

SCHEDULES

SCHEDULE 5

EMPLOYMENT-RELATED SCHEMES FOR PENSIONS OR OTHER BENEFITS: EQUAL TREATMENT FOR MEN AND WOMEN

PART 1

COMPLIANCE BY SCHEMES

Schemes to comply with the principle of equal treatment

1. Every employment-related benefit scheme shall comply with the principle of equal treatment.

The principle

2.—(1) The principle of equal treatment is that persons of the one sex shall not, on the basis of sex, be treated less favourably than persons of the other sex in any respect relating to an employment-related benefit scheme.

(2) Sub-paragraphs (3) to (6) have effect, where applicable, for the purpose of determining whether a scheme complies with the principle of equal treatment.

(3) Where any provision of the scheme imposes on both male and female members a requirement or condition—

- (a) which is such that the proportion of persons of the one sex (“the sex affected”) who can comply with it is considerably smaller than the proportion of persons of the other sex who can do so; and
- (b) which is not justifiable irrespective of the sex of the members,

the imposition of that requirement or condition shall be regarded as less favourable treatment of persons of the sex affected.

(4) No account shall be taken of—

- (a) any difference, on the basis of the sex of members, in the levels of contributions—
 - (i) which members are required to make, to the extent that the difference is justifiable on actuarial grounds; or
 - (ii) which the employer makes, to the extent that the difference is for the purpose of removing or limiting differences, as between men and women, in the amount or value of money purchase benefits;
- (b) any difference, on the basis of sex, in the amount or value of money purchase benefits, to the extent that the difference is justifiable on actuarial grounds;
- (c) any special treatment for the benefit of women in connection with pregnancy or childbirth;
- (d) any permitted age-related differences;

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- (e) any difference of treatment in relation to benefits for a deceased member's surviving husband, wife or other dependants;
- (f) any difference of treatment in relation to any optional provisions available; or
- (g) any provisions of a scheme to the extent that they have been specially arranged for the benefit of one particular member of the scheme;

but where the scheme includes any unfair maternity provisions, it shall to that extent be regarded as according less favourable treatment to women on the basis of sex.

(5) Where the scheme treats persons of the one sex differently according to their marital [^{F1}, civil partnership] or family status, that treatment is to be compared with the scheme's treatment of persons of the other sex who have the same status.

(6) The principle of equal treatment applies in relation to members' dependants as it applies in relation to members.

(7) If any question arises whether a condition or requirement falling within sub#paragraph (3) (a) is or is not justifiable irrespective of the sex of the members, it shall be for those who assert that it is so justifiable to prove that fact.

(8) In this paragraph—

“money purchase benefits” has the meaning given by^{F2} Article 2(2) of the 1986 Order, but with the substitution for references to a personal or occupational pension scheme of references to an employment#related benefit scheme;

“optional provisions available” means those provisions of a scheme—

- (a) which apply only in the case of members who elect for them to do so; and
- (b) whose purpose is to secure for those members—
 - (i) benefits in addition to those otherwise provided under the scheme; or
 - (ii) a choice with respect to the date on which benefits under the scheme are to commence; or
 - (iii) a choice between any two or more benefits;

“permitted age#related difference” means any difference, on the basis of sex, in the age—

- (a) at which a service#related benefit in respect of old age or retirement commences; or
- (b) at which, in consequence of the commencement of such a benefit, any other service#related benefit either ceases to be payable or becomes payable at a reduced rate calculated by reference to the amount of the benefit so commencing.

(9) For the purposes of this paragraph—

- (a) any reference to a person's family status is a reference to his having [^{F3}a relevant] partner or any dependants; and
- (b) a person “has [^{F4}a relevant] partner” if that person and some other person [^{F5}, without being married to or civil partners of each other, live together as if spouses of each other] .

