Changes to legislation: *The Social Security (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 06 July 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*

STATUTORY INSTRUMENTS

1989 No. 1342 (N.I. 13)

The Social Security (Northern Ireland) Order 1989 [F1]

F1 functions transf. by SR 1999/481

Introductory

Title, citation and commencement

1.—(1) This Order may be cited as the Social Security (Northern Ireland) Order 1989; and this Order may be cited together with the Social Security (Northern Ireland) Acts 1975 to 1988 as the Social Security (Northern Ireland) Acts 1975 to 1989.

(2) Subject to paragraph (3), this Order shall come into operation on such day or days as the Head of the Department may by order appoint.

(3) The following provisions of this Order shall come into operation on the twenty#first day after the day on which this Order is made—

(a) this Article and Article 2;

(b) Articles 4 to 6, 8, 16 to 22, 29, 30 and 31(3), subject in the case of Article 21 to paragraph (11) of that Article;

(c) Schedule 2;

(d) paragraphs 1, 12 and 13 of Schedule 3 (and Article 23 so far as relating to those paragraphs);

(e) paragraphs 2 to 4, 9 and 14 to 18 of Schedule 6 (and Article 26 so far as relating to those paragraphs);

(f) paragraphs 1 to 7 and 12 of Schedule 7 (and Article 27 so far as relating to those paragraphs);

(g) paragraphs 1, 4 to 6, 8 to 12, 16 and 17 of Schedule 8 (and Article 31 so far as relating to those paragraphs);

(h) the repeals in Schedule 9 to the extent that they are consequential on any provision specified in sub#paragraphs (a) to (g) (and Article 31 so far as relating to those repeals).

Subordinate Legislation Made

P1 Art. 1(2) partly exercised: 25.8.1989 appointed by S.R. 1989/353, **art. 2**;
31.1.1990 by S.R. 1990/35, **art. 2**
16.3.1990 by S.R. 1990/113, **art. 2**
22.6.1994 by S.R. 1994/234, **art. 2**
23.8.2007 by {S.R. 2007/362}, art. 2

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954[F2] shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"Commissioner" has the same meaning as it has in the principal Act;

"the Department" means the Department of Health and Social Services;

Definitions rep. by 1992 c.9

"the 1986 Order" means the Social Security (Northern Ireland) Order 1986[F3] ;

"the Pensions Order" means the Social Security Pensions (Northern Ireland) Order 1975[F4];

"prescribed" means prescribed by regulations;

"the principal Act" means the Social Security (Northern Ireland) Act 1975[F5];

"regulations" means regulations made by the Department;

"statutory provision" has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) In this Order references to Northern Ireland include references to the territorial waters of the United Kingdom adjacent to Northern Ireland.

F2 1954 c. 33 (NI)
F3 1986 NI 18
F4 1975 NI 15
F5 1975 c. 15

Contributions

Arts.3 — 5 rep. by 1992 c.9

Earnings factors

Paras.(1)#(4) rep. by 1992 c.9

(5) The Earnings Factor Regulations, as in operation for the purpose of determining earnings factors for the tax years beginning with 6th April 1985 and 6th April 1986, shall have effect, and be taken always to have had effect, with the substitution in paragraph 3 of Schedule 1 (which, as amended by regulation 2(3) of the Amending Regulations, provided in certain cases for the aggregation of separate contributions) for the words from "where the values" to "those sums" of the words—

"where, in the case of any two or more separate sums—

(a) the values to be accorded to F (apart from this paragraph) would fall to be ascertained under the same head of paragraph 2(e) above, and

(b) the values to be so accorded to G would fall to be ascertained under the same head of paragraph 2(f) above,

those sums" .

(6) In paragraph (5)—

"the Earnings Factor Regulations" means the Social Security (Earnings Factor) Regulations (Northern Ireland) 1979[F6]; and

"the Amending Regulations" means the Social Security (Earnings Factor) (Amendment) Regulations (Northern Ireland) 1985[F7].

