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## SCHEDULES

### SCHEDULE 5

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

##### PART I

##### COMPLIANCE BY SCHEMES

##### *[<sup>F1</sup>Unfair shared parental leave provisions*

###### Textual Amendments

**F1** and cross-heading inserted (1.12.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 4](#); [S.I. 2014/1640](#), art. 5(2)(c)

- 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;

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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), (6), (7), (8), (9) or (10) 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 (within the meaning of the Equality Act 2010).

(6) 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 171ZU(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992 in relation to the child, and
- (c) the member's absence from work is not absence during a period of paid paternity leave.

(7) 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 171ZV(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992 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.

(8) This sub-paragraph applies if—

- [<sup>F2</sup>(a) the member's absence from work is due to the placement of a child under—
  - (i) section 22C of the Children Act 1989 by a local authority in England,
  - or

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- (ii) section 81 of the Social Services and Well-being (Wales) Act 2014 by a local authority in Wales,  
with a local authority foster parent who has been approved as a prospective adopter,]
  - (b) the member is—
    - (i) the local authority foster parent with whom the child in question is placed under section 22C of the Children Act 1989 [<sup>F3</sup>or section 81 of the Social Services and Well-being (Wales) Act 2014], or
    - (ii) a person who satisfies the conditions prescribed under section 171ZV(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992, as modified by section 171ZV(18) of that Act (cases involving the placing of a child by a local authority in England [<sup>F4</sup>or Wales] with a local authority foster parent who has been approved as a prospective adopter), 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 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 171ZV(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992, as applied by virtue of section 171ZZ5(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.
- (10) 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.]

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#### Textual Amendments

- F2** Sch. 5 para. 5C(8)(a) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **54(e)**

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| <p><b>F3</b> Words in Sch. 5 para. 5C(8)(b)(i) inserted (E.W.) (6.4.2016) by <a href="#">The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413)</a>, regs. 2(1), <b>54(f)</b></p> <p><b>F4</b> Words in Sch. 5 para. 5C(8)(b)(ii) inserted (E.W.) (6.4.2016) by <a href="#">The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413)</a>, regs. 2(1), <b>54(g)</b></p> |
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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 5 para. 5E and cross-heading inserted by [2023 c. 20 Sch. para. 7](#)