F1	Words in Sch. 5 para. 2(5) inserted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514) , regs. 1(2), 63(a) (with regs. 6-9)
F2	prosp. subst. by 1993 c. 49
F3	Words in Sch. 5 para. 2(9)(a) substituted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514) , regs. 1(2), 63(b)(i) (with regs. 6-9)

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- F4** Words in Sch. 5 para. 2(9)(b) substituted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **63(b)(i)** (with regs. 6-9)
- F5** Words in Sch. 5 para. 2(9)(b) substituted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **63(b)(ii)** (with regs. 6-9)

Non#compliance: compulsory levelling up

3.—(1) To the extent that any provision of an employment#related benefit scheme does not comply with the principle of equal treatment, it shall be overridden by this Schedule and the more favourable treatment accorded to persons of the one sex shall also be accorded to persons of the other sex.

(2) Where more favourable treatment is accorded to any persons by virtue of sub#paragraph (1), that sub#paragraph requires them, in accordance with the principle of equal treatment—

- (a) to pay contributions at a level appropriate to the treatment so accorded; and
- (b) to bear any other burden which is an incident of that treatment,

but persons of either sex may instead elect to receive the less favourable treatment and, in accordance with the principle of equal treatment, pay contributions at the level appropriate to that treatment and bear the other burdens incidental to it.

(3) Where any provision of a scheme is overridden by sub#paragraph (1), nothing in this Schedule shall affect any rights accrued or obligations incurred during the period before the date on which that provision is so overridden.

(4) Sub#paragraph (1) is without prejudice to the exercise, in compliance with the principle of equal treatment, of any power to amend the scheme.

Commencement Information

- II** Sch. 5 para. 3 partly in force; Sch. 5 para. 3 not in force at Royal Assent see art. 1(2); Sch. 5 para. 3(1)(3)(4) in force for certain purposes at 23.6.1994 by S.R. 1994/234, art. 2, Sch. Pt. I; Sch. 5 para. 3(1)(3)(4) in force for certain additional purposes at 24.8.2007 by S.R. 2007/362, art. 2

Para.4 rep. by 1995 NI 22

Unfair maternity provisions

5.—(1) In this Schedule “unfair maternity provisions”, in relation to an employment#related benefit scheme, means any provision—

- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid maternity absence in the case of any woman who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a woman otherwise than in accordance with the normal employment requirement; or
- (b) which requires the amount of any benefit payable under the scheme to or in respect of any such woman, to the extent that it falls to be determined by reference to her earnings during a period which included a period of paid maternity absence, to be determined otherwise than in accordance with the normal employment requirement.

(2) In the case of any unfair maternity provision—

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- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the women^{F6} in accordance with the normal employment requirement;
- (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned; and

Sub-para.(c) rep. by 1995 NI 22

but, in respect of a period of paid maternity absence, a woman shall only be required to pay contributions on the amount of contractual remuneration or statutory maternity pay actually paid to or for her in respect of that period.

(3) In this paragraph—

- (a) “period of paid maternity absence” means any period—
 - (i) throughout which a woman is absent from work due to pregnancy or confinement; and
 - (ii) for which her employer (or, if she is no longer in his employment, her former employer) pays her any contractual remuneration or statutory maternity pay;
- (b) “the normal employment requirement” is the requirement that any period of paid maternity absence shall be treated as if it were a period throughout which the woman in question works normally and receives the remuneration likely to be paid for doing so.

F6 prosp. inserted by [1990 NI 15](#)

[^{F7}Unfair paternity leave provisions

F7 [2005 NI 1](#)

5A.—(1) Where an employment-related benefit scheme includes any unfair paternity leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—

- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
- (b) subject to sub-paragraph (3), this Schedule shall apply accordingly.

(2) In this paragraph “unfair paternity leave provisions”, in relation to an employment-related benefit scheme, means any provision—

- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid paternity leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or
- (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid paternity leave, to be determined otherwise than in accordance with the normal employment requirement.

(3) In the case of any unfair paternity leave provision—

- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and

(b) paragraph 3(2) does not authorise the making of any such election as is there mentioned; but, in respect of any period of paid paternity leave, a member shall only be required to pay contributions on the amount of contractual remuneration [^{F8}^{F9}or statutory paternity pay]] actually paid to or for him in respect of that period.