(7) The amendment by paragraph (5) of a provision contained in regulations shall not be taken to have prejudiced any power to make further regulations revoking or amending that provision, whether in relation to the tax years there mentioned or otherwise.

(8) The Social Security (Earnings Factor) (Amendment) Regulations (Northern Ireland) 1988[F8] shall have effect, and be deemed always to have had effect, as if the amendment made by paragraph (3) had come into operation before the making of those regulations.

F6 SR 1979 No. 193
F7 SR 1985 No. 263
F8 SR 1988 No. 73

Art. 7 rep. by 1992 c.9

Benefits under the principal Act

Benefits for women widowed before 11th April 1988

Para. (1) rep. by 1992 c.9

[F9](2) The Social Security (Widow's Benefit and Retirement Pensions) (Amendment) Regulations (Northern Ireland) 1987[F10] shall have effect, and be taken always to have had effect, with the addition at the end of regulation 3 (transitional provision for widowed mother's allowance where husband died before 11th April 1988) of the following paragraphs—

"(3) In determining whether a widow—

(a) whose late husband died on or after 7th October 1987 and before 11th April 1988, and

(b) who became entitled to a widow's allowance on his death,

is also entitled, after the cessation of that allowance, to a widowed mother's allowance for any period beginning on or after 11th April 1988, regulation 16(1) of the principal regulations shall apply as if regulation 2(6) above had not been made.

(4) In determining whether a widow—

(a) whose late husband died before 11th April 1988,

(b) who immediately before that date was entitled to a widowed mother's allowance otherwise than by virtue of regulation 16(1) of the principal regulations, and

(c) who would, apart from this paragraph, cease to be entitled to that allowance on or after that date,

is entitled to such an allowance for any period beginning on or after that date, that regulation shall apply as if regulation 2(6) above had not been made." .

(3) The Social Security Benefit (Dependency) (Amendment) Regulations (Northern Ireland) 1989[F11] shall have effect, and be taken always to have had effect, with the insertion after regulation 3 (which made amendments concerning widowed mother's allowance to regulation 4B of the Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977[F12] of the following regulation—

"**3A.** The amendment made by regulation 3(a) above shall not have effect in relation to a widow whose late husband died before 11th April 1988.".

(4) In any case where—

(a) a claim for a widow's pension or a widowed mother's allowance is made, or treated as made, before the commencement of this Article, and

(b) the Department has made a payment to or for the claimant on the ground that, if the claim had been received immediately after the commencement of this Article, she would have been entitled to that pension or allowance, or entitled to it at a higher rate, for the period in respect of which the payment is made,

the payment so made shall be treated as a payment of that pension or allowance; and, if and to the extent that an award of the pension or allowance, or an award at a higher rate, is made for the period in respect of which the payment was made, the payment shall be treated as made in accordance with that award.

(5) Where, apart from section 154A of the principal Act (making of claim a condition of entitlement), a widow falling within paragraph (1) would be entitled to a widow's pension for any period beginning on or after 11th April 1988, then, notwithstanding anything in that section, she shall be entitled to that pension for that period if she has made a claim for it before the end of the period of twelve months beginning with the commencement of this Article.

(6) Where a widow's late husband died on or after 7th October 1987 and before 11th April 1988 and, apart from section 154A of the principal Act, she would have become entitled to a widow's allowance on his death, then if either—

(a) she was over the age of 40 but under the age of 55 at the time of his death, or

(b) she would, apart from that section, have been entitled to a widowed mother's allowance on the cessation of her entitlement to the widow's allowance,

she shall, notwithstanding anything in that section, be entitled to the widow's allowance (and, accordingly, in a case falling within sub#paragraph (b), to the widowed mother's allowance) if she has made a claim, or is treated as having made a claim, for it before the end of the period of twelve months beginning with the commencement of this Article.

