

SCHEDULE 2

Regulation 2(2)

Amendment of the 1976 Order

**Indirect discrimination**

1. In Article 3(1) (direct and indirect discrimination against women)—
  - (a) at the end of paragraph (3)(a) omit “and”;
  - (b) after paragraph (3)(a) insert—
    - “(aa) Articles 30 to 32, except in so far as they relate to an excluded matter, and”.

**Discrimination on the grounds of gender reassignment**

2. In Article 4A(2) (discrimination on the grounds of gender reassignment)—
  - (a) at the end of paragraph (1)(a) omit “or”;
  - (b) after paragraph (1)(a) insert—
    - “(aa) Article 30, 31 or 32, except in so far as it relates to an excluded matter, or”.

**Pregnancy and maternity**

- 3.—(1) After Article 5A(3) (discrimination on the ground of pregnancy or maternity leave) insert—

**“Discrimination on the ground of pregnancy or maternity: goods, facilities, services or premises**

**5B.**—(1) In any circumstances relevant for the purposes of a provision to which this paragraph applies, a person discriminates against a woman if he treats her less favourably—

- (a) on the ground of her pregnancy, or
  - (b) within the period of 26 weeks beginning on the day on which she gives birth, on the ground that she has given birth.
- (2) A person (P) is taken to discriminate against a woman on the ground of her pregnancy if—
- (a) P refuses to provide her with goods, facilities or services because P thinks that providing them would, because of her pregnancy, create a risk to her health or safety, or
  - (b) P provides or offers to provide them on conditions intended to remove or reduce such a risk because P thinks that provision of them without the conditions would create such a risk.
- (3) Paragraph (2) does not apply if—
- (a) it is reasonable for P to think as mentioned in paragraph (2)(a) or (b), and
  - (b) P applies an equivalent policy.
- (4) An equivalent policy is—

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(1) Article 3 was substituted by [S.R. 2001 No. 282](#).  
(2) Article 4A was inserted by [S.R. 1999 No. 311](#).  
(3) Article 5A was inserted by [S.R.2005 No. 426](#).

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- (a) for the purposes of paragraph (2)(a), refusing to provide the goods, facilities or services to persons with other physical conditions because P thinks that to do so would, because of such physical conditions, create a risk to the health or safety of such persons;
  - (b) for the purposes of paragraph (2)(b), imposing conditions on the provision of goods, facilities or services to such persons which are intended to remove or reduce the risk to their health or safety because P thinks that the provision without the conditions would create such a risk.
- (5) Paragraph (1) applies to Articles 30 to 32, except in so far as they relate to an excluded matter.”
- (2) In Article 2 (interpretation), paragraph (7)(b)(4), for “or 5A” substitute “, 5A or 5B”.

### **Goods, facilities or services**

4. In Article 30 (discrimination in provision of goods, facilities or services)—
- (a) after paragraph (2) insert—
    - “(2A) It is unlawful in connection with the provision of goods, facilities or services to the public or a section of the public (except in so far as they relate to an excluded matter) for any person to subject to harassment—
    - (a) a woman who seeks to obtain or use those goods, facilities or services, or
    - (b) a woman to whom he provides those goods, facilities or services.”;
  - (b) in paragraph (4)(5) omit “to vocational training”.

### **Premises**

5. In Article 31 (discrimination in disposal or management of premises)—
- (a) after paragraph (1) insert—
    - “(1A) It is unlawful for such a person to subject to harassment a woman who applies for the premises.”;
  - (b) after paragraph (2) insert—
    - “(2A) It is unlawful for such a person to subject to harassment a woman who occupies the premises.”;
  - (c) after paragraph (3) insert—
    - “(4) Paragraphs (1A) and (2A) apply in relation to an application for or occupation of premises except in so far as they relate to an excluded matter.”.

### **Consent for assignment or sub-letting**

6. In Article 32 (discrimination: consent for assignment or sub-letting), paragraph (1), for the words from “to discriminate” to the end substitute—
- “(a) to discriminate against a woman by withholding the licence or consent for disposal of the premises to her, or
  - (b) in relation to such a licence or consent, to subject to harassment a woman to whom the disposal would be made if the licence or consent were given.”.

