
Changes to legislation: Social Security Act 1989, Paragraph 5D is up to date with all changes known to be in force on or before 31 January 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

SCHEDULES

SCHEDULE 5

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

PART I

COMPLIANCE BY SCHEMES

^{F1}Unfair parental bereavement leave provisions

Textual Amendments

F1 Sch. 5 para. 5D and cross-heading inserted (18.1.2020) by [Parental Bereavement \(Leave and Pay\) Act 2018 \(c. 24\), s. 2\(2\), Sch. para. 7; S.I. 2020/45, reg. 2](#)

- 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
 - (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;

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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 171ZZ6(3) of the Social Security Contributions and Benefits 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 of the Equality Act 2010),
- (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).]

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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](#)