

Draft Order laid before Parliament under section 255(10)(a) of the Civil Partnership Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No.

CIVIL PARTNERSHIP

The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005

Made - - - - 2005
in accordance with
Coming into force - - article 1(2)

Whereas a draft of this Order has been laid before and approved by a resolution of each House of Parliament;

Now therefore, in exercise of the powers conferred upon him by section 255 of the Civil Partnership Act 2004(1), the Secretary of State for Work and Pensions, after consultation with such persons as he considers appropriate in accordance with section 255(6) of that Act, hereby makes the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005.

(2) In this Order—

- (a) paragraphs 4 and 7 of Schedule 1 shall come into force, for the purposes only of making regulations under section 21(1) of the Pension Schemes Act 1993(2);
- (b) paragraph 9 of Schedule 1 shall come into force, for the purposes only of making regulations under section 28(5) of the Pension Schemes Act 1993; and
- (c) paragraph 10 of Schedule 1 shall come into force, for the purposes only of making regulations under section 28A(5)(a) of the Pension Schemes Act 1993,

on the day following that on which this Order is made.

(3) Subject to paragraph (2), this Order shall come into force on 5th December 2005.

(4) This Order extends to England and Wales and Scotland.

(1) 2004 c.33.

(2) 1993 c.48; a new section 21(1) was substituted by section 284(1) of the Pensions Act 2004 (c.35).

Draft Legislation: This is a draft item of legislation. This draft has since been made as
a UK Statutory Instrument: The Civil Partnership (Contracted-out Occupational and
Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 No. 2050

Amendment of legislation

2.—(1) Schedule 1, which contains amendments of provisions of the Pension Schemes Act 1993 which relate to contracted-out occupational and appropriate personal pension schemes, extending those provisions to surviving civil partners, shall have effect.

(2) Schedule 2, which contains amendments of provisions of the Regulations specified in the headings to each Part of that Schedule which relate to contracted-out occupational and appropriate personal pension schemes, extending those provisions to surviving civil partners, shall have effect.

Signed by authority of the Secretary of State for Work and Pensions.

Parliamentary Under-Secretary of State,
Department for Work and Pensions

SCHEDULE 1

Article 2(1)

Amendments of the Pension Schemes Act 1993 (c.48) relating to contracted-out occupational and appropriate personal pension schemes, extending those provisions to surviving civil partners

1. In section 8 (meaning of “contracted-out employment”, “guaranteed minimum pension” and “minimum payment”), in subsection (2), in the definition of “guaranteed minimum pension”, for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.

2. In section 12A (the statutory standard)(3), in subsections (1) and (2)(b), for “widows or widowers” substitute “widows, widowers or surviving civil partners”.

3. In section 12B (reference scheme)(4), in subsection (4), for “widows or widowers” (in each place) substitute “widows, widowers or surviving civil partners”.

4. Amend section 17 (minimum pensions for widows and widowers)(5) as follows—

(a) in subsection (1), for “widow or widower” (in each place) substitute “widow, widower or surviving civil partner”;

(b) in subsection (2), after paragraph (b) add the following paragraph—

“(c) if the earner is a person who has a guaranteed minimum under that section, the weekly rate of the surviving civil partner’s pension will not be less than the surviving civil partner’s guaranteed minimum.”;

(c) in subsection (4), after “widower’s” insert “or surviving civil partner’s”;

(d) in subsection (4A)—

(i) at the beginning insert “Subject to subsection (4B)”;

(ii) for “widow or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”;

(iii) for “widow or widower” (in each place, other than sub-paragraphs (i) and (ii) of paragraph (c)) substitute “widow, widower or surviving civil partner”;

(iv) for sub-paragraphs (i) and (ii) of paragraph (c) substitute the following sub-paragraphs—

“(i) comprises a period during which the widow, widower or surviving civil partner and—

(a) a person of the opposite sex are living together as husband and wife; or

(b) a person of the same sex are living together as if they were civil partners; nor

(ii) falls after the time of any—

(a) marriage; or

(b) formation of a civil partnership,

by the widow or widower or surviving civil partner which takes place after the earner’s death.”;

(3) Section 12A was inserted by section 136(5) of the Pensions Act 1995 (c.26).

(4) Section 12B was inserted by section 136(5) of the Pensions Act 1995 (c.26).

