

# Employment law update - changes to redundancy pay and end to the disability discrimination transition period

Service area / [Employment, Pensions and Incentives](#)

Legal jurisdictions / [Jersey](#)

Date / [September 2020](#)

## Statutory redundancy pay

Statistics Jersey (the States of Jersey statistics unit) have published their [annual average earnings report](#).

Accordingly, the statutory maximum for a week's pay for the purposes of redundancy payments under Article 60C of the Employment (Jersey) Law 2003 will rise to **£780** (an increase of £10 from the current maximum of **£770**) for redundancies taking effect on or after **28 September 2020**.

## Discrimination (Jersey) Law 2013 – end of transition period for duty to make reasonable adjustments to premises

In September 2018, the Discrimination (Disability) (Jersey) Regulations 2018 (the "**Regulations**") introduced "disability" as a protected characteristic under the Discrimination (Jersey) Law 2013 (the "**Law**"). At the same time (amongst other things), the description of indirect discrimination was extended to include a duty to make reasonable adjustments in various circumstances including where:

- a provision, criterion or practice; or
- the absence of an auxiliary aid

puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled (Article 7A of the Law).

At the time when the Regulations came into force, it was considered that the duty to make reasonable adjustments to avoid disadvantage caused by physical features of premises was more onerous, particularly as it may require business

owners to make alterations to property which may require consent of landlords etc. Accordingly, a two year transition period was introduced to delay the enactment of this part of the Law in order to give businesses sufficient time to prepare.

That transition period ended on 1 September 2020. Accordingly, from 1 September 2020, a person will also indirectly discriminate against another if they fail to take reasonable steps to avoid substantial disadvantage caused to a disabled person in comparison with non disabled persons by reason of a physical feature of premises.

We have set out below some summary issues to consider in relation to the duty to make reasonable adjustments to physical features of premises.

This guide is intended to be a general introduction and guide to this part of the Law. If you would like legal advice in relation to any specific circumstances, please contact us.

### What is a physical feature?

Under Article 7A(6) of the Law, the definition of a "physical feature" is broad, and includes:

- a feature arising from the design or construction of a building;
- a feature of an approach to, exit from or access to a building;
- a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on the premises; and/or
- any other physical element or quality.

## OFFSHORE LAW SPECIALISTS

BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY  
CAPE TOWN HONG KONG LONDON SINGAPORE

## Who could bring a claim?

In order for someone to bring a claim, they must be considered “disabled” within the meaning of the statutory definition.

A person is considered disabled if they have “one or more long-term physical, mental, intellectual or sensory impairments which can adversely affect a person’s ability to engage or participate in any activity in respect of which an act of discrimination is prohibited under [the Law]”.

An impairment is considered to be “long-term” if it has lasted, or is expected to last, for not less than 6 months or is expected to last until the end of the person’s life.

As well as this, for the purposes of bringing an Article 7A claim, the alleged discriminator must know, or should reasonably be expected to know, that the person had the disability and of the substantial disadvantage that the physical feature of the premises would cause to the person.

## What is a substantial disadvantage?

The disabled person must suffer a “substantial disadvantage” by reason of the physical feature, in comparison to a person who does not suffer from the disability. Under the Law, “substantial” is defined to mean “more than minor or trivial”.

## How the provisions apply

It is important to remember that the Law applies in a range of areas. For example in the context of employment, the provision of goods and services, education and in the access to and use of public premises.

Not only will you need to consider accessibility for your employees, but, depending on your business (i.e. retail shops or those who provide goods and services to the general public), your considerations may also need to include any potential customers or members of the general public who may attend your premises.

## What steps can be taken to remove the disadvantage?

Where you have identified physical features that may cause a substantial disadvantage, you will need to consider how to alleviate the disadvantage. For example, could you remove or alter the feature or provide a reasonable means of avoiding the feature?

## Reasonableness

In all cases, it is important to remember that the duty imposed is to take reasonable steps to avoid the disadvantage – it is not a requirement to take all steps possible to remove the disadvantage.

What is reasonable for one business may not be so for others. Therefore, when determining whether such steps taken are

reasonable, the Law outlines matters that should be taken into consideration, for example:

- the extent to which:
  - the likelihood of the substantial disadvantage was reasonably foreseeable; and
  - any steps which are, or would be if taken, proportionate to such degree of likelihood;
- the extent to which any steps are, or would be if taken, effective to prevent or remove the substantial disadvantage;
- the extent to which any steps are, or would be if taken, practical;
- the costs of any steps that have or might be taken;
- the extent of the financial, administrative and any other resources available to the person, including any provided by a third party, for the purposes of taking any steps; and
- characteristics of the person such as the nature of the person’s business, if any, and size.

## Exceptions

The Regulations also introduce an exception to the duty to make reasonable adjustments to avoid substantial disadvantage caused by physical features of premises. Broadly speaking, the exemption means that a person will not discriminate under Article 7A if their contravention under the Law arises from compliance with any provision of the Building Bye-laws (Jersey) 2007 or any guidance on compliance with those Bye-laws issued by the Minister and the contravention arises from failure to remove or alter or otherwise change the physical feature of the premises. This is most likely to arise where planning rules prohibit changes to buildings. The original *projet* to the Regulations gave the following example of when this exception may apply:

*[A] person wishes to install a wheelchair ramp but, in order to be built at an appropriate gradient, the length of the ramp would encroach on to a public highway; and so in order to comply with the Building Bye-laws, the person could not build the ramp..."*

## What should businesses do now?

- Consider whether any of your employees have disabilities within the meaning of the Law
- Consider whether any substantial disadvantage could be caused to employees or to others (such as customers) by features of your physical premises
- Consider whether any changes may alleviate or avoid the disadvantage – this may involve ongoing consultation with your employees and with others who use your premises
- The Jersey Citizens Advice Bureau has published a [guide to Disability Discrimination](#)
- Landlords may wish to think about contacting our property department to discuss accessibility issues in relation to premises.

Continued



---

## FIND US

Carey Olsen Jersey LLP  
47 Esplanade  
St Helier  
Jersey JE1 0BD  
Channel Islands

T +44 (0)1534 888900

E [jerseyco@careyolsen.com](mailto:jerseyco@careyolsen.com)



---

## FOLLOW US

Visit our Employment, Pensions  
and Incentives team at  
[careyolsen.com](https://www.careyolsen.com)



---

## PLEASE NOTE

Carey Olsen Jersey LLP is  
registered as a limited liability  
partnership in Jersey with  
registered number 80.

This briefing is only intended to  
provide a very general overview  
of the matters to which it relates.  
It is not intended as legal advice  
and should not be relied on as  
such. © Carey Olsen Jersey LLP  
2020.