

**EXPLANATORY MEMORANDUM TO THE  
CIVIL PARTNERSHIP (PENSIONS AND BENEFIT  
PAYMENTS)(CONSEQUENTIAL, ETC. PROVISIONS) ORDER 2005**

**2005 No. 2053**

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The Order amends social security primary legislation and includes amendments to various provisions dealing with matters relating to benefit payments and occupational and personal pensions. The changes are technical in nature and follow the main policy of the Civil Partnership Act, to afford the same treatment to civil partners in respect of pensions and benefits as is currently provided for spouses. The Civil Partnership Act already contains amendments to social security and The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes)(Surviving Civil Partners) Order 2005 contains amendments to occupational and personal pensions. The amendments in this Order are consequential to those provisions.

Details of the provisions of this Order are in annex A.

3. **Matters of special interest to the Joint Committee on Statutory Instruments.**

- 3.1 The commencement provisions in article 1(2) of the Order are to enable regulations to be made under section 62 and paragraphs 3C and 7B of Schedule 5 to the Social Security Contributions and Benefits Act 1992 and section 52(2) of the Welfare Reform and Pensions Act 1999 as amended by the Order. Those powers may then be exercised to add provision for civil partners to regulations that have been made under those powers since the Civil Partnership Act obtained Royal Assent on 18 November 2004. It is intended for those regulations to come into force on 5 December 2005.
- 3.2 Section 134(8)(a) Social Security Administration Act 1992 is being amended by this Order. This Section provides a power for local authorities to modify any part of the housing benefit scheme, which is administered by the authority so that certain payments are disregarded. All income is generally taken into account when assessing entitlement to an income-related benefit (Income Support, Jobseeker's Allowance, Housing Benefit and Council Tax Benefit), however regulations prescribe that £10 of a war disablement or war widow(er)s pension should be ignored for this purpose.

- 3.3 For Housing Benefit and Council Tax Benefit purposes only, local authorities, who administer these benefits, have discretionary powers to operate a local scheme to ignore up to the full amount of a War Disablement Pension and War Widow's Pension remaining after the statutory £10 has been ignored. These powers are set out in the primary legislation. For the purposes of section 134, regulations have been made under the power in section 134(8)(b) extending the local authorities power to modify in respect of war widower's pension as set out in regulation 33(2A) of the Housing Benefit (General) Regulations 1987 (SI 1987/1971)<sup>1</sup>. Therefore, the combination of statute and regulation makes provision for war widows and war widowers. We therefore think it appropriate that this section 259 Order makes similar provision for civil partners

#### **4. Legislative background**

- 4.1 The Order is laid in exercise of powers conferred by Section 259 of the Civil Partnership Act. This section allows for further provisions to be made for general purpose of, in consequence to and to give full effect to the Act. The amendments in this order cater for the consequential changes needed to primary legislation. The Order is subject to the affirmative resolution procedure.

#### **5. Extent**

- 5.1 This Order extends to England and Wales and Scotland except paragraph 27(c) of Part 6 of the Schedule, which extends to Northern Ireland. Equivalent provision, regarding the remainder, will be made for Northern Ireland by statutory rules.

#### **6. European Convention on Human Rights**

- 6.1 Lord Hunt of Kings Heath OBE has made the following statement regarding Human Rights:

In my view the provisions of the Civil Partnership (Pensions and Benefit Payments)(Consequential, etc. Provisions) Order 2005 are compatible with the Convention rights.

#### **7. Policy background**

- 7.1 The Civil Partnership Act 2004 received Royal Assent on 18 November 2004. The purpose of the Civil Partnership Act 2004 is to enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. The Civil Partnership Act 2004 also contains provisions enabling certain overseas same-sex relationships to be treated as civil partnerships. Civil

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<sup>1</sup> Regulation 33(2A) reads: 'An authority may modify this Part so as to provide for disregarding, in determining a person's income (whether he is the occupier of a dwelling or any other person whose income falls to be aggregated with that of the occupier of a dwelling), the whole or any part of any war widower's pension payable to that person.'

partners will be subject to many of the same legal rights and responsibilities as spouses.