^{F10}(4) In this paragraph—

“period of paid paternity leave”, in the case of a member, means a period—

- (a) throughout which the member is absent from work in circumstances where sub-paragraph (5), (6) [^{F11}, [^{F10}(7), (7A) or (7B)]] applies, and
- (b) for which the employer (or if he is no longer in his employment, his former employer) pays him any contractual remuneration [^{F12}^{F13}or statutory paternity pay]] ; and

“the normal employment requirement” is the requirement that any period of paid paternity leave shall be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so.

(5) This sub-paragraph applies if—

- (a) the member's absence from work is due to the birth or expected birth of a child, and
- (b) the member satisfies the conditions prescribed under section 167ZA(2)(a)(i) and (ii) of [^{F14}the Contributions and Benefits Act] in relation to that child.

(6) This sub-paragraph applies if—

- (a) the member's absence from work is due to the placement or expected placement of a child for adoption under the law of any part of the United Kingdom, and
- (b) the member satisfies the conditions prescribed under section 167ZB(2)(a)(i) and (ii) of that Act in relation to that child.

(7) This sub-paragraph applies if—

- (a) the member's absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and
- (b) the member satisfies the conditions prescribed under section 167ZB(2)(a)(i) and (ii) of that Act (as applied by virtue of [^{F15}section 167ZK(1)] of that Act (adoption cases not involving placement under the law of the United Kingdom)) in relation to that child.

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^{F16}(7A) This sub-paragraph applies if—

- (a) the member's absence from work is due to the placement or expected placement of a child as mentioned in section 167ZBA(1) and (2) of the Contributions and Benefits Act (cases involving the placing of a child under Article 27(2)(a) of the Children (Northern Ireland) Order 1995 with a person who is an approved foster parent and an approved prospective adopter), and
- (b) in relation to that child, the member satisfies the conditions prescribed under section 167ZB(2)(a)(i) and (ii) of that Act, as modified by virtue of section 167ZBA(1) to (3) of that Act (in relation to such cases).

(7B) This sub-paragraph applies if—

- (a) the member's absence from work is due to the birth or expected birth of a child, and
- (b) in relation to that child, the member satisfies the conditions prescribed under section 167ZB(2)(a)(i) and (ii) of the Contributions and Benefits Act, as applied by virtue

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of section 167ZK(2) of that Act (cases involving applicants for parental orders under section 54 of the Human Fertilisation and Embryology Act 2008).

(7C) In this paragraph and paragraphs 5B and 5C, “the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992.]

^{F17}[
^{F18}(8)]

F8	Words in Sch. 5 para. 5A(3) substituted (1.10.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)) , arts. 1(3), 13(1), Sch. 1 para. 1(2) ; S.R. 2010/295, art. 3(a)(d)
F9	Words in Sch. 5 para. 5A(3) substituted (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1) , s. 23(1), Sch. 1 para. 1(2)(a) ; S.R. 2015/86, art. 4(2)(a) (with art. 7(2))
F10	Words in Sch. 5 para. 5A(4) substituted (15.3.2015 for specified purposes, 5.4.2015 in so far as not already in operation) by Work and Families Act (Northern Ireland) 2015 (c. 1) , s. 23(1), Sch. 1 para. 1(2)(b)(i) ; S.R. 2015/86, arts. 3(2)(a), 4(2)(a) (with art. 7(2))
F11	Sch. 5 para. 5A(4): words in definition of "period of paid paternity leave" substituted (1.10.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)) , arts. 1(3), 13(1), Sch. 1 para. 1(3)(a) ; S.R. 2010/295, art. 3(a)(d)
F12	Sch. 5 para. 5A(4): words in definition of "period of paid paternity leave" substituted (1.10.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)) , arts. 1(3), 13(1), Sch. 1 para. 1(3)(b) ; S.R. 2010/295, art. 3(a)(d)
F13	Words in Sch. 5 para. 5A(4) substituted (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1) , s. 23(1), Sch. 1 para. 1(2)(b)(ii) ; S.R. 2015/86, art. 4(2)(a) (with art. 7(2))
F14	Words in Sch. 5 para. 5A(5)(b) substituted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1) , s. 23(1), Sch. 1 para. 1(2)(c) ; S.R. 2015/86, art. 3(2)(a)
F15	Words in Sch. 5 para. 5A(7) substituted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1) , s. 23(1), Sch. 1 para. 1(2)(d) ; S.R. 2015/86, art. 3(2)(a)
F16	Sch. 5 paras. 5A(7A)-(7C) inserted (15.3.2015 for (7B)(7C), 5.4.2015 for (7A)) by Work and Families Act (Northern Ireland) 2015 (c. 1) , s. 23(1), Sch. 1 para. 1(2)(e) ; S.R. 2015/86, arts. 3(2)(a), 4(2)(a) (with art. 7(2))
F17	Sch. 5 para. 5A(8) repealed (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1) , s. 23(1), Sch. 1 para. 1(2)(f) , Sch. 2 ; S.R. 2015/86, art. 4(2)(a)(3) (with art. 7(2))
F18	Sch. 5 para. 5A(8) added (1.10.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)) , arts. 1(3), 13(1), Sch. 1 para. 1(4) ; S.R. 2010/295, art. 3(a)(d)

