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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 adoption leave provisions*

###### Textual Amendments

- F1** Sch. 5 paras. 5A, 5B inserted (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), **ss. 265(1), 322(1)** (with s. 313); [S.I. 2005/275](#), **art. 2(7)**, [Sch. Pt. 7](#) (subject to [art. 2\(12\)](#))

- 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—
- the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and
  - 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—
- 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
  - 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—
- 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
  - 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 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)<sup>[F2]</sup>, (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.]

<sup>[F3]</sup>(7) This sub-paragraph applies if—

- (a) the member's absence from work is due to the placement or expected placement of a child under section 22C of the Children Act 1989 <sup>[F4]</sup>or section 81 of the Social Services and Well-being (Wales) Act 2014], and
- <sup>[F5]</sup>(b) in relation to that child, the member satisfies the condition in section 171ZL(2)(a) of the Social Security Contributions and Benefits Act 1992, as modified—
  - (i) in relation to a local authority in England, by section 171ZL(9) of that Act (cases involving the placing of a child by a local authority in England with a local authority foster parent who has been approved as a prospective adopter);
  - (ii) in relation to a local authority in Wales, by section 171ZL(11) of that Act (cases involving the placing of a child by a local authority in Wales with a local authority foster parent who has been approved as a prospective adopter).]

(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 171ZL(2)(a) of the Social Security Contributions and Benefits Act

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1992, as applied by virtue of section 171ZT(2) of that Act (cases involving applicants for parental orders under section 54 [<sup>F6</sup>or 54A] of the Human Fertilisation and Embryology Act 2008).]

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#### Textual Amendments

- F2** Words in Sch. 5 para. 5B(4) substituted (1.12.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 7 para. 3\(2\)](#); S.I. 2014/1640, art. 5(2)(b)
- F3** Sch. 5 para. 5B(7), (8) inserted (1.12.2014 for specified purposes) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 7 para. 3\(3\)](#); S.I. 2014/1640, art. 5(2)(b)
- F4** Words in Sch. 5 para. 5B(7)(a) inserted (E.W.) (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\(c\)](#)
- F5** Sch. 5 para. 5B(7)(b) 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\(d\)](#)
- F6** 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. 2](#)
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#### Modifications etc. (not altering text)

- C1** Sch. 5 para. 5B: power to apply (with modifications) conferred (6.4.2005) by [Pensions Act 2004 \(c. 35\), ss. 265\(2\), 322\(1\)](#) (with s. 313); S.I. 2005/275, [art. 2\(7\)](#), Sch. Pt. 7 (subject to 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):

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