- 7.2 Two people may register as civil partners of each other provided:
- they are of the same sex;
  - neither of them is already a civil partner or married;
  - they are not within the prohibited degrees of relationship i.e. members of the same family who are forbidden by law to marry;
  - they are both over the age of sixteen (and the consent of the appropriate persons has been obtained if either of the parties are under eighteen).
- 7.3 The policy intention behind this Order is to ensure that civil partners have similar treatment as spouses in the area of benefit payments and personal and occupational pensions. The Order seeks to fulfil those policy objectives by amending primary legislation relating to
- state retirement pension provisions including entitlement to a pension increase or lump sum where a deceased partner had deferred entitlement to state retirement pension;
  - the duty to furnish addresses for maintenance proceedings;
  - the up-rating of state benefits and alterations affecting awards of Housing Benefit and State Pension Credit;
  - private pension schemes to ensure civil partners are afforded the same rights as spouses in relation to technical issues such as the right to receive information etc.
- 7.4 The broad intention is to put civil partners and bereaved civil partners on an equal footing with spouses and bereaved spouses in relation to state retirement pension. To comply with EC Directive 79/7/EEC when extending derived State pension rights to civil partners we must avoid direct discrimination. The policy proposal is to give male and female civil partners those rights currently available equally to spouses from the civil partnerships implementation date and the remaining rights in 2010 when they become available to married men and widowers.
- 7.5 The Government held a three-month public consultation on the proposal to create a same-sex civil partnership registration scheme in England and Wales. This ran from 30 June 2003 to 30 September 2003 and generated substantial public and media interest. There were a total of 3,167 responses to the public consultation of which 83 per cent expressed support for the principle of civil partnership. A more detailed analysis of these responses showed that 84 per cent of individuals who responded supported the principle of civil partnership and 74 per cent of organisations that responded supported the principle of civil partnership. Organisations included gay, lesbian and bisexual groups, private sector organisations, public sector organisations, trade unions, voluntary organisations, nationally based religious groups and individual congregations.
- 7.6 The Government's response to the consultation was published in November 2003 and can be found on the DTI's website at <http://www.womenandequalityunit.gov.uk/lgbt/partnership.htm> Some

respondents felt that the Government should introduce gay marriage whilst others said it should be a purely civil, separate legal status. The Government response was that civil partnership would be a civil, separate legal status distinct from marriage. Some respondents also felt that civil partnership should also be extended to opposite sex couples. The Government response was that opposite sex couples already had the option of gaining legal and social recognition for their relationships by getting married, if they wished to do so.

- 7.7 The Government announced on 26 November 2003 that it intended to bring forward a Civil Partnership Bill. On 3 June 2004 the Scottish Parliament agreed to the inclusion of Scottish provisions in the Westminster Civil Partnership Bill, following a public consultation in Scotland. Northern Ireland Ministers also agreed to include Northern Ireland provisions in the Westminster Civil Partnership Bill after a public consultation in Northern Ireland. The responses to those respective consultations can be found on the DTI's website at <http://www.womenandequalityunit.gov.uk/lgbt/partnership.htm>

## **8. Impact**

- 8.1 A full Regulatory Impact Assessment was published alongside the Civil Partnership Act 2004 and outlines the cost implications for the public and private sector. Relevant extracts from that Regulatory Impact Assessment are attached at annex B. There will be no direct impact on charities and voluntary organisations other than their own responsibilities as employers.
- 8.2 The total annual cost to Government of State Pension and Bereavement Benefits could rise, depending upon the take-up rate of civil partnership, from between £1m and £2m per year in 2010 to between £10m and £19m per year by 2050. In addition there may also be a one-off cost of approximately £11.9m for DWP operational and administrative changes.

## **9. Contact**

- 9.1 Carol Krahe at the Department for Work and Pensions Tel: 0113 232 4646 or e-mail [Carol.Krahe@dwp.gsi.gov.uk](mailto:Carol.Krahe@dwp.gsi.gov.uk) can answer any queries regarding the instrument.

## **The Civil Partnership (Pensions and Benefit Payments) (Consequential, etc. Provisions) Order 2005**

### **Article 1**

1. This is a general provision about the citation, commencement and extent of the Order. It is intended that the order shall come into force on 5<sup>th</sup> December 2005 with the exception of paragraphs 4, 5(6) and 5(12) of Part 1 and paragraph 26 of part 5, which shall come into force for the purpose of making regulations on the day following that on which the Order is made

### **Article 2**

2. Article 2 explains the purpose of the schedule in that it amends primary legislation relating to pensions and benefit payments, extending those provisions to civil partners and surviving civil partners.