(5) In section 17, subsection (4A) was inserted by and subsection (6) amended by paragraph 1 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c.19), and subsection (7) was amended by paragraph 39 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) and by paragraph 29 of Schedule 5 to the Pensions Act 1995 (c.26), and subsection (8) is added by section 284(2) of the Pensions Act 2004 (c.35).

- (e) after subsection (4A), insert the following subsection—
- “(4B) Sub-paragraphs (i)(b) and (ii)(b) of subsection (4A)(c) do not apply where the earner dies before 5th December 2005.”;
- (f) in subsection (6), for “widower’s pension to be payable to him” substitute “widower’s or surviving civil partner’s pension to be payable”;
- (g) in subsection (7), for “widowers or widows” substitute “widows, widowers or surviving civil partners”;
- (h) after subsection (8) add the following subsection—
- “(9) For the purposes of subsection (4A), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex.”
- 5.** In section 19 (discharge of liability where guaranteed minimum pensions secured by insurance policies or annuity contracts), in subsection (5)(a)(i) and (ii), for “widow or widower” substitute “widow, widower or surviving civil partner”.
- 6.** In section 20 (transfer of accrued rights), in subsection (6), for “widow or widower” substitute “widow, widower or surviving civil partner”.
- 7.** In section 21 (commutation, surrender and forfeiture), in subsection (2), for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.
- 8.** In section 23 (securing of benefits)(6), in subsection (3)(b), for “widow or widower” substitute “widow, widower or surviving civil partner”.
- 9.** Amend section 28 (ways of giving effect to protected rights) as follows—
- (a) in subsection (3)(b)(7) for “widow or widower” substitute “widow, widower or surviving civil partner”;
- (b) in subsection (4B)(8), for “a married person” substitute “married or a civil partner”;
- (c) in subsection (8), in the definition of “the termination date”—
- (i) for “widow or widower” substitute “widow, widower or surviving civil partner”; and
- (ii) for “widow or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.
- 10.** In section 28A (requirements for interim arrangements)(9), in subsections (1), (2) and (5)(b)(ii), for “widow or widower” substitute “widow, widower or surviving civil partner”.
- 11.** In section 29 (the pension and annuity requirements), in subsection (1)(b) (in each place) and subsections (3)(b) and (4)(10), for “widow or widower” substitute “widow, widower or surviving civil partner”.
- 12.** In section 37 (alteration of rules of contracted-out schemes)(11), in subsection (4), after “widower” insert “or surviving civil partner”.
- 13.** In section 38 (alteration of rules of appropriate schemes), in subsection (2)—

(6) Paragraph 31 of Schedule 5 to the Pensions Act 1995 (c.26) provides that subsections (2) and (3) of section 23 will not apply where winding up is begun on or after the principal appointed day, which was designated as 6th April 1997 by article 2(7) of S.I. 1996/778.

(7) Subsection (3)(b) was amended by section 142(4) of the Pensions Act 1995 (c.26).

(8) Subsections (4A) and (4B) were inserted by paragraph 3(3) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c.19).

(9) Section 28A was inserted by section 143 of the Pensions Act 1995 (c.26).

(10) Subsection (1)(b) was amended by paragraph 35 of Schedule 5 to the Pensions Act 1995 (c.26) and subsection (4) was amended by section 144(4) of that Act and article 117(1) and (3) of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649).

(11) Section 37 was substituted by paragraph 39 of Schedule 5 to the Pensions Act 1995 (c.26).

