

SCHEDULES

SCHEDULE 5

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

PART 1

COMPLIANCE BY SCHEMES

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

Status: This is the original version (as it was originally made).

- (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 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 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 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.