

## SCHEDULES

### SCHEDULE 9

#### WORK: EXCEPTIONS

#### PART 2

#### EXCEPTIONS RELATING TO AGE

##### *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.