



Jersey

DISCRIMINATION (AGE) (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 1(2), 5 and 47 of the Discrimination (Jersey) Law 2013, have made the following Regulations –

1 Amendment of the Discrimination (Jersey) Law 2013

The Discrimination (Jersey) Law 2013 is amended in accordance with these Regulations.

2 Article 7 amended

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

“(e) age.”.

3 Schedule 1 amended

In Schedule 1, after paragraph 6 there shall be added the following paragraph –

“7 Age

(1) Age is a protected characteristic.

(2) In relation to the protected characteristic of age –

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;

(b) a reference to persons who share a protected characteristic is a reference to persons of the same age group.

(3) A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages.”.

4 Schedule 2 amended

- (1) Schedule 2 is amended as follows.
- (2) In Part 1, after paragraph 2J there shall be inserted the following paragraph –

“2K Financial and insurance arrangements

- (1) Parts 3 and 5 shall not prohibit a person discriminating against a person, 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 shall not prohibit 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.”.
- (3) In Part 2 paragraph 7 is deleted and in Part 3 paragraph 19 is deleted.
- (4) After Part 3 there shall be added the following Part –

“PART 4**EXCEPTIONS TO PROHIBITED ACTS: AGE****“25 Age: act done pursuant to States’ policy or Ministerial decision**

An act of discrimination is not prohibited by this Law if it is done pursuant to a policy adopted by the States or by Ministerial decision where the implementation of that policy or decision applies criteria based upon a person’s age, for the purposes of –

- (a) promoting employment or other opportunities; or
- (b) providing access to facilities and services.

26 Age: immigration

An officer of the Jersey Customs and Immigration Service does not contravene Article 22, in relation to the protected characteristic of age, in the exercise of his or her functions under any enactment relating to immigration.

27 Age: education

Article 21 shall not prohibit a person discriminating against a student, or a person applying for admission as a student, on grounds of the student's or applicant's age."

28 Age: higher education and employment opportunities

- (1) An act of discrimination in relation to the protected characteristic of age done by a provider of higher education in selecting students for a particular course that links to an employment opportunity, is not prohibited by this Law if it would not have been prohibited when done by an employer when selecting a person for employment.
- (2) It shall be sufficient, for the purposes of sub-paragraph (1), for the provider of higher education to prove –
 - (a) that in so acting, it relied on assurances that the act would not be prohibited in the context of employment; and
 - (b) that it was reasonable to rely upon the statement.
- (3) In this paragraph 'higher education' means education provided by means of a course of any description mentioned in Schedule 2 to the Education (Jersey) Law 1999.

29 Age: apprenticeships

A contract of apprenticeship that is limited to or gives preference to persons aged 21 or younger does not contravene this Law in relation to the protected characteristic of age.

30 Age: employment benefits

- (1) The provision of benefits to employees based on their length of service does not constitute indirect discrimination under this Law in relation to the protected characteristic of age.
- (2) An employer who makes arrangements for, or affords access to, the provision of insurance or a related financial service to employees only while they are under pensionable age does not contravene this Law in relation to the protected characteristic of age.
- (3) Sub-paragraph (2) applies only where the insurance or related financial service is, or is to be, provided to the employees or a class of employees –
 - (a) in pursuance of an arrangement between the employer and another person; or
 - (b) where the employer's business includes the provision of insurance or financial services of the description in question, by the employer.
- (4) An employer who provides, makes arrangements for or facilitates the provision of care for children of particular ages does not contravene this Law in relation to the protected characteristic of age.

- (5) In this paragraph –
- (a) ‘care’ includes supervision;
 - (b) ‘child’ means a person under the age of 18;
 - (c) ‘employee’ includes a partner of a partnership;
 - (d) facilitating the provision of care includes –
 - (i) paying for some or all of the cost of providing care for the child;
 - (ii) helping a parent of the child to find a suitable person to provide care for the child;
 - (iii) enabling a parent of the child to spend more time providing care for the child or otherwise assisting the parent with respect to the care that the parent provides for the child;
 - (e) ‘pensionable age’ has the same meaning as in Article 1A of, and Schedule 1AA to, the Social Security (Jersey) Law 1974.

31 Age: minimum wage

- (1) An employer who pays a person who –
- (a) does not qualify for the minimum wage; and
 - (b) is paid lower than the minimum wage,
- at a lower rate than is paid to a person who qualifies for the minimum wage does not contravene this Law in relation to the protected characteristic of age.
- (2) In this paragraph “minimum wage” shall be construed in accordance with Article 16(3) of the Employment (Jersey) Law 2003.

