

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 16: General and Miscellaneous

Schedule 9: Work: exceptions

Part 1: Occupational requirements

Religious requirements relating to sex, marriage etc., sexual orientation: paragraph 2

Effect

790. This specific exception applies to employment for the purposes of an organised religion, which is intended to cover a very narrow range of employment: ministers of religion and a small number of lay posts, including those that exist to promote and represent religion. Where employment is for the purposes of an organised religion, this paragraph allows the employer to apply a requirement to be of a particular sex or not to be a transsexual person, or to make a requirement related to the employee's marriage or civil partnership status or sexual orientation, but only if –
- appointing a person who meets the requirement in question is a proportionate way of complying with the doctrines of the religion; or,
 - because of the nature or context of the employment, employing a person who meets the requirement is a proportionate way of avoiding conflict with a significant number of the religion's followers' strongly held religious convictions.
791. The requirement must be crucial to the post, and not merely one of several important factors. It also must not be a sham or pretext. Applying the requirement must be a proportionate way of meeting either of the two criteria described in paragraph 790 above.
792. The requirement can also be applied by a qualifications body in relation to a relevant qualification (within the meaning of section 54), if the qualification is for employment for the purposes of an organised religion and either of the criteria described in paragraph 790 above is met.

Background

793. This exception replaces and harmonises exceptions contained in previous discrimination law.

Examples

- This exception would apply to a requirement that a Catholic priest be a man and unmarried.
- This exception is unlikely to permit a requirement that a church youth worker who primarily organises sporting activities is celibate if he is gay, but it may apply if the youth worker mainly teaches Bible classes.

*These notes refer to the Equality Act 2010 (c.15)
which received Royal Assent on 8 April 2010*

- This exception would not apply to a requirement that a church accountant be celibate if he is gay.

Other requirements relating to religion or belief: paragraph 3

Effect

794. This paragraph allows an employer with an ethos based on religion or belief to discriminate in relation to work by applying a requirement to be of a particular religion or belief, but only if, having regard to that ethos:

- being of that religion or belief is a requirement for the work (this requirement must not be a sham or pretext); and
- applying the requirement is proportionate so as to achieve a legitimate aim.

795. It is for an employer to show that it has an ethos based on religion or belief by reference to such evidence as the organisation's founding constitution.

Background

796. This paragraph is designed to replicate the effect of provisions in current legislation.

Example

- A religious organisation may wish to restrict applicants for the post of head of its organisation to those people that adhere to that faith. This is because to represent the views of that organisation accurately it is felt that the person in charge of that organisation must have an in-depth understanding of the religion's doctrines. This type of discrimination could be lawful. However, other posts that do not require this kind of in-depth understanding, such as administrative posts, should be open to all people regardless of their religion or belief.