

STATES OF JERSEY



DRAFT DISCRIMINATION (AGE) (JERSEY) REGULATIONS 201- (P.37/2016): COMMENTS

**Presented to the States on 25th April 2016
by the Health and Social Security Scrutiny Panel**

STATES GREFFE

COMMENTS

1. On 8th February 2016 and 6th April 2016, the Health and Social Security Scrutiny Panel was briefed on the [Draft Discrimination \(Age\) \(Jersey\) Regulations 201-](#).
2. The Panel decided not to undertake a full review on this topic, as it appeared the Department had undertaken a thorough review and consultation (between 21st December 2015 and 26th February 2016) with targeted stakeholders.
3. The draft Regulations will protect people against age discrimination in recruitment, employment, clubs and associations, voluntary work and the provision of goods and services. The draft Regulations also include some exceptions for situations where age discrimination would generally be accepted as fair; for example, adult-only hotels, or newsagents restricting the number of children entering their shops.
4. During the Panel's first briefing, it was noted that a compulsory retirement age was likely to be the most contentious issue. Initially, the draft Regulations allowed an employer to continue requiring employees to retire at pensionable age without facing an age discrimination complaint.
5. The Panel was referred to a Supreme Court judgement (Seldon v Clarkson Wright & Jakes) made in April 2012, whereby a partner challenged his firm's right to retire him at the age of 65. It was found that the firm had some valid reasons for having a mandatory retirement age for partners, and concluded that the fixed retirement age proportionately achieved a legitimate aim within the meaning of the Employment Equality (Age) Regulations 2006. Therefore, in the UK any dismissal by reason of retirement would be direct discrimination unless it could be objectively justified.
6. The outcome following the consultation was that an exception for retirement at pensionable age would be retained for a period of 2 years. The Department explained that this should allow employers sufficient time to assess whether they need to retire employees at a fixed age, and to make plans accordingly. It was also noted that the Jersey Advisory and Conciliation Service (JACS) would be assisting employers during the 2-year period, as well as publishing a code of practice. The Panel queried whether JACS would have sufficient resources to carry out this work, and was informed that there were no concerns regarding JACS resources.
7. The Panel had no major concerns about the draft Regulations and was happy with the change to the proposal relating to retirement age as explained above. The only other major change following the consultation was the inclusion of a general exception for direct age discrimination. This means that in cases where there is not a specific exception, it will be for the Tribunal and the courts to decide what does and does not count as a proportionate means of achieving a legitimate aim.
8. The Panel was grateful to the Social Security Department, as both briefings provided an opportunity to ask questions and be fully briefed on the draft Regulations.