

# **STATES OF JERSEY**



## **DRAFT DISCRIMINATION (JERSEY) LAW 200: CONSULTATION REPORT – WHITE PAPER**

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**Presented to the States on 5th February 2008  
by the Minister for Home Affairs**

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**STATES GREFFE**



# Draft Discrimination (Jersey) Law

## Consultation Report

Minister for Home Affairs

Consultation period: 1st February – 14th March 2008

**THE PURPOSE OF THIS DOCUMENT IS TO CONSULT ON  
CHANGES THAT HAVE BEEN MADE TO THE DRAFT  
DISCRIMINATION (JERSEY) LAW BEFORE IT IS LODGED FOR  
STATES DEBATE**

## SUMMARY

**This report sets out proposals for a draft Discrimination (Jersey) Law 200-. Further to a previous public consultation, certain provisions of the draft Law have been revised. The Minister for Home Affairs has therefore decided to provide a final consultation opportunity before the Law is lodged for consideration by the States.**

### **Background**

The attached Report sets out the background to proposals for the introduction of a Discrimination Law in Jersey, since the initial work of the Race Relations Working Party in 1999 through to the Chief Minister's Department consultation paper in July 2006.

In 2002 the States strongly supported the principle of a Race Discrimination Law (P.32/2002). There has been consistent and overwhelming support for the introduction of a Law to address discrimination issues generally, although the proposals have been subject to refinement as a result of the public consultation.

The proposed legislation will have wide-ranging implications for society in Jersey and for the States, both as an employer and as a provider of services. It will also support (when the Regulations are brought into force) Jersey's commitments to international standards, in particular the United Nations Convention on the Elimination of all forms of Racial Discrimination (CERD).

### **Proposed Law**

The Draft Discrimination (Jersey) Law will be an over-arching provision which aims to prohibit discriminatory conduct. It sets out areas where discrimination will not be tolerated, for example in employment, education, provision of goods, facilities and services, and in the management of clubs and premises, subject to certain exceptions.

However, the principal Law will have no effect without the subsequent Regulations, which will define the 'attributes' to which the Law applies – for example, race, sex, disability, etc. It is intended that the first set of Regulations will relate to race discrimination, to be put before the States later in 2008 when the Law is brought into force.

Drafting an over-arching Law and Regulations in this way has been commended by experts in the field of discrimination law, because it 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 several separate and different laws.

The following Report explains the structure of the draft Law and the way that Regulations will be applied in stages. The aim of phasing the introduction of Regulations is to enable full public consultation at each stage and to spread any potential administrative burden for employers, organisations and other individuals over a period of time.

Political responsibility for implementing the legislation lies with the Minister for Home Affairs.

### **Resource implications**

It is estimated that the first full year costs of enforcing the Discrimination (Jersey) Law, in 2009, may be in the region of £250,000. In subsequent years it is anticipated that enforcement costs, and therefore annual costs, will increase as each set of Regulations introducing an additional attribute, such as sex or disability, is introduced, up to a maximum cost of £500,000 annually to implement the legislation once all phases are in place.

Funding to implement the Law will be subject to States approval in the 2009 Business Plan.

## **SEEKING YOUR VIEWS**

**The Minister for Home Affairs would welcome views on the proposals outlined in this document.**

A paper copy of this report is available from –

States Greffe Bookshop, Morier House, St. Helier, and  
States of Jersey Customer Services Centre, Cyril le Marquand House, St. Helier,  
between 9.00 a.m. and 5.00 p.m. (Telephone 445500)

**Responses to the consultation should be addressed to:  
Discrimination Consultation  
Cyril le Marquand House, St. Helier, Jersey JE4 8QT**

**Responses must be received by Friday, 14th March 2008**

**Confidentiality:** Responses will be used to produce aggregate information, although unless marked “Confidential”, opinions given in responses, including those submitted with no name or address, may be quoted in any published report produced to demonstrate views that have been expressed during the consultation process. Names will not be quoted. Responses will only be attributed to a named individual or organisation if the respondent has given express permission.

## **WHAT HAPPENS NEXT?**

All comments received as a result of this consultation will be collated and presented to the Minister for Home Affairs. The results of the consultation will then be included in the Report to the States Assembly.

# **DRAFT DISCRIMINATION (JERSEY) LAW 200-**

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## **REPORT**

**This Report sets out an overview of the need for a Discrimination (Jersey) Law 200- (“DJL”) and proposals for a programme of supporting legislation to enable protection to be provided in the Island from various types of discrimination in a number of areas.**

### **PART ONE: BACKGROUND TO THE PROPOSALS**

#### **1.1 THE NEED FOR LEGISLATION**

Anti-discrimination legislation is to be found in jurisdictions worldwide. Protection from race, sex and disability discrimination are the most common, but legislation relating to discrimination of other types such as age, gender and religion is being introduced.

Jersey has a recognised presence on the international stage. It follows that the Island should have the necessary legislation in place in order to command respect as a jurisdiction that promotes modern standards of respect for individuals’ rights and encourages equality and harmony between its citizens.

In addition, the Island has obligations under a number of international treaties and covenants to ensure protection from discriminatory behaviour for its citizens. The Island is required to file regular reports to demonstrate its compliance with these treaties and covenants with the relevant international organisations. In the last 2 years official reports have been filed relating to the International Convention on the Elimination of All Forms of Racial Discrimination “CERD”; a number of the International Labour Organisation treaties; the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

#### **1.2 CURRENT LEGISLATIVE PROVISION AGAINST DISCRIMINATORY BEHAVIOUR**

Current Jersey law relating to discrimination is limited. Legislation to combat sex discrimination is confined to the Sex Disqualification (Jersey) Law 1957 and general provisions of the Employment (Jersey) Law 2003 have the effect of preventing discrimination in the workplace in certain circumstances.

The Sex Disqualification (Jersey) Law 1957 does 2 things: it 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 Employment (Jersey) Law 2003 promotes equality of treatment in the workplace, in the sense that dismissal or selection for redundancy on a ground unrelated to the employee’s capability or conduct would constitute unfair dismissal. However, the 2003 Law applies to employees only and it makes no provision against discrimination at the time of selection for employment nor in the terms or conditions on which employment is offered.

Both the Education (Jersey) Law 1999 and the Building Bye-laws 2004 contain provisions regarding disability. The 1999 Education Law imposes duties on the Minister for Education, Sport and Culture regarding the education of a child with special educational needs; in particular, that education is to be provided in a mainstream school, where possible.

The Building Bye-laws require reasonable provision to be made in new buildings, for certain, but not all, descriptions of disabled people to enter and use a building. The requirements relate only to the needs of persons who have a limited ability to walk, or use a wheelchair, or who have impaired hearing or sight.

The Human Rights (Jersey) Law 2000 also gives effect to Article 14 of the European Convention on Human Rights, which prohibits discrimination in relation to the Convention Rights. However, this protection is extended

only to those specific Convention Rights and, in particular, places the obligation on public authorities.

### **1.3 RECENT AWARENESS RAISING AND CONSULTATION ON DISCRIMINATION ISSUES**

Recent Government initiatives have contributed to an increased awareness of the need to introduce a comprehensive law to protect the basic right of all individuals to be free from discrimination. These are as follows –

#### 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<sup>[1]</sup>. More recently a policy dealing with the issue of bullying has been introduced.

Although not having the power of law, Codes of Practice establish sound guidelines which will have raised awareness over the years of what amounts to acceptable practice.

#### 1998: Employment legislation:

In 1998 the then Employment and Social Security Committee circulated a consultation paper entitled “Fair Play in the Workplace” which asked Islanders for their opinions 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) 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. P.99/2000 was adopted by the States and resulted in the drafting of the Employment (Jersey) Law 2003. As a result, and as referred to above, the Employment Law only provides limited protection from discriminatory behaviour. Further legislation is required to fully deal with potential discriminatory issues in the employment arena.

#### 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. In March 2002 the Legislation Committee lodged its proposal for the preparation of a Race Discrimination Law (Projet 32/2002), based upon the recommendations of the Working Party (published as R.C.46/1999). On 14th May 2002 the States voted, overwhelmingly, in favour of the proposal.<sup>[2]</sup>

However, the former Legislation Committee then reviewed the lack of legislation in the Island aimed at eliminating forms of discrimination other than race. It concluded that it would be desirable to take the opportunity to bring forward legislation which would promote not only the elimination of racial discrimination, but also, other forms of discrimination.

#### November 2000: Racial Discrimination Forum:

The Racial Discrimination Forum, led by the then Policy and Resources Committee was established. Members came from both the public and private sectors and their work culminated in the States voting to set up the Jersey Community Relations Trust (P.120/2003)<sup>[3]</sup>.

#### 2004: Jersey Advisory and Conciliation Service:

The Jersey Advisory and Conciliation Service, established as part of the Employment Law programme, was opened in 2004. The service advises employers and employees on employment issues and has advisory literature available on discrimination matters<sup>[4]</sup>.

#### 2005 – 7: Jersey Community Relations Trust:

Established in 2005, the Trust aims to “eliminate discrimination on any ground ... and to encourage mutual respect among all people in the Island”. In 2006 the Trust launched its Anti-Discrimination Promise initiative. The States of Jersey, as an employer, was the first major organisation to sign up to the commitments in the promise.

In September 2007 the Trust held a major Island-wide conference on discrimination issues: “Facing the Future... a Conference about discrimination in Jersey”. This conference, attended by nearly 300 people from a wide sector of the community including many who might be affected by discrimination, clearly supported the introduction of a Discrimination Law in Jersey.

July 2006: Consultation paper on the Discrimination (Jersey) Law 200- and the Discrimination (Race) (Jersey) Regulations 200-:

The Chief Minister’s Department launched a consultation paper on the Draft Discrimination (Jersey) Law 200- (the “DJL”) and the Discrimination (Race) (Jersey) Regulations 200-. Responses were received and the results published on the [www.gov.je](http://www.gov.je) website<sup>[5]</sup>. There was unanimous support for the introduction of discrimination legislation in the Island.

Summer 2007: Maternity and flexible working rights:

The Employment Forum released a consultation paper on maternity and flexible working rights. In order for these rights to be effective, particularly those surrounding issues such as entitlement to maternity leave and pay, it will be essential that provision to grant protection from discrimination on the grounds of sex be introduced on to the Island’s statute books.

## **PART TWO: DISCRIMINATION (JERSEY) LAW 200- (THE “DJL”)**

### **2.1 RECOMMENDATIONS**

As a result of the conclusions of both the former Employment and Social Security and Legislation Committees, further research was carried out by a group led by Senator Wendy Kinnard, the Minister for Home Affairs and officers from the Law Draftsman’s and Chief Minister’s Departments.

The group reviewed anti-discrimination legislation in the United Kingdom, Guernsey, the Isle of Man and the Australian Capital Territory. A Northern Ireland consultation paper on a Single Equality Bill was also considered, together with European Directives regarding the elimination of discrimination.

The original recommendations of the Race Relations Working Party were also considered. These had been based on the United Kingdom’s Race Relations Act 1976. However, the 1976 Act has been subject to important changes, as has other United Kingdom anti-discrimination legislation, since the time of the Race Relations Working Party report. Many of these changes have been introduced because of requirements introduced by the European Union.

The Island is not a member of the European Union and is therefore not generally obliged to implement Directives or comply with EU legislation. However, the Island does have obligations under some international conventions, as described above, and consideration needs to be given generally not only to those direct obligations but also to standards adopted both in Europe and worldwide.

The latest research culminated in a consultation paper which promoted the concept of an over-arching enabling law, the Discrimination (Jersey) Law 200-, which would then be given effect through the introduction of supporting Regulations. The Consultation paper was released for public consultation on 3rd July 2006.

