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SCHEDULES

SCHEDULE 9

WORK: EXCEPTIONS

PART 1

OCCUPATIONAL REQUIREMENTS

General

- 1 (1) A person (A) does not contravene a provision mentioned in sub-paragraph (2) by applying in relation to work a requirement to have a particular protected characteristic, if A shows that, having regard to the nature or context of the work—
- (a) it is an occupational requirement,
 - (b) the application of the requirement is a proportionate means of achieving a legitimate aim, and
 - (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).
- (2) The provisions are—
- (a) section 39(1)(a) or (c) or (2)(b) or (c);
 - (b) section 41(1)(b);
 - (c) section 44(1)(a) or (c) or (2)(b) or (c);
 - (d) section 45(1)(a) or (c) or (2)(b) or (c);
 - (e) section 49(3)(a) or (c) or (6)(b) or (c);
 - (f) section 50(3)(a) or (c) or (6)(b) or (c);
 - (g) section 51(1).
- (3) The references in sub-paragraph (1) to a requirement to have a protected characteristic are to be read—
- (a) in the case of gender reassignment, as references to a requirement not to be a transsexual person (and section 7(3) is accordingly to be ignored);
 - (b) in the case of marriage and civil partnership, as references to a requirement not to be married or a civil partner (and section 8(2) is accordingly to be ignored).
- (4) In the case of a requirement to be of a particular sex, sub-paragraph (1) has effect as if in paragraph (c), the words from “(or” to the end were omitted.

Religious requirements relating to sex, marriage etc., sexual orientation

- 2 (1) A person (A) does not contravene a provision mentioned in sub-paragraph (2) by applying in relation to employment a requirement to which sub-paragraph (4) applies if A shows that—

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- (a) the employment is for the purposes of an organised religion,
 - (b) the application of the requirement engages the compliance or non-conflict principle, and
 - (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).
- (2) The provisions are—
- (a) section 39(1)(a) or (c) or (2)(b) or (c);
 - (b) section 49(3)(a) or (c) or (6)(b) or (c);
 - (c) section 50(3)(a) or (c) or (6)(b) or (c);
 - (d) section 51(1).
- (3) A person does not contravene section 53(1) or (2)(a) or (b) by applying in relation to a relevant qualification (within the meaning of that section) a requirement to which sub-paragraph (4) applies if the person shows that—
- (a) the qualification is for the purposes of employment mentioned in sub-paragraph (1)(a), and
 - (b) the application of the requirement engages the compliance or non-conflict principle.
- (4) This sub-paragraph applies to—
- (a) a requirement to be of a particular sex;
 - (b) a requirement not to be a transsexual person;
 - (c) a requirement not to be married or a civil partner;
 - (d) a requirement not to be married to, or the civil partner of, a person who has a living former spouse or civil partner;
 - (e) a requirement relating to circumstances in which a marriage or civil partnership came to an end;
 - (f) a requirement related to sexual orientation.
- (5) The application of a requirement engages the compliance principle if the requirement is applied so as to comply with the doctrines of the religion.
- (6) The application of a requirement engages the non-conflict principle if, because of the nature or context of the employment, the requirement is applied so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.
- (7) A reference to employment includes a reference to an appointment to a personal or public office.
- (8) In the case of a requirement within sub-paragraph (4)(a), sub-paragraph (1) has effect as if in paragraph (c) the words from “(or” to the end were omitted.

Other requirements relating to religion or belief

- 3 A person (A) with an ethos based on religion or belief does not contravene a provision mentioned in paragraph 1(2) by applying in relation to work a requirement to be of a particular religion or belief if A shows that, having regard to that ethos and to the nature or context of the work—
- (a) it is an occupational requirement,

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- (b) the application of the requirement is a proportionate means of achieving a legitimate aim, and
- (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).

Armed forces

- 4 (1) A person does not contravene section 39(1)(a) or (c) or (2)(b) by applying in relation to service in the armed forces a relevant requirement if the person shows that the application is a proportionate means of ensuring the combat effectiveness of the armed forces.
- (2) A relevant requirement is—
 - (a) a requirement to be a man;
 - (b) a requirement not to be a transsexual person.
- (3) This Part of this Act, so far as relating to age or disability, does not apply to service in the armed forces; and section 55, so far as relating to disability, does not apply to work experience in the armed forces.

Employment services

- 5 (1) A person (A) does not contravene section 55(1) or (2) if A shows that A's treatment of another person relates only to work the offer of which could be refused to that other person in reliance on paragraph 1, 2, 3 or 4.
- (2) A person (A) does not contravene section 55(1) or (2) if A shows that A's treatment of another person relates only to training for work of a description mentioned in sub-paragraph (1).
- (3) A person (A) does not contravene section 55(1) or (2) if A shows that—
 - (a) A acted in reliance on a statement made to A by a person with the power to offer the work in question to the effect that, by virtue of sub-paragraph (1) or (2), A's action would be lawful, and
 - (b) it was reasonable for A to rely on the statement.
- (4) A person commits an offence by knowingly or recklessly making a statement such as is mentioned in sub-paragraph (3)(a) which in a material respect is false or misleading.
- (5) A person guilty of an offence under sub-paragraph (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Interpretation

- 6 (1) This paragraph applies for the purposes of this Part of this Schedule.
- (2) A reference to contravening a provision of this Act is a reference to contravening that provision by virtue of section 13.
- (3) A reference to work is a reference to employment, contract work, a position as a partner or as a member of an LLP, or an appointment to a personal or public office.
- (4) A reference to a person includes a reference to an organisation.

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- (5) A reference to section 39(2)(b), 44(2)(b), 45(2)(b), 49(6)(b) or 50(6)(b) is to be read as a reference to that provision with the omission of the words “or for receiving any other benefit, facility or service”.
- (6) A reference to section 39(2)(c), 44(2)(c), 45(2)(c), 49(6)(c), 50(6)(c), 53(2)(a) or 55(2)(c) (dismissal, etc.) does not include a reference to that provision so far as relating to sex.
- (7) The reference to paragraph (b) of section 41(1), so far as relating to sex, is to be read as if that paragraph read—
“(b) by not allowing the worker to do the work.”

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