so as to provide for excepted circumstances to otherwise discriminatory acts.

*Article 6* defines direct discrimination for the purposes of the Law. Direct discrimination occurs where the reason for a person being treated less favourably than another is a protected characteristic listed in Schedule 1. This Article also provides that racial segregation is always discriminatory. The wording of the Article is broad enough to cover cases of discrimination based on association or perception.

*Article 7* defines indirect discrimination for the purposes of the Law.

Indirect discrimination occurs when a policy which applies in the same way for everybody has an effect which particularly disadvantages people with a protected characteristic. Where a particular group is disadvantaged in this way, a person in that group is indirectly discriminated against if he or she is put at that disadvantage, unless the person applying the policy can justify it.

Indirect discrimination can also occur when a policy would put a person at a disadvantage if it were applied. This means, for example, that where a person is deterred from doing something, such as applying for a job or taking up an offer of service, because a policy which would be applied would result in his or her disadvantage, this may also be indirect discrimination.



*Article 8* provides that it is no defence to a claim of discrimination that the discriminator shares the protected characteristic with the victim. The discriminator will still be liable for any unlawful discrimination.

*Part 3 – Prohibited Acts of Discrimination – Paid Work*

*Part 3* describes discriminatory acts in the workplace which the Law prohibits.

This Part makes specific provision for contract workers as well as for employees. In fact a person may be, for the purposes of the Law, both a contract worker and an employee. A contract worker is defined in Article 1 as a person who is supplied by a person (such as an employment agency supplying temporary workers) to contract to work for another person (referred to in the Law as the “principal”). So, the contract worker is the employee of the person who enters into the contract with the principal. But, given that the contract worker, when his or her services are supplied to the principal, may be working in the principal’s place of business and reporting to that person, the Law also affords the contract worker protection from discrimination by the principal.

This Part and *Parts 4, 5 and 6* must be read in conjunction with *Schedule 2* which sets out the circumstances in which an act is not prohibited by the Law.

*Article 9* prohibits discrimination in selecting a person for employment and in the terms on which employment is offered.

*Article 10* prohibits discriminatory treatment of an employee in all aspects of the employee’s employment.

*Article 11* prohibits discriminatory treatment of a contract worker by a principal, being the person for whom work is done pursuant to a contract with the contract worker’s employer.

*Article 12* prohibits discriminatory treatment in the formation of a partnership, in the appointment of partners and in the course of the partnership.

*Article 13* prohibits a professional or trade organization from discriminating against an applicant for membership and in the treatment of members.

*Article 14* prohibits an authority that has the power to issue an authorization or qualification which is required in order to carry on a trade or profession from discriminating in the exercise of that power.

*Article 15* prohibits a person who provides or arranges vocational training from discriminating against a person who is either seeking or undergoing such training.

*Article 16* prohibits an employment agency from discriminating in the provision of its services both for employers and for persons seeking work.

*Part 4 – Prohibited Acts of Discrimination – Voluntary Work*

This Part provides protection for a person who does voluntary work (a “voluntary worker”) for another person (a “manager”). Voluntary work may be undertaken in different circumstances: a person may work within an organization in order to obtain experience that will enhance the person’s ability to find work in the future, or, a person may undertake voluntary work as a way of contributing to the community.

*Article 17* prohibits discrimination in selecting a person for voluntary work and in the terms on which voluntary work is offered.

*Article 18* prohibits discriminatory treatment of a voluntary worker in all aspects of the voluntary work that he or she does.

*Article 19* prohibits an organization for voluntary workers from discriminating against an applicant for membership and in the treatment of members.

*Article 20* prohibits an agency which provides guidance on the availability of voluntary work and services of introducing prospective voluntary workers to managers discriminating in the provision of those services.

#### *Part 5 – Prohibited Acts of Discrimination in Other Areas*

*Article 21* prohibits discrimination in the provision of education for students of any age, both within the public and the private sector.

*Article 22* prohibits discrimination in the supply of goods, facilities and services. The definition of “facilities” and “services” in *Article 1* is particularly relevant to this prohibition.

*Article 23* prohibits discrimination in the provision of access to and the use of public premises.

*Article 24* prohibits discrimination in the sale or letting of premises, whether residential or commercial. Firstly, this Article makes it unlawful for a person who has the authority to dispose of premises (for example, by selling, letting or subletting a property) to discriminate against someone else in a number of ways including by offering the premises to them on less favourable terms; by not letting or selling the premises to them or by treating them less favourably. For example, a landlord who refuses to let a property to a prospective tenant because of his or her race, is committing an act of direct discrimination when disposing of premises.

