

SCHEDULES

SCHEDULE 5

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

PART 1

COMPLIANCE BY SCHEMES

[^{F1}Unfair paternity leave provisions

F1 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 ^{F2}on the amount of contractual remuneration [^{F2}^{F3}or statutory paternity pay]] actually paid to or for him in respect of that period.

^{F4}(4) In this paragraph—

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“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) [F5, [F4(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 [F6[F7 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 [F8the 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 [F9section 167ZK(1)] of that Act (adoption cases not involving placement under the law of the United Kingdom)) in relation to that child.

[F10(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.]

[F11 [F12(8)]]

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- F2** 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)**
- F3** 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))
- F4** 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))
- F5** 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)**
- F6** 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)**
- F7** 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))
- F8** 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)
- F9** 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)
- F10** 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))
- F11** 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))
- F12** 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)**

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Changes and effects yet to be applied to :

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