32 Age: redundancy payments

The provision of redundancy payments by employers to employees, whether in compliance with or in excess of the statutory minimum, does not constitute discrimination under this Law in relation to the protected characteristic of age provided that the payments are calculated on the same basis for all employees regardless of age.

33 Retirement age

- (1) An employer who dismisses an employee who has reached pensionable age or, if higher, the retirement age set by the employer, does not commit an act of direct discrimination in relation to the protected characteristic of age if the employer has a policy of requiring employees to retire at such an age.
- (2) An employer who dismisses an employee who is below pensionable age but has reached the retirement age set by the employer, does not commit an act of direct discrimination in relation to the protected characteristic of age if the employer has a policy of requiring

employees to retire at that age and that policy is a proportionate means of achieving a legitimate aim.

- (3) The fact that an employer may, from time to time, allow an employee to remain in post beyond pensionable age or, if higher, the retirement age set by the employer shall not of itself be taken to mean that the employer does not have a policy of requiring employees to retire at such an age.

34 Persons nearing retirement age

- (1) An employer who takes into account that a person is nearing retirement age in deciding on –
 - (a) who to recruit;
 - (b) who to promote;
 - (c) who to move to another position; or
 - (d) what training is to be provided to any employee,does not contravene this Law in relation to the protected characteristic of age.
- (2) In this paragraph a person is nearing retirement age if the person's age is not less than 6 months short of the age at which and circumstances in which it would not be direct discrimination to dismiss the person under paragraph 33(1) or (2), whichever is applicable to that person.
- (3) However, in the case of a training course that lasts more than 6 months there is no contravention of this Law under paragraph (1) if the employee's retirement age (as determined by sub-paragraph (2)) is within 6 months of the date on which the training is due to be completed.

35 Age: pension schemes

The provision of an occupational pension scheme, or any personal or group personal pension scheme, does not contravene this Law in relation to the protected characteristic of age.

36 Age: goods, facilities and services

- (1) Article 22 shall not prohibit a person discriminating against another person on grounds of age if the subject of the discrimination is under the age of 18.
- (2) A person does not contravene Article 22, so far as it relates to the protected characteristic of age, by providing separate services for persons of different ages if –
 - (a) a joint service for people of different ages would be less effective; and
 - (b) the limited provision is a proportionate means of achieving a legitimate aim.

- (3) A person does not contravene Article 22, so far as it relates to the protected characteristic of age, by providing separate services differently for persons of different ages if –
- (a) a joint service for persons of different ages would be less effective;
 - (b) the extent to which the service is required by one age group makes it not reasonably practicable to provide the service otherwise than as a separate service provided differently for different age groups; and
 - (c) the limited provision is a proportionate means of achieving a legitimate aim.
- (4) A person does not contravene Article 22, so far as it relates to the protected characteristic of age, by providing a service only to persons of one age group if –
- (a) any of the conditions in sub-paragraph (4) is satisfied; and
 - (b) the limited provision is a proportionate means of achieving a legitimate aim.
- (5) The conditions are that –
- (a) only persons of that age group have need of the service;
 - (b) the service is also provided jointly for persons of different ages and it would be insufficiently effective were it to be provided only jointly;
 - (c) a joint service for persons of different age groups would be less effective and the extent to which the service is required by persons of different age groups makes it not reasonably practicable to provide separate services;
 - (d) the service is provided at a place which is, or is part of, a hospital or another establishment for persons requiring special care, supervision or attention.
- (6) This paragraph applies to a person exercising a public function in relation to the provision of a service as it applies to the person providing the service.

37 Age: healthcare

An act of discrimination in relation to the protected characteristic of age done by a healthcare provider is not prohibited by this Law if it is proportionate in all the circumstances having regard to the well-being and clinical needs of the patient, the relevant clinical evidence relating to the patient's condition and the prevailing standards of medical treatment.

38 Age-related concessions

- (1) A person does not contravene Article 22, so far as it relates to the protected characteristic of age, by giving a concession in respect of a service to persons of a particular age group.