Secondly, this Article makes it unlawful for a person whose permission is needed to dispose of premises (for example, to sell, let or sublet a property) to discriminate against someone else by withholding that permission. This Article does not apply where permission to dispose of premises is refused by a court in the context of legal proceedings.

Thirdly, this Article makes it unlawful for a person who manages premises to discriminate against someone who occupies the property in the way the person allows the other person (the “subject”) to use a benefit or facility associated with the premises, by evicting the subject or by otherwise treating the subject unfavourably. For example, a manager of a property responds to requests for maintenance issues more slowly or less favourably for one tenant than similar requests from other tenants, because the tenant is Portuguese. This would be direct discrimination in the management of premises.

This Article also explains what is meant by “disposing of premises” in the case of premises which are subject to a tenancy, and defines what is meant by “tenancy”. It also makes it clear that the provisions apply to tenancies made before as well as after this Law comes into force.

By virtue of the definition in *Article 1*, “premises” includes vessels and vehicles and places.

*Article 25* prohibits discrimination in the running of a club, in the treatment of applications for membership and in the treatment of members. It does not apply to a club having 24 members or less and which is private in nature. The Minister may by Order alter this number.

*Article 26* prohibits a person discriminating by requesting or requiring information in connection with or for the purposes of a prohibited act. For example, a question on a form for completion by applicants for membership of a club regarding the applicant's ethnic origins, where that information is to be used for purposes prohibited under this draft Law.

#### *Part 6 – Other Prohibited Conduct*

*Article 27* provides that victimization is a form of discrimination and describes the circumstances in which conduct amounting to victimization occurs. Victimization takes place where one person treats another less favourably because he or she in good faith has, for example, made or supported any complaint in relation to any alleged breach of the provisions of the Law. It also provides that victimization takes place where one person treats another less favourably because he or she is suspected of having made a complaint or of intending to do so.

A person is not victimized under this Article where he or she maliciously makes or supports an untrue complaint.

*Article 28* provides that harassment is a form of discrimination and describes what is meant by harassment. Harassment involves unwanted conduct which is related to a protected characteristic and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant or of violating the complainant's dignity.

In determining the effect of the unwanted conduct, the Employment and Discrimination Tribunal ("the Tribunal") is required to consider all the circumstances of the case, the perception of the person who has been harassed and whether a reasonable person could regard the conduct as harassment.

*Article 29* makes it unlawful to discriminate against someone after a relationship in which a prohibited act of discrimination could occur, has ended. It covers any former relationship such as in employment, or in the provision of goods, facilities and services. It is designed to ensure that treatment of the kind made unlawful by the Law which results from, and is closely linked to, the existence of a relationship is still unlawful even though the relationship no longer exists. An example might be where a school or employer refuses to give a reference to an ex-pupil or ex-employee because of his or her protected characteristic. This would be direct discrimination.

This provision applies to conduct which takes place after the Law is commenced, whether or not the relationship in question ended before that date.

*Article 30* makes it unlawful for a person to instruct, cause or induce someone to discriminate against another person, or to attempt to do so. It provides a remedy for both the recipient of the instruction and the intended victim, whether or not the instruction is carried out, provided the recipient or intended victim suffers a detriment as a result. However, this Article only applies where the person giving the instruction is in a relationship with the recipient of the instruction where a prohibited act of discrimination is prohibited.

For example, a G.P. instructs his receptionist not to register anyone with an Asian name. The receptionist would have a claim against the G.P. if subjected to a detriment for not doing so. A potential patient would also have a claim against the G.P. if he or she discovered the instruction had been given and was put off applying to register.

*Article 31* provides that a person who knowingly assists another person to do a prohibited act is to be treated as having done the act personally. However, this Article does not apply if the person giving assistance has been told that the act is not prohibited and that person reasonably believes this to be true. Taken together with the provisions on “Liability of employee and employer” (Article 32), “Liability of agent and controller” (Article 33) and “Instructions or pressure to commit prohibited act” (Article 30) this Article is designed to ensure that both the person carrying out a prohibited act and any person on whose behalf or with whose help that person was acting can be held to account where appropriate.

*Article 32* makes an employee personally liable for prohibited acts committed in the course of employment and also makes an employer liable for acts of discrimination carried out by their employee. Employees are also liable for anything they do which if it had been done by their employer would be prohibited under this draft Law. It does not matter whether or not the employer knows about or approves of those acts. However, employers who can show that they took all reasonable steps to prevent their employees from acting unlawfully will not be held liable. An employee will not be liable if he or she has been told by their employer that the act is not prohibited and he or she reasonably believes this to be true. This Article analogously applies to contract workers and their principals.

