

STATES OF JERSEY



DRAFT DISCRIMINATION (JERSEY) LAW 201- (S.R.7/2013) – RESPONSE OF THE MINISTER FOR SOCIAL SECURITY

**Presented to the States on 7th May 2013
by the Minister for Social Security**

STATES GREFFE

**DRAFT DISCRIMINATION (JERSEY) LAW 201- (S.R.7/2013) – RESPONSE
OF THE MINISTER FOR SOCIAL SECURITY**

Ministerial Response to: S.R.7/2013

Ministerial Response required by: 14th June 2013

Review title: Draft Discrimination (Jersey) Law 201-

Scrutiny Panel: Health, Social Security and Housing

INTRODUCTION

The Minister for Social Security (the ‘Minister’) is grateful to the Health, Social Security and Housing Scrutiny Panel (the ‘Panel’) for undertaking a review of the Draft Discrimination (Jersey) Law 201- (the ‘draft Law’).

FINDINGS

The Minister presents the following responses to the Panel’s 6 recommendations –

1. *The Minister should issue additional guidance for the Jersey Employment Tribunal in order to clarify the uncertainty of whether a breach of the Draft Law may be committed by an employer extra-territorially.*

Article 2(1) of the draft Law provides that, in general, the draft Law will apply to acts of discrimination committed in Jersey. Article 2(2) of the draft Law then provides that, in respect of employment, it covers employment ‘wholly or mainly’ in Jersey. The Minister is satisfied that the position is sufficiently clear and is consistent with similar provisions in other legislation, in particular the Employment (Jersey) Law 2003 (the ‘Employment Law’), which also applies to employment ‘wholly or mainly’ in Jersey (see Article 101 of that Law). The Minister is not aware of any difficulty or ambiguity arising from the application of that provision of the Employment Law in practice. While it might be possible to imagine difficult scenarios where the application of the words ‘wholly or mainly’ might not be straightforward, it is not practicable to issue guidance specifically for each of them. Ultimately, the Minister is not persuaded that the Employment and Discrimination Tribunal (the ‘Tribunal’) should be guided by the Minister in this respect and the Minister is content that the Tribunal can reach a conclusion on the evidence as to the application of these words.

2. *In view of the international nature of many businesses that trade within Jersey, the Minister should consider broadening Article 12 of the Draft Law to encompass foreign law as well as Jersey law partnerships which operate within Jersey.*

The Minister agreed that the draft Law should also encompass foreign law partnerships and lodged an amendment on 30th April 2013 (P.6/2013 Amd.).

3. *The Minister should consider taking a different approach to the sanctions which may be imposed on profit and non-profit making sectors in relation to the same discrimination acts.*

The draft Law does not make provision for the imposition of punitive damages, sanctions and fines. Where there is no financial loss to a complainant, for example in a voluntary or honorary position, any compensation for hurt and distress is limited to £5,000 and so this is the maximum amount that can be awarded. Even this sum will only be awarded in the most serious of cases. The Minister has the power under Article 42(3)(a) of the draft Law to prescribe by Order the matters which the Tribunal may take into consideration in determining amounts of compensation. It is the Minister's intention to provide guidance in determining awards for hurt and distress. There will be cases where compensation will not be appropriate and Article 42 makes it clear that compensation is merely one of the options available to the Tribunal. It is anticipated that many cases involving voluntary work could be adequately dealt with through a Tribunal declaration and/or a recommendation.

4. *Over time, it would be beneficial for the Minister to consider establishing an Employment and Discrimination Appeals Tribunal to sit in common between Jersey and Guernsey in order to hear appeals from both jurisdictions. Discussions should take place with Guernsey to determine whether a joint Employment and Discrimination Appeals Board could be established.*

The Minister will consider the possibility of establishing a joint appeals tribunal.

5. *The Minister should give further consideration to providing the Tribunal with other options such as the power to issue non-discrimination notices in the first instance as part of the "bedding-in" process.*

The Minister had considered the issue of non-discrimination notices during the preparation of the draft Law but decided that, on balance, these would be overly burdensome. It was always the Minister's intention to simplify the draft Law as far as possible, avoiding any unnecessary bureaucracy. The administration of non-discrimination notices would require the establishment of a separate inspection and enforcement system with criminal penalties, which would operate in addition to the right to make a complaint to the Tribunal. This would bring additional financial and manpower implications. In Guernsey, a non-discrimination notice may be issued by the Commerce and Employment Department, whereas the Panel proposes that they should be issued by the Tribunal. However matters will only come to the attention of the Tribunal when an individual complaint is made.

The Minister is satisfied that the Tribunal has enough tools at its disposal to deal with complaints appropriately and proportionately. For example, the Tribunal can make a declaration of the rights of the parties and can also recommend that the respondent takes appropriate practical action, within a specified period, to reduce the adverse effect of the discrimination on the complainant. If the respondent fails to action the Tribunal's recommendations, the Tribunal could then either order the respondent to pay compensation, or increase the amount of any compensation that the respondent may previously have been ordered to pay.

A non-discrimination notice as a method of providing an initial “bedding in” or warning is, by contrast, a disproportionately heavy-handed and time consuming procedure which would not deliver a swift, practical or efficient resolution for either party. This would be likely to lead to delays in the Tribunal proceedings; for example, to give the respondent time to make representations as to the grounds specified in the notice, and to allow the respondent a reasonable period of time to comply with the notice. The Minister is of the view that a criminal sanction for non-compliance is not a reasonable or proportionate remedy. The Minister is not persuaded that the power to issue non-discrimination notices will offer anything of additional practical effect beyond the existing comprehensive powers that will be at the disposal of the Tribunal. Tribunal recommendations are likely to be a more effective “bedding-in” remedy than non-discrimination notices because they will be quicker and can achieve the same result, which is to change behaviour.

6. *Following approval of the Draft Law, the Minister should ensure that plain English guidance notes are made available to all businesses and voluntary organisations to assist them in complying with the Law.*

Agree. The Minister has plans to undertake an awareness campaign will be required, subject to States approval of the draft Law. The Jersey Advisory and Conciliation Service (JACS) has been providing public and in-house training on the principles of employment related discrimination since 2008. Many organisations have supported these courses; approximately 900 delegates have taken advantage of this training to date. Additional budget has been provided to enable JACS to provide discrimination training at no cost to delegates during 2013 and 2014.

The Minister is pleased to note that the panel generally supports the introduction of the draft Law, as stated in the Panel’s media release of 3rd May 2013. The Minister is satisfied that the draft Law is fit for purpose and is committed to undertaking a significant publicity campaign in 2014.