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(4) Article 2(7)(b) was amended by [S.R.2005 No. 426](#).

(5) Article 35(4) was inserted by [S.R.1999 No. 311](#).

### **Exception for voluntary bodies**

7. In Article 35 (exception for voluntary bodies), after paragraph (4) insert—
- “(5) Paragraphs (2) to (4) do not apply to discrimination under Article 3 or 4A in its application to Articles 30 to 32 unless the treatment mentioned in those paragraphs is—
- (a) a proportionate means of achieving a legitimate aim, or
  - (b) for the purpose of preventing or compensating for a disadvantage linked to sex.”.

### **Further exceptions from Articles 30(1) and 31**

8. In Article 36 (further exceptions from Articles 30(1) and 31)—
- (a) for paragraph (1) substitute—

“(1) A person who provides at any place facilities or services restricted to men does not for that reason contravene Article 30(1) if any of the conditions in paragraphs (1A) to (1C) is satisfied.”;
  - (b) after paragraph (1) insert—

“(1A) The condition is that the place is, or is part of—

    - (a) a hospital, or
    - (b) any other establishment for persons requiring special supervision, attention or care.

(1B) The condition is that the place is (permanently or for the time being) occupied or used for the purposes of an organised religion, and the facilities or services are restricted to men so as to comply with the doctrines of that religion or avoid offending the religious susceptibilities of a significant number of its followers.

(1C) The condition is that the facilities or services are provided for, or are likely to be used by, two or more persons at the same time, and—

    - (a) the facilities or services are such, or those persons are such, that male users are likely to suffer serious embarrassment at the presence of a woman, or
    - (b) the facilities or services are such that a user is likely to be in a state of undress and a male user might reasonably object to the presence of a female user.”;
    - (c) after paragraph (2) insert—

“(2A) In their application to discrimination falling within Article 4A, paragraphs (1A), (1C) and (2) shall apply to the extent that any such discrimination is a proportionate means of achieving a legitimate aim.”; and
    - (d) in paragraph (3)(6), after “discrimination”, (in each place where it occurs), insert “or harassment”.

### **Excluded matters**

- 9.—(1) After Article 36 (further exceptions from Articles 30(1) and 31) insert—

#### **“36ZA Excluded matters**

Each of the following is an excluded matter for the purposes of Articles 30 to 32—

- (a) education (including vocational training);
- (b) the content of media and advertisements;

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(6) The Table in Article 36(3) was amended by [S.R. 2005 No. 426](#).

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(c) the provision of goods, facilities or services (not normally provided on a commercial basis) at a place (permanently or for the time being) occupied or used for the purposes of an organised religion.”

(2) In Article 2 (interpretation)—

(a) in paragraph (2), after the definition of “estate agent” insert—

““excluded matter” shall be construed in accordance with paragraph (8);” and

(b) after paragraph (7) insert—

“(8) In this Order, references to an excluded matter must be construed in accordance with Article 36ZA.”.

### **Relationships which have come to an end**

**10.** In Article 36A(7) (relationships which have come to an end), in paragraph (2) for the words from “under” to the end substitute—

“under—

(a) Articles 30 to 32, except in so far as they relate to an excluded matter, or

(b) any other provision of this Part, so far as the provision applies to vocational training.”.

### **Charities**

**11.** In Article 44 (charities), after paragraph (2) insert—

“(2A) But paragraph (1) does not apply to discrimination under Article 3 or 4A in its application to Articles 30 to 32 unless the conferral of benefits is —

(a) a proportionate means of achieving a legitimate aim, or

(b) for the purpose of preventing or compensating for a disadvantage linked to sex.”.

### **Sport**

**12.** At the end of Article 45 (sport etc) (which becomes paragraph (1)) insert—

“(2) Paragraph (1) applies to discrimination under Articles 30 to 32 which falls within Article 4A, only if the discrimination is necessary to secure—

(a) fair competition, or

(b) the safety of competitors,

at such events.”.