*Article 33* makes similar provision to Article 32 in respect of a person who is an agent acting under the authority of another person (i.e. a “controller”): for example, an estate agent who collects rent for a landlord. A controller is liable for acts of discrimination carried out by their agent regardless of whether they knew about or approved of those acts. An agent would be personally liable under this Article for any unlawful acts committed under a controller’s authority. However an agent would not be liable if he or she had been told by their controller that the act is not prohibited and he or she reasonably believes this to be true.

#### *Part 7 – Enforcement*

This Part deals with the enforcement functions of the Tribunal, the procedures for making a complaint and remedies available.

*Article 34* requires the Secretary of the Tribunal to discharge the functions conferred by the Law. The Judicial Greffier is currently appointed under Article 85 of the Employment (Jersey) Law 2003 (the “Employment Law”) to carry out this function.

*Article 35* requires the Jersey Advisory and Conciliation Service (“JACS”) to discharge the duties imposed on it by the Law.

*Article 36* requires the Tribunal to discharge the functions imposed on it by the Law and provides for the Tribunal’s jurisdiction to hear discrimination complaints, whether workplace related or otherwise. This Article also deems certain provisions contained in Part 9 of the Employment Law relating to the powers of the Tribunal when hearing employment disputes, to apply to the Tribunal when hearing discrimination complaints. Schedule 3 contains amendments to the Employment Law that are consequential on the widening of the Tribunal’s jurisdiction.

*Article 37* describes the process for making a complaint. A complaint must be made, before the end of the period of 8 weeks beginning with the date the act of discrimination occurred. However, the Tribunal has the discretion to extend that period if it is satisfied that it was not reasonably practicable for the complaint to have been brought within the 8 week period. Where the conduct in respect of which a complaint under the Law continues over a period, the time limit starts to run at the end of that period. Where it consists of a failure to do something, the time limit starts to run when the person decides not to do the thing in question. In the absence of evidence to the contrary, this is either when the person does something which conflicts with doing the act in question, or at the end of the time when it would have been reasonable for them to do the thing. The States may by Regulations amend the 8 week time limit.

Any act of discrimination that occurred before the coming into force of the Law or the coming into force of Regulations made under Regulation 5, where that act continues to occur on the date the Law or Regulations come into force, is treated as having begun on the date the Law or Regulations come into force. However it is not proposed that the Law should be retrospective. Accordingly a prohibited act of discrimination which, for example, occurs the day before the Law or Regulations come into force and does not recur on the coming into force date, cannot be entertained as a complaint under the Law.

*Article 38* requires the Secretary of the Tribunal to refer a workplace-related complaint to JACS. If the complainant and respondent agree, JACS are required to appoint an officer to attempt to resolve the complaint by conciliation. The Minister may by Order prescribe a timescale within which the Secretary of the Tribunal or the conciliation officer shall discharge their functions under this Article.

*Article 39* applies to complaints that are not workplace related. The Secretary of the Tribunal must, if the complainant and respondent agree, refer them to conciliation services. Like *Article 38*, the Minister has power to prescribe a timescale.

*Article 40* provides that any provision in a contract or agreement that attempts to exclude or limit the operation of this Law or precludes a person from making a claim to the Tribunal, is void. The exception to this is where the agreement is made following successful conciliation of the complaint or the conditions regulating compromise agreements under the Employment Law are satisfied in relation to the agreement.

*Article 41* sets out what happens if there is no attempt at conciliation, or it is unsuccessful. The matter is referred to the Tribunal for a hearing in accordance with the procedures prescribed in an Order made under Article 91 of the Employment Law.

*Article 42* empowers the Tribunal, when a complaint is proved, to declare the rights of the complainant and the respondent, to order the respondent to pay to the complainant compensation up to £10,000 for financial loss and up to £5,000 for hurt and distress (subject to a £10,000 total cap on compensation), and to recommend that the respondent take action to obviate or reduce the adverse effect of the discrimination on the complainant. If there is more than one respondent, the Tribunal may order that the amount of compensation be apportioned. The Minister for Social Security (the “Minister”) has power to make an Order prescribing how awards of compensation are to be determined. The States may also make Regulations altering the maximum amount of compensation or removing the limit.

*Article 43* provides a mechanism for enforcement of recommendations made under *Article 42*. It empowers the Tribunal to increase the award of compensation in the event that the respondent does not comply with the recommendations. In this event, the compensation can be increased to £10,000 (that is, the maximum for the initial award). Alternatively the Tribunal can make an order for compensation if one had not previously been made under *Article 42(1)(b)*.