### **2.2 THE PROPOSED DISCRIMINATION (JERSEY) LAW 200-**



- (i) The focus of the DJL is on the prohibition of discriminatory conduct. The Law does not deal with the promotion of equal opportunity. It is not intended to be retrospective.

The DJL is designed to be an “overarching law” which will establish the areas in which discriminatory conduct will not be tolerated, for example in employment, education, provision of goods, facilities and services, and the management of premises and clubs, subject to exceptions granted in Regulations.

However, the principal Law has no effect without the Regulations, described below, made by virtue of powers granted in the Law. The DJL should be seen as the foundations of a building, the floors of which will be added on in phases by the Regulations.

It is suggested that having one overarching Law, the provisions of which apply equally to all forms of discriminatory behaviour as defined in the Law, will be simpler than having separate and potentially different laws for each type of discrimination from which protection is to be granted.

The DJL will also allow for protection from prohibited acts, victimisation and harassment in certain circumstances and will provide an enforcement mechanism for acting on complaints brought under the Law.

(ii) **Introducing protection from discrimination in phases by reference to an ‘attribute’**

Each of the characteristics for which protection from discrimination is to be granted, for example race, sex, disability, age, etc. will be known as an ‘attribute’.

The provisions of the over-arching enabling Law will allow the States to approve Regulations providing protection from different types of discrimination, that is in respect of various ‘attributes’, whenever this is deemed appropriate. The terminology relating to ‘attributes’ has been adopted because the DJL is an overarching Law and so a generic term is required to describe the basis of each type of discrimination for which protection will be introduced by Regulations.

It is worth noting that a major consultation exercise has just been undertaken in the United Kingdom in which people were asked for their views on the drafting of a Single Equality Act. Such an act would effectively replace the current Sex Discrimination Act 1975; Race Relations Act 1976 and Disability Discrimination Act 1991 together with all their supporting and amending legislation with one new Act. Interestingly, the UK is also promoting the use of the word ‘attribute’ as a generic term to describe the previous types of discrimination for which protection was available under these 3 laws.

## 2.3 **THE STRUCTURE OF THE DISCRIMINATION (JERSEY) LAW 200-**

In summary the Law is divided into seven parts:

- Part 1 of the law is the Interpretation and Application section. It establishes what is meant by discrimination in Articles 2 and 3.
- Parts 2 to 4 deal with areas within which protection from discriminatory behaviour will be afforded:
- Part 2 focuses on Discrimination at Work where the work is paid work. Provisions dealing with the following areas are included: selection for employment; treatment of employees; contract workers; partnerships; professional or trade organisations; professional bodies; vocational training and employment agencies.
- Part 3 contains provisions dealing with Voluntary Work, for example where someone gives of their time to work for no pay in a charity shop.

- Part 4 deals with Prohibited Acts of Discrimination in Other Areas which include education; the provision of goods, facilities and services; access to and use of public premises; the disposal or management of premises; clubs and requests for information.
- Part 5 includes a number of Other Prohibited Acts to ensure that the legislation is comprehensive. These provisions include protection for anyone who suffers a detriment as a result of a prohibited act falling within the provisions of Part 5 or who suffers harassment on the grounds of an attribute referred to in the DJL. Additional protection is now included in relation to discrimination that occurs after a relationship has ended. The prohibited acts are: unlawful advertising; victimisation; harassment; discriminatory practices; instructions to commit a prohibited act and pressure to commit a prohibited act. Part 5 also includes provisions to deal with the liability of employer or principal and of a manager for a voluntary worker victimisation; and the aiding of prohibited acts.
- Part 6 provides an enforcement mechanism to deal with any breaches.
- Part 7 deals with miscellaneous matters, including the provision of powers to make Regulations under the DJL including those that would apply the DJL as appropriate to different types of discrimination, or attributes.

(i) Burden of Proof

The DJL affords individuals the right to make a civil claim. It is proposed that a claimant will need to adduce evidence to show that, on the balance of probabilities, he or she has been discriminated against. This test is the standard burden of proof used in civil law matters.

(ii) Enforcement and Awards

The Working Party on Race Relations in P.32/2002 advocated that the consideration and enforcement of any measures relating to complaints brought under the DJL should be dealt with by a Discrimination Officer and a Discrimination Tribunal.

Since that time the Employment Tribunal has been set up under the provisions of the Employment (Jersey) Law 2003. Accordingly the former Working Party's proposals have been adopted for the most part but modified to take account of the Employment Tribunal's existence and experience. All complaints filed under the DJL will be filed with the Discrimination Officer in the first instance but then any arising out of an employment scenario will be referred to the Jersey Advisory and Conciliation Service and the Employment Tribunal for resolution. However the enforcement procedures of the Employment Law and the DJL have been closely paralleled, as the two bodies will need to work closely together. Indeed, some changes are being proposed to the enforcement procedures of the Employment Law and the Employment Tribunal Regulations to ensure consistency with the DJL procedures. During the consultation process respondents sought consistency between the 2 laws and these changes will grant that and make both laws easier to understand and implement.

It is proposed that an award for hurt and distress may be made in cases arising out of a discrimination complaint. The maximum award proposed in the DJL is £10,000 but the DJL makes provision for the Minister to introduce differing award limits. The current £10,000 limit in the DJL reflects the aggregate £10,000 limit that the Employment Tribunal can award for complaints (other than unfair dismissal claims) brought under the Employment (Jersey) Law 2003. Again this £10,000 figure will ensure consistency with the Employment Law when the DJL is first introduced.

**2.4 EXCEPTIONS TO THE DISCRIMINATION (JERSEY) LAW 200-**

Exceptions to the DJL will be introduced with each set of Regulations which will introduce an attribute upon which a claim for discrimination can be based.

Inevitably each attribute will be subject to exceptions, i.e. instances where an individual will *not*, for the purposes of the Law, be treated as discriminated against if an act which might otherwise appear discriminatory has been committed against him or her.

Standard exceptions are expected to include acts done under legislative or judicial authority; acts done with the intention of achieving equality; acts done in order to achieve compliance with the law of another country and acts done for reasons of national security.

Thereafter exceptions will be relevant to the specific attribute, e.g. when referring to discrimination on the basis of race it will be lawful to recruit someone of a specified nationality to play in a national football team.

## **2.5 PROPOSALS TO PHASE THE INTRODUCTION OF PROTECTION FROM DISCRIMINATION UNDER THE LAW**

Apart from the necessity to comply with current international obligations, the proposed phases also take into consideration the priorities determined by the States; the need to reflect the proportionate number of people likely to be affected by the protection under consideration; the anticipated cost implications of compliance and the need to link in with other States' policies as far as possible. Details of the responses received to the consultation process were published<sup>[6]</sup>, and support was given for the sequence of the phases proposed below.

### **Phase One**

It is proposed that race should be the first attribute introduced under the DJL in furtherance of the commitment made by the States in 2002<sup>[7]</sup>. In addition, the Island has obligations under CERD<sup>[8]</sup>. The purpose of CERD is "to adopt all necessary measures for the elimination of racial discrimination in all its forms; to combat racist doctrine and practice; promote understanding between races; and to develop an international community free from all forms of segregation."

The proposed Race Regulations have been prepared and were released for consultation at the same time as the paper on the DJL in July 2006<sup>[9]</sup>. If the States adopt this Report and Proposition relating to the DJL then it is proposed to bring the Race Regulations to the States for debate as soon as procedurally possible.

The intention would be to have the DJL and the Race Regulations in force during 2008.

### **Phase Two**

It is proposed that the second attribute to be introduced should be protection from discrimination on the ground of an individual's sex. The reason for this is three-fold: first, it is felt that of all the attributes to be introduced protection from race and sex discrimination are likely to affect the largest number of people.

Secondly, the States have previously agreed in principle<sup>[10]</sup> that all forms of discrimination based on sex, whether against men or women, should be removed. Phase Two will also enable the extension of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women<sup>[11]</sup> (CEDAW), ratified by the UK in April 1986.

Thirdly, the Social Security Department completed a consultation programme through the Employment Forum on maternity issues and family friendly and flexible working policies in summer 2007. The outcome is awaited but in order to co-ordinate policies across departments it will be necessary to introduce protection from discrimination on the grounds of sex (and possibly gender as well) at the same time, or as soon as possible thereafter, as any employment legislation brought forward by the Social Security department as a result of their consultation.

Drafting time for the Discrimination (Sex) (Jersey) Regulations 200- has been included in the States legislative

programme; it is hoped that consultation on these Regulations will commence in 2008 and that the Regulations will be introduced in 2009.

### **Phase Three**

It is proposed that the third phase should extend the DJL to include the attribute of disability. It is anticipated that “disability” will include physical, sensory or mental disability. It is intended that consultation on this attribute will commence in 2009.

### **Phase Four**

It is anticipated that this would be the last phase of legislation to be introduced over the first 5 year period. It is suggested that it will include any other type of discrimination that it is still felt necessary to address, such as protection from discrimination based on age or religion. It is likely that consultation on any additional attributes to be introduced will take place in 2010.

## **2.6 OUTCOMES OF PUBLIC CONSULTATION**

The original Consultation paper<sup>[12]</sup> provided some detail on how the law was intended to work. Some concerns were expressed and some requests for greater clarification or adjustment to some sections of the draft legislation were received. As a result, a number of drafting changes have been made as well as the introduction of some additional provisions. This section of the report highlights those areas where changes have been made. The Explanatory Notes appearing at the beginning of the DJL also offer assistance with interpretation.

### ***(i) Definitions: Article 1***

The following were raised as being of particular concern during the consultation period and have been addressed as follows:

#### ***“Employment”:***

The DJL has been drafted with the provisions of the Employment (Jersey) Law 2003 in mind, as it is inevitable that complaints will be filed which will involve the application of both Laws. Respondents were keen that definitions used in the Laws would therefore be comparable. To achieve greater clarity, changes have been made to the definition of “employment” in the DJL: the definition still includes work done under a contract for services, but otherwise has the same meaning as in the Employment Law.

#### ***“Unpaid worker”:***

Reference in the former draft DJL to employment, including “work as an unpaid worker”, have been separated out to avoid confusion. New Articles have been introduced in Part 3 of the DJL<sup>[13]</sup> which will afford protection to “voluntary workers”. The use of the term “manager” has been introduced to describe the person for whom a voluntary worker does unpaid work. The expression “volunteer bureau” is understood to be in common usage and is included in the DJL to mean an organisation which provides guidance on the availability of voluntary work and services of introducing persons seeking voluntary work to managers.

#### ***“services”:***

The definition of “services” in the Interpretation section is expanded to expressly include fund management and to add a provision which is intended to cover other forms of financial service.

### ***(ii) Territorial Application: Article 4***

The wording of Article 4 was queried during the consultation process and has been revised to provide greater clarity. In essence, the DJL is designed to afford protection from acts of discrimination carried out in Jersey and falling within the provisions of the DJL. If discriminatory acts are carried out elsewhere, an individual will need to have recourse to any protection against discriminatory behaviour afforded under the legislation of the jurisdiction where the act was committed.

The revised wording keeps the application of the DJL in relation to employment in line with the Employment (Jersey) Law 2003. It will apply to the whole of an employment, *if the employment is wholly or mainly in Jersey*.

It will also apply to employment on a ship registered in Jersey, unless the employment is wholly outside Jersey or the employee is not ordinarily resident in Jersey.

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

(iii) **Remedies available to adjudicators:** Articles 42/49

(a) **£10,000 award for hurt and distress:**

A variety of suggestions were put forward during the consultation process as to how the discrimination award for hurt and distress to be made by the Discrimination Panel or the Employment Tribunal should be calculated.