### **The Schedule**

#### **Part 1 amends the Social Security Contributions and Benefits Act 1992 (c.4)**

3. *Paragraph 1* amends section 48C to ensure that, where a civil partner qualifies for a state pension by virtue of the contributions of the other member of the civil partnership, references to the pensioner in relevant provisions used to calculate that pension are taken as references to the civil partner.
4. *Paragraph 2* amends section 54. This section allows a person who has claimed their retirement pension to elect to cease claiming that pension and thereby be treated as deferring their pension in accordance with section 55 – see next paragraph. Provided that any deferment lasts for a specified period of time, the person will become eligible for either an increase in retirement pension (known as “increments”) or a lump sum payment, when they claim or re-claim their pension. Subsection (3) provides that where a spouse elects to defer his pension but the other spouse is entitled to a pension/additional pension based on his contributions, the election to defer cannot be made without the consent of the other spouse. The change to this section extends the provision to civil partners.
5. *Paragraph 3* amends section 55, which provides that where a retirement pension is deferred, either because the person has not claimed it, or because they have elected to stop claiming under section 54, the provisions of Schedule 5, which set out the calculation of increments or (under the new provisions introduced by the Pensions Act 2004) a lump sum, will apply. The amendments will allow a civil partner, whose pension is based in full or in part on the contributions of their partner, to be treated in the same way as a married person in the same circumstances.

6. *Paragraph 4* amends section 62 to ensure that where a person has deferred entitlement to graduated retirement benefit, a surviving civil partner will be able to elect to receive a lump sum in respect of that deferment in the same way that a surviving spouse will be able to make such a choice under the provisions introduced by the Pensions Act 2004.
7. *Paragraph 5* makes a number of amendments to Schedule 5. This Schedule provides for the choice between increments and a lump sum following deferment, and sets out how the two forms of payment are to be calculated. It also makes provision for the surviving spouse of a person who has deferred his pension to be entitled to either increments or a lump sum in respect of the deceased's deferment. The amendments (together with the amendments to paragraph 26 of Schedule 11 to the Pensions Act 2004 – see paragraph 32 below) extend this entitlement to “inheritable” increments or a lump sum to surviving civil partners on the same basis as is currently applicable to widowers.

**Part 2 amends the Social Security Administration Act 1992 (c.5)**

8. *Paragraph 6* amends section 133, which allows the Secretary of State to incur expenses for the purpose of providing an address required in the process of taking or enforcing maintenance orders against spouses or former spouses. It extends the provision to ensure that similar action can be taken in respect of current or former civil partners.
9. *Paragraph 7* amends section 134, which refers to arrangements for housing benefit. Paragraph (8)(a) enables a local authority to modify any part of the housing benefit scheme, which is administered by the authority, so as to be able to disregard the whole or part of any war disablement pension or war widow's pension payable to a person when determining that person's income. This amendment enables a surviving civil partner's war disablement pension or war widow's pension to be disregarded similarly. Provision for widowers has already been made in regulation 33(2A) of the Housing Benefit (General) Regulations using the power in section 134(8)(b).
10. *Paragraph 8* amends section 150, which provides for the annual up-rating of state benefits. This section was recently amended by schedule 11 of the Pensions Act so that it provides for the lump sum which the surviving spouse inherits to be up-rated where s/he is below pension age when bereaved. This provision is amended so that it applies to surviving civil partners.
11. *Paragraph 9* amends section 155 (7)(c), which refers to the effect of alteration of rates of contributory benefits and increases for dependants (parts 2 and 4 of the Contributions and Benefits Act). It extends the provision so that any addition to the weekly rate of retirement pension for widows and widowers is also extended to surviving civil partners.
12. *Paragraph 10* amends section 159B, which refers to the effect of alterations affecting pension credit. It amends the definition of war widow's or widower's pension so that a surviving civil partner's pension granted in this way, is treated as benefit income for this purpose.