#### *Part 8 – Miscellaneous and Closing*

*Article 44* makes provision as to the application of the Law to police officers. An officer of the States of Jersey Police is not an employee, but an office holder. This Article has the effect that, for the purposes of the Law, an officer is treated as the employee of the Chief Officer of the States of Jersey Police Force.

*Article 45* provides that JACS cannot charge for the provision of its services under the Law.

*Article 46* empowers the Minister to approve codes of practice regarding acts of discrimination prohibited by this Law. Articles 2A and 2B of the Employment Law apply for the purposes of approving and issuing such codes for the purposes of this Law.

*Article 47* provides a power for the States to make Regulations to make such other amendments to any enactment as appear to the States to be expedient for the general purposes, or any particular purpose, of this Law, in consequence of any provision made by or under this Law, or for giving full effect to this Law or any provision of it.

This Article also provides that the power to make an Order or Regulations under this Law may be exercised so as to make any supplementary, incidental, consequential, transitional, transitory or saving provisions which are considered expedient.

*Article 48* gives effect to *Schedule 3*, which amends various employment Laws as a consequence of this Law.

*Article 49* provides for the title of the Law and for its coming into force on such day or days as are to be appointed by Act of the States.

*Schedule 1* prescribes the characteristics that are protected from discrimination under the Law. “Race” is at present the only protected characteristic but this Schedule may in due course be amended to include other protected characteristics (by virtue of Regulations made under *Article 5*).

Paragraph 2 defines the protected characteristic of race. For the purposes of the Law, “race” includes colour, nationality, national origins or ethnic origins.

This paragraph also explains that people who have or share characteristics of colour, nationality, national or ethnic origins can be described as belonging to a particular racial group. A racial group can be made up of 2 or more different racial groups.

Colour includes being black or white. Nationality includes being a British, Polish or Portuguese citizen. Ethnic origins includes being from a Jewish background and national origins includes being of Jersey origin.

A racial group could be “black Britons” which would encompass those people who are both black and who are British citizens.

*Schedule 2 Part 1* describes the general exceptions in which acts of discrimination in relation to any of the protected characteristic are not prohibited acts, despite Parts 3 to 6 of the Law, in which the prohibited acts are set out.

Paragraph 1 has the effect that a person does not commit a prohibited act if the person, commits it in order to comply with any written law, or any condition or requirement lawfully imposed under a written law, or any order of a court or tribunal.

Paragraph 2 provides that an act of discrimination done outside Jersey is not prohibited 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. An act of discrimination done in Jersey is not prohibited if it is done for the purpose of complying with so much of the law of a country as applies to the performance of part of a person's work in that country or the supply of goods, services or facilities in that country.

*Schedule 2 Part 2* describes the exceptions in which acts of discrimination in relation to the protected characteristic of race are not prohibited acts.

Paragraph 3 provides that it is not discriminatory to implement States' policy or a decision of a Minister which applies criteria based upon a person's place of birth or length of residency in Jersey if the aim of the policy or decision is to promote employment or access to services.

Paragraph 4 provides an exception for discrimination which may be justified on the grounds of safeguarding national security.

Paragraph 5 provides that discrimination in the pre-selection of job candidates by a recruitment agency is not prohibited if prospective employers could themselves lawfully discriminate if they had been selecting candidates for a vacancy.

Paragraph 6 allows the existing selection arrangements of national sports teams, or local clubs or related associations to continue. It also protects "closed" competitions where participation is limited to people who meet a requirement relating to nationality, place of birth or residence.

Paragraph 7 provides an exception in the provision of banking, insurance, grants, loans or credit for a purpose which is either to be carried out outside Jersey or connected with a risk arising outside Jersey. This paragraph also provides that it is not prohibited to discriminate against someone in the terms on which annuities or insurance are offered provided it can be justified based upon statistical or actuarial data which it would be reasonable to rely upon.

Paragraph 8 provides that it is not prohibited to discriminate when selecting a person for domestic employment or work within a private residence or where the person is to look after a child in the child's home. However, once a person is in such employment or work, the person cannot be discriminated against in the terms or conditions of the employment or work or in his or her dismissal or redundancy.

Paragraph 9 provides a general exception to what would otherwise be unlawful direct discrimination in relation to work. The exception applies where being of a particular race is a requirement for the work, and the person whom it is applied to does not meet it. The requirement must be crucial to the post, and not merely one of several important factors. In addition, applying the requirement must be proportionate so as to achieve a legitimate aim. The exception can be used by employers, principals and partnerships in relation to contract work and partners.