(7) Where in consequence of any of the amending provisions an adjudicating authority has decided before the commencement of this Article that a widow whose husband died before 11th April 1988 either—

(a) is not entitled to a benefit under section 25 or 26 of the principal Act, or

(b) is entitled to such a benefit at a particular rate,

an adjudication officer may review that decision, notwithstanding anything in**[**[F13] section 23 of the Social Security Administration (Northern Ireland) Act 1992**]**.

(8) In any case where—

(a) it is determined on such a review that the widow in question was entitled to a benefit under section 25 or 26 of the principal Act, or was entitled to such a benefit at a higher rate, and

(b) the application for the review was made before the end of the period of twelve months beginning with the commencement of this Article,

the decision on the review may take effect on 11th April 1988 or any later date, notwithstanding any statutory provision restricting the payment of any benefit or increase of benefit to which a person would otherwise be entitled by reason of a review in respect of any period before the review.

(9) **[**[F13]Section 26 of the Social Security Administration (Northern Ireland) Act 1992 (appeals from reviews)**]** shall apply in relation to a review under this Article as it applies in relation to a review under**[**[F13] section 23 of that Act**]**.

(10) In this Article—

"adjudicating authority" means—

(a) an adjudication officer;

(b) a social security appeal tribunal;

(c) a Commissioner; and

"the amending provisions" are—

(a) Article 37(3) of the 1986 Order; and

(b) regulation 2(6) of the Social Security (Widow's Benefit and Retirement Pensions) (Amendment) Regulations (Northern Ireland) 1987[F14] (deemed entitlement to child allowance for purposes of widowed mother's allowance, etc.).

(11) The amendment by this Article of provisions contained in regulations shall not be taken to have prejudiced any power to make further regulations revoking or amending those provisions.

(12) Nothing in this Article shall be taken to prejudice section 28 or 29 of the Interpretation Act (Northern Ireland) 1954[F15] (effect of repeals, substitutions, etc.).

F9 prosp.rep. by 1990 NI 15
F10 SR 1987 No. 404
F11 SR 1989 No. 103
F12 SR 1977 No. 74
F13 1992 c. 9
F14 SR 1987 No. 404
F15 1954 c. 33 (NI)

Abolition of earnings rule etc.

Paras.(1)#(5) rep. by 1992 c.9

(6) The statutory provisions mentioned in Schedule 1 shall have effect with the amendments there specified.

Art. 10 rep. by 1991 NI 17

Arts. 11#21 rep. by 1992 c.9

Art. 22 rep. by 1993 c.49

Art. 23 rep. by 1992 c.9

Recovery from damages, etc., of sums equivalent to benefit

Recovery of sums equivalent to benefit from compensation payments in respect of accidents, injuries and diseases

Paras.(1)#(6) rep. by 1992 c.9

(7) Schedule 4 shall have effect for the purpose of supplementing the provisions of this Article; and this Article shall have effect subject to the provisions of that Schedule.

Para.(8) rep. by 1992 c.9

Occupational and personal pensions, etc.

Equal treatment for men and women

25. Schedule 5 shall have effect for the purpose of implementing the directive of the Council of the European Communities, dated 24th July 1986, relating to the principle of equal treatment for men and women in occupational social security schemes, and of making additional, supplemental and consequential provision.

Miscellaneous amendments relating to pensions

26. The statutory provisions mentioned in Schedule 6 (which relate to occupational and personal pensions) shall have effect with the amendments there specified.

General and supplementary provisions

Art. 27 rep. by 1993 c.49

Art. 28 rep. by 1992 c.9

Financial provisions

29.—(1) There shall be paid out of the National Insurance Fund into the Consolidated Fund, at such times and in such manner as the Department of Finance and Personnel may direct, such sums as the Department may estimate (in accordance with any directions given by the Department of Finance and Personnel) to be the amount of the administrative expenses incurred by the Department under Articles[F16]. . . 8, 9[F16]. . . excluding any category of expenses or payments which the Department of Finance and Personnel may direct, or any statutory provision may require, to be excluded from the Department's estimates under this paragraph.
Paras. (2)(3) rep. by 1992 c.9

(5) In this Article "the National Insurance Fund" means the Northern Ireland National Insurance Fund.

