



Jersey

DISCRIMINATION (DISABILITY) (JERSEY) REGULATIONS 201-

Report

Explanatory Note



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Arrangement

Regulation

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

THE STATES, in pursuance of Articles 5 and 47 of the Discrimination (Jersey) Law 2013, have made the following Regulations –

1 Discrimination (Jersey) Law 2013 amended

The Discrimination (Jersey) Law 2013 is amended in accordance with Regulations 2 to 7.

2 Article 6 amended

In Article 6 after paragraph (10) there shall be added the following paragraphs –

- “(11) In relation to a person who has a particular disability (‘disabled person’), a person (‘the person’) does not directly discriminate against another person who does not have that particular disability (‘the subject’) if the person treats the disabled person more favourably than the subject because of the disabled person’s particular disability.
- (12) Without prejudice to the generality of paragraph (1) but subject to paragraph (13), a person directly discriminates against a disabled person (‘the subject’) if –
 - (a) the person treats the subject unfavourably because of something arising as a consequence of the subject’s disability; and
 - (b) the person cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (13) Paragraph (12) does not apply if the person shows that he or she did not know, and could not have been reasonably expected to know, that the subject had the disability.”.



3 Article 7 amended

In Article 7(4) after sub-paragraph (e) there shall be added the following sub-paragraph –

“(f) disability”.

4 Article 7A inserted

After Article 7 there shall be inserted the following Article –

“7A What constitutes indirect discrimination – failure to make reasonable adjustments regarding disability

- (1) If a provision, criterion or practice of a person (‘the person’) puts a disabled person (‘the subject’) at a substantial disadvantage in comparison with persons who are not disabled, the person discriminates against the subject if the person fails to take reasonable steps to avoid the substantial disadvantage.
- (2) If a disabled person (‘the subject’) is put at a substantial disadvantage in comparison with persons who are not disabled by reason of a physical feature of premises, a person (‘the person’) discriminates against the subject if the person fails to take reasonable steps to avoid the substantial disadvantage.
- (3) If a disabled person (‘the subject’) would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in comparison with persons who are not disabled, a person (‘the person’) discriminates against the subject if the person fails to take such steps as it is reasonable to take to provide the auxiliary aid.
- (4) Paragraphs (1) to (3) apply only if the person knows or reasonably should have been expected to know –
 - (a) that the subject has the disability; and
 - (b) of the substantial disadvantage that the provision, criterion, practice, physical feature of premises or lack of auxiliary aid would cause to the subject.
- (5) In taking reasonable steps to avoid the substantial disadvantage described in paragraph (1), (2) or (3), the person must not require the subject to pay any or all of the person’s costs in taking such steps.
- (6) For the purposes of paragraph (2) a physical feature includes –
 - (a) a feature arising from the design or construction of a building;
 - (b) a feature of an approach to, exit from or access to a building;
 - (c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises;
 - (d) any other physical element or quality.
- (7) For the purposes of paragraph (2), avoiding the substantial disadvantage includes –
 - (a) removing the physical feature in question;

- (b) altering it; or
 - (c) providing a reasonable means of avoiding it.
- (8) For the purposes of paragraph (3), the reference to an auxiliary aid includes a reference to an auxiliary service.
- (9) In determining whether the person has taken reasonable steps to avoid the substantial disadvantage described in paragraph (1), (2) or (3), matters to be taken into account include –
- (a) the extent to which any steps are, or would be if taken, effective to prevent or remove the substantial disadvantage;
 - (b) the extent to which any steps are, or would be if taken, practical;
 - (c) the cost of any steps that have or might be taken;
 - (d) the extent of the financial, administrative and any other resources available to the person, including any provided by a third party, for the purpose of taking any steps;
 - (e) characteristics of the person such as the nature of the person’s business, if any, and size.”.

5 Schedule 1 amended

In Schedule 1 after paragraph 7 there shall be added the following paragraph –

“8 Disability

- (1) Disability is a protected characteristic.
- (2) A person has the protected characteristic if the person has one or more long-term physical, mental, intellectual or sensory impairments which, when taken together if more than one, can adversely affect the person’s ability to engage or participate in any activity in respect of which an act of discrimination is prohibited under this Law.
- (3) In relation to the protected characteristic –
 - (a) a reference to a person who has the protected characteristic is a reference to a disabled person;
 - (b) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability.
 - (c) a reference to persons who share a particular protected characteristic is a reference to persons who have the same disability.
- (4) Each of the following is a disability regardless of whether paragraph (2) applies –
 - (a) cancer,
 - (b) multiple sclerosis;

- (c) HIV infection, that is infection by a virus capable of causing Acquired Immune Deficiency Syndrome.
- (5) Addiction to alcohol, nicotine or any other substance is not a disability, unless the addiction was originally the result of the administration of medically prescribed drugs or other medical treatment.
- (6) None of the following is a disability –
 - (a) a tendency to set fires;
 - (b) a tendency to steal;
 - (c) a tendency to physical or sexual abuse of other persons.

6 Schedule 2, Part 1 amended

Paragraph 2F of Part 1 of the Schedule shall be repealed.

7 Schedule 2, Part 5 inserted

In Schedule 2 after Part 4 there shall be inserted the following Part –

“PART 5

EXCEPTIONS TO PROHIBITED ACTS: DISABILITY

42 Disability: goods, facilities and services

- (1) A person does not contravene Article 22 by discriminating against a person under Article 7A where the contravention relates to the carrying of passengers for hire or reward in a public service vehicle.
- (2) In this paragraph ‘public service vehicle’ has the same meaning as in Article 1 of the Motor Traffic (Jersey) Law 1935.

43 Disability: building bye-laws

A person does not contravene anything in Parts 3, 4, 5 or 6 by discriminating against a person under Article 7A where the contravention arises from compliance with any provision of the Building Bye-laws (Jersey) 2007.

44 Disability: admission to schools

- (1) A person does not contravene Article 21(1), so far as relating to the protected characteristic of disability, only by applying arrangements for selective admission to a school.
- (2) In sub-paragraph (1), ‘arrangements for selective admission’ mean arrangements which provide for some or all of a school’s pupils to

be selected by reference to general or special ability or aptitude, with a view to admitting only pupils of high ability or aptitude.

45 Disability: financial and insurance arrangements

- (1) Parts 3 and 5 do not prohibit a person discriminating against a person, in so far as such discrimination relates to the protected characteristic of disability, in relation to the terms on which an annuity or policy of insurance is offered to, or may be obtained by, that person, if the discrimination is reasonable in the circumstances, having regard to any statistical or actuarial data on which it is reasonable for the person to rely.
- (2) Article 22 does not prohibit a person discriminating against another person, in so far as such discrimination relates to the protected characteristic of disability, in the provision of a relevant financial service, if the provision is in pursuance of arrangements made by an employer for the service-provider to provide the service to the employer's employees, and other persons, as a consequence of the employment.
- (3) In this paragraph 'relevant financial service' means –
 - (a) insurance or a related financial service; or
 - (b) a service relating to membership of or benefits under a personal pension scheme.

46 Disability: sport and competitions

A person does not contravene this Law in relation to the protected characteristic of disability only by doing anything in relation to the participation of persons in a sport or competition which is consistent with the rules relating to that sport or competition of an international competition or international organisation.”.

8 Citation and commencement

- (1) These Regulations may be cited as the Discrimination (Disability) (Jersey) Regulations 201-.
- (2) Subject to paragraph (3), these Regulations shall come into force on 1st September 2018.
- (3) Regulation 4, in relation to the insertion of Article 7A(1), shall come into force on 1st September 2020.