- (a) after “apply” insert “(a)”; and
 - (b) after “prescribed description” insert “; or (b) where the rules of the relevant scheme are altered to make provision for pensions for surviving civil partners”.
- 14.** Amend section 47 (further provisions concerning entitlement to guaranteed minimum pensions for the purposes of section 46) as follows—
- (a) in subsection (1)(**12**), after “widower” insert “or surviving civil partner”;
 - (b) in subsection (3)—
 - (i) for “widow or widower” (in each place) substitute “widow, widower or surviving civil partner”; and
 - (ii) for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.
- 15.** In section 48 (reduced benefits where minimum payments or minimum contributions paid), in subsection (2)(c)(**13**), for “widow or widower” substitute “widow, widower or surviving civil partner”.
- 16.** In section 55 (payment of state scheme premiums on termination of certified status), in subsection (2A)(c)(**14**), for “widow or widower” substitute “widow, widower or surviving civil partner”.
- 17.** In section 60 (effect of payment of premium on rights), in subsection (5)(**15**), for “widow or widower” substitute “widow, widower or surviving civil partner”.
- 18.** Amend section 87 (general protection principle) as follows—
- (a) in subsection (2)(c), for “widow or widower, the widow’s or, as the case may be, the widower’s” substitute “widow, widower or surviving civil partner, the widow’s, widower’s or surviving civil partner’s (as the case may be)”;
 - (b) in subsection (3), for “widow or widower” substitute “widow, widower or surviving civil partner”;
 - (c) in subsections (3)(a) and (4)(d), for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.
- 19.** In section 88 (the relevant sum), in subsection (1)(b), for “widow or widower” substitute “widow, widower or surviving civil partner”.
- 20.** In section 89 (the appropriate addition), in subsections (1)(a) and (b) and (2)(b), for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.
- 21.** In section 90 (the later earnings addition), in subsection (2)(a) and (b), for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.
- 22.** In section 109 (annual increase of guaranteed minimum pensions), in subsection (2)(b), for “widows and widowers” substitute “widows, widowers and surviving civil partners”.
- 23.** In section 110 (requirement as to resources for annual increase of guaranteed minimum pensions)(**16**), in subsection (1)(b), for “widow or widower” (in each place) substitute “widow, widower or surviving civil partner”.

(12) Subsection (1) was amended by section 18 of the State Pension Credit Act 2002 (c.16) and by paragraph 57 of Schedule 1 to and Schedule 2 to the Social Security (Incapacity for Work) Act 1994 (c.18).

(13) Section 48 ceased to have effect for minimum payments or minimum contributions paid from 6th April 1997 in consequence of section 140(3) of the Pensions Act 1995 (c.26); subsection (2)(c) was amended by section 140(2) of, and Part III of Schedule 7 to, the Pensions Act 1995 (c.26).

(14) Subsection (2A) was inserted by section 141(1) of the Pensions Act 1995 (c.26).

(15) Subsection (5) was amended by paragraph 54(c) of Schedule 5 to the Pensions Act 1995 (c.26).

(16) Subsection (1) was amended by section 53(4)(b) of the Pensions Act 1995 (c.26).

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24.—(1) In section 170 (determination of questions by Secretary of State), in subsection (1)(c), for “widow or widower” substitute “widow, widower or surviving civil partner”.

(2) The reference in sub-paragraph (1) to section 170 is a reference to that section as it has effect without the substitution made by paragraph 131 of Schedule 7 to the Social Security Act 1998⁽¹⁷⁾.

SCHEDULE 2

Article 2(2)

Amendments of provisions of Regulations relating to contracted-out occupational and appropriate personal pension schemes, extending those provisions to surviving civil partners

PART 1

The Personal and Occupational Pension Schemes (Abatement of Benefit) Regulations 1987 (S.I. 1987/1113)(18)

1. Amend regulation 3 (guaranteed minimum pension to which earner’s widow or widower is treated as entitled after minimum contributions have been paid)⁽¹⁹⁾ as follows—

- (a) in the heading preceding it, for “widow or widower” substitute “widow, widower or surviving civil partner”;
- (b) for “widow or widower” (in each place) substitute “widow, widower or surviving civil partner”;
- (c) in paragraph (2), after “widower” insert “or surviving civil partner”.

2. Amend regulation 5 (guaranteed minimum pension to which earner’s widow or widower is treated as entitled after minimum payments have been made)⁽²⁰⁾ as follows—

- (a) in the heading preceding it, for “widow or widower” substitute “widow, widower or surviving civil partner”;
- (b) for “widow or widower” (in each place) substitute “widow, widower or surviving civil partner”;
- (c) in paragraph (2), after “widower” insert “or surviving civil partner”.

PART 2

The Contracting-out (Protection of Pensions) Regulations 1991 (S.I. 1991/166)

3. In regulation 2 (hybrid benefits), in paragraph (1), for “widow or widower” substitute “widow, widower or surviving civil partner”.

4. Amend regulation 4 (pensions for widows and widowers varied after commencement)⁽²¹⁾ as follows—

⁽¹⁷⁾ 1998 c.14.