F16 1992 c. 9

Regulations and orders: general provisions

30.—(1) Subject to the following provisions of this Article,**[**[F17] section 171(2) to (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992**]** shall apply in relation to any power conferred by any provision of this Order to make regulations or an order as they apply in relation to any power conferred by that Act to make regulations or an order, but as if for references to that Act there were substituted references to this Order.
Para.(2) rep. by 1992 c.9

[[F18](3) Regulations and orders made under this Order, other than[F19]. . . orders under Article 1(2), shall be subject to negative resolution.**]**

Para.(4) rep. by 1990 NI 15

Para.(5) rep. by 1992 c.9

(6) A power conferred by this Order to make any regulations or order, where the power is not expressed to be exercisable with the consent of the Department of Finance and Personnel, shall if the Department of Finance and Personnel so directs, be exercisable only in conjunction with it.
Para.(7) rep. by 1995 NI 22

F17 1992 c. 9
F18 1990 NI 15
F19 1992 c. 9

Minor and consequential amendments, repeals and transitional provisions

31.—(1) The statutory provisions mentioned in Schedule 8 shall have effect with the amendments there specified (being minor amendments and amendments consequential on provisions of this Order).

(2) The statutory provisions mentioned in Schedule 9 (which include some that are spent or of no further practical utility) are repealed to the extent specified in the third column of that Schedule.

(3) The Department may by regulations make—

(a) such transitional provision,

(b) such consequential provision, or

(c) such savings,

as it considers necessary or expedient in preparation for or in connection with the coming into operation of any provision of this Order or the operation of any statutory provision repealed or amended by a provision of this Order during any period when the repeal or amendment is not wholly in operation.

S C H E D U L E S

Sch. 1 paras. 1#10 rep. by 1992 c.9

Sch. 1 para. 11 rep. by 1993 c.49

Schs. 2,3 rep. by 1992 c.9

SCHEDULE 4

Article 24.

RECOVERY OF SUMS EQUIVALENT TO BENEFIT FROM COMPENSATION PAYMENTS IN RESPECT OF ACCIDENTS, ETC: SUPPLEMENTARY PROVISION

Paras. 1#21 rep. by 1992 c.9

PART IV

MISCELLANEOUS

Amendment of Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 (c. 23)
Sub-paras.(1)(2) rep. by 1997 NI 12

(3) Subsection (2) of that section (disregard of increase for constant attendance) shall cease to have effect.

Para.23 rep. by 1992 c.9

SCHEDULE 5 Article 25.

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

PART 1

COMPLIANCE BY SCHEMES

Schemes to comply with the principle of equal treatment

1. Every employment#related benefit scheme shall comply with the principle of equal treatment.

The principle

2.—(1) The principle of equal treatment is that persons of the one sex shall not, on the basis of sex, be treated less favourably than persons of the other sex in any respect relating to an employment# related benefit scheme.

(2) Sub#paragraphs (3) to (6) have effect, where applicable, for the purpose of determining whether a scheme complies with the principle of equal treatment.

(3) Where any provision of the scheme imposes on both male and female members a requirement or condition—

(a) which is such that the proportion of persons of the one sex ("the sex affected") who can comply with it is considerably smaller than the proportion of persons of the other sex who can do so; and

(b) which is not justifiable irrespective of the sex of the members,

the imposition of that requirement or condition shall be regarded as less favourable treatment of persons of the sex affected.

