

STATES OF JERSEY



DRAFT DISCRIMINATION (JERSEY) LAW 2013 (APPOINTED DAY) ACT 201-

**Lodged au Greffe on 14th January 2014
by the Minister for Social Security**

STATES GREFFE



Jersey

DRAFT DISCRIMINATION (JERSEY) LAW 2013 (APPOINTED DAY) ACT 201-

REPORT

Introduction

A decision of the States of Jersey in July 2011¹ transferred the responsibility for preparing discrimination legislation to the Minister for Social Security (the “Minister”).

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, including extensive public consultation. Full details of the history and development of the legislation were set out in the Projet for the Draft Discrimination (Jersey) Law 201- (P.6/2013²). In order to progress the legislation, the Minister took into account –

- The need to keep the Law as simple and clear as possible
- Changes in the UK as a result of the Equality Act 2010
- Guernsey’s experience of sex discrimination legislation
- Comments received from stakeholders during consultation.

The Discrimination (Jersey) Law 2013 (the “Discrimination Law”) is an overarching Law that provides a framework for protection against discrimination and it includes “race” as the first protected characteristic. We all belong to one or more racial groups, so the draft Law protects everyone. “Race” includes colour, nationality, ethnic origin and national origin.

Further protected characteristics can be introduced by Regulations in the future to spread any potential administrative burden over a period of time and to allow consultation to be undertaken at each stage. The Minister intends that the second protected characteristic would be sex, which would be introduced in conjunction with family-friendly legislation.

There has been consistent and overwhelming support for the introduction of legislation in Jersey to address discrimination issues generally. However, during consultation, some stakeholders requested evidence that discriminatory behaviour exists in Jersey and evidence that legislation will remove or reduce inequalities. It is not realistic to expect the Law to prevent all discrimination or eliminate inequality entirely, but it can provide legal protection where a person has suffered a detriment because of their race.

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

² www.statesassembly.gov.je/AssemblyPropositions/2013/P.006-2013.pdf

In jurisdictions worldwide, it is taken for granted that laws exist to protect people against discrimination. Jersey has obligations under a number of international conventions, covenants and treaties to ensure protection from discriminatory behaviour. Introducing the Discrimination Law will help Jersey to achieve compliance and meet widely recognised international standards.

The introduction of the Discrimination Law will have wide-ranging implications for Jersey as a whole. 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.

Timetable

The Discrimination Law was adopted by the States of Jersey on 14th May 2013, sanctioned by Order of Her Majesty in Council on 9th October 2013 and registered by the Royal Court on 18th October 2013.

The Minister has publicly stated his intention to bring the Discrimination Law into force in the second half of 2014 to allow sufficient time for employers, organisations and other individuals to make any necessary preparations.

If adopted by the States, this Draft Appointed Day Act would bring the Discrimination Law into force on 1st September 2014 so that acts of discrimination on the grounds of race would be prohibited from that date.

The States will also be asked to adopt the Draft Employment and Discrimination Tribunal (Jersey) Regulations 201- (the “Draft Tribunal Regulations”) which would come into force on the same date as the Discrimination Law. The Draft Tribunal Regulations would extend the jurisdiction of the Employment Tribunal to discrimination complaints.

Two additional matters will be addressed before the legislation comes into force –

1. Recruitment, appointment and training of the new discrimination Tribunal lay members. Article 16 of the Interpretation (Jersey) Law 1954 (Exercise of statutory powers before commencement of enactment) provides the power to take such preparatory steps as are necessary in order for the Tribunal to be up and running from the commencement date. As a necessary preparatory step, the recruitment process can begin as soon as the Draft Tribunal Regulations have been adopted by the States.
2. Ministerial Orders will be drafted to set out the procedures of the Tribunal. The Orders will be drafted in conjunction with the Judicial Greffe, and will include procedures for the reference of disputes to the Tribunal and for the filing and service of documents.

Training and advice

During early consultation, the need for public training was highlighted and, in particular, the potential cost to business of ensuring that employees are aware of their responsibilities. It is vital that the legislation is properly understood and implemented. The Minister is confident that responsible employers will not have to devote time and money to complying with the Law. Many larger businesses already have the necessary procedures in place to avoid discriminatory practice.

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.

Literature and training on general discrimination issues are already available, and detailed guidelines are available on the JACS website³ and the CAB website⁴.

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. More than 1,000 delegates have taken advantage of this training to date. JACS will continue to provide public training courses on the Discrimination Law, and the Minister has allocated funds so that JACS can continue to provide its public discrimination law courses at no cost to delegates during 2014.

Financial and manpower implications

The following financial and manpower implications were included in the Projet for the Draft Discrimination (Jersey) Law 201- (P.6/2013), lodged in January 2013. No additional financial or manpower implications have been identified since that date.

Policy – The cost of continuing to develop and prepare legislation for further characteristics and making the necessary preparations for the enactment and enforcement of the Discrimination Law is anticipated to 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 protected characteristic is introduced, up to a maximum cost of £300,000 once all of the protected characteristics 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 exemplar employer. During 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.

³ www.jacs.org.je/media/79099/discrimination-in-employment-guide-26-september-13.pdf

⁴ www.cab.org.je/images/M_images/discrim_law_not_in_emp.pdf

Any costs which cannot be met from existing cash limits, including growth approved in the MTFP 2013–2015, 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 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.

Explanatory Note

The effect of this Act would be to bring the Discrimination (Jersey) Law 2013 into force on 1st September 2014.



Jersey

DRAFT DISCRIMINATION (JERSEY) LAW 2013 (APPOINTED DAY) ACT 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 49 of the Discrimination (Jersey) Law 2013¹, have made the following Act –

1 Commencement of Law

The Discrimination (Jersey) Law 2013² shall come into force on 1st September 2014.

2 Citation

This Act may be cited as the Discrimination (Jersey) Law 2013 (Appointed Day) Act 201-.

¹ *L.10/2013*
² *L.10/2013*