Paragraph 10 provides an exception in recruitment, in the terms and conditions of employment and in redundancy or dismissal where a person who is not ordinarily resident in Jersey is employed in Jersey for the purpose of acquiring training in skills and he or she intends to use the skills acquired outside Jersey. The same exception is applied between a principal and a contract worker.

Paragraph 11 removes a potential overlap of prohibitions by providing that the prohibition relating to the provision of vocational training does not apply to any act to which Article 9, 10 or 21 of the Law applies (recruitment, employment and education) – in particular, where the act to which one of those Articles applies is permitted by another exception made by this Schedule.

Paragraph 12 provides an exception in the provision of services and in the provision of premises, by a person who takes into his or her home a child, elderly person or person requiring special care and treats that person as a member of the family.

Paragraph 13 sets out 3 limited exceptions to the prohibitions on discrimination contained in Article 24.

The first exception applies where a person who owns and lives in a property disposes of all or part of it privately (for example by selling, letting or sub-letting) without using the services of an estate agent, or publishing an advertisement.

The second exception applies to disposal, management or occupation of part of small premises. It applies where a person engaging in the conduct in question, or a relative of that person, lives in another part of the premises and the premises include facilities shared with other people who are not part of their household. There is power for the Minister to amend or repeal the small premises exception.

The third exception applies where the premises are disposed by a religious, charitable or voluntary body to persons of the same race. However this exception does not apply if the disposal is on the basis of a person's colour.

Paragraph 14 provides an exception for a club which has as its principal object providing benefits to persons of a particular race. It does not, however, provide an exception where the persons are identified by their colour.

*Schedule 3* makes consequential and miscellaneous amendments to various employment laws.

Paragraph 1 would amend the Employment Law in 2 respects. Firstly, as a direct consequence of the provisions of this draft Law or for giving effect to any of its provisions. For example to cover the expanded jurisdiction of the Tribunal to hear discrimination complaints. Secondly, to take the opportunity to make some "housekeeping" amendments which are not directly connected with the draft Discrimination Law. The purpose of these amendments is to provide consistency with analogous provisions in the draft Discrimination Law. For example, the power to amend the time limit for bringing a complaint under the draft Law (*Article 37(4)*), is for the purposes of bringing an employment claim, proposed to be replicated by inserting a corresponding power into Article 87 of the Employment Law.

The proposed amendments are as follows –

- (a) references to the Discrimination Law are inserted into interpretation Article 1 and into Articles 2A and 2B relating to the approval of codes of practice;



- (b) Article 70A is inserted to provide that dismissal arising from a prohibited act of discrimination is automatically unfair;
- (c) Article 81 is amended so as to rename the Employment Tribunal as the Employment and Discrimination Tribunal and other consequential amendments are made to cover its new jurisdiction to hear Discrimination Law complaints. Articles 83, 84, 89, 90, 91, 92, 93, 94 and 95 of the Employment Law apply to the Tribunal when exercising its functions under the Discrimination Law. The opportunity is also taken to make an express reference to the Tribunal's jurisdiction in relation to disputes under the Employment Relations (Jersey) Law 2007;
- (d) Article 83 is amended to provide that a conciliation officer, the Secretary of the Tribunal and a member of the Tribunal are not liable in damages for anything done in good faith in the discharge of their functions;
- (e) Article 87 is amended so that the States may make Regulations to alter the 8 week time limit within which any reference or complaint under the relevant provisions of the Law, is to be presented to the Tribunal;
- (f) the effect of the amendments to Article 89 is to clarify the powers of the Tribunal in so far as it may draw an adverse inference if a witness fails to attend a hearing, and may commission expert independent advice for the purpose of making a decision;
- (g) a minor amendment is made to Article 90 which is consequential on the amendments to Article 91 relating to the scope of the Order making powers which include Orders made in relation to the Discrimination law;
- (h) Article 91 is amended so as to clarify the provisions dealing with the representation of complainants and respondents who may represent themselves or be represented or accompanied by anybody of their choosing. The amendments to this Article also extend the scope of the power to make Orders relating to the procedures and conduct of hearings before the Tribunal. These amendments are to reflect the extended jurisdiction of the Tribunal to hear discrimination complaints. For example an Order may include provision regarding the handling of an employment dispute that also gives rise to a discrimination complaint, and vice versa;
- (i) Article 93 is amended to clarify that a complainant who has been awarded compensation or other sum of money in relation to an employment claim or discrimination complaint, can, where the respondent fails to pay the award, recover that award through the Petty Debts Court or Royal Court as the case may be;
- (j) Article 94 is amended to clarify that appeals from a decision of the Tribunal are to the Royal Court on a point of law only and must first be made with the permission of the Tribunal or the Royal Court within 4 weeks of the date of the Tribunal's decision;
- (k) Article 101 is amended to clarify the territorial application of the Employment Law;
- (l) Article 104 is amended to clarify that the powers to make Orders or Regulations includes power to make incidental, consequential and transitional provisions.