(4) No account shall be taken of—

(a) any difference, on the basis of the sex of members, in the levels of contributions—

(i) which members are required to make, to the extent that the difference is justifiable on actuarial grounds; or

(ii) which the employer makes, to the extent that the difference is for the purpose of removing or limiting differences, as between men and women, in the amount or value of money purchase benefits;

(b) any difference, on the basis of sex, in the amount or value of money purchase benefits, to the extent that the difference is justifiable on actuarial grounds;

(c) any special treatment for the benefit of women in connection with pregnancy or childbirth;

(d) any permitted age#related differences;

(e) any difference of treatment in relation to benefits for a deceased member's surviving husband, wife or other dependants;

(f) any difference of treatment in relation to any optional provisions available; or

(g) any provisions of a scheme to the extent that they have been specially arranged for the benefit of one particular member of the scheme;

but where the scheme includes any unfair maternity provisions, it shall to that extent be regarded as according less favourable treatment to women on the basis of sex.

(5) Where the scheme treats persons of the one sex differently according to their marital **[**[F20], civil partnership**]** or family status, that treatment is to be compared with the scheme's treatment of persons of the other sex who have the same status.

(6) The principle of equal treatment applies in relation to members' dependants as it applies in relation to members.

(7) If any question arises whether a condition or requirement falling within sub#paragraph (3)(a) is or is not justifiable irrespective of the sex of the members, it shall be for those who assert that it is so justifiable to prove that fact.

(8) In this paragraph—

"money purchase benefits" has the meaning given by[F21] Article 2(2) of the 1986 Order, but with the substitution for references to a personal or occupational pension scheme of references to an employment#related benefit scheme;

"optional provisions available" means those provisions of a scheme—

(a) which apply only in the case of members who elect for them to do so; and

(b) whose purpose is to secure for those members—

(i) benefits in addition to those otherwise provided under the scheme; or

(ii) a choice with respect to the date on which benefits under the scheme are to commence; or

(iii) a choice between any two or more benefits;

"permitted age#related difference" means any difference, on the basis of sex, in the age—

(a) at which a service#related benefit in respect of old age or retirement commences; or

(b) at which, in consequence of the commencement of such a benefit, any other service#related benefit either ceases to be payable or becomes payable at a reduced rate calculated by reference to the amount of the benefit so commencing.

(9) For the purposes of this paragraph—

(a) any reference to a person's family status is a reference to his having **[**[F22]a relevant**]** partner or any dependants; and

(b) a person "has **[**[F23]a relevant**]** partner" if that person and some other person **[**[F24], without being married to or civil partners of each other, live together as if spouses of each other**]** .

F20 Words in Sch. 5 para. 2(5) inserted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **63(a)** (with regs. 6-9)

F21 prosp. subst. by 1993 c. 49

F22 Words in Sch. 5 para. 2(9)(a) substituted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **63(b)(i)** (with regs. 6-9)

F23 Words in Sch. 5 para. 2(9)(b) substituted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **63(b)(i)** (with regs. 6-9)

F24 Words in Sch. 5 para. 2(9)(b) substituted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **63(b)(ii)** (with regs. 6-9)

Non#compliance: compulsory levelling up

3.—(1) To the extent that any provision of an employment#related benefit scheme does not comply with the principle of equal treatment, it shall be overridden by this Schedule and the more favourable treatment accorded to persons of the one sex shall also be accorded to persons of the other sex.

(2) Where more favourable treatment is accorded to any persons by virtue of sub#paragraph (1), that sub#paragraph requires them, in accordance with the principle of equal treatment—

(a) to pay contributions at a level appropriate to the treatment so accorded; and

(b) to bear any other burden which is an incident of that treatment,

but persons of either sex may instead elect to receive the less favourable treatment and, in accordance with the principle of equal treatment, pay contributions at the level appropriate to that treatment and bear the other burdens incidental to it.

(3) Where any provision of a scheme is overridden by sub#paragraph (1), nothing in this Schedule shall affect any rights accrued or obligations incurred during the period before the date on which that provision is so overridden.

