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SCHEDULES

SCHEDULE 9

WORK: EXCEPTIONS

PART 2

EXCEPTIONS RELATING TO AGE

Preliminary

- 7 For the purposes of this Part of this Schedule, a reference to an age contravention is a reference to a contravention of this Part of this Act, so far as relating to age.

Retirement

- 8 (1) It is not an age contravention to dismiss a relevant worker at or over the age of 65 if the reason for the dismissal is retirement.
- (2) Each of the following is a relevant worker—
- (a) an employee within the meaning of section 230(1) of the Employment Rights Act 1996;
 - (b) a person in Crown employment;
 - (c) a relevant member of the House of Commons staff;
 - (d) a relevant member of the House of Lords staff.
- (3) Retirement is a reason for dismissal only if it is a reason for dismissal by virtue of Part 10 of the Employment Rights Act 1996.

Applicants at or approaching retirement age

- 9 (1) A person does not contravene section 39(1)(a) or (c), so far as relating to age, in a case where the other person—
- (a) has attained the age limit, or would have attained it before the end of six months beginning with the date on which the application for the employment had to be made, and
 - (b) would, if recruited for the employment, be a relevant worker within the meaning of paragraph 8.
- (2) The age limit is whichever is the greater of—
- (a) the age of 65, and
 - (b) the normal retirement age in the case of the employment concerned.

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- (3) The reference to the normal retirement age is to be construed in accordance with section 98ZH of the Employment Rights Act 1996.

Benefits based on length of service

- 10 (1) It is not an age contravention for a person (A) to put a person (B) at a disadvantage when compared with another (C), in relation to the provision of a benefit, facility or service in so far as the disadvantage is because B has a shorter period of service than C.
- (2) If B's period of service exceeds 5 years, A may rely on sub-paragraph (1) only if A reasonably believes that doing so fulfils a business need.
- (3) A person's period of service is whichever of the following A chooses—
- (a) the period for which the person has been working for A at or above a level (assessed by reference to the demands made on the person) that A reasonably regards as appropriate for the purposes of this paragraph, or
 - (b) the period for which the person has been working for A at any level.
- (4) The period for which a person has been working for A must be based on the number of weeks during the whole or part of which the person has worked for A.
- (5) But for that purpose A may, so far as is reasonable, discount—
- (a) periods of absence;
 - (b) periods that A reasonably regards as related to periods of absence.
- (6) For the purposes of sub-paragraph (3)(b), a person is to be treated as having worked for A during any period in which the person worked for a person other than A if—
- (a) that period counts as a period of employment with A as a result of section 218 of the Employment Rights Act 1996, or
 - (b) if sub-paragraph (a) does not apply, that period is treated as a period of employment by an enactment pursuant to which the person's employment was transferred to A.
- (7) For the purposes of this paragraph, the reference to a benefit, facility or service does not include a reference to a benefit, facility or service which may be provided only by virtue of a person's ceasing to work.

The national minimum wage: young workers

- 11 (1) It is not an age contravention for a person to pay a young worker (A) at a lower rate than that at which the person pays an older worker (B) if—
- (a) the hourly rate for the national minimum wage for a person of A's age is lower than that for a person of B's age, and
 - (b) the rate at which A is paid is below the single hourly rate.
- (2) A young worker is a person who qualifies for the national minimum wage at a lower rate than the single hourly rate; and an older worker is a person who qualifies for the national minimum wage at a higher rate than that at which the young worker qualifies for it.
- (3) The single hourly rate is the rate prescribed under section 1(3) of the National Minimum Wage Act 1998.

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The national minimum wage: apprentices

- 12 (1) It is not an age contravention for a person to pay an apprentice who does not qualify for the national minimum wage at a lower rate than the person pays an apprentice who does.
- (2) An apprentice is a person who—
- (a) is employed under a contract of apprenticeship, or
 - (b) as a result of provision made by virtue of section 3(2)(a) of the National Minimum Wage Act 1998 (persons not qualifying), is treated as employed under a contract of apprenticeship.

