

# STATES OF JERSEY



## **DRAFT DISCRIMINATION (SEX AND RELATED CHARACTERISTICS) (JERSEY) REGULATIONS 201- (P.40/2015): COMMENTS**

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**Presented to the States on 26th May 2015  
by the Health and Social Security Scrutiny Panel**

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**STATES GREFFE**

## COMMENTS

### Introduction

1. On 18th February 2015, the Health and Social Security Scrutiny Panel was briefed by Officers from the Social Security Department and Mr. D. Newman (UK expert adviser and trainer in Employment and Discrimination Law) on the Draft Discrimination (Sex and Related Characteristics) (Jersey) Regulations 201- (P.40/2015).
2. The Panel felt that the draft Regulations were of great public importance, but agreed not to pursue this topic further as it was content that the Department had undertaken a thorough review and consultation with targeted stakeholders. Nevertheless, the briefing provided an opportunity to put questions and elicit information on the draft Regulations which we believe will be of use to Members during the debate.
3. The draft Regulations seek to introduce 4 new protected characteristics which would be inserted into Schedule 1 of the Discrimination (Jersey) Law 2013: sex, sexual orientation, gender reassignment and pregnancy and maternity.
4. The Discrimination (Jersey) Law 2013 already includes 2 general exceptions in Schedule 2, and these would be applied to all protected characteristics; where an act is necessary under judicial or legislative authority, and where an act is done outside of Jersey to comply with the law of another country. However, we understand that the draft Regulations would also provide 10 general exceptions (including for positive action, charities and clubs), and 10 new exceptions that are specific to sex and related characteristics (including for single-sex schools, single-sex services and communal accommodation).
5. The Panel questioned why the draft Regulations were proposing to delete the wording “towards the subject” in regards to harassment from Article 28 of the Discrimination (Jersey) Law 2013. We were advised that this amendment would bring the Legislation more in-line with the original intention (and the UK law) so that for behaviour to constitute harassment, it would not have to be directed towards a person, and so the provision will include wider atmospheric harassment, such as offensive calendars.
6. We understand that the biggest difference between the draft Regulations and the Equality Act 2010 is that the Regulations do not include separate provision for equal pay. We were advised that, rather than introducing a complex and separate equal pay mechanism (as in the UK), sex discrimination in pay systems will be dealt with in the same way as the Regulations already deal with race discrimination in pay systems. When the new protected characteristics are introduced, it will be unlawful discrimination to pay a woman less than a man (or *vice versa*), for undertaking the same work, because of sex. The consultation revealed support for the Department’s approach.

7. During the Briefing, the Panel suggested a number of amendments to the draft Regulations based on the information it had been provided with and the subsequent comprehensive discussion. Following the Briefing, the Law Draftsman confirmed that the Panel's proposed changes were achievable and the Minister agreed to change the draft Regulations accordingly.
8. With regard to the exception that applies in selection for domestic employment (new Schedule 2, paragraph 2F), we asked whether 'domestic duties' might be interpreted widely enough to include personal care type duties in the home and, if not, whether the exception could be amended. Subsequently, the exception has been amended to apply where the duties of the position involve the performance of domestic duties, or the care of a child, **or the care of an adult**, on premises in which the person who is selecting those staff resides.
9. The second proposed amendment referred to Schedule 2, paragraph 2J of the draft Regulations; the exception for disposal of premises. We suggested that where an owner-occupier intends to dispose of part of their premises, the exception should also apply where a person intends to continue to reside in another part of the premises and that person is **a relative of the partner** of the owner-occupier, but is not married to or the civil partner of the owner-occupier. The exception has since been amended to include circumstances where the person, a relative of the person, **or a relative of the partner of that person**, intends to continue to reside in another part of the premises.
10. The Panel reviewed the outcomes of the Minister's consultation and agreed that no further work needed to be undertaken.
11. The Panel would like to take this opportunity to thank the Officers at Social Security and Mr. Newman for their time and assistance.