After consideration it has been decided that the original proposal of a maximum award of £10,000 for hurt and distress should remain at least for the introductory period of the DJL. Whilst the DJL becomes established it is appropriate to keep the maximum compensation payable for hurt and distress to a limit that is comparable with award limits for cases in the Employment Tribunal.<sup>[14]</sup> (NB: It is necessary here to distinguish the additional unfair dismissal award from the basic award in Employment cases – see footnote below).

However, awards made under the DJL to compensate an individual for any discrimination that they have suffered will always be subjective and made on a case by case basis at the discretion of Tribunal or Panel members. Initially, there are no proposals to base awards on any specific factors. If, for example, an award is made to compensate someone who was discriminated against at interview and did not get the job there will be no contractual elements to use as a calculation basis; if someone is denied access to a night club because of a discriminatory act there will be no set basis upon which to base a claim.

(b) **Orders re determination of compensation:**

A new power has been introduced in Articles 42 and 49 of the DJL for the Minister for Home Affairs, after consultation with the Bailiff, to make an Order giving directions to both the Discrimination Panel and the Employment Tribunal as to how compensation may be determined in discrimination cases. There is no obligation to make an Order, so the Minister might decide to leave it to the adjudicators to develop their own policy. On the other hand, an Order could include, for example, directions as to the matters which may be taken into consideration in determining amounts of compensation and as to whether or not interest may be added to amounts of compensation and as to the rates of interest that may be applied.

The addition of these new Order-making powers in the DJL means that the Minister for Home Affairs has the authority to provide the guidelines that consultees asked for during the consultation process so that people would have a greater understanding of how awards are likely to be calculated.

In addition, the Regulation-making powers granted to the States in Articles 42(4) and 49(4) gives the States considerable discretion as to what they do to change the compensation cap by Regulations in the future.

These provisions effectively grant 2 mechanisms for establishing the way in which awards under the DJL can be managed.

(c) **Additional powers granted to adjudicators:**

Additional powers have been given in Articles 42 and 49 to the adjudicators. Firstly, they can make a declaration on the rights of the complainant and the respondent in relation to the act to which the complaint relates. Secondly,

they can recommend that the respondent take action to obviate or reduce the adverse effect of the act of discrimination on the complainant.

**(iv) Non-discrimination notice: Employment Tribunal: Article 43:**

A new power, replicating that conferred in Article 50 on the Discrimination Panel, has been included for the Employment Tribunal. The power only arises where an individual has made a complaint which proceeds to adjudication. It would not arise where a complaint is dealt with by way of conciliation or where the Tribunal or Panel is made aware of discriminatory practices but there is no complainant, or a complaint is made but then withdrawn.

The Tribunal and Panel will fulfil a quasi-judicial rôle to consider applications brought before them under the DJL. Because of that, it would be inappropriate for them to have the additional responsibility of investigating an issue in the absence of a formal complaint and possibly initiating an action under the DJL.

For example, the newly created Equality and Human Rights Commission<sup>[15]</sup> in the United Kingdom is given certain investigatory and enforcement responsibilities and powers by the Equality Act 2006. However, the Commission is a separate body which acts independently of the tribunal and court systems which hear complaints brought under the United Kingdom's discrimination legislation and pass judgement on them.

The DJL does not establish an equivalent body. The DJL is a first step towards effectively introducing and co-ordinating anti-discrimination legislation in Jersey. As such, it is felt that the provisions of the DJL should be confined to enabling individuals to bring complaints and to providing for the introduction of appropriate remedies.

**(v) New enforcement provision: Article 51**

Article 51, which deals with enforcement issues, is a new provision which provides that an award of compensation under the DJL may be enforced as if it were a judgement debt ordered by a Judge of the Petty Debts Court. This means that both the Tribunal or Panel adjudicators have power, not only to make an order for compensation, but also an order giving permission to sell or for an arrest of wages. Such order-making powers will assist in cases where the adjudicators make compensation orders but the respondent has no money with which to pay the compensation order.

The power for the Minister to make Orders in Articles 42(3) and 49(3) relating to interest payments relates to these powers also.

It is intended that such provisions will extend to the Employment Tribunal so that Tribunal adjudicators can make such additional orders in all employment cases brought before the Tribunal for settlement.

**(vi) Application of the DJL to the police: Article 53**

This additional Article is now specifically included and means that a police officer who commits any act in the course of carrying out his duties which is deemed to be discriminatory under the provisions of the DJL can have a complaint brought against him.

**(vii) Codes of Practice: Article 56**

Article 56 has been revised so that the Minister may either publish codes of practice in his or her name or approve codes published by other persons.

**(viii) Making of Orders relating to Hearings: Article 60**

A requirement has been included in this provision that the Minister for Home Affairs must consult with the Bailiff before making any Orders specifying the procedures to be followed in relation to a discrimination hearing by an

adjudicator of either the Employment Tribunal or the Discrimination Panel, or the manner in which the hearing is to be conducted. The need to consult with the Bailiff is because the Tribunal and the Discrimination Panel are fulfilling quasi-judicial roles.

An additional order-making power has been granted in Article 60(3) to the Minister, after consulting with the Bailiff, to specify the circumstances in which any hearing before an adjudicator shall or may be heard in public or in private. This power reflects the provisions of the Employment (Jersey) Law 2003 which states the Panel will sit in public unless certain circumstances are met which result in a hearing being a private one.

**(ix) Schedule 1: Appointment of Chairman and Deputy Chairman of the Discrimination Panel:**

The provisions in Schedule 1 provide for the establishment of the Discrimination Panel. These closely parallel the provisions which establish the Employment Tribunal. However, in paragraph 3(3) an additional requirement has been included for the Bailiff's concurrence to be given to any appointment made by the Minister to the rôles of Chairman or Deputy Chairman, and the criteria for removing a member from office in paragraph 5 have been expanded.

**(x) Schedule 2:**

The provisions of this schedule will amend the Employment (Jersey) Law 2003 so that the Employment Tribunal can hear cases brought under the DJL. The provisions also extend the enforcement powers of the Employment Tribunal adjudicators to match those of the Discrimination Panel adjudicators. The appeal provisions for both bodies are also brought into line.

The Schedule also amends the Employment (Jersey) Law 2003; the Jersey Advisory and Conciliation (Jersey) Law 2003 and the Employment Relations (Jersey) Law 2003 so that the territorial application provision of each is the same as the DJL.

## **2.7 OTHER ISSUES RAISED IN THE CONSULTATION RESPONSES**

A number of other issues were raised during the consultation process and consideration was given to them.

**(i) Statistics:**

As stated previously, there was unanimous support for the proposal to introduce anti-discrimination legislation, albeit some questioned what evidence there was that discriminatory behaviour existed in the Island to such an extent that legislation was necessary.

There are no official statistics currently kept by government departments or agencies such as the Citizen's Advice Bureau or the Jersey Advisory and Conciliation Service, to record instances of discriminatory behaviour. However, there is descriptive evidence that discriminatory incidents do occur and, without legislation to clearly set out acceptable standards, there are no benchmarks against which behavioural standards can be assessed and no recourse to fair treatment and compensation, where appropriate, to be had.

Two different examples of such discriminatory incidents are a spate of anti-Semitic graffiti that appeared on buildings in the Island at the time of the last election, and advertisements that appear which are discriminatory in their wording.

It is not intended that the introduction of the DJL will open a floodgate of discrimination complaints. Indeed it is hoped that it will act as a backdrop and set behavioural standards that are commonly accepted by all as appropriate for a community in the 21st century. If these standards are maintained, then complaints will not need to be filed. In addition, the Island will have legislation befitting its international standing.

The majority of respondents to the consultation, whilst noting that the DJL would take time to "bed down", commented that they thought society would benefit in the long term. It was also felt that business would benefit:

*“However long term the benefits will be positive both for the general public and for business. Jersey cannot continue to be a major international player if this type of legislation is not introduced.”<sup>[16]</sup>*

*“Discrimination in any form is counter-productive to general employee morale and effective working”<sup>[17]</sup>.*

## **(ii) Protection from other types of discrimination**

Others felt that the DJL should go further and provide protection from other types of discrimination. However, the initial and principal focus of the DJL is to bring in protection from discrimination on well-recognised grounds such as race; sex and disability, with perhaps age and religion at a later date.

It is hoped that the introduction of the DJL will help develop a sense of community amongst Islanders such that discriminatory behaviour and harassment are considered unacceptable.

## **(iii) Training and cost implications**

During the consultation process the need for training prior to the introduction of the DJL was highlighted and, in particular, the potential cost to business of ensuring that staff are aware of their responsibilities under the DJL. However, it is suggested that the majority of people will already have an appreciation of what constitutes discrimination and discriminatory behaviour.

Many larger business organisations already have the necessary procedures in place to avoid discriminatory practice. Literature and training on general discrimination issues are already available. Before the DJL comes into force, Regulations would need to be adopted by the States, so there will be an ability to manage the timing of the introduction of the legislation to allow opportunity for training if deemed necessary. It is also intended to issue advisory guidelines on the implications of the DJL, which will help reduce training costs.

## **2.8 REGULATIONS**

It should be noted that this report does not discuss in detail the specific provisions and exceptions with regard to discrimination on the grounds of any particular attribute. These matters will be considered fully in any Regulations which may be brought to the States in due course, for example to address race or sex discrimination.

However, it should be borne in mind that the DJL, if and when it comes into force, will only have effect when implemented together with subordinate Regulations. It is therefore proposed that the proposed Regulations to deal with race discrimination would be presented for adoption by the States at the same time as the Law is to be brought into force by an Appointed Day Act.

## **2.9 FINANCIAL AND MANPOWER IMPLICATIONS**

The earlier consultation paper made reference to the likely costs to be incurred as a result of the introduction of the DJL. Costs for the Discrimination Officer, Discrimination Panel members and other administrative issues will be borne by the Home Affairs Department. Costs in connection with work related to employment discrimination carried out by JACS and the Employment Tribunal will continue to be borne from their respective budgets.

It is estimated that the first full year costs of enforcing the DJL may be in the region of £250,000. This figure has been reached in discussion with those responsible for the management of the Jersey Advisory and Conciliation Service and the Employment Tribunal. The figure includes staffing and set-up costs that are likely to be incurred and it is dependent on the opportunity of sharing a number of resources such as the Employment Tribunal premises and panel members in order to minimise costs.

It is anticipated that enforcement costs, and therefore annual costs, will increase as each set of Regulations introducing an additional attribute, such as sex or disability, is introduced. Allowance should be made in the States Business Plan, once all phases are in place, for a maximum cost of up to £500,000 annually to enforce the



DJL.

Manpower implications will include the appointment of a Discrimination Officer and an administrative assistant. Initially, the latter post is expected to be a part-time post. The members of the Discrimination Panel will not fall to be classified as States employees and therefore will not affect headcount.



Jersey

## DRAFT DISCRIMINATION (JERSEY) LAW 200-

### Explanatory Note

#### *Part 1 - Interpretation and Application*

*Article 1* provides for the interpretation of expressions used in the draft Law.

*Article 2* applies the draft Law to discrimination on the grounds of specified attributes. There are no attributes specified in the Law at this time. It is proposed that they should be specified in or added to the Law by Regulations. For example, if the States so approve, Regulations will amend this Law so as to add a definition of “race” and amend this Article so as to make race a specified attribute. Other attributes that might be added by Regulations include sex, disability and age.

Paragraph (2) describes how a reference to an attribute is to be construed. For example, if the attribute is disability, a reference to it would be read as including –

- (a) a characteristic that persons having a particular disability generally have;
- (b) a characteristic that persons having a particular disability are generally presumed to have;
- (c) a person’s presumed disability;
- (d) a disability that a person had in the past, but no longer has.