### **Part 3 amends the Pensions Schemes Act 1993 (c.48)**

13. *Paragraph 11* amends section 70, to include civil partners and surviving civil partners in the definition of "long service benefit".
14. *Paragraph 12* amends section 84, which relates to the basis of revaluation. This amendment ensures that surviving civil partners are included in this calculation in the same way as widows and widowers.
15. *Paragraph 13* amends section 96, which relates to the manner in which a member of an occupational or personal pension is able to take a cash equivalent. This amendment ensures that the rules that apply to a widow's or widower's guaranteed minimum pension or protected rights, also apply to a surviving civil partner.
16. *Paragraph 14* amends section 113, which prescribes that regulations will specify requirements for compliance in providing information relating to the occupational pension scheme to members etc. The amendment ensures that relevant information will be available to a member's civil partner.
17. *Paragraph 15* amends section 129 to ensure that surviving civil partners are included in the definition of 'protected provision' for the purposes of establishing rights over and above the Guaranteed Minimum Pension.
18. *Paragraph 16* amends section 146 and ensures that a surviving civil partner may ask the Pensions Ombudsman to investigate a complaint raised on their behalf.
19. *Paragraph 17* amends section 159A, which prescribes that rights under a personal pension scheme cannot be forfeited by reference to a person's bankruptcy. The provision also refers to the rights of a divorced spouse, and has been amended to include any similar rights after dissolution of a civil partnership.
20. *Paragraph 18* amends section 181, to include surviving civil partners in the definition of "money purchase benefits".
21. *Paragraph 19* amends paragraph 1 of schedule 3. The amendment ensures that, when revaluing accrued final salary pension benefits, any surviving civil partner's guaranteed minimum payment is treated the same way as such a guaranteed minimum payment for a widow or widower.

### **Part 4 amend the Pensions Act 1995 (c.26)**

22. *Paragraph 20* amends section 41, which provides for documents relating to an occupational pension scheme to be made available to (amongst others) members and prospective members of a scheme, and their spouses. The amendment provides that documents will also be made available to a civil partner of a member or prospective member.

23. *Paragraph 21* amends section 50A to include surviving civil partners in the meaning of a person with an interest in an occupational pension scheme for the purpose of resolving a dispute between an interested party and the managers or trustees of a scheme.
24. *Paragraph 22* amends section 63 to ensure that where an occupational pension scheme does not contain an equal treatment rule it shall be treated as containing one and that the rule will also apply to civil partners.
25. *Paragraph 23* amends section 91 to ensure that the exception to the rules on the inalienability of occupational pension, in cases of assignment, surrender or commutation of a member's occupational pension for the benefit of their widow, widower or dependant, will also apply to a surviving civil partner.
26. *Paragraph 24* amends section 92 and ensures that the provision that a member's forfeited occupational pension or a member's forfeited right to a future pension may, at the discretion of a trustee or scheme manager, be paid to a spouse, widow or widower of the member, will also apply a civil partner or a surviving civil partner of the member.
27. *Paragraph 25* amends section 124, and inserts a new definition for 'civil partnership status'.

**Part 5 amends the Welfare Reform and Pensions Act 1999 (c.30)**

28. *Paragraph 26* amends section 52, which allows regulations to prescribe the amount of additional retirement pension<sup>a</sup> payable to widows and widowers. The amendment ensures that regulations made under this power may also apply to surviving civil partners.

**Part 6 amends the Pensions Act 2004 (c.35)**

29. *Paragraph 27* amends section 24, which ensures that where an occupational pension is subject to a freezing order to protect the members of that pension, any prescribed pension earmarking order will not be prevented. The change ensures that such a provision made for civil partners can be applied.
30. *Paragraph 28* amends paragraph 26 of schedule 11. This paragraph provides that a widower who attains pension age before 6th April 2010 will only be entitled to an increase (based on his wife's contributions) in his retirement pension or lump sum, as a result of her deferment, if he is over pension age when his wife dies. The amendment ensures that this rule applies to civil partners.

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<sup>(a)</sup> In 1986, the Government changed the law to reduce to 50% the amount of additional pension (known as SERPS) that a person widowed after April 2000 could inherit from their late spouse. In 1999 the Government decided to postpone the change and Section 52 of the Welfare Reform and Pensions Act 1999 provided the Secretary of State with powers to make regulations to modify Part II the Social Security Contributions and Benefits Act 1992 to allow for the change to take place gradually.



## Annex B

### Final Regulatory Impact Assessment: Civil Partnership Act 2004

This regulatory impact assessment has been prepared by the Department of Trade and Industry and supports the Civil Partnership Act.

This regulatory impact assessment (RIA) has been prepared on the basis of the Civil Partnership Act 2004 which received Royal Assent on 18 November 2004.

#### Executive Summary

The Civil Partnership Act creates an entirely new legal relationship of civil partner, giving same-sex couples in the UK the opportunity of gaining legal recognition for their relationships. Couples who register as civil partners of each other will gain a package of rights and responsibilities.