- (2) A club does not contravene Article 25, in so far as it relates to the protected characteristic of age, by giving a concession on admission to membership or on access to a benefit, facility or service, for –
 - (a) persons of a particular age group; or
 - (b) persons who have been members of the association for more than a number of years specified by the association for this purpose.
- (3) A club does not contravene Article 25, in so far as it relates to the protected characteristic of age, by giving a concession on invitations, or access to a benefit, facility or service, for guests of a particular age group.
- (4) For the purposes of this paragraph –
 - (a) affording only persons of a particular age group access to a benefit, facility or service for a limited time is to be regarded as a concession;
 - (b) ‘concession’ means, in respect of a service, a benefit, right or privilege that is provided on such terms or in such a manner that is more favourable than the terms on which, or the manner in which, it is usually provided to a more general group of persons.

39 Age-related holidays

- (1) A person does not contravene Article 22, so far as it relates to the protected characteristic of age, by providing a holiday service to persons of a particular age group if the person providing the service has, in advance of its provision, given the person to whom the holiday service is provided a written statement that the service is provided only to persons of the age group in question.
- (2) In this paragraph –

‘holiday service’ means a service –

 - (a) that involves the provision of at least 2 of the following together for a single price –
 - (i) travel;
 - (ii) accommodation;
 - (iii) access to activities or services not ancillary to travel or accommodation that form a significant part of the service or its cost;
 - (b) the provision of which is for a period of more than 24 hours or includes the provision of overnight accommodation;
 - (c) that the holiday service provider provides only to persons of the age group in question; and
 - (d) an essential feature of which is the bringing together of persons of that age group with a view to facilitating their enjoyment of facilities or services designed with particular regard to persons of that age group;

‘travel’ includes an option for an individual to make alternative travel arrangements to those included in the holiday service as standard.

40 Age-restricted services

- (1) A person does not contravene Article 22, so far as it relates to the protected characteristic of age, by refusing to provide a service the provision of which is prohibited by or under an enactment to persons under the statutory age, to a person who –
 - (a) appears to the person providing the service, or that person’s employee or agent, to be under the statutory age; and
 - (b) on being requested by that person to provide satisfactory identification, fails to do so.
- (2) In this paragraph –

‘satisfactory identification’, in relation to a person, means a valid document that includes a photograph of the person and establishes that the person has attained the statutory age in relation to the provision of a service;

‘statutory age’ means the age specified in or under the enactment whereby a person under that age is prohibited from doing any act.

41 Age: sport and competitions

- (1) A person does not contravene this Law in relation to the protected characteristic of age only by doing anything in relation to the participation of another as a competitor in an age-banded activity if it is necessary to do so –
 - (a) to secure, in relation to the activity, fair competition or the safety of competitors;
 - (b) to comply with the rules of a national or international competition; or
 - (c) to increase participation in that activity.
- (2) For the purposes of this paragraph, an age-banded activity is a sport, game or other activity of a competitive nature in circumstances in which the physical or mental strength, agility, stamina, physique, mobility, maturity or manual dexterity of average persons of a particular age group would put them at a disadvantage compared with average persons of another age group as competitors in events involving the activity.

42 Age: scholarships, prizes and awards

An act of discrimination in relation to the protected characteristic of age whereby scholarships, prizes or other awards are made available only to specified age groups is not prohibited by this Law.

43 Age: premises

An act of discrimination is not prohibited by Article 23 or Article 24 in relation to the protected characteristic of age.”.

5 Amendment of Employment (Jersey) Law 2003

For Article 74 of the Employment (Jersey) Law 2003 there is substituted the following Article –

“74 Upper age limit

- (1) Article 61 shall not apply to the dismissal of an employee if on or before the effective date of termination the employee has attained –
 - (a) in a case where –
 - (i) in the undertaking in which the employee was employed there was a common retiring age for men and women holding the position held by the employee, and
 - (ii) that retiring age was higher than pensionable age, that retiring age;
 - (b) in a case where –
 - (i) in the undertaking in which the employee was employed there were different retiring ages for men and women holding the position held by the employee, and
 - (ii) the higher of the 2 retiring ages is greater than pensionable age, that higher retiring age; and
 - (c) in any other case, pensionable age.
- (2) Paragraph (1) does not apply if Article 65, 66, 67(1) or (2), 68(1), 69(1), 70 or 70A applies.
- (3) In this Article ‘pensionable age’ has the same meaning as in Article 1A of, and Schedule 1AA to, the Social Security (Jersey) Law 1974.”.

6 Citation and commencement

These Regulations may be cited as the Discrimination (Age) (Jersey) Regulations and shall come into force on 1st September 2016.



