



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 5

#### OCCUPATIONAL AND PERSONAL PENSION SCHEMES: MISCELLANEOUS PROVISIONS

##### *Safeguarding pension rights*

#### **265 Paternity leave and adoption leave**

- (1) In Schedule 5 to the Social Security Act 1989 (c. 24) (employment-related schemes for pensions or other benefits: equal treatment), after paragraph 5 insert—

##### **“Unfair paternity leave provisions**

- 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

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**Changes to legislation:** *Pensions Act 2004, Section 265 is up to date with all changes known to be in force on or before 20 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*

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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 or statutory paternity pay actually paid to or for him in respect of that period.

- (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) or (7) 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 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 171ZA(2)(a)(i) and (ii) of the Social Security Contributions and Benefits Act 1992 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 171ZB(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 171ZB(2)(a)(i) and (ii) of that Act (as applied by virtue

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of section 171ZK of that Act (adoption cases not involving placement under the law of the United Kingdom)) in relation to that child.

### 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) or (6) 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

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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.”

(2) The provision that may be made under section 142(1) of the Adoption and Children Act 2002 (c. 38) (power to make consequential etc provision to give full effect to any provision of that Act) includes provision modifying paragraph 5A or 5B of Schedule 5 to the Social Security Act 1989 (c. 24) (as inserted by subsection (1) above).

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**Commencement Information**

**II** S. 265 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#) (with art. 2(12))

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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):

- s. 18(5A) inserted by [2014 c. 19 s. 52\(2\)](#)
- s. 18(6) words inserted by [2014 c. 19 s. 52\(3\)](#)
- s. 18(8) words inserted by [2014 c. 19 s. 52\(3\)](#)
- s. 23(1A) inserted by [2015 c. 8 Sch. 2 para. 26\(3\)](#)
- s. 23(10A) inserted by [2015 c. 8 Sch. 2 para. 26\(5\)](#)
- s. 38(1)-(1B) substituted for s. 38(1) by [2015 c. 8 Sch. 2 para. 27](#)
- s. 38(7)(da) inserted by [2021 c. 1 s. 104\(2\)](#)
- s. 43(1)-(1B) substituted for s. 43(1) by [2015 c. 8 Sch. 2 para. 28\(2\)](#)
- s. 52(1)-(1B) substituted for s. 52(1) by [2015 c. 8 Sch. 2 para. 29](#)
- s. 80(1)(a)(iib) inserted by [2021 c. 1 s. 109\(3\)](#)
- s. 102(2)(a) words in s. 102(2) renumbered as s. 102(2)(a) by [2008 c. 30 s. 44\(5\)\(a\)](#)
- s. 102(2)(b) inserted by [2008 c. 30 s. 44\(5\)\(b\)](#)
- s. 103(1A) inserted by [2008 c. 30 s. 44\(6\)](#)
- s. 117A inserted by [2008 c. 30 Sch. 10 para. 3](#)
- s. 126(1)-(1B) substituted for s. 126(1) by [2015 c. 8 Sch. 2 para. 31](#)
- s. 188(1)(ba) inserted by [2008 c. 30 Sch. 10 para. 6](#)
- s. 189A inserted by [2008 c. 30 Sch. 10 para. 7](#)
- s. 209(9) added by [2008 c. 30 Sch. 10 para. 8](#)
- s. 291(4)(f) and word inserted by [2021 c. 1 Sch. 3 para. 19\(b\)](#)
- s. 318(3)(a)(viii)-(x) inserted by [2015 c. 8 Sch. 2 para. 38\(3\)\(a\)](#)
- s. 318(3)(b)(vi)-(viii) inserted by [2015 c. 8 Sch. 2 para. 38\(3\)\(b\)](#)
- Sch. 4 para. 7(5)(b) inserted by [2008 c. 30 s. 44\(8\)\(b\)](#)
- Sch. 4 para. 13(3) inserted by [2008 c. 30 s. 44\(9\)\(b\)](#)
- Sch. 4 para. 7(5)(a) words in Sch. 4 para. 7(5) renumbered as Sch. 4 para. 7(5)(a) by [2008 c. 30 s. 44\(8\)\(a\)](#)
- Sch. 7 para. 21(2)(c)-(cc) substituted for Sch. 7 para. 21(2)(b)(c) by [2008 c. 30 Sch. 8 para. 11](#) (This amendment not applied to legislation.gov.uk. Sch. 8 para. 10 (3.1.2012) omitted without ever being in force by virtue of 2011 c. 19, Sch. 4 para. 20; S.I. 2011/3034 art. 3(i)(iv))