

SCHEDULES

SCHEDULE 5

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

PART 1

COMPLIANCE BY SCHEMES

[^{F1}Unfair adoption leave provisions

F1 2005 NI 1

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—

Changes to legislation: *The Social Security (Northern Ireland) Order 1989, Cross Heading: Unfair adoption leave provisions is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (a) throughout which the member is absent from work in circumstances where sub-paragraph (5) [^{F2}, (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.]
 - [^{F3}(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 [^{F4} or 54A] of the Human Fertilisation and Embryology Act 2008).]

- | | |
|-----------|---|
| F2 | 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) |
| F3 | 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)) |
| F4 | 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 |

Changes to legislation:

The Social Security (Northern Ireland) Order 1989, Cross Heading: Unfair adoption leave provisions is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

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