⁽¹⁸⁾ Section 48 of the Pension Schemes Act 1993 (c.48) ceased to have effect for minimum payments or minimum contributions paid from 6th April 1997, in consequence of section 140(3) of the Pensions Act 1995 (c.26). Accordingly regulations 3 and 5 of S.I. 1987/1113 lapsed in relation to those cases. However, S.I. 1987/1113 continues to have effect for minimum payments or minimum contributions paid earlier than 6th April 1997.

⁽¹⁹⁾ Regulation 3 was amended by S.I. 1994/1062 and S.I. 1996/776.

⁽²⁰⁾ Regulation 5 was amended by S.I. 1994/1062 and S.I. 1996/776.

⁽²¹⁾ Regulation 4(2) was amended by S.I. 1994/1062.

- (a) in the heading preceding it, for “widows and widowers” substitute “widows, widowers and surviving civil partners”;
 - (b) in paragraphs (1) and (2), for “widow or widower” substitute “widow, widower or surviving civil partner”.
5. Amend regulation 5 (the relevant sum for widows and widowers)(**22**) as follows—
- (a) in the heading preceding it, for “widows and widowers” substitute “widows, widowers and surviving civil partners”;
 - (b) in paragraph (2)—
 - (i) for “widow or widower” (in the first place where those words occur) substitute “widow, widower or surviving civil partner”;
 - (ii) in sub-paragraph (a), after “widow or widower” insert “or being then a civil partner of the surviving civil partner”.
6. In regulation 8 (the later earnings addition), in paragraph (1), for “widow or widower” substitute “widow, widower or surviving civil partner”.

PART 3

The Occupational Pension Schemes (Discharge of Protected Rights on Winding Up) Regulations 1996 (S.I. 1996/775)

7. In regulation 5 (conditions on which appropriate policies of insurance may be commuted), in paragraph (a), for “his widow or her widower” substitute “the beneficiary’s widow, widower or surviving civil partner”.

PART 4

The Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172)

8. In regulation 1 (citation, commencement and interpretation), after paragraph (1) insert the following paragraph—
- “(1A) For the purposes of these Regulations, two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex.”
9. In regulation 20 (trivial commutation of benefits derived from section 9(2B) rights)(**23**), in paragraph (1)(b), for “his widow or widower” substitute “the relevant transferee’s widow, widower or surviving civil partner”.
10. In regulation 23 (requirements for meeting the statutory standard), in paragraph (b), for “widows or widowers” (in each place) substitute “widows, widowers or surviving civil partners”.
11. For regulation 26 (reference scheme: circumstances in which widows’ or widowers’ pensions need not be payable) substitute the following regulation—

(22) Regulation 5(2) was amended by S.I. 1994/1062.

(23) Paragraph (1) was numbered as such by S.I. 2002/681, and amended by S.I. 2000/2975.

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“Reference scheme: circumstances in which widows’, widowers’ or surviving civil partners’ pensions need not be payable

26.—(1) For the purposes of section 12B(4)(a) of the 1993 Act (reference scheme to provide widows’, widowers’ and surviving civil partners’ pensions except in prescribed circumstances), and subject to paragraph (2), the prescribed circumstances are where—

- (a) the scheme member marries or forms a civil partnership after having received benefits under the scheme;
- (b) the widow, widower or surviving civil partner of the scheme member—
 - (i) remarries or, as the case may be, marries;
 - (ii) forms a civil partnership or, as the case may be, forms a subsequent civil partnership;
 - (iii) lives together as husband and wife with another person to whom he or she is not married; or
 - (iv) lives together with a person of the same sex as if they were civil partners, after having received benefits under the scheme;
- (c) the widow, widower or surviving civil partner of the scheme member is at the time of the member’s death—
 - (i) living together as husband and wife with another person to whom he or she is not married; or
 - (ii) living together with a person of the same sex as if they were civil partners.

(2) Sub-paragraphs (b)(ii) and (iv) and (c)(ii) of paragraph (1) do not apply where the scheme member dies before 5th December 2005.”.

12. In regulation 37 (circumstances in which the age-related payments are not to be paid)(**24**), in paragraphs (4) and (5)—

- (a) for “widow or widower” substitute “widow, widower or surviving civil partner”; and
- (b) for “died unmarried” substitute “was not married or a civil partner at the time of his or her death”.