### **Insurance**

**13.** At the end of Article 46 (insurance etc) (which becomes paragraph (1)) insert—

“(2) In the case of discrimination under Article 30, 31 or 32, paragraph (1) applies only in so far as that Article relates to—

(a) an excluded matter, or

(b) differences in premiums and benefits applicable to a person under a contract of insurance or related financial services entered into before the appropriate date.

(3) Despite paragraph (2), the treatment is not unlawful under Article 30(1) if—

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(7) Article 36A was inserted [S.R. 2004 No.172](#) and was amended by [S.R. 2005 No.426](#).

- (a) in the case of discrimination under a contract entered into on or after the appropriate date which relates to differences in premiums and benefits, each of the following conditions is satisfied—
    - (i) the use of sex as a factor in the assessment of risk is based on relevant and accurate actuarial and statistical data;
    - (ii) the data referred to in head (i) are compiled, published (whether in full or in summary form) and regularly updated in accordance with guidance issued by the Treasury;
    - (iii) the differences in treatment are proportionate having regard to the data mentioned in head (i);
    - (iv) the differences do not result from costs related to pregnancy or to the fact that a woman has given birth at any time in the period of 26 weeks ending on the day the treatment occurs or begins; or
  - (b) insurance or related financial services are provided only to members of one sex in relation to risks which only affect that sex.
- (4) Paragraph (3)(a) applies to discrimination under Article 4A as if, in paragraph (1) of that Article, after “other persons” there were inserted “of B’s sex”.
- (5) For the purposes of this Article, “the appropriate date” means the date on which the Sex Discrimination (Amendment of Legislation) Regulations 2008 came into force.”

#### **Communal accommodation**

- 14.** In Article 47 (communal accommodation)—
- (a) in paragraph (4)—
    - (i) at the end of sub-paragraph (b) insert “; and”, and
    - (ii) after that sub-paragraph insert—
      - “(c) in respect of discrimination falling within Article 4A, whether and how far such discrimination is a proportionate means of achieving a legitimate aim.”.
  - (b) in paragraph (8) for “Article 36(1)(c)” substitute “Article 36(1) and (1C)”.

#### **Acts done under statutory authority**

- 15.** In Article 52A(8) (acts done under statutory authority to be exempt from certain provisions of Part IV)—
- (a) in paragraph (1), before sub-paragraph (a) insert—
    - “(za) Articles 24 to 28, 33 and 34;”;
  - (b) in paragraph (2), for “except so far as they apply to vocational training” substitute “(except Articles 24 to 28, 33 and 34) in so far as they relate to an excluded matter”.

#### **Duties of the Equality Commission**

- 16.** In Article 54 (establishment and duties of Commission), in paragraph (1)(bb)(9) omit the words “, in the field of employment and of vocational training,”.

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(8) Article 52A was inserted by [S.I. 1990/246 \(N.I. 2\)](#)

(9) Article 54(1)(bb) was inserted by of [S.R 1999 No 311](#).

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### **Burden of proof**

**17.** In Article 66A(10) (burden of proof: county court), in paragraph (2), for sub-paragraph (a) substitute—

- “(a) has committed an act of discrimination or harassment against the claimant which is unlawful by virtue of—
  - (i) Article 30, 31 or 32, or
  - (ii) any other provision of Part IV so far as it applies to vocational training, or”.

### **Time for answering questions from aggrieved persons**

**18.** In Article 74 (help for aggrieved persons in obtaining information etc)—

- (a) at the end of paragraph (2A)(a)(i)(11) omit “or”;
- (b) after paragraph (2A)(a)(i) insert—
  - “(ia) Article 30, 31 or 32, except in so far as it relates to an excluded matter; or”.

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(10) Article 66A was inserted by [S.R. 2001 No. 282](#).

(11) Article 74(2A) was inserted by [S.R. 2005 No. 426](#).