It is not proposed that the Law should be retrospective. Accordingly, an act of discrimination on the ground of an attribute done before the day that the attribute is specified in or added to the Law by Regulations will not be a prohibited act and therefore will not be the subject of a complaint under the Law. For example, if Regulations are made extending the application of the Law to discrimination on the ground of sex from a day specified in the Regulations, it will not be possible to make a complaint on the ground of sex discrimination in respect of an act done before that day.

*Article 3* describes what constitutes an act of discrimination. Discrimination can be either direct or indirect. Paragraph (1) describes what constitutes direct discrimination. Paragraph (2) is relevant to paragraph (1), in that it makes it clear that segregation is a form of direct discrimination. Paragraph (3) describes what constitutes indirect discrimination. Paragraphs (4) and (5) are relevant to paragraph (3), in that they provide a general exception for conditions that are reasonable in the circumstances and direct how reasonableness is to be assessed.

*Article 4* establishes the extent of the application of the Law.

The Law will apply to all acts done in Jersey.

To the extent that the Law applies to employment, it will apply to the whole of an employment, if the employment is wholly or mainly in Jersey. It will also apply to employment on a ship registered in Jersey, unless the employment is wholly outside Jersey or the employee is not ordinarily resident in 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 ship registered in Jersey and to benefits, facilities and services provided on the ship itself.

#### *Part 2 - Prohibited Acts of Discrimination - Paid Work*

*Part 2* 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 employed by a person who contracts with another person (referred to in the Law as the “principal”) to supply the contract worker’s work to the principal. So, the contract worker is the employee of the person (such as an agency supplying temporary workers) 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 3, 4 and 5* would be read in conjunction with Regulations made under the draft Law. When Regulations are made specifying an attribute, they shall also describe circumstances in which discrimination on the ground of that attribute is not prohibited. Examples are given below of the circumstances in which discrimination might not be prohibited in particular cases. In addition, there would be exceptions that would apply to all acts that would otherwise be prohibited. Of these, the most important is an exception where the act of discrimination is done for the purpose of complying with a Law, any condition imposed pursuant to a Law, or any court order.

*Article 5* prohibits discrimination in selecting a person for employment and in the terms on which employment is offered. An example of an exception that might be made by Regulations, if the States so agree, would be for the selection of a person for employment to undertake domestic duties within the employer’s home or to care for a child in the child’s home.

*Article 6* prohibits discriminatory treatment of an employee in all aspects of the employee’s employment. Again, an example of a possible exception might be any action taken to give a class of persons access to facilities, services or opportunities to meet their special needs.

*Article 7* 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. In this case, the sort of exception that might be made would be the same as those made in relation to Article 6.

*Article 8* prohibits discriminatory treatment in the formation of a partnership, in the appointment of partners and in the course of the partnership. In this case, one consideration would be whether or not to make an exception for small partnerships.

*Article 9* prohibits a professional or trade organization from discriminating against an applicant for membership and in the treatment of members.

*Article 10* 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 11* prohibits a person who provides or arranges vocational training from discriminating against a person who is either seeking or undergoing such training.

*Article 12* prohibits an employment agency from discriminating in the provision of its services both for employers and for persons seeking work. Any exception that would apply to the employer would apply also to the agency recruiting on the employer’s behalf.

### *Part 3 - Prohibited Acts of Discrimination - Voluntary Work*

This Part provides protection for a person who does unpaid work (a “voluntary worker”) for another person (a “manager”). Unpaid 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 unpaid work as a way of contributing to the community.

Subject to the decision of the States, the exceptions likely to be made by Regulations in the case of voluntary work would be the same as those for paid work.

*Article 13* prohibits discrimination in selecting a person for unpaid work and in the terms on which unpaid work is offered.

*Article 14* prohibits discriminatory treatment of a voluntary worker in all aspects of the unpaid work that he or she does.

*Article 15* prohibits an organization for voluntary workers from discriminating against an applicant for membership and in the treatment of members.

*Article 16* prohibits an agency which provides guidance on the availability of unpaid work and services of introducing prospective voluntary workers to managers discriminating in the provision of those services.

#### *Part 4 - Prohibited Acts of Discrimination in Other Areas*

*Article 17* prohibits discrimination in the provision of education for students of any age, both within the public and the private sector.

*Article 18* prohibits discrimination in the supply of goods, facilities and services. The definition “services” in *Article 1* is particularly relevant to this prohibition. The kind of exception that might be made would be for discrimination in the provision of insurance or an annuity, where the discrimination is based upon statistical or actuarial data pertaining to, for example, either men or women, or people of a particular race.

*Article 19* prohibits discrimination in the provision of access to and the use of public premises.

*Article 20* prohibits discrimination in the sale or letting of premises, whether residential or commercial. By virtue of the definition in *Article 1*, “premises” includes vessels and vehicles and places. An exception might be made where a person lets a room in his or her home.

*Article 21* 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.

*Article 22* 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 they are not a genuinely relevant factor in the application would be prohibited.

#### *Part 5 - Other Prohibited Acts*

*Article 23* prohibits a person placing an advertisement that indicates an intention to do a prohibited act or could be understood to indicate such an intention. An example would be an advertisement for a job stating ‘only women need apply’ where there is no exception for the job permitting recruitment of women only.

*Article 24* is concerned with victimisation. One person cannot subject another person to any detriment because that person has made a complaint under the draft Law or done any other lawful act under the draft Law, or because the first person believes that the other person has done or will do such an act.

*Article 25* prohibits one person harassing another. Harassment occurs where one person, by reason of an attribute which another person has, violates that person’s dignity or creates an intimidating, hostile, degrading or humiliating environment for that person.

*Article 26* prohibits a person discriminating against, victimising or harassing another person where a relationship during which discrimination has occurred comes to an end. An example might be where a person is discriminated against in his or her employment and decides to resign and then is discriminated against once more when he or she asks his or her former employer for a reference.

*Article 27* prohibits a person applying discriminatory practices or operating arrangements that would necessitate the application of discriminatory practices. A practice is discriminatory if it involves the application of a condition or requirement which results in discrimination which is indirect and of a kind prohibited by the Law. A practice is also discriminatory if it would result in an act of discrimination in the event that there were persons having a particular attribute to whom the practice applied.

*Article 28* prohibits a person in a position of management or authority instructing another person to do a prohibited act.

*Article 29* prohibits a person inducing or attempting to induce another person to do a prohibited act.

*Article 30* sets out circumstances in which an employer is liable for the acts of his or her employee.

*Article 31* sets out circumstances in which a manager of voluntary workers is liable for the acts of any of those workers.

*Article 32* provides that a person who knowingly aids another person to do a prohibited act is to be treated as having done the act personally.

## *Part 6 - Enforcement*

*Article 33* and *Schedule 1* establish the Discrimination Panel (the “Panel”).

*Article 34* provides for the appointment of a discrimination officer to discharge the functions of that office.

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

*Article 36* requires the Employment Tribunal (“the Tribunal”) to discharge the functions imposed on it by the draft Law.

### *Initiating complaint*

*Article 37* describes the process for making a complaint. A complaint must be made, within 8 weeks, to the discrimination officer. That officer may reject complaints which are trivial, frivolous or vexatious, although the complainant may request a review of the decision to reject, in which event the decision is reviewed by, as the case requires, the chairman of the Tribunal or the Panel.

### *Employment and work-related complaints*

*Article 38* requires the discrimination officer to refer a work-related complaint to JACS. If the complainant and respondent agree, JACS appoints an officer to attempt to resolve the complaint by conciliation.

*Article 39* 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. It may be heard by the chairman or deputy chairman sitting alone, or with 2 other Tribunal members (the “Tribunal adjudicator”).

*Article 40* describes the processes for the hearing of a complaint. These include, if the complainant and respondent so agree, a referral back for one last attempt at resolution by conciliation. The Tribunal adjudicator is not given any power to summons a person to appear before it but may draw an adverse inference from a person’s failure to attend or produce documents, in the absence of a reasonable excuse for the failure.

*Article 41* requires that, for a complainant to succeed, he or she must prove his or her case on the balance of probabilities.

*Article 42* empowers the Tribunal adjudicator, when a complaint is proved, to make a declaratory order as to the rights of the complainant and the respondent, to order the respondent to pay to the complainant compensation up to £10,000 for loss and hurt and distress and to recommend that the respondent take action to obviate or reduce the adverse effect of the discrimination on the complainant. The Tribunal adjudicator cannot award costs. The Minister for Home Affairs (the “Minister”) is empowered to make an Order setting out directions as to how awards of compensation are to be determined. If the complainant has also taken action under the Employment (Jersey) Law 2003 in respect of the same acts, the Tribunal adjudicator may defer making an order as to the rights of the complainant, or any recommendation regarding the actions of the respondent, until an order or declaration has been made under that Law regarding the terms and conditions of the complainant’s employment. The States may also make Regulations altering the maximum amount of compensation or removing the limit.

*Article 43* empowers a Tribunal adjudicator to serve a non-discrimination notice. The power only arises where, during the hearing of a complaint, the adjudicator is satisfied that the respondent has done a prohibited act. The notice would require the respondent not to commit the act and, as required, take steps and make changes necessary to prevent the act being committed. The respondent must be given an opportunity to make representations about the notice before it is served and, under Article 52, would have a right of appeal against it. However, where a notice is served, non-compliance with it is an offence liable to a fine up to level 4 on the standard scale (£5,000).

*Article 44* requires the discrimination officer to be informed of the outcomes of successful conciliations and of hearings. This is for the purpose of the preparation of the annual report required by Article 58.

### *Other complaints*

*Article 45* applies to complaints that are not work-related. The discrimination officer must, if the complainant and respondent so agree, attempt to resolve the complaint by conciliation.

*Article 46* sets out what happens if there is no attempt at conciliation, or it is unsuccessful. The matter is referred to the Panel for a hearing. It may be heard by the chairman or deputy chairman sitting alone, or with 2 other Panel members (the “Panel adjudicator”).

*Article 47* describes the processes for the hearing of a complaint. These include, if the complainant and

respondent so agree, a referral back for one last attempt at resolution by conciliation. The Panel adjudicator cannot require a witness to appear, but may draw an inference from a witness's failure to appear or produce documents without reasonable excuse.

*Article 48* requires that, for a complainant to succeed, he or she must prove his or her case on the balance of probabilities.

*Article 49* empowers the Panel adjudicator, when a complaint is proved, to order the respondent to pay to the complainant compensation up to £10,000 for loss and for hurt and distress. The adjudicator may also make an order declaring the rights of the complainant and respondent and make recommendations about the actions that the respondent could take to mitigate or reduce the adverse effect of the discrimination. The Minister is empowered to make Orders, giving directions as to how the amount of any compensation award is to be determined. The States may make Regulations altering the maximum amount of compensation or removing the limit.

*Article 50* empowers the Panel adjudicator to serve a non-discrimination notice requiring the respondent not to commit prohibited acts and to take steps to make such changes to his or her practices or arrangements as are necessary to ensure his or her compliance with the Law. The respondent has a right to make representations before the notice is served and a right to appeal against it (*Article 52*). Failure to comply with a notice is an offence liable to a fine up to level 4 (£5,000) on the standard scale.

#### *Enforcement and appeals*

*Article 51* provides that an award of compensation under the Law may be enforced as if it were a judgment debt ordered by the Judge of the Petty Debts Court.

*Article 52* confers rights of appeal to the Royal Court against decisions of a Tribunal adjudicator or a Panel adjudicator and a right of appeal against the serving of a non-discrimination notice.

#### *Part 7 - Miscellaneous and Closing*

*Article 53* 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 Police.

*Article 54* provides that officers, Tribunal members and Panel members are not liable in damages for anything done in good faith in the discharge of their functions under the Law.

*Article 55* makes it clear that JACS cannot charge for the provision of its services under the Law.

