

Social Security Act 1989

CHAPTER 24

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An Act to amend the law relating to social security and occupational and personal pension schemes; to make provision with respect to certain employment-related benefit schemes; to provide for the recovery, out of certain compensation payments, of amounts determined by reference to payments of benefit; to make fresh provision with respect to the constitution and functions of war pensions committees; and for connected purposes.

[21st July 1989]

Words of enactment omitted under Statute Law Revision Act 1948 (c.62), s.3.

Contributions

1–3. repealed by 1992 c.6, see Annex 1, page 2.2121

Earnings factors.

4.—(1)–(4) repealed by 1992 c.6, see Annex 1, page 2.2121

(5) The Earnings Factor Regulations, as in force 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 paragraph of paragraph 2(e) above, and

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

- (6) In subsection (5) above—
 “the Earnings Factor Regulations” means the Social Security (Earnings Factor) Regulations 1979; and S.I. 1979/676.
 “the Amending Regulations” means the Social Security (Earnings Factor) Amendment Regulations 1985. S.I. 1985/1417.

(7) The amendment by subsection (5) above 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 1988 shall have effect, and be deemed always to have had effect, as if the amendment made by subsection (3) above had come into force before the making of those regulations. S.I. 1988/429.

5. see Annex 1, page 2.2121

Benefits under the principal Act

6.—(1)–(2) repealed, see Annex 1, page 2.2121 Benefits for women widowed before 11th April 1988.

(3) The Social Security Benefit (Dependency) Amendment Regulations 1989 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 1977) of the following— S.I. 1989/523.
 S.I. 1977/343.

“3A. The first amendment made by regulation 3 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 passing of this Act, and
 - (b) the Secretary of State has made a payment to or for the claimant on the ground that if the claim had been received immediately after its passing 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 165A of the principal Act (making of claim a condition of entitlement), a widow falling within subsection (1) above 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 passing of this Act.

(6) Where a widow’s late husband died on or after 7th October 1987 and before 11th April 1988 and, apart from section 165A of the principal Act, she would have become entitled to a widow’s allowance on his death, then if either—

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- (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 tht section, have been entitled to a widowed mother’s allowance on the cessation of her entitlement to the widow’s allowance,

she shall not, notwithstanding anything in that section, be entitled to the widow’s allowance (and, accordingly, in a case falling within paragraph (b) above, 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 passing of this Act.

(7) Where in consequence of any of the amending provisions an adjudicating authority has decided before the passing of this Act 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 [1section 25 of the Social Security Administration 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 passing of this Act,

the decision on the review may take effect on 11th April 1988 or any later date, notwithstanding any provision of any Act or instrument 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) [2Section 28 of the Social Security Administration Act 1992] (appeals from reviews) shall apply in relation to a review under this section as it applies in relation to a review under [2section 25 of that Act].

(10) In this section–

“adjudicating authority” means–

- (a) an adjudication officer;
- (b) a social security appeal tribunal;
- (c) a Commissioner, and

“the amending provisions” are–

- (a) section 36(3) of the 1986 Act; and
- (b) regulation 2(6) of the Social Security (Widow’s Benefit and Retirement Pensions) Amendment Regulations 1987 (deemed entitlement to child allowance for purposes of widowed mother’s allowance etc).

S.I. 1987/1854.

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

1978 c.30.

(12) Nothing in this section shall be taken to prejudice section 16 or 17 of the Interpretation Act 1978 (effect of repeals, substitutions etc).

7–21. repealed, see Annex 1, page 2.2121

¹ Words in s.6(7) substituted (1.7.92) by Social Security (Consequential Provisions) Act 1992 (c. 6), Sch. 2, para. 105(1).

² Words in s. 6(9) substituted (1.7.92) by Social Security (Consequential Provisions) Act 1992 (c. 6), Sch. 2, para. 105(2).