Redundancy

- 13 (1) It is not an age contravention for a person to give a qualifying employee an enhanced redundancy payment of an amount less than that of an enhanced redundancy payment which the person gives to another qualifying employee, if each amount is calculated on the same basis.
- (2) It is not an age contravention to give enhanced redundancy payments only to those who are qualifying employees by virtue of sub-paragraph (3)(a) or (b).
- (3) A person is a qualifying employee if the person—
- (a) is entitled to a redundancy payment as a result of section 135 of the Employment Rights Act 1996,
 - (b) agrees to the termination of the employment in circumstances where the person would, if dismissed, have been so entitled,
 - (c) would have been so entitled but for section 155 of that Act (requirement for two years' continuous employment), or
 - (d) agrees to the termination of the employment in circumstances where the person would, if dismissed, have been so entitled but for that section.
- (4) An enhanced redundancy payment is a payment the amount of which is, subject to sub-paragraphs (5) and (6), calculated in accordance with section 162(1) to (3) of the Employment Rights Act 1996.
- (5) A person making a calculation for the purposes of sub-paragraph (4)—
- (a) may treat a week's pay as not being subject to a maximum amount;
 - (b) may treat a week's pay as being subject to a maximum amount above that for the time being specified in section 227(1) of the Employment Rights Act 1996;
 - (c) may multiply the appropriate amount for each year of employment by a figure of more than one.
- (6) Having made a calculation for the purposes of sub-paragraph (4) (whether or not in reliance on sub-paragraph (5)), a person may multiply the amount calculated by a figure of more than one.
- (7) In sub-paragraph (5), “the appropriate amount” has the meaning given in section 162 of the Employment Rights Act 1996, and “a week's pay” is to be read with Chapter 2 of Part 14 of that Act.
- (8) For the purposes of sub-paragraphs (4) to (6), the reference to “the relevant date” in subsection (1)(a) of section 162 of that Act is, in the case of a person who is a

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qualifying employee by virtue of sub-paragraph (3)(b) or (d), to be read as reference to the date of the termination of the employment.

Life assurance

- 14 (1) This paragraph applies if a person (A) takes early retirement because of ill health.
- (2) It is not an age contravention to provide A with life assurance cover for the period starting when A retires and ending—
- (a) if there is a normal retirement age, when A attains the normal retirement age;
 - (b) in any other case, when A attains the age of 65.
- (3) The normal retirement age in relation to A is the age at which, when A retires, persons holding comparable positions in the same undertaking are normally required to retire.

Child care

- 15 (1) A person does not contravene a relevant provision, so far as relating to age, only by providing, or making arrangements for or facilitating the provision of, care for children of a particular age group.
- (2) The relevant provisions are—
- (a) section 39(2)(b);
 - (b) section 41(1)(c);
 - (c) section 44(2)(b);
 - (d) section 45(2)(b);
 - (e) section 47(2)(b);
 - (f) section 48(2)(b);
 - (g) section 49(6)(b);
 - (h) section 50(6)(b);
 - (i) section 57(2)(a);
 - (j) section 58(3)(a).
- (3) Facilitating the provision of care for a child includes—
- (a) paying for some or all of the cost of the provision;
 - (b) helping a parent of the child to find a suitable person to provide care for the child;
 - (c) enabling a parent of the child to spend more time providing care for the child or otherwise assisting the parent with respect to the care that the parent provides for the child.
- (4) A child is a person who has not attained the age of 17.
- (5) A reference to care includes a reference to supervision.

Contributions to personal pension schemes

- 16 (1) A Minister of the Crown may by order provide that it is not an age contravention for an employer to maintain or use, with respect to contributions to personal pension schemes, practices, actions or decisions relating to age which are of a specified description.

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- (2) An order authorising the use of practices, actions or decisions which are not in use before the order comes into force must not be made unless the Minister consults such persons as the Minister thinks appropriate.
- (3) “Personal pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993; and “employer”, in relation to a personal pension scheme, has the meaning given in section 318(1) of the Pensions Act 2004.

Commencement Information

- II** Sch. 9 para. 16 wholly in force; para. 16 not in force at Royal Assent see s. 216; para. 16 in force for certain purposes at 6.7.2010 by S.I. 2010/1736, art. 2, Sch.; Sch. 9 in force at 1.10.2010 in so far as not already in force by S.I. 2010/2317, art. 2(1)(5)(i) (with art. 15)

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