*Article 56* empowers the Panel to issue codes of practice regarding the elimination of discrimination and the promotion of equality.

*Article 57* requires the discrimination officer to keep records of the outcomes of hearings and of the serving of non-discrimination notices. These are to be available for public inspection.

*Article 58* requires the chairman of the Panel to prepare an annual report, which the Minister must present to the States.

*Article 59* empowers the States to make Regulations adding attributes to which the Law is to apply, adding to or varying what constitutes discrimination and adding to or varying exceptions to what would otherwise constitute discrimination.

*Article 60* empowers the Minister to make Orders regarding procedures for the conduct of hearings and regarding transitional arrangements upon the commencement of this draft Law.

*Article 61* gives effect to *Schedule 2*, which amends various employment Laws.

*Article 62* is the citation and commencement provision.

*Schedule 1* provides for the constitution and appointment of the Panel.

*Schedule 2* amends the Employment (Jersey) Law 2003 (the "2003 Law"). The 2003 Law is made consistent with this draft Law in 3 respects: its territorial application, the powers of enforcement of an award of compensation in an employment dispute, and the grounds for an appeal against a decision of the Employment Tribunal. Provision is added to the 2003 Law enabling an Order to be made regarding the handling of an employment dispute that also gives rise to a discrimination complaint, and vice versa. The Jersey Advisory and Conciliation (Jersey) Law 2003 and the Employment Relations (Jersey) Law 2007 are also amended so that they apply to the same employments

as are within the application of the 2003 Law.



Jersey

# DRAFT DISCRIMINATION (JERSEY) LAW 200-

## Arrangement

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### Article

#### **PART 1**

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##### INTERPRETATION AND APPLICATION

- 1        Interpretation
- 2        Discrimination to which this Law applies
- 3        What constitutes discrimination
- 4        Application of Law

#### **PART 2**

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##### PROHIBITED ACTS OF DISCRIMINATION – PAID WORK

- 5        Selection for employment
- 6        Employees
- 7        Contract workers
- 8        Partnerships
- 9        Professional or trade organizations
- 10       Professional bodies
- 11       Vocational training
- 12       Employment agencies

#### **PART 3**

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##### PROHIBITED ACTS OF DISCRIMINATION – VOLUNTARY WORK

- 13       Selection for voluntary work
- 14       Voluntary workers
- 15       Organizations for voluntary workers
- 16       Volunteer bureaux

#### **PART 4**

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##### PROHIBITED ACTS OF DISCRIMINATION IN OTHER AREAS

- 17       Education
- 18       Goods, facilities and services
- 19       Access to and use of public premises
- 20       Disposal or management of premises
- 21       Clubs
- 22       Requests for information

#### **PART 5**

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## OTHER PROHIBITED ACTS

- 23      Unlawful advertising
- 24      Victimisation
- 25      Harassment
- 26      Relationships which have come to an end
- 27      Discriminatory practices
- 28      Instructions to commit prohibited act
- 29      Pressure to commit prohibited act
- 30      Liability of employer or principal for employee
- 31      Liability of manager for voluntary worker
- 32      Aiding prohibited acts

## **PART 6**

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### ENFORCEMENT

- 33      Discrimination Panel
  - 34      Discrimination officer
  - 35      Functions of JACS under this Law
  - 36      Functions of Employment Tribunal under this Law
- Initiating complaint*
- 37      Making a complaint
- Employment and other work-related complaints*
- 38      Conciliation by conciliation officer
  - 39      Referral to Employment Tribunal
  - 40      Conduct of hearing by Tribunal adjudicator
  - 41      Burden of proof in hearing by Tribunal adjudicator
  - 42      Remedies available to Tribunal adjudicator
  - 43      Power of Tribunal adjudicator to serve non-discrimination notice
  - 44      Duty to report outcome of complaint
- Other complaints*
- 45      Conciliation by discrimination officer
  - 46      Referral to Panel
  - 47      Conduct of hearing by Panel adjudicator
  - 48      Burden of proof in hearing by Panel adjudicator
  - 49      Remedies available to Panel adjudicator
  - 50      Power of Panel adjudicator to serve non-discrimination notice
- Enforcement and appeals*
- 51      Enforcement
  - 52      Rights of appeal

## **PART 7**

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### MISCELLANEOUS AND CLOSING

- 53      Application to police
- 54      Limitation of liability
- 55      Costs
- 56      Codes of practice
- 57      Records of decisions
- 58      Annual report
- 59      Regulations

- 60      Orders relating to procedure
- 61      Employment Laws amended
- 62      Citation and commencement

## **SCHEDULE 1**

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### DISCRIMINATION PANEL

- 1      Interpretation
- 2      Constitution
- 3      Appointment of members
- 4      Term of office of members
- 5      Termination of office
- 6      Remuneration and allowances
- 7      Duties of chairman and deputy chairman

## **SCHEDULE 2**

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### EMPLOYMENT LAWS AMENDED

- 1      Employment (Jersey) Law 2003 amended
- 2      Jersey Advisory and Conciliation (Jersey) Law 2003 amended
- 3      Employment Relations (Jersey) Law 2007 amended



Jersey

## DRAFT DISCRIMINATION (JERSEY) LAW 200-

A LAW to prohibit certain kinds of discrimination and for connected purposes.

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*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 –

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### PART 1

#### INTERPRETATION AND APPLICATION

##### 1 Interpretation

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

“conciliation officer” means a conciliation officer designated by JACS under Article 5 of the Jersey Advisory and Conciliation (Jersey) Law 2003;

“contract worker” means a person who does work for another person pursuant to a contract between the employer of the first-mentioned person and the person for whom the work is done;

“discriminate” shall be construed in accordance with Article 3;

“discrimination officer” means the discrimination officer appointed under Article 34;

“employment” means –

(a) employment, within the meaning of the Employment (Jersey) Law 2003; and

(b) work done under a contract for services,

and the expressions “employer” and “employee” 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 Tribunal” means the Jersey Employment Tribunal established by Article 81 of the Employment (Jersey) Law 2003;

“JACS” has the same meaning as in the Jersey Advisory and Conciliation (Jersey) Law 2003;

“Jersey” includes the territorial waters adjacent to Jersey;

“Jersey ship” means a ship or fishing vessel which may be registered in the register maintained pursuant to Article 11 of the Shipping (Jersey) Law 2002;

“lease” means a lease of any duration and includes a tenancy;

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

“Minister” means the Minister for Home Affairs;

“Panel” means the Discrimination Panel established by Article 33;

“Panel adjudicator” has the meaning given in Article 46(5);

“premises” includes –

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

“principal” means a person for whom a contract worker does work pursuant to a contract between the employer of the contract worker and the person;

“provided school” has the same meaning as in the Education (Jersey) Law 1999;

“Regulations” means Regulations made under Article 59;

“school” has the same meaning as in the Education (Jersey) Law 1999;

“services” 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 entertainment, recreation or refreshment;
- (c) accommodation in a hotel, boarding house or other similar establishment;
- (d) facilities for transport or travel;
- (e) the services of any profession, trade or business;
- (f) services provided by the States or any administration of the States;
- (g) services provided by a company or other body corporate in which the States have a controlling interest;
- (h) services provided by any parochial authority; and
- (i) the provision of scholarships, prizes or awards;

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

“Tribunal adjudicator” has the meaning given in Article 39(5);

“voluntary worker” means a person who does unpaid 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) In this Law a reference to an act which is prohibited by this Law is, subject to any exceptions in this Law or in Regulations, a reference to an act which is prohibited by any provision of Parts 2 to 5 or of Regulations.
- (3) 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 Discrimination to which this Law applies**

- (1) This Law applies to discrimination on the ground of any attribute specified in it or in Regulations.
- (2) A reference in this Law to an attribute shall be construed as including a reference to –

- (a) a characteristic that persons with that attribute generally have;
- (b) a characteristic that persons with that attribute are generally presumed to have;
- (c) such an attribute that a person is presumed to have; and
- (d) such an attribute that a person had in the past but no longer has.

### **3 What constitutes discrimination**

- (1) For the purposes of this Law, a person discriminates against another person if he or she treats or proposes to treat the other person less favourably than he or she treats, or would treat, other persons because that other person or a third person has an attribute mentioned in Article 2(1).
- (2) For the purposes of this Law, segregating a person from other persons because he or she has an attribute mentioned in Article 2(1) is treating that person less favourably than the other persons are treated.
- (3) For the purposes of this Law, a person discriminates against another person if he or she imposes or proposes to impose a condition or requirement that has, or is likely to have, the effect of disadvantaging persons because they have an attribute mentioned in Article 2(1).
- (4) Paragraph (3) shall not apply to a condition or requirement that is reasonable in the circumstances.
- (5) In determining, for the purposes of paragraph (4), whether a condition or requirement is reasonable in the circumstances, 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 who imposes or proposes to impose the condition or requirement.

### **4 Application of Law**

- (1) This Law applies to acts done 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 an employment on a Jersey ship unless –
  - (a) the employment is wholly outside Jersey; or
  - (b) the employee is not ordinarily resident in Jersey.
- (4) This Law also applies to –
  - (a) facilities for travel on a Jersey ship;
  - (b) benefits, facilities or services provided on a Jersey ship.

## **PART 2**

### **PROHIBITED ACTS OF DISCRIMINATION – PAID WORK**

### **5 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.

## **6 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.

## **7 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.

## **8 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 partner in 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 partner in 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.

## **9 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.

## **10 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.

## **11 Vocational training**

A person who provides or make 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 deliberately 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.

## **12 Employment agencies**

- (1) An employment agency shall not discriminate against a person –
  - (a) by refusing or deliberately 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 3**

## **PROHIBITED ACTS OF DISCRIMINATION – VOLUNTARY WORK**

### **13 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.

### **14 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.

### **15 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.

### **16 Volunteer bureaux**

A volunteer bureau shall not discriminate against a person –

- (a) by refusing or deliberately 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 4**

### **PROHIBITED ACTS OF DISCRIMINATION IN OTHER AREAS**



## **17 Education**

- (1) A person shall not discriminate against another person –
  - (a) by refusing or failing to accept the other person's application for admission as a student to a school; or
  - (b) in the terms or conditions on which he or she is prepared to admit the other person 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.

## **18 Goods, facilities and services**

A person who (whether for payment or not) provides goods or services, or makes facilities available, shall not discriminate against another person –

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

## **19 Access to and use of public premises**

A person shall not discriminate against another person –

- (a) by refusing to allow the other person 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 he or she is prepared to allow the other person 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 other person the use of any facilities in 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 he or she is prepared to allow the other person the use of any such facilities; or
- (f) by requiring the other person to leave such premises or cease to use such facilities.

## **20 Disposal or management of premises**

- (1) A person (whether as principal or agent) shall not discriminate against another person –
  - (a) by refusing the other person's application for premises;
  - (b) by refusing to sell or grant a lease of premises to the other person;
  - (c) in the terms or conditions on which premises are offered to the other person; or
  - (d) by deferring the other person's application for premises or according to the other person a lower order of precedence in any list of applicants for premises.

- (2) A person (whether as principal or agent) shall not discriminate against another person—
  - (a) by denying the other person access, or limiting the other person's access, to any benefit associated with premises occupied by the other person;
  - (b) by refusing to grant the other person consent to any assignment or sub-letting of premises;
  - (c) by evicting the other person from premises occupied by the other person; or
  - (d) by subjecting the other person to any other detriment in relation to premises occupied by the other person.

## **21 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 9 or 15 applies; or
  - (b) whose membership does not exceed 24 and to which admission is regulated by its constitution and so conducted that the members do not constitute a section of the public.
- (4) The Minister may by Order amend the number in paragraph (3)(b) and make transitional arrangements for the purposes of the amendment.