Unfair adoption leave provisions

5B.—(1) Where an employment-related benefit scheme includes any unfair adoption leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—

- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
- (b) subject to sub-paragraph (3), this Schedule shall apply accordingly.

(2) In this paragraph “unfair adoption leave provisions”, in relation to an employment-related benefit scheme, means any provision—

- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid adoption leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or

- (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid adoption leave, to be determined otherwise than in accordance with the normal employment requirement.
- (3) In the case of any unfair adoption leave provision—
 - (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and
 - (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned; but, in respect of any period of paid adoption leave, a member shall only be required to pay contributions on the amount of contractual remuneration or statutory adoption pay actually paid to or for him in respect of that period.
- (4) In this paragraph—
 - “period of paid adoption leave”, in the case of a member, means a period—
 - (a) throughout which the member is absent from work in circumstances where sub-paragraph (5) [^{F19}, (6), (7) or (8)] applies, and
 - (b) for which the employer (or, if he is no longer in his employment, his former employer) pays him any contractual remuneration or statutory adoption pay; and
 - “the normal employment requirement” is the requirement that any period of paid adoption leave shall be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so.
- (5) This sub-paragraph applies if—
 - (a) the member's absence from work is due to the placement, or expected placement, of a child for adoption under the law of any part of the United Kingdom, and
 - (b) the member is a person with whom the child is, or is expected to be, placed for such adoption.
- (6) This sub-paragraph applies if—
 - (a) the member's absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and
 - (b) the member is a person by whom the child has been or is expected to be adopted.]
- [^{F20}(7) This sub-paragraph applies if—
 - (a) the member's absence from work is due to the placement or expected placement of a child as mentioned in section 167ZLA(1) and (2) of the Contributions and Benefits Act (cases involving the placing of a child under Article 27(2)(a) of the Children (Northern Ireland) Order 1995 with a person who is an approved foster parent and an approved prospective adopter), and
 - (b) in relation to that child, the member satisfies the condition in section 167ZL(2)(a) of that Act, as modified by virtue of section 167ZLA(1) to (3) of that Act (in relation to such cases).
- (8) This sub-paragraph applies if—
 - (a) the member's absence from work is due to the birth or expected birth of a child, and
 - (b) in relation to that child, the member satisfies the condition in section 167ZL(2)(a) of the Contributions and Benefits Act, as applied by virtue of section 167ZT(2) of that Act

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(cases involving applicants for parental orders under section 54 [^{F21}or 54A] of the Human Fertilisation and Embryology Act 2008).]