Recovery from damages etc sums equivalent to benefit

22.—(1)–(6) repealed by 1992 c. 6, see Annex 1, page 2.2121

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

(8) repealed by 1992 c. 6, see Annex 1, page 2.2121

Occupational and personal pensions etc

23. Schedule 5 to this Act 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.

Equal treatment for men and women.
86/378/EEC.

24. The enactments and instruments mentioned in Schedule 6 to this Act (which relate to occupational and personal pensions) shall have effect with the amendments there specified.

Miscellaneous amendments relating to pensions.

Section 25 – relates to war pensions, outside the scope of this work. It is therefore omitted here, save for the defn. of “war pension” in s.25(4), to which reference is made elsewhere in this work, and which is reproduced as follows:-

“war pension” means–

- (a) any pension or other benefit, payable otherwise than under an enactment, for or in respect of a person who has died or been disabled in consequence of service as a member of the armed forces of the Crown,
- (b) any pension or benefit awarded under–
 - (i) the Personal Injuries (Emergency Provisions) Act 1939,
 - (ii) the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939, or
 - (iii) the Polish Resettlement Act 1947,
- (c) any pension or other payment which constitutes such an obligation as is mentioned in section 4(1) of the Statute Law Revision Act 1958 (seamen and fishermen killed or injured in the 1914– 1918 war),
- (d) any other pension or benefit which is specified in an order made by the Secretary of State for the purposes of this section,

1939 c. 82.
1939 c. 83.

1947 c. 19.

1958 c. 46.

but does not include any pension or benefit administered by the Defence Council, the Minister of the Crown with responsibility for defence or the Commissioners for the Royal Hospital for Soldiers at Chelsea.

General and supplementary provisions

26.—(1) The enactments mentioned in Schedule 7 to this Act shall have effect subject to the amendments there specified, being amendments designed to facilitate, or otherwise desirable in connection with, the consolidation of enactments relating to social security or pensions.

Pre-consolidation amendments.

(2) The amendment by that Schedule of any provision contained in any enactment by virtue of any order or regulations shall not be taken to have prejudiced any power to make further orders or regulations revoking or amending that provision.

27. repealed by 1992 c. 6, see Annex 1, page 2.2121

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Financial provisions.

- 28.—**(1) There shall be paid out of money provided by Parliament–
 - (a) any expenses incurred under this Act by a Minister of the Crown; and
 - (b) any increase attributable to the provisions of this Act in the sums payable out of such money under any other Act.

(2) There shall be paid out of the National Insurance Fund into the Consolidated Fund, at such times and in such manner as the Treasury may direct, such sums as the Secretary of State may estimate (in accordance with any directions given by the Treasury) to be the amount of the administrative expenses incurred by him under sections ...¹, 6, 7, ...¹ above, excluding any category of expenses or payments which the Treasury may direct, or any enactment may require, to be excluded from the Secretary of State’s estimates under this subsection.

(3)–(4) repealed by 1992 c. 6, see Annex 1, page 2.2121

(5) There shall be paid into the Consolidated Fund Mny increase by virtue of this Act in the sums so payable by virtue of any other Act.

Regulations and orders:
general provisions.

29.—(1) Subject to the following provisions of this section, [²section 175(2) to (5) of the Social Security Contributions and Benefits Act 1992] shall apply in relation to any power conferred by any provision of this Act 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 Act.

(2) repealed by 1992 c. 6, see Annex 1, page 2.2121

[³(3) A statutory instrument–

- (a) which contains (whether alone or with other provisions) any regulations or orders under this Act, other than orders under section 33 below, and
- (b) which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

(4) and (5) repealed, see Annex 1, page 2.2121

(6) A power conferred by this Act to make any regulations or order, where the power is not expressed to be exercisable with the consent of the Treasury, shall if the Treasury so direct be exercisable only in conjunction with them.

(7) [...⁴

Interpretation.
1973 c. 38.

30.—(1) In this Act, unless the context otherwise requires–

“the 1973 Act” means the Social Security Act 1973;

...⁵,

1986 c. 50.

“the 1986 Act” means the Social Security Act 1986;

“Commissioner” has the same meaning as it has in the principal Act;

...⁵,

1975 c. 60.