Paragraphs 2 and 3 would make analogous consequential and miscellaneous amendments to the Jersey Advisory and Conciliation (Jersey) Law 2003 and the Employment Relations (Jersey) Law 2007 respectively. Firstly, to update references to the Employment and Discrimination Tribunal and secondly to make amendments to provisions about the territorial application of those Laws so as to make them consistent with analogous provisions in the Employment Law and the draft Discrimination Law.



Jersey

## DRAFT DISCRIMINATION (JERSEY) LAW 201-

### Arrangement

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Jersey

## DRAFT DISCRIMINATION (JERSEY) LAW 201-

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.

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### 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 2003<sup>1</sup>;

“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 2003<sup>2</sup>;

“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 2003<sup>3</sup>;

“Jersey” includes the territorial waters adjacent to Jersey;

“Jersey ship” has the meaning given in Article 2 of the Shipping (Jersey) Law 2002<sup>4</sup>;

“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 1999<sup>5</sup>;

“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 1999<sup>6</sup>;

“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) In this Article, "partnership" means any partnership formed under Jersey law including (but not limited to) –
  - (a) a limited partnership established in accordance with the Limited Partnerships (Jersey) Law 1994<sup>7</sup>;
  - (b) a limited liability partnership established in accordance with the Limited Liability Partnerships (Jersey) Law 1997<sup>8</sup>;
  - (c) an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 2011<sup>9</sup>;
  - (d) a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 2011<sup>10</sup>; and"partner" shall be construed accordingly.

## 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 2009<sup>11</sup> 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 2003<sup>12</sup>, 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).



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**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 2003<sup>13</sup>, 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 Employment Laws amended**

Schedule 3 shall have effect to amend enactments.

**49 Citation and commencement**

This Law may be cited as the Discrimination (Jersey) Law 201- and shall come into force on such day or days as the States by Act appoint.

**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.

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**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
  - (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.



**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.

**SCHEDULE 3**

(Article 48)

**EMPLOYMENT LAWS AMENDED****1 Employment Law amended**

- (1) In this paragraph, “principal Law” means the Employment (Jersey) Law 2003<sup>14</sup>.
- (2) In Article 1(1) of the principal Law, after the definition “collective employment dispute” there shall be inserted the following definition –
  - “ ‘Discrimination Law’ means the Discrimination (Jersey) Law 201-<sup>15</sup>.”
- (3) In Article 2A(1) of the principal Law, after the words “this Law” there shall be added the words “or the Discrimination Law”.
- (4) In Article 2B(1) of the principal Law, after the words “this Law” there shall be inserted the words “or the Discrimination Law”.
- (5) After Article 70 of the principal Law, there shall be inserted the following Article –

**“70A Dismissal by reason of discrimination**

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason or principal reason for the dismissal constitutes an act of discrimination against the employee prohibited by the Discrimination Law.”

- (6) In Article 73(2) of the principal Law, for the words “or 70 applies” there shall be substituted the words “70 or 70A applies”.
- (7) For Article 81 of the principal Law there shall be substituted the following Article –

**“81 Establishment of the Tribunal**

- (1) There is established a Tribunal to be known as the Jersey Employment and Discrimination Tribunal.
- (2) The Tribunal shall exercise the jurisdiction conferred on it by or under –
  - (a) this Law;
  - (b) the Discrimination Law; and
  - (c) the Employment Relations (Jersey) Law 2007<sup>16</sup>.
- (3) Articles 83, 84, 89, 90, 91, 92, 93, 94 and 95 shall apply to the Tribunal and to proceedings before it when it is exercising

jurisdiction conferred on it by or under the Discrimination Law or the Employment Relations (Jersey) Law 2007 as they apply to the Tribunal and to proceedings before it when it is exercising the jurisdiction conferred on it by or under this Law.”.

- (8) For Article 83 of the principal Law there shall be substituted the following Article –

**“83 Limitation of civil liability**

A conciliation officer, the Secretary of the Tribunal or a member of the Tribunal shall not be liable in damages for anything done or omitted in the discharge, or purported discharge of any functions under this Law, unless it is shown that the act or omission was in bad faith.”.