(4) Sub#paragraph (1) is without prejudice to the exercise, in compliance with the principle of equal treatment, of any power to amend the scheme.

Commencement Information

I1 Sch. 5 para. 3 partly in force; Sch. 5 para. 3 not in force at Royal Assent see art. 1(2); Sch. 5 para. 3(1)(3)(4) in force for certain purposes at 23.6.1994 by S.R. 1994/234, art. 2, Sch. Pt. I; Sch. 5 para. 3(1)(3)(4) in force for certain additional purposes at 24.8.2007 by S.R. 2007/362, **art. 2**

Para.4 rep. by 1995 NI 22

Unfair maternity provisions

5.—(1) In this Schedule "unfair maternity 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 maternity absence in the case of any woman who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a woman 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 woman, to the extent that it falls to be determined by reference to her earnings during a period which included a period of paid maternity absence, to be determined otherwise than in accordance with the normal employment requirement.

(2) In the case of any unfair maternity provision—

(a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the women[F25] in accordance with the normal employment requirement;

(b) paragraph 3(2) does not authorise the making of any such election as is there mentioned; and

Sub-para.(c) rep. by 1995 NI 22

but, in respect of a period of paid maternity absence, a woman shall only be required to pay contributions on the amount of contractual remuneration or statutory maternity pay actually paid to or for her in respect of that period.

(3) In this paragraph—

(a) "period of paid maternity absence" means any period—

(i) throughout which a woman is absent from work due to pregnancy or confinement; and

(ii) for which her employer (or, if she is no longer in his employment, her former employer) pays her any contractual remuneration or statutory maternity pay;

(b) "the normal employment requirement" is the requirement that any period of paid maternity absence shall be treated as if it were a period throughout which the woman in question works normally and receives the remuneration likely to be paid for doing so.

F25 prosp. inserted by 1990 NI 15

[F26 Unfair paternity leave provisions

F26 2005 NI 1

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 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 **[**[F27]**[**[F28]or statutory paternity pay**]]** actually paid to or for him in respect of that period.

[F29](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) **[**[F30], **[**[F29](7), (7A) or (7B) **]]** applies, and

(b) for which the employer (or if he is no longer in his employment, his former employer) pays him any contractual remuneration **[**[F31]**[**[F32]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 167ZA(2)(a)(i) and (ii) of **[**[F33]the Contributions and Benefits Act**]** 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 167ZB(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 167ZB(2)(a)(i) and (ii) of that Act (as applied by virtue of **[**[F34]section 167ZK(1)**]** of that Act (adoption cases not involving placement under the law of the United Kingdom)) in relation to that child.

[

[F35](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 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, "theContributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992.**]**

[F36]**[**

[F37](8)**]** . . . . . .

F27 Words in Sch. 5 para. 5A(3) substituted (1.10.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), 13(1), **Sch. 1 para. 1(2)**; S.R. 2010/295, **art. 3(a)(d)**

F28 Words in Sch. 5 para. 5A(3) substituted (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), s. 23(1), **Sch. 1 para. 1(2)(a)**; S.R. 2015/86, art. 4(2)(a) (with art. 7(2))

F29 Words in Sch. 5 para. 5A(4) substituted (15.3.2015 for specified purposes, 5.4.2015 in so far as not already in operation) by Work and Families Act (Northern Ireland) 2015 (c. 1), s. 23(1), **Sch. 1 para. 1(2)(b)(i)**; S.R. 2015/86, arts. 3(2)(a), 4(2)(a) (with art. 7(2))

F30 Sch. 5 para. 5A(4): words in definition of "period of paid paternity leave" substituted (1.10.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), 13(1), **Sch. 1 para. 1(3)(a)**; S.R. 2010/295, **art. 3(a)(d)**