“the Pensions Act” means the Social Security Pensions Act 1975;

“prescribe” means prescribe by regulations;

¹ Words in s. 28(2) repealed (1.7.92) by S.S. (C.P.) Act 1992 (c. 6), Sch. 1.

² Words in s. 29(1) substituted (1.7.92) by Social Security (Consequential Provisions) Act 1992 (c. 6), Sch. 2, para. 106.

³ Section 29(3) substituted (13.7.90) by Social Security Act 1990 (c. 27), Sch. 6, para. 8(12).

⁴ S. 29(7) deleted (6.4.97) by para. 13(1), of Sch. 5 & Sch. 7 Part III, to Pensions Act 1995 (c. 26).

⁵ Defns. in s. 30(1) repealed (1.7.92) by S.S. (C.P.) Act 1992 (c. 6), Sch. 1.

“the principal Act” means the Social Security Act 1975;
 “regulations” means regulations made by the Secretary of State.

(2) In this Act references to Great Britain include references to the territorial waters of the United Kingdom adjacent to Great Britain.

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

Minor and consequential amendments, repeals and transitional provisions.

(2) The enactments mentioned in Schedule 9 to this Act (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 Secretary of State may by regulations make—

- (a) such transitional provision,
- (b) such consequential provision, or
- (c) such savings,

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

32. repealed by 1992 c.6, Annex 1, page 2.2121

33.—(1) This Act may be cited as the Social Security Act 1989; and this Act, other than section 25, and the Social Security Acts 1975 to 1988 may be cited together as the Social Security Acts 1975 to 1989.

Short title, commencement and extent.

(2) Apart from the provisions specified in subsection (3) below, this Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be so appointed for different provisions or different purposes of the same provision.

(3) The provisions referred to in subsection (2) above are the following—

- (a) sections 2, 3, 4, 6, 14 to 20, 28, 29, 30, 31(3), 32 and this section;
- (b) Schedule 2;
- (c) paragraphs 1, 12 and 13 of Schedule 3 (and section 21 so far as relating to those paragraphs),
- (d) paragraphs 6 to 8, 14 and 16 to 21 of Schedule 6 (and section 24 so far as relating to those paragraphs);
- (e) paragraphs 2 to 7, 13 and 15 of Schedule 7 (and section 26 so far as relating to those paragraphs);
- (f) paragraphs 1, 4 to 6, 8 to 13, 17 and 18 of Schedule 8 (and section 31 so far as relating to those paragraphs);
- (g) the repeals in Schedule 9 to the extent that they are consequential on any provision specified in paragraphs (a) to (f) above (and section 31 so far as relating to those repeals).

(4) Where any enactment repealed or amended by this Act extends to any part of the United Kingdom, the repeal or amendment extends to that part.

(5) Paragraph 12 of Schedule 4 does not extend to Scotland.

(6) Sections 25, 31(3), 32 and this section [and paragraph 20A of Schedule 4] extend to Northern Ireland.

(7) Except as provided by this section, this Act does not extend to Northern Ireland.

¹ Words inserted (13.7.90) in section 33(6) by Social Security Act 1990 (c. 27), Sch. 1, para. 5(3). (Section 32 and the said paragraph 20A were later repealed by S.S. (C.P.) Act 1992 (c. 6), Sch. 1(1.7.92).)

SCHEDULES
SCHEDULES 1–4

..... see Annex 1, page 2.2121

Section 23.

[¹SCHEDULE 5

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) below 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) [...²]

(5) Where the scheme treats persons of the one sex differently according to their marital 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) above 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 [section 181(1) of the Pension Schemes Act 1993], but with the substitution for references

¹ Paras. 1–3 of Sch. 5 are prosp., save that paras. 1, 2(1), (2), (4)(c), (5) and (9), and 3(1), (3) and (4) are commenced on 23.6.94 for the sole purpose of giving effect to the commenced parts of paras. 5 and 6.

² Para. 4 of Sch 5 deleted (6.4.97) by Pensions Act 1995 (c. 26), Sch. 5, para. 13(2).