- (9) In Article 87 of the principal Law –
- (a) in paragraph (a), there shall be deleted the word “and”;
  - (b) in paragraph (b), for the words “Law.” there shall be substituted the words “Law; and”;
  - (c) after paragraph (b), there shall be added the following paragraph –
    - “(c) amend the period for making a reference or presenting a complaint (as the case may be) to the Tribunal, specified in any of the relevant provisions of this Law.”.
- (10) In Article 89(1) of the principal Law –
- (a) in sub-paragraph (b), for the words “otherwise; and”, there shall be substituted the words “otherwise;”;
  - (b) in sub-paragraph (c), in the proviso, for the words “furnished.” there shall be substituted the words “furnished;”;
  - (c) after sub-paragraph (c), there shall be added the following sub-paragraphs –
    - “(d) notwithstanding the offences in Article 95(1)(b) and (1)(c)(ii), draw an adverse inference from the failure, without reasonable excuse of any witness to attend or of any person to produce any documents, when so requested;
    - (e) for the purposes of making a determination, take independent expert advice.”.
- (11) For Article 90(1) of the principal Law there shall be substituted the following paragraph –
- “(1) Subject to paragraph (2) or to an Order made under Article 91(3), the Tribunal shall sit in public.”.
- (12) In Article 91 of the principal Law –
- (a) for paragraph (1), there shall be substituted the following paragraph –
    - “(1) Where a complainant or respondent attend a hearing before the Tribunal, they may –
      - (a) represent themselves; or

- (b) be represented or accompanied by any person of their choice.”;
- (b) for paragraph (4) there shall be substituted the following paragraph –
  - “(4) Orders made under paragraph (3) may, in particular, include provision –
    - (a) for the reference of employment disputes to the Tribunal;
    - (b) for the reference of complaints brought under the Discrimination Law;
    - (c) for the manner in which and time within which proceedings may be brought before the Tribunal;
    - (d) for the filing and service of documents in relation to proceedings brought before the Tribunal;
    - (e) for the completion, filing, and service by the complainant and respondent of forms containing such information as may be prescribed in the Order, for the purposes of adducing the facts of the dispute or complaint;
    - (f) for the hearing, investigation and determination of –
      - (i) employment disputes, and
      - (ii) complaints brought under the Discrimination Law;
    - (g) for the procedures to be adopted where it appears to the Tribunal that proceedings brought before it to which Article 86 applies relate to any act which is prohibited by the Discrimination Law, where a complaint in respect of the act would be referable to the Tribunal under that Law;
    - (h) for the procedures to be adopted where it appears to the Tribunal that a hearing before it under the Discrimination Law concerns an employment dispute to which Article 86 applies;
    - (i) for directing the Tribunal as to the circumstances in which a hearing is to be heard in private;
    - (j) for the manner in which proceedings in respect of a claim before the Tribunal may be disposed of;
    - (k) for the award of costs or expenses; and
    - (l) for the registration and proof of decisions, orders and awards of the Tribunal.”; and
  - (c) after paragraph (4) there shall be added the following paragraphs –
    - “(5) The reference of employment disputes or complaints mentioned in paragraph 4(a) and (b) includes the procedures to be followed by the Secretary of the Tribunal in administering the referral and recording of those disputes and complaints.
    - (6) In this Article, “documents” includes statements of evidence and information held in electronic form.”.
- (13) For Article 93 of the principal Law there shall be substituted the following Article –

**“93 Enforcement**

- (1) Where the Tribunal has ordered a person to pay to a complainant –
    - (a) compensation; or
    - (b) a sum of money, and  
that compensation or sum of money is not paid, the complainant may apply to the Court to recover the compensation or sum as a civil debt.
  - (2) In paragraph (1), ‘Court’ means –
    - (a) the Petty Debts Court if the amount of compensation or other sum of money does not exceed the amount in respect of which the Petty Debts Court has jurisdiction; or
    - (b) the Royal Court, in any other case.
  - (3) An order of the Tribunal to take any action or to refrain from taking any action, may (subject to Article 88(5)) be enforced on application by the complainant to the Royal Court.”.
- (14) For Article 94 of the principal Law there shall be substituted the following Article –

