
Changes to legislation: Social Security Act 1989, Cross Heading: Unfair paternity leave provisions is up to date with all changes known to be in force on or before 10 October 2023. 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](#)

SCHEDULES

SCHEDULE 5

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

PART I

COMPLIANCE BY SCHEMES

[^{F1}Unfair paternity 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\(12\)](#))

- 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;

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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 [^{F2}or statutory paternity pay] actually paid to or for him in respect of that period.

(4) In this paragraph—

“period of paid paternity leave”, in the case of a member, means a period—

- (a) ^{F3} throughout which the member is absent from work in circumstances where sub-paragraph (5), (6) [^{F4}, (7) [^{F5}, (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}or statutory paternity pay]; and

“the normal employment requirement” is the requirement that any period of paid paternity leave shall be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so.

(5) This sub-paragraph applies if—

- (a) the member’s absence from work is due to the birth or expected birth of a child, and
- (b) the member satisfies the conditions prescribed under section 171ZA(2)(a) (i) and (ii) of the Social Security Contributions and Benefits Act 1992 in relation to that child.

(6) This sub-paragraph applies if—

- (a) the member’s absence from work is due to the placement or expected placement of a child for adoption under the law of any part of the United Kingdom, and
- (b) the member satisfies the conditions prescribed under section 171ZB(2)(a)(i) and (ii) of that Act in relation to that child.

(7) This sub-paragraph applies if—

- (a) the member’s absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and
- (b) the member satisfies the conditions prescribed under section 171ZB(2)(a) (i) and (ii) of that Act (as applied by virtue of [^{F7}section 171ZK(1)] of that Act (adoption cases not involving placement under the law of the United Kingdom)) in relation to that child.

[This sub-paragraph applies if—

- ^{F8}(7A) (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 [^{F9}or section 81 of the Social Services and Well-being (Wales) Act 2014], and
- ^{F10}(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—
 - (i) in relation to a local authority in England, 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);

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(ii) in relation to a local authority in Wales, by section 171ZB(10) 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)]

(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).]

^{F11}(8)]

Textual Amendments

- F2** Words in Sch. 5 para. 5A(3)(b) substituted (5.4.2015) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 7 para. 2\(2\)](#); S.I. 2014/1640, art. 7(a) (with art. 16)
- F3** Words in Sch. 5 para. 5A(4) repealed (5.4.2015) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 7 para. 2\(3\)\(b\)](#); S.I. 2014/1640, art. 7(a) (with art. 16)
- F4** Words in Sch. 5 para. 5A(4)(a) substituted (6.4.2010) by [Work and Families Act 2006 \(c. 18\), ss. 11\(1\), 19\(1\), Sch. 1 para. 1\(3\)\(a\)](#); S.I. 2010/495, art. 4(d)
- F5** Words in Sch. 5 para. 5A(4) inserted (1.12.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 7 para. 2\(3\)\(a\)](#); S.I. 2014/1640, art. 5(2)(a)
- F6** Words in Sch. 5 para. 5A(4) substituted (5.4.2015) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 7 para. 2\(3\)\(c\)](#); S.I. 2014/1640, art. 7(a) (with art. 16)
- F7** Words in Sch. 5 para. 5A(7) substituted (30.6.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 7 para. 2\(4\)](#); S.I. 2014/1640, art. 3(2)(b)
- F8** Sch. 5 para. 5A(7A), (7B) inserted (1.12.2014 for specified purposes) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 7 para. 2\(5\)](#); S.I. 2014/1640, art. 5(2)(a)
- F9** Words in Sch. 5 para. 5A(7A)(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\(a\)](#)
- F10** Sch. 5 para. 5A(7A)(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\(b\)](#)
- F11** Sch. 5 para. 5A(8) repealed (5.4.2015) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 7 para. 2\(6\)](#); S.I. 2014/1640, art. 7(a) (with arts. 1618)

Modifications etc. (not altering text)

- C1** Sch. 5 para. 5A: 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](#)