³ Words substituted (prosp.) by Pension Schemes Act 1993 (c. 48), Sch. 7, para. 2 and s.193(3).

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 an unmarried partner or any dependants; and
- (b) a person “has an unmarried partner” if that person and some other person to whom he is not married live together as husband and wife.

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) above, 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) above, 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) above is without prejudice to the exercise, in compliance with the principle of equal treatment, of any power to amend the scheme.]

[¹ Modification of schemes by the Occupational Pensions Board

4.—(1) *On an application made to them in respect of an employment-related benefit scheme, other than a public service scheme, by persons*

¹ Para. 4 has not been commenced. It is to be repealed (prosp.) by Pensions Act 1995 (c. 26), Sch. 5, para. 13(2) and Sch. 7, Part III.

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competent to make such an application, the Occupational Pensions Board (the "Board") may make an order modifying, or authorising the modification of, the scheme, for the purpose—

- (a) of making provision implementing the principle of equal treatment otherwise than as provided by sub-paragraph (1) of paragraph 3 above; or*
- (b) of reflecting in the rules of the scheme any changes consequential upon the operation of that sub-paragraph.*

(2) In relation to any employment-related benefit scheme, the persons competent to make an application to the Board under this paragraph are—

- (a) the trustees or managers of the scheme;*
- (b) any person other than the trustees or managers who has power to alter the rules of the scheme;*
- (c) any person who is an employer of persons in service in an employment to which the scheme applies; and*
- (d) such other persons as regulations may specify, in relation to any category of schemes into which the scheme falls, as being proper persons to make an application for the purposes of this paragraph in respect of a scheme of that category.*

(3) The Board shall not entertain an application for an order by them under this paragraph unless they are satisfied that the modification of the scheme in question—

- (a) cannot be achieved otherwise than by means of such an order; or*
- (b) can only be achieved in accordance with a procedure which is liable to be unduly complex or protracted, or involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty.*

(4) Subject to sub-paragraph (3) above, the Board may on an application under this paragraph make (with the consent of the applicants) an order under sub-paragraph (1) above and may exercise their powers under this paragraph from time to time; and the extent of their powers under this paragraph is not limited, in relation to any purposes for which they are exercisable, to the minimum necessary to achieve those purposes.

(5) An order of the Board under sub-paragraph (1) above authorising the modification of a scheme shall be framed so as to confer the power of modification on such persons as the Board think proper (including persons who were not parties to the application made to the Board) and shall include such directions as the Board think appropriate indicating the modifications which they consider to be desirable.]]

5. [...¹]

Unfair paternity leave provisions

[²5A—(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*

¹ Sch. 5, para. 5 repealed (6.7.10) by the Equality Act 2010 (c. 15), Sch. 27.

² Paras. 5A and 5B inserted (6.4.05) by the Pensions Act 2004 (c. 35), s. 265.

(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 [¹, ordinary statutory paternity pay or additional 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) [¹, (7) [², (7A) or (7B)] 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 [¹, ordinary statutory paternity pay or additional 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.

¹ Words substituted in Sch. 5, para. 5A(3) & (4) defn. of “period of paid paternity leave” (6.4.10) by the Work & Families Act 2006 (c. 18), Sch. 1, para. 1(2) & (3).

² Words in Sch. 5, para. 5A(4)(a) inserted (1.12.14) by the Children and Families Act 2014 (c. 6), Sch. 7, para. 2(3)(a). (See art’s. 5 & 12 of S.I. 2014/640 for when to apply).

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(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 of [1section 171ZK(1)] of that Act (adoption cases not involving placement under the law of the United Kingdom)) in relation to that child.

[2(7A) 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, and
- (b) in relation to that child, the member satisfies the conditions prescribed under section 171ZB(2)(a)(i) and (ii) of the Social Security Contributions and Benefits Act 1992, as modified by section 171ZB(8) 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).