F31 Sch. 5 para. 5A(4): words in definition of "period of paid paternity leave" substituted (1.10.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), 13(1), **Sch. 1 para. 1(3)(b)**; S.R. 2010/295, **art. 3(a)(d)**

F32 Words in Sch. 5 para. 5A(4) substituted (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), s. 23(1), **Sch. 1 para. 1(2)(b)(ii)**; S.R. 2015/86, art. 4(2)(a) (with art. 7(2))

F33 Words in Sch. 5 para. 5A(5)(b) substituted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), s. 23(1), **Sch. 1 para. 1(2)(c)**; S.R. 2015/86, art. 3(2)(a)

F34 Words in Sch. 5 para. 5A(7) substituted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), s. 23(1), **Sch. 1 para. 1(2)(d)**; S.R. 2015/86, art. 3(2)(a)

F35 Sch. 5 paras. 5A(7A)-(7C) inserted (15.3.2015 for (7B)(7C), 5.4.2015 for (7A)) by Work and Families Act (Northern Ireland) 2015 (c. 1), s. 23(1), **Sch. 1 para. 1(2)(e)**; S.R. 2015/86, arts. 3(2)(a), 4(2)(a) (with art. 7(2))

F36 Sch. 5 para. 5A(8) repealed (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), s. 23(1), Sch. 1 para. 1(2)(f), **Sch. 2**; S.R. 2015/86, art. 4(2)(a)(3) (with art. 7(2))

F37 Sch. 5 para. 5A(8) added (1.10.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), 13(1), **Sch. 1 para. 1(4)**; S.R. 2010/295, **art. 3(a)(d)**

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) **[**[F38], (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.**]**

[[F39](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 **[**[F40]or 54A**]** of the Human Fertilisation and Embryology Act 2008).**]**

F38 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)

F39 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))

F40 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**

[F41 Unfair shared parental leave provisions

F41 Sch. 5 para. 5C and preceding cross-heading inserted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), s. 23(1), **Sch. 1 para. 1(4)**; S.R. 2015/86, art. 3(2)(a)

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,

"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.

(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

(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**]**

[F42 Unfair parental bereavement leave provisions

F42 Sch. 5 para. 5D and cross-heading inserted (23.3.2022) by Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 (c. 5), ss. 4, 5(5)(6), **Sch. Pt. 1 para. 1**; S.R. 2022/136, arts. 2, 3

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;

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 167ZZ9(3) of the Social Security Contributions and Benefits (Northern Ireland) 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 given in sub-paragraph (6)),

(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).

(6) A period of maternity leave is a period throughout which the member is absent—

(a) in consequence of the prohibition in Article 104(1) of the Employment Rights (Northern Ireland) Order 1996 (compulsory maternity leave), or

(b) 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).**]**

Unfair family leave provisions

6.—(1) Where an employment#related benefit scheme includes any unfair family 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 Schedule "unfair family leave provisions" means any provision—

(a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid family leave in the case of any member who is an employed earner and which treats such a member otherwise than in accordance with the normal leave 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 family leave, to be determined otherwise than in accordance with the normal leave requirement.

(3) In the case of any unfair family leave provision—

(a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the members in accordance with the normal leave requirement;

(b) paragraph 3(2) does not authorise the making of any such election as is there mentioned; and

Sub-para.(c) rep. by 1995 NI 22

but, in respect of a period of paid family leave, a member shall only be required to pay contributions on the amount of contractual remuneration actually paid to or for him in respect of that period.

(4) In this paragraph—

(a) "period of paid family leave" means any period—

(i) throughout which a member is absent from work for family reasons; and

(ii) for which the employer pays him any contractual remuneration;

(b) "the normal leave requirement" is the requirement that any period of paid family leave shall be treated as if it were a period throughout which the member in question works normally but only receives the remuneration in fact paid to him for that period.

Meaning of "employment#related benefit scheme", etc.