13. In regulation 45 (approval of arrangements for schemes ceasing to be contracted-out), in paragraph (3A)(**25**), for “widow or widower” substitute “widow, widower or surviving civil partner”.

14. In regulation 50A (persons to be regarded as members)(**26**), for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.

15. In regulation 51 (contributions equivalent premiums)(**27**)—

- (a) in paragraph (1B)(b)(**28**), after “spouse” insert “or civil partner”;
- (b) in paragraph (2)(c), for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.

16. In regulation 54 (refund of a contributions equivalent premium), in paragraph (5)(**29**), for “widow or widower” (in each place) substitute “widow, widower or surviving civil partner”.

(24) Paragraphs (4) and (5) were amended by virtue of Schedule 2 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

(25) Paragraph (3A) was inserted by S.I. 1997/819.

(26) Regulation 50A was inserted by S.I. 1998/1397.

(27) The heading of regulation 51 was substituted by S.I. 2002/681.

(28) Paragraph (1B) was inserted by S.I. 2002/681.

(29) Paragraph (5) was amended by virtue of Schedule 2 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

17. In regulation 55 (scheme rules about guaranteed minimum pensions), in paragraph (1)(c), after “widower” insert “or surviving civil partner”.

18. Amend regulation 57 (circumstances in which widower’s guaranteed minimum pension is to be payable) as follows—

- (a) in the heading preceding it, after “widower’s” insert “or surviving civil partner’s”;
- (b) after “widower’s” insert “or surviving civil partner’s”;
- (c) after “widower” (in each place) insert “or surviving civil partner”;
- (d) in paragraph (b)—
 - (i) in sub-paragraph (ii), for “her” substitute “the earner’s”; and
 - (ii) in sub-paragraph (iii), for “he” substitute “the widower or surviving civil partner”.

19. Amend regulation 58 (period for which widower’s guaranteed minimum pension is to be payable) as follows—

- (a) in the heading preceding it, after “widower’s” insert “or surviving civil partner’s”;
- (b) in paragraph (1), after “widower’s” (in each place) insert “or surviving civil partner’s”;
- (c) for paragraph (2) substitute the following paragraph—

“(2) There is excluded from the periods prescribed under paragraph (1)(b) or (c) any period—

- (a) after the widower’s remarriage or surviving civil partner’s marriage under pensionable age;
- (b) after the formation of a civil partnership by the widower or the formation of a subsequent civil partnership by the surviving civil partner under pensionable age;
- (c) during which the widower or surviving civil partner is under pensionable age and
 - (i) he or, as the case may be, she and a person of the opposite sex are living together as husband and wife; or
 - (ii) he or, as the case may be, she and a person of the same sex are living together as if they were civil partners;
- (d) after the widower has attained pensionable age if immediately before he attained that age—
 - (i) he and a woman to whom he was not married were living together as husband and wife; or
 - (ii) he and a man were living together as if they were civil partners; or
- (e) after the surviving civil partner has attained pensionable age if immediately before he or she attained that age—
 - (i) he or she and a person of the opposite sex to whom he or she was not married were living together as husband and wife; or
 - (ii) he or she and a person of the same sex were living together as if they were civil partners.”;
- (d) after paragraph (2), as substituted by sub-paragraph (c) above, add the following paragraph—

“(3) Sub-paragraphs (b), (c)(ii), and (d)(ii) of paragraph (2) do not apply where a man became a widower before 5th December 2005.”.

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20. Amend regulation 59 (statutory references to persons entitled to guaranteed minimum pensions – application to widowers) as follows—

- (a) in the heading preceding it, at the end add “and surviving civil partners”;
- (b) after “when the earner died” insert “or by virtue of being the surviving civil partner of an earner only in the case where the earner and the surviving civil partner were both over pensionable age when the earner died”.

21. Amend regulation 60 (trivial commutation of guaranteed minimum pensions) as follows—

- (a) in paragraph (1)(b), for “his widow or her widower” substitute “the earner’s widow, widower or surviving civil partner”;
- (b) in paragraph (2), for “widow’s or widower’s” (in each place) substitute “widow’s, widower’s or surviving civil partner’s”.

