

## SCHEDULES

### SCHEDULE 1

#### Minor and consequential amendments

##### *Social Security (Northern Ireland) Order 1989 (NI 13)*

1.—(1) Schedule 5 to the Social Security (Northern Ireland) Order 1989 is amended as follows.

(2) In paragraph 5A (schemes that contain unfair paternity leave provisions)—

(a) in sub-paragraph (3) (how scheme affected), in the words following paragraph (b), for “, ordinary statutory paternity pay or additional statutory paternity pay” substitute “ or statutory paternity pay ”,

(b) in sub-paragraph (4) (definitions)—

(i) in paragraph (a) of the definition of “period of paid paternity leave”, for “(7) or (8)” substitute “ (7), (7A) or (7B) ”,

(ii) in paragraph (b) of that definition, for “, ordinary statutory paternity pay or additional statutory paternity pay” substitute “ or statutory paternity pay ”,

(c) in sub-paragraph (5)(b), for “the Social Security Contributions and Benefits (Northern Ireland) Act 1992” substitute “ the Contributions and Benefits Act ”,

(d) in sub-paragraph (7) (type of paid paternity leave: where adoption does not involve placement for adoption under the law of any part of the United Kingdom), for “section 167ZK” substitute “ section 167ZK(1) ”,

(e) after sub-paragraph (7) insert—

“(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

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**Changes to legislation:** *There are currently no known outstanding effects for the Work and Families Act (Northern Ireland) 2015, Cross Heading: Social Security (Northern Ireland) Order 1989 (NI 13). (See end of Document for details)*

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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 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.”

(f) omit sub-paragraph (8) (absence from work in circumstances where certain conditions for payment of additional statutory paternity pay are satisfied).

(3) In paragraph 5B (schemes that contain unfair adoption leave provisions)—

- (a) in sub-paragraph (4) (definitions), in paragraph (a) of the definition of “period of paid adoption leave”, for “or (6)” substitute “, (6), (7) or (8)”,
- (b) after sub-paragraph (6) add—

“(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 (cases involving applicants for parental orders under section 54 of the Human Fertilisation and Embryology Act 2008).”.

(4) After that paragraph insert—

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*“Unfair shared parental leave provisions*

**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,

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“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.

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- (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
  - (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

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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”

**Commencement Information**

- I1** Sch. 1 para. 1(1) in operation at 15.3.2015 by [S.R. 2015/86, art. 3\(2\)\(a\)](#)
- I2** Sch. 1 para. 1(2)(a)(b)(ii)(f) in operation at 5.4.2015 by [S.R. 2015/86, art. 4\(2\)\(a\)](#) (with [art. 7\(2\)](#))
- I3** Sch. 1 para. 1(2)(b)(i) in operation at 15.3.2015 for specified purposes by [S.R. 2015/86, art. 3\(2\)\(a\)](#)
- I4** Sch. 1 para. 1(2)(b)(i)(e) in operation at 5.4.2015 in so far as not already in operation by [S.R. 2015/86, art. 4\(2\)\(a\)](#) (with [art. 7\(2\)](#))
- I5** Sch. 1 para. 1(2)(b)(ii) in operation at 5.4.2015 by [S.R. 2015/86, art. 4\(2\)\(a\)](#) (with [art. 7\(2\)](#))
- I6** Sch. 1 para. 1(2)(c)(d)(3)(a) in operation at 15.3.2015 by [S.R. 2015/86, art. 3\(2\)\(a\)](#)
- I7** Sch. 1 para. 1(2)(e) in operation at 15.3.2015 for specified purposes by [S.R. 2015/86, art. 3\(2\)\(a\)](#)
- I8** Sch. 1 para. 1(3)(b) in operation at 15.3.2015 for specified purposes by [S.R. 2015/86, art. 3\(2\)\(a\)](#)
- I9** Sch. 1 para. 1(3)(b) in operation at 5.4.2015 in so far as not already in operation by [S.R. 2015/86, art. 4\(2\)\(a\)](#) (with [art. 7\(2\)](#))
- I10** Sch. 1 para. 1(4) in operation at 15.3.2015 by [S.R. 2015/86, art. 3\(2\)\(a\)](#)

**Changes to legislation:**

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