- F19** Words in Sch. 5 para. 5B(4) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), s. 23\(1\), Sch. 1 para. 1\(3\)\(a\)](#); S.R. 2015/86, art. 3(2)(a)
- F20** Sch. 5 para. 5B(7), (8) added (15.3.2015 for sub-para. (8), 5.4.2015 for sub-para. (7)) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), s. 23\(1\), Sch. 1 para. 1\(3\)\(b\)](#); S.R. 2015/86, arts. 3(2)(a), 4(2)(a) (with art. 7(2))
- F21** Words in Sch. 5 para. 5B(8)(b) inserted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\), art. 1\(1\), Sch. 1 para. 3](#)

[^{F22}Unfair shared parental leave provisions

- F22** Sch. 5 para. 5C and preceding cross-heading inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), s. 23\(1\), Sch. 1 para. 1\(4\)](#); S.R. 2015/86, art. 3(2)(a)

5C.—(1) Where an employment-related benefit scheme includes any unfair shared parental leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—

- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment, and
- (b) subject to sub-paragraph (3), this Schedule shall apply accordingly.

(2) In this paragraph “unfair shared parental leave provisions”, in relation to an employment-related benefit scheme, means any provision—

- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid shared parental leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement, or
- (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid shared parental leave, to be determined otherwise than in accordance with the normal employment requirement.

(3) In the case of any unfair shared parental leave provision—

- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement, and
- (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned,

but, in respect of any period of paid shared parental leave, a member shall only be required to pay contributions on the amount of contractual remuneration or statutory shared parental pay actually paid to or for the member in respect of that period.

(4) In this paragraph—

“the normal employment requirement” is the requirement that any period of paid shared parental leave shall be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so,

“period of paid adoption leave” has the same meaning as in paragraph 5B,

- “period of paid paternity leave” has the same meaning as in paragraph 5A,
- “period of paid shared parental leave”, in the case of a member, means a period—
- (a) throughout which the member is absent from work in circumstances where sub-paragraph (5), (7), (8), (9), (10) or (11) applies, and
 - (b) for which the employer (or if the member is no longer in that person's employment, his former employer) pays the member any contractual remuneration or statutory shared parental pay.
- (5) This sub-paragraph applies if—
- (a) the member's absence from work is due to the birth of a child,
 - (b) the member is the mother of the child, and
 - (c) the absence from work is not absence on maternity leave.
- (6) For the purposes of sub-paragraph (5)(c), the absence of the member from work is absence on maternity leave if—
- (a) the absence is in consequence of the prohibition in Article 104(1) of the Employment Rights (Northern Ireland) Order 1996 (compulsory maternity leave),
 - (b) the absence is because the member is exercising the right conferred by Article 103(1) or 105(1) of that Order (ordinary maternity leave or additional maternity leave).
- (7) This sub-paragraph applies if—
- (a) the member's absence from work is due to the birth of a child,
 - (b) the member is a person who satisfies the conditions prescribed under section 167ZU(4)(b)(i) or (ii) of the Contributions and Benefits Act in relation to the child, and
 - (c) the member's absence from work is not absence during a period of paid paternity leave.
- (8) This sub-paragraph applies if—
- (a) the member's absence from work is due to the placement of a child for adoption under the law of any part of the United Kingdom,
 - (b) the member is—
 - (i) a person with whom a child is placed for adoption under the law of any part of the United Kingdom, or
 - (ii) a person who satisfies the conditions prescribed under section 167ZW(4)(b)(i) or (ii) of the Contributions and Benefits Act in relation to the child, and
 - (c) the member's absence from work is not absence during—
 - (i) a period of paid paternity leave, or
 - (ii) a period of paid adoption leave.
- (9) This sub-paragraph applies if—
- (a) the member's absence from work is due to the placement of a child (as mentioned in section 167ZY(1) and (2) of the Contributions and Benefits Act: cases involving the placing of a child under Article 27(2)(a) of the Children (Northern Ireland) Order 1995 with a person who is an approved foster parent and an approved prospective adopter),
 - (b) the member is—
 - (i) the approved foster parent with whom the child in question is placed as mentioned in section 167ZY(1) and (2) of that Act, or
 - (ii) a person who satisfies the conditions prescribed under section 167ZW(4)(b)(i) or (ii) of that Act, as modified by virtue of section 167ZY(3) of that Act (in relation to such cases), in relation to the child, and