## **22 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 5**

## **OTHER PROHIBITED ACTS**

## **23 Unlawful advertising**

- (1) A person shall not advertise or cause to be advertised any matter –
  - (a) that indicates an intention to do an act that is prohibited by this Law; or
  - (b) that could reasonably be understood as indicating such an intention.

- (2) A publisher who publishes any matter described in paragraph (1) shall not be taken to have contravened that paragraph if the publisher proves –
  - (a) that, in publishing the matter, the publisher relied upon a statement made to the publisher by the advertiser that the matter indicated an intention to do an act which would not be prohibited by this Law; and
  - (b) that it was reasonable to rely upon the statement.
- (3) A person who knowingly or recklessly makes a statement described in paragraph (2)(a) which is misleading or false in a material particular shall be guilty of an offence and liable to a fine of level 4 on the standard scale.

## **24 Victimization**

- (1) A person shall not subject another person to any detriment on the ground that the other person has–
  - (a) made a complaint under this Law;
  - (b) instituted proceedings against any person under this Law;
  - (c) given information or produced a document to a person exercising a power or performing a function under or in relation to this Law;
  - (d) given information, produced a document or answered a question when required to do so under this Law;
  - (e) reasonably asserted any rights that a person (including that other person) has under this Law; or
  - (f) alleged that a person has committed an act which is prohibited by this Law.
- (2) A person shall not subject another person to any detriment on the ground that he or she believes that the other person proposes to do or has done an act mentioned in paragraph (1).
- (3) Paragraph (1)(f) shall not apply in relation to an allegation that a person makes, knowing it to be untrue.

## **25 Harassment**

- (1) A person shall not subject another person to harassment.
- (2) A person subjects another person to harassment if he or she, on grounds of any attribute mentioned in Article 2(1), engages in unwanted conduct which has the purpose or effect of –
  - (a) violating the other person’s dignity; or
  - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the other person.
- (3) Conduct shall be regarded as having the effect described in paragraph (2)(a) or (b) only if, having regard to all the circumstances, including in particular the perception of that other person, it should be reasonably considered as having that effect.

## **26 Relationships which have come to an end**

- (1) In this Article a “relevant relationship” is a relationship during the course of which an act of discrimination against, or of victimisation or harassment of, one party to the relationship (“B”) by the other party to it (“A”) is prohibited by Part 2, 3 or 4 or Article 24 or 25 or by Regulations.
- (2) Where a relevant relationship has come to an end A shall not –
  - (a) discriminate against B by subjecting B to a detriment; or
  - (b) subject B to victimisation or harassment,where the discrimination, victimisation or harassment arises out of and is closely connected to that

relationship.

## **27 Discriminatory practices**

- (1) A person shall not –
  - (a) apply a discriminatory practice; or
  - (b) operate practices or other arrangements which, in any circumstances, would call for the application by that person of a discriminatory practice.
- (2) For the purposes of this Law “discriminatory practice” means the application of a condition or requirement that –
  - (a) results in an act of discrimination described in Article 3(3) which is prohibited by Part 2, 3 or 4 or by Regulations; or
  - (b) would be likely to result in such an act if the persons to whom it is applied included persons of a group having any particular attribute mentioned in Article 2(1) notwithstanding that there has been no occasion for applying it.

## **28 Instructions to commit prohibited act**

A person who has authority over another person, or in accordance with whose wishes that other person is accustomed to act, shall not instruct the other person to do any act which is prohibited by this Law.

## **29 Pressure to commit prohibited act**

- (1) A person shall not induce, or attempt to induce, a person to do any act which is prohibited by this Law.
- (2) An attempted inducement is not prevented from falling within paragraph (1) because it is not made directly to the person in question, if it is made in such a way that he or she is likely to hear of it.

## **30 Liability of employer or principal for employee**

- (1) For the purposes of this Law –
  - (a) anything done by a person in the course of his or her employment shall be treated as 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; and
  - (b) anything done by a person as agent for another person with the authority, whether express or implied and whether precedent or subsequent, of that other person shall be treated as done by that other person as well as by the first-mentioned person.
- (2) In proceedings brought under this Law against a person in respect of an act alleged to be done by one of that person’s employees or agents, it shall be a defence for that person to prove that he or she took such steps as were reasonably practicable to prevent the employee or agent from doing that act or from doing, in the course of the employment or agency, acts of that description.

## **31 Liability of manager for voluntary worker**

- (1) For the purposes of this Law anything done by a voluntary worker in the course of his or her unpaid work shall be treated as done by his or her manager as well as by the voluntary worker, whether or not it was done with the manager’s knowledge or approval.
- (2) In proceedings brought under this Law against a manager in respect of an act alleged to be done by one of that manager’s voluntary workers, it shall be a defence for the manager to prove that he or she took such steps as were reasonably practicable to prevent the voluntary worker from doing that act or

from doing, in the course of the voluntary work, acts of that description.

### **32 Aiding prohibited acts**

- (1) A person who knowingly aids 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) For the purposes of paragraph (1) an employee or agent for whose act the employer or principal is liable under Article 30, or would be so liable but for paragraph (2) of that Article, shall be deemed to aid the doing of the act by the employer or principal.
- (3) For the purposes of paragraph (1) a voluntary worker for whose act the manager is liable under Article 31, or would be so liable but for paragraph (2) of that Article shall be deemed to aid the doing of the act by the manager.
- (4) For the purposes of paragraph (1) a person does not knowingly aid another person to do any act which is prohibited by this Law if –
  - (a) the other person makes a statement to him or her that the act, by reason of any provision of this Law or of Regulations, would not be prohibited;
  - (b) he or she relies on that statement; and
  - (c) it is reasonable for him or her to rely on the statement.
- (5) A person who knowingly or recklessly makes a statement described in paragraph (4)(a) which is misleading or false in a material particular shall be guilty of an offence and liable to a fine of level 4 on the standard scale.

## **PART 6**

### **ENFORCEMENT**

### **33 Discrimination Panel**

- (1) There shall be a Discrimination Panel.
- (2) The Panel shall discharge the duties imposed and exercise the powers and jurisdiction conferred on it by this Law.
- (3) Schedule 1 has effect to provide for the constitution of the Panel.

### **34 Discrimination officer**

A discrimination officer shall be appointed to discharge the duties imposed, and exercise the powers conferred, on the office holder by this Law.

### **35 Functions of JACS under this Law**

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

### **36 Functions of Employment Tribunal under this Law**

The Employment Tribunal shall discharge the duties imposed and exercise the powers and jurisdiction conferred on it by this Law.

*Initiating complaint*

### **37 Making a complaint**

- (1) A person (the “complainant”) may make a complaint, in writing, to the discrimination officer that another person (the “respondent”) has committed an act, or is treated as having committed an act, which is prohibited by this Law.
- (2) A complaint cannot be made more than 8 weeks after the act, or the last act, to which it relates was committed.
- (3) Subject to paragraphs (4) and (5), the discrimination officer shall record the complaint and inform the respondent, in writing, that it has been made.
- (4) Where it appears to the discrimination officer that the complaint relates to acts which may constitute an offence, the discrimination officer may defer taking any further action under the following provisions of this Part in respect of the complaint until such time as either a decision has been made not to charge any person with an offence in respect of the act or any criminal proceedings for such an offence have been concluded.
- (5) Where it appears to the discrimination officer that the complaint is trivial, frivolous or vexatious, the officer shall notify the complainant of the decision, in writing, and shall not take any further action in respect of the complaint.
- (6) A complainant may, within 28 days of receiving notice of a decision under paragraph (5), make a written request to the discrimination officer for the decision to be reviewed.
- (7) The discrimination officer shall refer a request made under paragraph (6) to –
  - (a) in the case of a complaint which concerns, or is done in connection with, employment or work, the chairman of the Employment Tribunal;
  - (b) in the case of any other complaint, the chairman of the Panel.
- (8) The chairman to whom a request is referred under paragraph (7) shall review the discrimination officer’s decision made under paragraph (5) and, if he or she is not of the opinion that the complaint is trivial, frivolous or vexatious, shall direct the discrimination officer to recommence action in respect of the complaint.
- (9) The discrimination officer shall comply with a direction given under paragraph (8).

#### *Employment and other work-related complaints*

### **38 Conciliation by conciliation officer**

- (1) The discrimination officer 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, in writing, of the referral.
- (2) JACS shall appoint a conciliation officer to deal with a complaint referred to it under paragraph (1).
- (3) If the complainant and respondent so agree, the conciliation officer shall endeavour to resolve the complaint by conciliation.
- (4) Anything communicated to the conciliation officer during conciliation shall not be admissible in evidence in any proceedings, unless the person who communicated it consents.
- (5) Notwithstanding paragraph 2(1) of the Schedule to the Jersey Advisory and Conciliation (Jersey) Law 2003, the conciliation officer shall have regard, in conducting the conciliation, to any code of practice published or approved by the Minister under Article 56.

### **39 Referral to Employment Tribunal**

- (1) Where a complainant and respondent in a complaint referred to JACS do not agree to conciliation or the complaint is not resolved by conciliation the conciliation officer shall, if the complainant so wishes, refer the complaint to the Employment Tribunal for a hearing.
- (2) The chairman of the Employment Tribunal shall –
  - (a) elect to hear the complaint personally;
  - (b) appoint the deputy chairman to hear the complaint; or
  - (c) appoint a panel to hear the complaint, comprising –
    - (i) the chairman or the deputy chairman, who shall preside, and
    - (ii) 2 other members.
- (3) In making any election or appointment under paragraph (2) the chairman of the Employment Tribunal shall have regard to the need to ensure that appointments are fairly distributed between members.
- (4) If the chairman of the Employment Tribunal is unable, for any reason, to act under paragraph (2), the deputy chairman shall act in his or her place.
- (5) In this Law, “Tribunal adjudicator” means the person or persons who, pursuant to paragraph (2), shall hear a complaint.

#### **40 Conduct of hearing by Tribunal adjudicator**

- (1) Subject to this Article and Articles 41 and 60, a Tribunal adjudicator may adopt such procedures as he or she or, as the case may require, the person presiding, thinks fit when hearing a complaint.
- (2) Where it appears to the Tribunal adjudicator that the complainant and respondent agree to conciliation and that the complaint is suitable for conciliation, the Tribunal adjudicator may refer the complaint back to the conciliation officer for conciliation.
- (3) A complaint may be referred back under paragraph (2) once only.
- (4) A Tribunal adjudicator may, with the agreement of the complainant and respondent, adjudicate upon the complaint upon their written submissions.
- (5) A Tribunal adjudicator may –
  - (a) for the purpose of adjudicating upon a complaint, request the attendance of witnesses and the production of documents; and
  - (b) 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.
- (6) A Tribunal adjudicator may, for the purpose of adjudicating upon a complaint, take independent, expert advice.
- (7) The complainant and respondent may each be represented or accompanied at the hearing by any person.
- (8) The Minister may approve forms to be used for the purposes of the hearing, including a questionnaire that may be submitted by the complainant to the respondent, for completion by that person, for the purpose of adducing the facts of the complaint.
- (9) Where the complainant submits a questionnaire approved under paragraph (8) to the respondent, the respondent must complete it and return it to the complainant within one month of its submission or such longer period as the complainant agrees or the Tribunal adjudicator allows and, at the same time, give a copy to the Tribunal adjudicator.
- (10) Where a panel is appointed as Tribunal adjudicator, any matter shall be decided by a majority of its members.

#### **41 Burden of proof in hearing by Tribunal adjudicator**

A Tribunal adjudicator shall find that a complaint is well-founded where it is proved on a balance of probabilities.