Overall the costs identified in this RIA are justified by the social policy reasons for introducing a civil partnership scheme for same-sex couples.

There will be costs and substantial benefits for the individuals who chose to form a civil partnership.

The overall impact on business will be low; there will be a minor cost increase for defined-benefit occupational pension providers. It is also expected that there will be a small increase in demand for the hospitality industry.

There will be no direct impact on charities and voluntary organisations other than their own responsibilities as employers.

The greatest impact of the proposals would be on central and local Government. The total annual costs to Government are summarised in Table 1 below, excluding the costs of public service pension schemes, which are summarised in Table 2. In addition to the annual costs of public service pension schemes, for the rights accrued from 1988 (as is the position for widowers in the contracting-out rules) there are additional costs to Government of between £60m and £125m depending on the take up of civil partnership

**Table 1 - Total Annual Costs to Government (£m)**

	<i>Year</i>	<i>State Pension and Bereavement Benefits<sup>1</sup></i>	<i>Public Funding for Dissolution</i>	<i>TOTAL</i>
<b><i>High Take-Up</i></b>	2010	2	1.0	3.0

<sup>1</sup> Costings are based on rights derived from Bereavement Benefits (from lump sum Bereavement Payment and from Bereavement Allowance paid for up to 52 weeks) and Retirement Pension (inherited rights from Additional Pension or State Second Pension). Figures are in 2003/4 prices.

<i>Scenario</i>	2020	6	1.7	7.7
	2030	9	2.4	11.4
	2040	12	2.8	16.8
	2050	19	3.2	22.2
<i>Low Take-Up Scenario</i>	2010	1	0.5	1.5
	2020	3	1.0	4.0
	2030	4	1.2	5.2
	2040	6	1.4	7.4
	2050	10	1.6	11.6

**Table 2 – Total Annual Costs To Public Service Employers**

	<i>Annual increase in liabilities as % of pensionable payroll</i>	<i>Annual increase (£m) pa</i>
<i>High take-up</i>	0.016	14.0
<i>Low take-up</i>	0.008	7.0

There will also be a number of one-off administrative costs to Government totaling approximately £20m, Table 3 below summarises these.

**Table 3 – One off Administrative Costs to Government**

<i>Issue</i>	<i>Estimated Cost (£m)</i>
Registration Service Set-up Costs	0.50
Court Service 'FamilyMan' IT System	1.00
Administrative changes for the Court Service	0.38
Administrative changes to Public Service Pension Schemes	5.00
Non-IT operational and administrative costs for changes to state pensions and benefits	6.40
IT systems for changes to state pensions and benefits	5.50
Public awareness raising (of legal rights and responsibilities)	0.10
Judicial training	0.79
Inland Revenue IT and Administrative changes	0.10
<b>Total</b>	<b>19.77</b>

#### *Costs to Private Sector Employers*

Total annual costs to private sector employers are summarised in Table 4 below. In addition to these annual costs there will be a one-off cost of between £20m and £40 (depending on the take-up rate of civil partnership) to meet the costs of providing survivor benefits on the basis of service from 1988 up to the introduction of civil partnership. These one off costs could be spread over a number of years rather than met in totality when civil partnership is implemented (with costs of between £2m to

£4m a year over fifteen years). The estimated one-off administrative costs are around £7m.

**Table 4 - Annual Costs<sup>2</sup> To Private Pension Defined Benefit Schemes of Private Sector Employers (Benefits accrue from date of implementation)**

	<i>Annual cost increase as % of contributions</i>	<i>Annual Increase (£m) pa</i>
<i>High take-up<sup>3</sup></i>	0.016%	2.5
<i>Low take-up</i>	0.008%	1.25

<sup>2</sup> Data from the Government Actuary's Department suggest that usually at trustees' discretion, around ¾ of members of private sector defined benefit schemes are already in schemes which pay survivor benefits to unmarried couples, including those of the same sex.

<sup>3</sup> Under the high take-up scenario, the Government Actuary's Department assumes that, by 2050, 6% of the lesbian, gay and bisexual population aged around 70 who are retired with occupational pensions will be in civil partnerships (the proportions around age 70 being a key driver in determining the cost of benefits to spouses/partners on death). This figure is broadly consistent with the assumption that, overall, around 3.3% of the lesbian, gay and bisexual population aged 16 and over will be in registered civil partnerships, as compared to around 33% of the heterosexual population aged 16 and over who will be married.