**“94 Appeals**

- (1) A person aggrieved by a decision or order of the Tribunal, may on a question of Law only, appeal to the Royal Court.
  - (2) An appeal under paragraph (1) may only be made with leave of the Tribunal or the Royal Court, and must be made before the end of the period of 4 weeks beginning with the date of the Tribunal’s decision or order.
  - (3) An application for leave to appeal under paragraph (2) may include an application to stay a decision or order of the Tribunal pending the appeal.
  - (4) No appeal shall lie from a decision of the Tribunal refusing leave for the institution or continuance of, or for the making of an application in, proceedings by a person who is the subject of an order under Article 1 of the Civil Proceedings (Vexatious Litigants) (Jersey) Law 2001<sup>17</sup>.”.
- (15) For Article 101 of the principal Law there shall be substituted the following Article –

**“101 Application**

- (1) This Law applies to an employment which requires the person to work wholly or mainly in Jersey.
- (2) This Law also applies to an employment on a Jersey ship unless –
  - (a) the employment is wholly outside Jersey; or
  - (b) the employee is not ordinarily resident in Jersey.

- (3) In this Article –
  - (a) ‘Jersey’ includes the territorial waters adjacent to Jersey; and
  - (b) ‘Jersey ship’ has the meaning given in Article 2 of the Shipping (Jersey) Law 2002<sup>18</sup>.”.
- (16) In Article 104 of the principal Law, after paragraph (8) there shall be added the following paragraph –
  - “(9) 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.”.

## 2 Jersey Advisory and Conciliation (Jersey) Law 2003 amended

- (1) In this paragraph, “principal Law” means the Jersey Advisory and Conciliation (Jersey) Law 2003<sup>19</sup>.
- (2) In Article 1 of the principal Law –
  - (a) the text commencing with the words “In this Law” and ending with the words “requires –” shall be numbered as paragraph (1) of that Article;
  - (b) in paragraph (1), after the definition “JACS” there shall be inserted the following definitions –
    - “ ‘Jersey’ includes the territorial waters adjacent to Jersey;
    - ‘Jersey ship’ has the meaning given in Article 2 of the Shipping (Jersey) Law 2002<sup>20</sup>;”;
  - (c) after paragraph (1) there shall be added the following paragraph –
    - “(2) In this Law, any reference to employment, or to one person being employed by another, is a reference to –
      - (a) employment which requires the employee to work wholly or mainly in Jersey; or
      - (b) employment on a Jersey ship, unless –
        - (i) the employment is wholly outside Jersey, or
        - (ii) the employee is not ordinarily resident in Jersey.”.
- (3) In Article 5 of the principal Law, for the words “Jersey Employment Tribunal” there shall be substituted the words “Jersey Employment and Discrimination Tribunal”.

## 3 Employment Relations (Jersey) Law 2007 amended

In Article 1 of the Employment Relations (Jersey) Law 2007<sup>21</sup> –

- (a) the text commencing with the words “In this Law” and ending with the words “requires –” shall be numbered as paragraph (1) of that Article;
- (b) in paragraph (1) –

- 
- (i) after the definition “Employment Forum” there shall be inserted the following definitions –
- “ ‘Jersey’ includes the territorial waters adjacent to Jersey;  
‘Jersey ship’ has the meaning given in Article 2 of the Shipping (Jersey) Law 2002<sup>22</sup>;” and
- (ii) for the definition “Jersey Employment Tribunal” there shall be substituted the following definition –
- “ ‘Jersey Employment and Discrimination Tribunal’ and ‘Tribunal’ mean the Jersey Employment and Discrimination Tribunal established under Article 81 of the Employment (Jersey) Law 2003<sup>23</sup>;” and
- (c) after paragraph (1) there shall be added the following paragraph –
- “(2) In this Law, any reference to employment, or to one person being employed by another, is a reference to –
- (a) employment which requires the employee to work wholly or mainly in Jersey; or
- (b) employment on a Jersey ship, unless –
- (i) the employment is wholly outside Jersey, or
- (ii) the employee is not ordinarily resident in Jersey.”.

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- 1 *chapter 05.400*
  - 2 *chapter 05.255*
  - 3 *chapter 05.400*
  - 4 *chapter 19.885*
  - 5 *chapter 10.800*
  - 6 *chapter 10.800*
  - 7 *chapter 13.500*
  - 8 *chapter 13.475*
  - 9 *chapter 13.370*
  - 10 *chapter 13.780*
  - 11 *chapter 24.980*
  - 12 *chapter 05.400*
  - 13 *chapter 05.400*
  - 14 *chapter 05.255*
  - 15 *P.6/2013*
  - 16 *chapter 05.260*
  - 17 *chapter 04.240*
  - 18 *chapter 19.885*
  - 19 *chapter 05.400*
  - 20 *chapter 19.885*
  - 21 *chapter 05.260*
  - 22 *chapter 19.885*
  - 23 *chapter 05.255*