#### **42 Remedies available to Tribunal adjudicator**

- (1) Where a Tribunal adjudicator finds that a complaint is well-founded, the adjudicator may –
  - (a) make an order declaring 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 loss and hurt and distress, in an amount not exceeding £10,000; and
  - (c) recommend that the respondent take, within a specified period, action appearing to the adjudicator 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) The Minister, after consultation with the Bailiff, may by Order give directions as to the determination of amounts of compensation under paragraph (1)(b).
- (3) Directions given by Order under paragraph (2) may include (but not by way of limitation) directions –
  - (a) as to the matters which may be taken into consideration in determining amounts of compensation;
  - (b) as to whether or not interest may be added to amounts of compensation, and as to the rates of interest that may be applied;
  - (c) requiring a Tribunal adjudicator, when determining any amount of compensation, to have regard to or otherwise take into account, in the manner specified in the directions, any award made under the Employment (Jersey) Law 2003 in respect of the acts on which the complaint in respect of which the award is being made, was founded.
- (4) The States may by Regulations amend paragraph (1) so as to –
  - (a) alter the maximum amount of compensation that may be ordered by a Tribunal adjudicator;
  - (b) introduce different maximum amounts that may be so ordered in respect of the elements of compensation for 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 loss or for hurt and distress.
- (5) A Tribunal adjudicator shall not make any award of costs.
- (6) Where the complainant has also made a complaint regarding the respondent to the Employment Tribunal under the Employment (Jersey) Law 2003 in respect of the acts on which the complaint under this Law is founded, the Tribunal adjudicator may defer making any order under paragraph (1), (a) or (b) or any recommendation under paragraph (1)(c) pending the final determination of the complaint under the Employment (Jersey) Law 2003.

#### **43 Power of Tribunal adjudicator to serve non-discrimination notice**

- (1) If, during the hearing of a complaint, the Tribunal adjudicator is satisfied that the respondent has done any act which is prohibited by this Law, the Tribunal adjudicator may serve on the respondent a non-discrimination notice requiring the respondent –
  - (a) not to commit any acts that are prohibited by this Law; and



- (b) where compliance with sub-paragraph (a) involves changes in any of the respondent's practices or other arrangements –
  - (i) to inform the Employment Tribunal that he or she has effected those changes and what those changes are, and
  - (ii) to take such steps as may be reasonably required by the notice for the purpose of informing other persons of the changes.
- (2) A non-discrimination notice may require the respondent to supply the Employment Tribunal, on more than one occasion and at specified times, with such information as may be required to verify that the notice has been complied with.
- (3) A Tribunal adjudicator shall not serve a non-discrimination notice on a respondent unless the adjudicator has first –
  - (a) notified the respondent that the adjudicator is minded to issue the notice, specifying the grounds on which the notice is to be issued; and
  - (b) offered the respondent an opportunity of making oral or written representations, within a period of not less than 28 days, on the grounds specified in the notice; and
  - (c) taken account of any representations so made.
- (4) A respondent who does not comply with a non-discrimination notice shall be guilty of an offence and liable to a fine of level 4 on the standard scale.

#### **44 Duty to report outcome of complaint**

- (1) A conciliation officer appointed to deal with a complaint, who resolves the complaint by conciliation, shall report the outcome to the discrimination officer.
- (2) A Tribunal adjudicator shall report the outcome of the hearing of a complaint to the discrimination officer.

#### *Other complaints*

#### **45 Conciliation by discrimination officer**

- (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 discrimination officer shall endeavour to resolve the complaint by conciliation.
- (3) Anything communicated to the discrimination officer during conciliation shall not be admissible in evidence in any proceedings, unless the person who communicated it consents.
- (4) In conducting the conciliation, the discrimination officer shall have regard to any code of practice published or approved by the Minister under Article 56.

#### **46 Referral to Panel**

- (1) Where a complainant and respondent in a complaint described in Article 45(1) do not agree to conciliation, or the complaint is not resolved by conciliation, the discrimination officer shall, if the complainant so wishes, refer the complaint to the Panel for a hearing.
- (2) The chairman of the Panel shall –
  - (a) elect to hear the complaint personally;
  - (b) appoint the deputy chairman to hear the complaint; or

- (c) appoint a sub-panel to hear the complaint, comprising –
  - (i) the chairman or the deputy chairman, who shall preside, and
  - (ii) 2 other members.
- (3) In making any election or appointment under paragraph (2) the chairman of the Panel shall have regard to the need to ensure that appointments are fairly distributed between members.
- (4) If the chairman of the Panel is unable, for any reason, to act under paragraph (2), the deputy chairman shall act in his or her place.
- (5) In this Law “Panel adjudicator” means the person or persons who, pursuant to paragraph (2), shall hear a complaint.

#### **47 Conduct of hearing by Panel adjudicator**

- (1) Subject to this Article and Articles 48 and 60, a Panel adjudicator may adopt such procedures as he or she or, as the case may require, the person presiding, thinks fit when hearing a complaint.
- (2) Where it appears to the Panel adjudicator that the complainant and respondent agree to conciliation and that the complaint is suitable for conciliation, the Panel adjudicator may refer the complaint back to the discrimination officer for conciliation.
- (3) A complaint may be referred back under paragraph (2) once only.
- (4) A Panel adjudicator may, with the agreement of the complainant and respondent, adjudicate upon the complaint upon their written submissions.
- (5) A Panel adjudicator may –
  - (a) for the purpose of adjudicating upon a complaint, request the attendance of witnesses and the production of documents; and
  - (b) 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.
- (6) A Panel adjudicator may, for the purpose of adjudicating upon a complaint, take independent, expert advice.
- (7) The complainant and respondent may each be represented or accompanied at the hearing by any person.
- (8) The Minister may approve forms to be used for the purposes of the hearing, including a questionnaire that may be submitted by the complainant to the respondent, for completion by that person, for the purpose adducing the facts of the complaint.
- (9) Where the complainant submits a questionnaire approved under paragraph (8) to the respondent, the respondent must complete it and return it to the complainant within one month of its submission, or such longer period as the complainant agrees or the Panel adjudicator allows and, at the same time, give a copy to the Panel adjudicator.
- (10) Where a sub-panel is appointed as Panel adjudicator, any matter shall be decided by a majority of its members.

#### **48 Burden of proof in hearing by Panel adjudicator**

A Panel adjudicator shall find that a complaint is well-founded where it is proved on a balance of probabilities.

#### **49 Remedies available to Panel adjudicator**

- (1) Where a Panel adjudicator finds that a complaint is well-founded, the adjudicator may –

- (a) make an order declaring 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 loss and hurt and distress in an amount not exceeding £10,000; and
  - (c) recommend that the respondent take, within a specified period, action appearing to the adjudicator 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) The Minister, after consultation with the Bailiff, may by Order give directions as to the determination of amounts of compensation under paragraph (1)(b).
- (3) Directions given by Order under paragraph (2) may include (but not by way of limitation) directions –
- (a) as to the matters which may be taken into consideration in determining amounts of compensation;
  - (b) as to whether or not interest may be added to amounts of compensation, and as to the rates of interest that may be applied.
- (4) The States may by Regulations amend paragraph (1) so as to –
- (a) alter the maximum amount of compensation that may be ordered by a Panel adjudicator;
  - (b) introduce different maximum amounts that may be so ordered in respect of the elements of compensation for 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 loss or for hurt and distress.
- (5) A Panel adjudicator shall not make any award of costs.

## **50 Power of Panel adjudicator to serve non-discrimination notice**

- (1) If, during the hearing of a complaint, the Panel adjudicator is satisfied that the respondent has done any act which is prohibited by this Law, the Panel adjudicator may serve on the respondent a non-discrimination notice requiring the respondent –
- (a) not to commit any acts that are prohibited by this Law; and
  - (b) where compliance with sub-paragraph (a) involves changes in any of the respondent's practices or other arrangements –
    - (i) to inform the Panel that he or she has effected those changes and what those changes are, and
    - (ii) to take such steps as may be reasonably required by the notice for the purpose of informing other persons of the changes.
- (2) A non-discrimination notice may require the respondent to supply the Panel, on more than one occasion and at specified times, with such information as may be required to verify that the notice has been complied with.
- (3) A Panel adjudicator shall not serve a non-discrimination notice on a respondent unless the adjudicator has first –
- (a) notified the respondent that the adjudicator is minded to issue the notice, specifying the grounds on which the notice is to be issued; and
  - (b) offered the respondent an opportunity of making oral or written representations, within a period of not less than 28 days, on the grounds specified in the notice; and
  - (c) taken account of any representations so made.
- (4) A respondent who does not comply with a non-discrimination notice shall be guilty of an offence and

liable to a fine of level 4 on the standard scale.

### *Enforcement and appeals*

#### **51 Enforcement**

- (1) An order by an adjudicator for a respondent to pay compensation to a complainant shall be enforceable as if it were an order by the Judge condemning a defendant to pay a sum of money.
- (2) Accordingly, an adjudicator, on or after making an order for the payment of compensation, may further order –
  - (a) permission to sell;
  - (b) an arrest of wages.
- (3) However, an adjudicator shall not have the power to order the imprisonment of a respondent for debt.
- (4) Where, notwithstanding the powers of enforcement conferred by paragraphs (1) and (2), any compensation ordered by an adjudicator to be paid by a respondent to a complainant has not been paid or otherwise recovered, the complainant may apply to the Judge for the order to be enforced.
- (5) On an application under paragraph (4), the Judge shall have the same powers to make further orders for the enforcement of the adjudicator's order as if it were an order made by the Judge condemning a defendant to pay a sum of money.
- (6) The powers to make rules of court under Article 13 of the Royal Court (Jersey) Law 1948 and Article 2 of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1967 shall include the power to make rules regarding the enforcement of an order for compensation made by an adjudicator.
- (7) In this Article –

“adjudicator” means a Panel adjudicator or Tribunal adjudicator;

“Judge” means the Judge of the Petty Debts Court.

#### **52 Rights of appeal**

- (1) A complainant or respondent aggrieved by a finding of a Tribunal adjudicator or Panel adjudicator on the hearing of a complaint may appeal to the Royal Court –
  - (a) on a question of law; or
  - (b) on the ground that the decision of the Tribunal adjudicator or Panel adjudicator was unreasonable, having regard to all the circumstances of the case.
- (2) A complainant or respondent may appeal under paragraph (1) only with the leave of the Tribunal adjudicator or Panel adjudicator, as the case requires.
- (3) A complainant or respondent may appeal to the Royal Court against a decision of a Tribunal adjudicator or Panel adjudicator to refuse leave under paragraph (2).
- (4) A respondent aggrieved by the service of a non-discrimination notice under Article 43 or 50 or by the requirements of such a notice may appeal to the Royal Court.
- (4) An appeal under this Article may be made only within the period of 28 days following the date the finding or decision was given or the non-discrimination notice served.

## **PART 7**

### **MISCELLANEOUS AND CLOSING**

### **53 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).

### **54 Limitation of liability**

- (1) A conciliation officer, the discrimination officer, a member of the Employment Tribunal and a member of the Panel shall not be liable in damages for anything done or omitted in the discharge, or purported discharge, of any functions under this Law.
- (2) Paragraph (1) shall not apply –
  - (a) if it is shown that the act or omission was in bad faith;
  - (b) so as to prevent an award of damages in respect of an act or omission on the ground that the act or omission was unlawful by virtue of Article 7(1) of the Human Rights (Jersey) Law 2000.

### **55 Costs**

Notwithstanding paragraph 11 of the Schedule to the Jersey Advisory and Conciliation (Jersey) Law 2003 JACS shall not charge any fee, or make any other charge, in respect of the discharge of its functions under this Law.