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- (c) the member's absence from work is not absence during—
 - (i) a period of paid paternity leave, or
 - (ii) a period of paid adoption leave.
- (10) This sub-paragraph applies if—
 - (a) the member's absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve placement of the child for adoption under the law of any part of the United Kingdom,
 - (b) the member is—
 - (i) the person who has adopted or expects to adopt the child in question, or
 - (ii) a person who satisfies the conditions prescribed under section 167ZW(4)(b)(i) or (ii) of the Contributions and Benefits Act, as applied by virtue of section 167ZZ8(1) of that Act (adoption cases not involving placement under the law of the United Kingdom), in relation to the child, and
 - (c) the member's absence from work is not absence during—
 - (i) a period of paid paternity leave, or
 - (ii) a period of paid adoption leave.
- (11) This sub-paragraph applies if—
 - (a) the member's absence from work is due to the birth of a child,
 - (b) the member is a person who has applied, or intends to apply, for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in relation to the child, and
 - (c) the member's absence from work is not absence during—
 - (i) a period of paid paternity leave, or
 - (ii) a period of paid adoption leave]

F²³Unfair parental bereavement leave provisions

F23 Sch. 5 para. 5D and cross-heading inserted (23.3.2022) by Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 (c. 5), ss. 4, 5(5)(6), Sch. Pt. 1 para. 1; S.R. 2022/136, arts. 2, 3

5D.—(1) Where an employment-related benefit scheme includes any unfair parental bereavement leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—

- (a) the scheme is to be regarded to that extent as not complying with the principle of equal treatment; and
- (b) subject to sub-paragraph (3), this Schedule is to apply accordingly.

(2) In this paragraph “unfair parental bereavement leave provisions”, in relation to an employment-related benefit scheme, means any provision—

- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid parental bereavement leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or

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- (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid parental bereavement leave, to be determined otherwise than in accordance with the normal employment requirement.
- (3) In the case of any unfair parental bereavement leave provision—
 - (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and
 - (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned; but, in respect of any period of paid parental bereavement leave, a member is only required to pay contributions on the amount of contractual remuneration or statutory parental bereavement pay actually paid to or for the member in respect of that period.
- (4) In this paragraph—
 - “the normal employment requirement” is the requirement that any period of paid parental bereavement leave is to be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so;
 - “period of paid parental bereavement leave”, in the case of a member, means any period—
 - (a) throughout which a member who is a bereaved parent (within the meaning given by section 167ZZ9(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992) is absent from work due to the death of a child, otherwise than by virtue of a period of leave mentioned in sub-paragraph (5); and
 - (b) for which the employer (or if the member is no longer in that person's employment, his former employer) pays the member any contractual remuneration or statutory parental bereavement pay.
- (5) The periods of leave referred to in paragraph (a) of the definition of “period of paid parental bereavement leave” are—
 - (a) a period of paid paternity leave (within the meaning of paragraph 5A),
 - (b) a period of maternity leave (within the meaning given in sub-paragraph (6)),
 - (c) a period of paid adoption leave (within the meaning of paragraph 5B), or
 - (d) a period of shared parental leave (within the meaning of paragraph 5C).
- (6) A period of maternity leave is a period throughout which the member is absent—
 - (a) in consequence of the prohibition in Article 104(1) of the Employment Rights (Northern Ireland) Order 1996 (compulsory maternity leave), or
 - (b) because the member is exercising the right conferred by Article 103(1) or 105(1) of that Order (ordinary maternity leave or additional maternity leave).]

Unfair family leave provisions

- 6.—(1) Where an employment#related benefit scheme includes any unfair family leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—
- (a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
 - (b) subject to sub#paragraph (3), this Schedule shall apply accordingly.
- (2) In this Schedule “unfair family leave provisions” means any provision—

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- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid family leave in the case of any member who is an employed earner and which treats such a member otherwise than in accordance with the normal leave requirement; or
 - (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member to the extent that it falls to be determined by reference to earnings during a period which included a period of paid family leave, to be determined otherwise than in accordance with the normal leave requirement.
- (3) In the case of any unfair family leave provision—
- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the members in accordance with the normal leave requirement;
 - (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned; and

Sub-para.(c) rep. by 1995 NI 22

but, in respect of a period of paid family leave, a member shall only be required to pay contributions on the amount of contractual remuneration actually paid to or for him in respect of that period.

