

Example

- This exception would apply to a requirement that a Catholic priest be a man.
- This exception would not apply to a requirement that a church youth worker or accountant be heterosexual.

Other requirements relating to religion and belief: paragraph 3

Effect

748. 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.

749. 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.

750.

751. Background

751. 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

Armed forces: paragraph 4

Effect

752. This paragraph allows women and transsexual persons to be excluded from service in the armed forces if this is a proportionate way to ensure the combat effectiveness of the armed forces.

753. It also exempts the armed forces from the work provisions of the Bill relating to disability and age.

Background

754. This paragraph replicates the effects of exemptions for the armed forces in current legislation, but narrows the scope of the existing combat effectiveness exception so that this applies only to direct discrimination in relation to recruitment and access to training, promotion and transfer opportunities.

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 –
- (a) the employment is for the purposes of an organised religion, 5
 - (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). 10
- (2) The provisions are –
- (a) section 36(1)(a) or (c) or (2)(b) or (c);
 - (b) section 46(3)(a) or (c) or (6)(b) or (c);
 - (c) section 47(3)(a) or (c) or (6)(b) or (c);
 - (d) section 48(1). 15
- (3) A person does not contravene section 50(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 20
 - (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; 25
 - (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; 30
 - (f) a requirement related to sexual orientation.
- (5) The application of a requirement engages the compliance principle if the application is a proportionate means of complying with the doctrines of the religion.
- (6) The application of a requirement engages the non-conflict principle if, 35 because of the nature or context of the work, the application is a proportionate means of avoiding conflict 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. 40
- (8) Employment is for the purposes of an organised religion only if the employment wholly or mainly involves –
- (a) leading or assisting in the observation of liturgical or ritualistic practices of the religion, or
 - (b) promoting or explaining the doctrine of the religion (whether to 45 followers of the religion or to others).