(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 171ZB(2)(a)(i) and (ii) of the Social Security Contributions and Benefits Act 1992, as applied by virtue of section 171ZK(2) of that Act (cases involving applicants for parental orders under section 54 of the Human Fertilisation and Embryology Act 2008).]

[3(8) This sub-paragraph applies if—

- (a) the member's absence from work is due to the fact that he is caring for a child, and
- (b) in relation to that child, the member satisfies the conditions prescribed—
 - (i) under section 171ZEA(2)(a)(i) and (ii) of that Act,
 - (ii) under section 171ZEB(2)(a)(i) and (ii) of that Act, or
 - (iii) under section 171ZEB(2)(a)(i) and (ii) of that Act as applied by virtue of section 171ZK of that Act (adoption cases not involving placement under the law of the United Kingdom).]

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

¹ Words in Sch. 5, para. 5A(7)(b) substituted (30.6.14) by the Children and Families Act 2014 (c. 6), Sch. 7, para. 2(4).

² Sch. 5, para. 5A(7A) & (7B) inserted (1.12.14) by the Children and Families Act 2014 (c. 6), Sch. 7, para. 2(5). (See art's. 5 & 12 of S.I. 2014/640 for when to apply).

³ Sch. 5, para. 5(8) inserted (6.4.10) by the Work & Families Act 2006 (c. 18), Sch. 1, para. 1(4).

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 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.]

[¹Unfair shared parental leave provisions

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.

¹ Sch. 7, para. 5C inserted (1.12.14) by the Children and Families Act 2014 (c. 6), Sch. 7, para. 4.

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(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), (6), (7), (8), (9) or (10) 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.

has the same meaning as in paragraph 5B;

(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 (within the meaning of the Equality Act 2010).

(6) 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 171ZU(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992 in relation to the child, and
- (c) the member’s absence from work is not absence during a period of paid paternity leave.

(7) 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 171ZV(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992 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.
- (8) This sub-paragraph applies if—
- (a) the member's absence from work is due to the placement of a child under section 22C of the Children Act 1989 by a local authority in England with a local authority foster parent who has been approved as a prospective adopter,
 - (b) the member is—
 - (i) the local authority foster parent with whom the child in question is placed under section 22C of the Children Act 1989, or
 - (ii) a person who satisfies the conditions prescribed under section 171ZV(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992, as modified by section 171ZV(18) 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), 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 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 171ZV(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992, as applied by virtue of section 171ZZ5(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.
- (10) 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.]

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) below, 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) above is treatment no less favourable than would be accorded to the members in accordance with the normal leave requirement;

[¹(b) paragraph 3(2) above does not authorise the making of any such election as is there mentioned; and

- (c) paragraph 4(1)(a) above does not authorise the making of any modification which does not satisfy the requirements of paragraph (a) above;]*

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.

¹ Prosp.

(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.

[¹Meaning 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 paragraph (a) above by virtue of sub-paragraph (ii) of that paragraph (or which would so fall apart from paragraph (b) above);
- (d) “public service scheme” has [²the same meaning as “public service pension scheme” in section 1 of the Pension Schemes Act 1993];
- (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.

Extension of ban on compulsory membership

8. [²Section 160(1) of the Pension Schemes Act 1993] (which renders void any provision making membership of a pension scheme compulsory for

¹ Paras. 7-10 are prosp., save that paras. 7(a)–(c) and (e), 9 and 10 are commenced on 23.6.94 for the sole purpose of giving effect to the commenced parts of paras. 5 and 6.

² Words substituted (prosp.) by Pension Schemes Act 1993 (c. 48), Sch. 7, para. 2 and s.193(3).

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.

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 above.

(2) In sub-paragraph (1) above “the court” means—

- (a) in England and Wales, the High Court of a county court; and
- (b) in Scotland, the Court of Session or the sheriff court.

(3) An application under sub-paragraph (1) above 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.]