- (4) In this paragraph—
- (a) “period of paid family leave” means any period—
 - (i) throughout which a member is absent from work for family reasons; and
 - (ii) for which the employer pays him any contractual remuneration;
 - (b) “the normal leave requirement” is the requirement that any period of paid family leave shall be treated as if it were a period throughout which the member in question works normally but only receives the remuneration in fact paid to him for that period.

Meaning of “employment#related benefit scheme”, etc.

7. In this Schedule—

- (a) “employment#related benefit scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide service#related benefits to or in respect of employed or self#employed earners—
 - (i) who have qualifying service in an employment of any such description or category, or
 - (ii) who have made arrangements with the trustees or managers of the scheme to enable them to become members of the scheme,but does not include a limited scheme;
- (b) “limited scheme” means—
 - (i) any personal scheme for employed earners to which the employer does not contribute;
 - (ii) any scheme which has only one member, other than a personal scheme for an employed earner to which his employer contributes;
 - (iii) any contract of insurance which is made for the benefit of employed earners only and to which the employer is not a party;
- (c) “personal scheme” means any scheme or arrangement which falls within sub#paragraph (a) by virtue of head (ii) of that sub#paragraph (or which would so fall apart from sub#paragraph (b));

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- (d) “public service scheme” has the^{F24} meaning given by Article 2(2) of the Pensions Order;
- (e) “service#related benefits” means benefits, in the form of pensions or otherwise, payable in money or money's worth in respect of—
 - (i) termination of service;
 - (ii) retirement, old age or death;
 - (iii) interruptions of service by reason of sickness or invalidity;
 - (iv) accidents, injuries or diseases connected with employment;
 - (v) unemployment; or
 - (vi) expenses incurred in connection with children or other dependants,and includes, in the case of a member who is an employed earner, any other benefit so payable to or in respect of the member in consequence of his employment.

F24 prosp. subst. by 1993 c. 49

Extension of ban on compulsory membership

8. ^{F25}Article 17(1) of the 1986 Order (which renders void any provision making membership of a pension scheme compulsory for an employed earner) shall apply in relation to a self#employed earner as it applies in relation to an employed earner, but with the substitution for references to a personal pension scheme of references to an employment#related benefit scheme which would be such a pension scheme if self#employed earners were regarded as employed earners.

F25 prosp. subst. by 1993 c. 49

Jurisdiction

- 9.—**(1) The court, on the application of any person interested, shall have jurisdiction to determine any question arising as to—
- (a) whether any provision of an employment#related benefit scheme does or does not comply with the principle of equal treatment; or
 - (b) whether, and with what effect, any such provision is overridden by paragraph 3.
- (2) In sub#paragraph (1) “the court” means the High Court or a county court.
- (3) An application under sub#paragraph (1) may be commenced in a county court notwithstanding—
- (a) any financial limit otherwise imposed on the jurisdiction of such a court; or
 - (b) that the only relief claimed is a declaration or an injunction.

Interpretation

10. Expressions other than “benefit” which are used in this Part of this Schedule and in the principal Act have the same meaning in this Part of this Schedule as they have in that Act.

Supplemental

11. In consequence of the foregoing provisions of this Schedule the following provisions of the Pensions Order shall cease to have effect—

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- (a) Articles 55 to 58 (equal access to schemes for men and women); and
- (b) Article 60(3)(e) (functions of the Occupational Pensions Board relating to equal access).

Future repeal of actuarial provisions

12. The Department may by order repeal paragraph 2(4)(a)(i); and if and to the extent that the Department has not done so before 30th July 1999 that sub#head shall cease to have effect on that date.

Changes to legislation:

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Changes and effects yet to be applied to :

- power to am. (prosp.) by [1998 c. 47 s.87](#)