7. In this Schedule—

(a) "employment#related benefit scheme" means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide service#related benefits to or in respect of employed or self#employed earners—

(i) who have qualifying service in an employment of any such description or category, or

(ii) who have made arrangements with the trustees or managers of the scheme to enable them to become members of the scheme,

but does not include a limited scheme;

(b) "limited scheme" means—

(i) any personal scheme for employed earners to which the employer does not contribute;

(ii) any scheme which has only one member, other than a personal scheme for an employed earner to which his employer contributes;

(iii) any contract of insurance which is made for the benefit of employed earners only and to which the employer is not a party;

(c) "personal scheme" means any scheme or arrangement which falls within sub#paragraph (a) by virtue of head (ii) of that sub#paragraph (or which would so fall apart from sub#paragraph (b));

(d) "public service scheme" has the[F43] meaning given by Article 2(2) of the Pensions Order;

(e) "service#related benefits" means benefits, in the form of pensions or otherwise, payable in money or money's worth in respect of—

(i) termination of service;

(ii) retirement, old age or death;

(iii) interruptions of service by reason of sickness or invalidity;

(iv) accidents, injuries or diseases connected with employment;

(v) unemployment; or

(vi) expenses incurred in connection with children or other dependants,

and includes, in the case of a member who is an employed earner, any other benefit so payable to or in respect of the member in consequence of his employment.

F43 prosp. subst. by 1993 c. 49

Extension of ban on compulsory membership

8. [F44]Article 17(1) of the 1986 Order (which renders void any provision making membership of a pension scheme compulsory for an employed earner) shall apply in relation to a self#employed earner as it applies in relation to an employed earner, but with the substitution for references to a personal pension scheme of references to an employment#related benefit scheme which would be such a pension scheme if self#employed earners were regarded as employed earners.

F44 prosp. subst. by 1993 c. 49

Jurisdiction

9.—(1) The court, on the application of any person interested, shall have jurisdiction to determine any question arising as to—

(a) whether any provision of an employment#related benefit scheme does or does not comply with the principle of equal treatment; or

(b) whether, and with what effect, any such provision is overridden by paragraph 3.

(2) In sub#paragraph (1) "the court" means the High Court or a county court.

(3) An application under sub#paragraph (1) may be commenced in a county court notwithstanding—

(a) any financial limit otherwise imposed on the jurisdiction of such a court; or

(b) that the only relief claimed is a declaration or an injunction.

Interpretation

10. Expressions other than "benefit" which are used in this Part of this Schedule and in the principal Act have the same meaning in this Part of this Schedule as they have in that Act.

Supplemental

11. In consequence of the foregoing provisions of this Schedule the following provisions of the Pensions Order shall cease to have effect—

(a) Articles 55 to 58 (equal access to schemes for men and women); and

(b) Article 60(3)(e) (functions of the Occupational Pensions Board relating to equal access).

Future repeal of actuarial provisions

12. The Department may by order repeal paragraph 2(4)(a)(i); and if and to the extent that the Department has not done so before 30th July 1999 that sub#head shall cease to have effect on that date.

PART II

AMENDMENT OF PROVISIONS RELATING TO EMPLOYMENT

The Equal Pay Act (Northern Ireland) 1970 (c. 32)

13. In section 6 (equality clauses and pensions, etc.), in subsection (1A)(a) for the words following "1975)" substitute " which is also an employment#related benefit scheme, within the meaning of Schedule 5 to the Social Security (Northern Ireland) Order 1989, so far as those terms relate to any matter in respect of which the scheme has to comply with the principle of equal treatment in accordance with that Schedule; but ".

Para.14 rep. by 1995 NI 22

Para.15 rep. by 1993 NI 11; 1996 NI 16

Schedule 6—Amendments

Schedule 7 rep. by 1992 c.9; 1993 c.49

Schedule 8—Amendments

Schedule 9—Repeals

Changes to legislation:
The Social Security (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 06 July 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