### **56 Codes of practice**

- (1) The Minister may publish codes of practice containing guidance regarding –
  - (a) the elimination of discrimination in general and of acts which are prohibited by this Law; and
  - (b) the promotion of equality of opportunity between relevant classes of persons.
- (2) The Minister may approve codes of practice published by other persons containing the guidance described in paragraph (1).
- (3) Failure to observe any code of practice published under paragraph (1) or approved under paragraph (2) shall not, of itself, constitute an act which is prohibited by this Law but may be taken into consideration in any hearing or proceedings under Part 6.

### **57 Records of decisions**

- (1) The discrimination officer shall keep a record of any finding and order made under Article 42 or 45 and of any non-discrimination notice served under Article 43 or 50.
- (2) The discrimination officer shall make records kept under paragraph (1) available for inspection by the public.

### **58 Annual report**

- (1) The chairman of the Panel shall, as soon as may be practicable following the end of a year, submit to the Minister a report upon –
  - (a) the activities of the Panel and the discrimination officer during the year;
  - (b) complaints made during the year;

- (c) the outcome of complaints determined during the year;
  - (d) any developments in the field of discrimination generally and concerning acts which are prohibited by this Law.
- (2) The discrimination officer shall provide the chairman of the Panel with such information as he or she may require for the purposes of completing the report.
- (2) The Minister shall present the report to the States.

## **59 Regulations**

- (1) The States may by Regulations make provision –
- (a) to add or vary an attribute to which the Law is to apply;
  - (b) as to what constitutes discrimination on the ground of an attribute;
  - (c) to add or vary acts of discrimination on the grounds of an attribute that are to be prohibited;
  - (d) to add or vary circumstances in which an act of discrimination on the ground of an attribute is not prohibited.
- (2) Regulations made under paragraph (1) may also make incidental, supplementary and transitional provisions.
- (3) The powers conferred by paragraphs (1) and (2) may be exercised so as to amend this Law.
- (4) Regulations made under paragraphs (1) and (2) may also make consequential amendments to other enactments.

## **60 Orders relating to procedure**

- (1) The Minister, after consultation with the Bailiff, may by Order –
- (a) specify the procedures to be followed in relation to a hearing by a Tribunal adjudicator, and the manner in which the hearing is to be conducted;
  - (b) specify the procedures to be followed in relation to a hearing by a Panel adjudicator, and the manner in which the hearing is to be conducted.
- (2) Without prejudice to the generality of paragraph (1) an Order made under it may specify the procedures to be adopted –
- (a) where it appears that a complaint being heard by a Tribunal adjudicator raises an issue that should be heard by a Panel adjudicator, or vice versa;
  - (b) where it appears to a Tribunal adjudicator or Panel adjudicator that a hearing before the adjudicator concerns an employment dispute to which Article 86 of the Employment (Jersey) Law 2003 applies;
  - (c) where, pursuant to an Order made under Article 91 of the Employment (Jersey) Law 2003, a prohibited act is referred to the Discrimination Panel by the Employment Tribunal, or the Employment Tribunal continues, under this Law, proceedings commenced under the Employment (Jersey) Law 2003, to the extent that the proceedings are concerned with such an act.
- (3) Without prejudice to the generality of paragraph (1), an Order made under it may specify the circumstances in which any hearing before a Tribunal adjudicator or Panel adjudicator shall or may be heard in public or in private.
- (4) An Order made under paragraph (1) may also make incidental, supplementary and transitional provisions.
- (5) The Minister may, by Order, make such transitional arrangements and savings as he or she considers appropriate upon the commencement of this Law.

**61 Employment Laws amended**

Schedule 2 shall have effect to amend enactments.

**62 Citation and commencement**

This Law may be cited as the Discrimination (Jersey) Law 200- and shall come into force on such day or days as the States by Act appoint.

## **SCHEDULE 1**

(Article 33)

### **DISCRIMINATION PANEL**

#### **1 Interpretation**

In this Schedule –

“Jersey Appointments Commission” means the Commission established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005;

“member” means the chairman, deputy chairman or any other member of the Panel.

#### **2 Constitution**

The Panel shall consist of –

- (a) a chairman, being a person who holds a qualification in law;
- (b) a deputy chairman, being a person who holds a qualification in law; and
- (c) not fewer than 4 or more than 12 other members.

#### **3 Appointment of members**

- (1) The recruitment of members shall be overseen by, and conducted in accordance with any guidelines produced by, the Jersey Appointments Commission.
- (2) The Minister shall then, after consultation with the Jersey Appointments Commission, appoint the members of the Panel.
- (3) In the case of the chairman or deputy chairman, the Minister shall make the appointment with the Bailiff’s concurrence.
- (4) A member is not eligible for re-appointment on the expiry of his or her term of office.

#### **4 Term of office of members**

- (1) A member’s term of office shall be such period, not exceeding 5 years, as the Minister specifies when appointing the member.
- (2) A member’s term of office shall be extended once, if he or she so requests, for a further period, of his or her choosing, not exceeding 5 years.
- (3) A request referred to in paragraph (2) shall be in writing, made to the Minister.
- (4) A member may nevertheless continue in office, after his or her term of office has expired, for so long as may be necessary to complete any proceeding that the member began to hear before such expiry.

#### **5 Termination of office**

- (1) The chairman or deputy chairman shall cease to hold office if he or she ceases to hold a qualification in law.
- (2) Any member shall cease to hold office on delivering his or her written resignation to the Minister.
- (3) Any member shall cease to hold office –



- (a) on becoming bankrupt;
  - (b) on the appointment of a curator of the member's property and affairs under the Mental Health (Jersey) Law 1969;
  - (c) on being received into guardianship under the Mental Health (Jersey) Law 1969;
  - (d) if, without the consent of the chairman, he or she has, for a continuous period of more than 6 months, been absent from any meetings of the Panel or unavailable for appointment under Article 46(2); or
  - (e) on being removed by the Royal Court –
    - (i) on the grounds that he or she has neglected the duties of a member, or
    - (ii) on the grounds of misconduct proved to the satisfaction of the Court.
- (4) A member shall not cease to hold office for any other reason.

## **6 Remuneration and allowances**

- (1) The Minister shall establish rates for remuneration of members.
- (2) Members may also be paid such reasonable expenses as the Minister may determine.

## **7 Duties of chairman and deputy chairman**

- (1) The chairman shall discharge the duties imposed on the chairman by this Law.
- (2) The chairman shall –
  - (a) provide guidance to members appointed to hear a complaint; and
  - (b) advise members appointed to hear a complaint when so requested by one of them.
- (3) The deputy chairman shall discharge the duties of the chairman whenever the chairman is, for any reason, unable to discharge them.

## SCHEDULE 2

(Article 61)

### EMPLOYMENT LAWS AMENDED

#### 1 Employment (Jersey) Law 2003 amended

- (1) In this paragraph, “principal Law” means the Employment (Jersey) Law 2003.
- (2) At the end of Article 91(4) of the principal Law there shall be added the following sub-paragraphs –
  - “(i) 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 (Jersey) Law 200-, where a complaint in respect of the act would be referable to the Tribunal or to the Discrimination Panel under that Law;
  - (j) for the procedures to be adopted where, pursuant to an Order made under Article 60 of the Discrimination (Jersey) Law 200-, an employment dispute to which Article 86 of this Law applies is referred to the Tribunal by the Discrimination Panel;
  - (k) for the procedures to be adopted where it appears to the Tribunal that a hearing before it under the Discrimination (Jersey) Law 200- concerns an employment dispute to which Article 86 of this Law applies.”.
- (3) For Article 93 of the principal Law there shall be substituted the following Article –

#### “93 Enforcement

- (1) A decision of the Tribunal making an award of compensation or for the payment of any other sum of money in proceedings in respect of an employment dispute to which Article 86 applies shall be enforceable as if it were an order by the Judge condemning a defendant to pay a sum of money.
  - (2) The Tribunal, on or after making an award described in paragraph (1), may further order –
    - (a) permission to sell;
    - (b) an arrest of wages.
  - (3) However, the Tribunal shall not have the power to order the imprisonment of a respondent for debt.
  - (4) Where, notwithstanding the powers of enforcement conferred by paragraphs (1) and (2), any compensation awarded by the Tribunal to be paid by an employer to an employee has not been paid or otherwise recovered, the employee may apply to the Judge for the order to be enforced.
  - (5) On an application under paragraph (4), the Judge shall have the same powers to make further orders for the enforcement of the Tribunal’s order as if it were an order made by the Judge condemning a defendant to pay a sum of money.
  - (6) The powers to make rules of court under Article 13 of the Royal Court (Jersey) Law 1948 and Article 2 of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1967 shall include the power to make rules regarding the enforcement of a decision described in paragraph (1).
  - (7) In this Article “Judge” means the Judge of the Petty Debts Court.”.
- (3) In Article 94 of the principal Law for paragraph (1) there shall be substituted the following paragraphs –

- “(1) An employer or employee aggrieved by a decision of the Tribunal may appeal to the Royal Court –
    - (a) on a question of law; or
    - (b) on the ground that the Tribunal’s decision was unreasonable, having regard to all the circumstances of the case.
  - (2) An employer or employee may appeal under paragraph (1) only with the leave of the Tribunal or of the Royal court.”.
- (4) 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 paragraph (2), “Jersey ship” means a ship or sailing vessel which may be registered in the register maintained pursuant to Article 11 of the Shipping (Jersey) Law 2002.”.

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

In Article 1 of the Jersey Advisory and Conciliation (Jersey) Law 2003 –

- (a) the text shall be numbered as paragraph (1) of that Article;
- (b) in paragraph (1), after the definition “JACS” there shall be inserted the following definition –
  - “‘Jersey ship’ means a ship or fishing vessel which may be registered in the register maintained pursuant to Article 11 of the Shipping (Jersey) Law 2002;”;
- (b) 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 Employment Relations (Jersey) Law 2007 amended**

In Article 1 of the Employment Relations (Jersey) Law 2007 –

- (a) the text shall be numbered as paragraph (1) of that Article;
- (b) in paragraph (1), after the definition “JACS” there shall be inserted the following definition –
  - “‘Jersey ship’ means a ship or fishing vessel which may be registered in the register maintained pursuant to Article 11 of the Shipping (Jersey) Law 2002;”;
- (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] *Special Committee on Sex Discrimination draft Code of Good Practice for Maternity Rights 1991 and Sexual Harassment in the Workplace 1992 (employer and employee versions); Maternity Entitlement in Employment: Code of Good Practice P.44/1993.*

[2] <http://www.statesassembly.gov.je/frame.asp> – Propositions – 2002 No. 32

[3] <http://www.statesassembly.gov.je/frame.asp> – Propositions – 2003 No. 120

[4] *JACS The A-Z of Work: A Handbook for Employees*

[5] <http://www.gov.je/NR/rdonlyres/D88739AA-C033-46B4-B550-6411E580EF04/0/20070213Consultationresultsforwebsite.pdf>

[6] <http://www.gov.je/NR/rdonlyres/D88739AA-C033-46B4-B550-6411E580EF04/0/20070213Consultationresultsforwebsite.pdf>

[7] *See paragraph 1.3*

[8] *International Convention on the Elimination of all Forms of Racial Discrimination see paragraph 1.1*

[9] <http://www.gov.je/ChiefMinister/International+Relations/discriminationjerseylaw200-.htm>

[10] *See p.3, 29 January, 1991*

[11] <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

[12] <http://www.gov.je/ChiefMinister/International+Relations/discriminationjerseylaw200-.htm>

[13] *Part 3 Articles 13 –16*

[14] *Awards in the Employment Tribunal are based on contractual elements and a £10,000 cap is applied. However, in Unfair Dismissal cases, there is the additional right to an award based on salary and length of service. This additional award in unfair dismissal cases is not subject to a cap as it is based on a specific calculation.*

[15] *The Commission was established in 2007. It replaced the former Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission.*

[16] *Chartered Institute of Personnel Development*

[17] *Jersey Advisory and Conciliation Service*