11. repealed by 1993 c.48, see Annex 1, page 2.2121

[¹Future repeal of actuarial provisions

12. *The Secretary of State may by order repeal paragraph 2(4)(a)(i) above; and if and to the extent that he has not done so before 30th July 1999 it shall cease to have effect on that date.]*

PART II

AMENDMENT OF ENACTMENTS RELATING TO EMPLOYMENT

13. repealed by 1993 c.48, see Annex 1, page 2.2121

[²Sex Discrimination Act 1975 (c.65)

14.—(1) *In section 4(1) of the Sex Discrimination Act 1975 (victimisation of complainants etc)—*

- (a) *in paragraphs (a), (b) and (c) after the words “Equal Pay Act 1970” there shall be inserted the words “or Part 1 of Schedule 5 to the Social Security Act 1989”; and*
- (b) *at the end of paragraph (d) there shall be added the words “or proceedings under Part 1 of Schedule 5 to the Social Security Act 1989”*

(2) *In section 6 of that Act, in subsection (4) (disapplication of certain provisions in relation to death or retirement) for the words from “except” to “retirement, they” there shall be substituted the words “except as provided in subsections (4A) and (4B) below.*

(4A) Subsection (4) does not prevent the application of subsections

¹ Prosp.

² Para. 14 has not been commenced. It is to be repealed (prosp.) by Pensions Act 1995 (c. 26), Sch. 7, Part I.

(1)(b) and (2) to provision in relation to retirement in so far as those subsections"

(3) After subsection (4A) of that section there shall be inserted-

"(4B) Subsection (4) does not prevent the application of subsections (1)(b) and (2) to provision in relation to death or retirement in so far as those subsections render it unlawful for a person to discriminate against a woman-

- (a) in such of the terms on which he offers her employment as make provision in relation to the way in which he will afford her access to any benefits, facilities or services under an occupational pension scheme; or
(b) in the way he affords her access to any such benefits, facilities or services; or
(c) by refusing or deliberately omitting to afford her access to any such benefits, facilities or services; or
(d) by subjecting her to any detriment in connection with any such scheme;

but an act of discrimination is rendered unlawful by virtue of this subsection only to the extent that the act relates to a matter in respect of which an occupational pension scheme has to comply with the principle of equal treatment in accordance with Part 1 of Schedule 5 to the Social Security Act 1989.

(4C) In the application of subsection (4B) to discrimination against married persons of either sex, Part 1 of Schedule 5 to the Social Security Act 1989 shall be taken to apply to less favourable treatment of married persons on the basis of their marital status as it applies in relation to less favourable treatment of persons on the basis of sex, and references to persons of either sex shall be construed accordingly."

(4) At the end of that section there shall be added-

"(8) In this section "occupational pension scheme" means an occupational pension scheme, within the meaning of the Social Security Pensions Act 1975, which is also an employment-related benefit scheme, within the meaning of Schedule 5 to the Social Security Act 1989."

15. repealed, see Annex 1, page 2.2121

SCHEDULE 6

Section 24.

OCCUPATIONAL AND PERSONAL PENSIONS

1.-20. repealed, see Annex 1, page 2.2121

The Occupational Pension Schemes (Contracting-out) Regulations 1984 (S.I. 1984/380)

21.—(1) In regulation 22 of the Occupational Pension Schemes (Contracting-out) Regulations 1984 (additional requirement alternative to limited revaluation premium) in paragraphs (3A) and (7A) (which were inserted by regulation 2 of the Contracting-out (Miscellaneous Amendments) Regulations 1988 and which provide for the rate of increase to be 7 1/2 per cent. in certain cases) for the words "and in relation to another scheme," there shall be substituted the words "(and whether in relation to the same or another scheme)".

S.I. 1988/475.

(2) The amendment by sub-paragraph (1) above of a provision contained in regulations shall not be taken to have prejudiced any power to make further regulations revoking or amending that provision.

(3) This paragraph shall be deemed to have come into force on 6th April 1988.

SCHEDULE 7

SCHEDULE 8

SOCIAL SECURITY ACT 1989 (c. 24)

Schs. 7-9

Section 31(1).

S.I. 1981/330.

S.I. 1988/623.

Section 31(2).