22. Amend regulation 61 (suspension and forfeiture of guaranteed minimum pensions) as follows—

- (a) in paragraph (1), for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”;
- (b) in paragraph (2)—
 - (i) for “widow’s or widower’s” (in each place) substitute “widow’s, widower’s or surviving civil partner’s”; and
 - (ii) in sub-paragraph (c), for “widow or widower” substitute “widow, widower or surviving civil partner”.

23. In regulation 63 (provision of information about guaranteed minimum pensions) for “widow or widower” (in each place) substitute “widow, widower or surviving civil partner”.

PART 5

The Protected Rights (Transfer Payment) Regulations 1996 (S.I.1996/1461)

24. In regulation 4 (transfer payments to salary-related contracted-out schemes), in paragraph (d), for “widow or widower” substitute “widow, widower or surviving civil partner”.

PART 6

The Contracting-out (Transfer and Transfer Payment) Regulations 1996

(S.I. 1996/1462)

25. In Schedule 1, Part III, paragraph 6(b) (further conditions for transfer of liability for the payment of a guaranteed minimum pension to or in respect of a person who has become entitled to it), for “his widow or her widower” substitute “the widow, widower or surviving civil partner of that person”.

PART 7

The Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996

(S.I. 1996/1537)

26. In regulation 1 (citation, commencement and interpretation), in paragraph (2), after the definition of “child benefit” insert the following definition—

““marital or civil partnership status”, in relation to a person, means whether that person has previously formed a marriage or a civil partnership and, if so, whether that marriage or civil partnership has ended;”.

27. Amend regulation 4 (conditions applying to pensions and annuities which give effect to protected rights) as follows—

- (a) in paragraph (2)(b)(**30**), for “an unmarried member” substitute “a member who is neither married nor a civil partner”, and for “widow or widower” substitute “widow, widower or surviving civil partner”;
- (b) in paragraph (9)(a), for “widow or widower” substitute “widow, widower or surviving civil partner”.

28. Amend regulation 5 (circumstances in which and periods for which pension or annuity is to be paid to widow or widower after being paid to member)(**31**) as follows—

- (a) in the heading preceding it, for “widow or widower” substitute “widow, widower or surviving civil partner”;
- (b) in paragraph (1)—
 - (i) for “widow or widower” substitute “widow, widower or surviving civil partner”; and
 - (ii) in sub-paragraph (b) for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”;
- (c) for paragraph (2), substitute the following paragraphs—
 - “(2) There is excluded from the period prescribed in paragraph (1)(b) any period after—
 - (a) the widow’s or widower’s remarriage or the surviving civil partner’s marriage under pensionable age; or
 - (b) subject to paragraph (3), the widow’s or widower’s formation of a civil partnership, or the surviving civil partner’s formation of a subsequent civil partnership under pensionable age.
 - (3) Paragraph (2)(b) does not apply where the member dies before 5th December 2005.”.

29. In regulation 6 (interim arrangements), in paragraph (c)—

- (a) for “an unmarried member” substitute “a member who is neither married nor a civil partner”;
- (b) for “widow or widower” (in each place) substitute “widow, widower or surviving civil partner”.

(30) Sub-paragraph (b) was substituted by [S.I. 2002/681](#).

(31) Regulation 5 was substituted by [S.I. 2002/681](#).

30. In regulation 11 (insurers that may provide protected rights by way of annuities)(**32**), in paragraph (b), after “marital” insert “or civil partnership”.

31. Amend regulation 12 (death of member before effect given to his protected rights)(**33**) as follows—

- (a) in paragraph (2) (in each place) and paragraphs (3), (5), (9), (11)(a), (12), (13) and (14), for “widow or widower” substitute “widow, widower or surviving civil partner”;
- (b) for sub-paragraph (b) of paragraph (5) substitute the following sub-paragraphs—
 - “(b) in the case of a widow or widower, remarries or, in the case of a surviving civil partner, marries while under pensionable age; or
 - (c) subject to paragraph (15), in the case of a widow or widower, forms a civil partnership or, in the case of a surviving civil partner, forms a subsequent civil partnership while under pensionable age.”;
- (c) for sub-paragraph (b) of paragraph (9), substitute the following sub-paragraphs—
 - “(b) in the case of a widow or widower remarried or, in the case of a surviving civil partner, married while under pensionable age; or
 - (c) subject to paragraph (15), in the case of a widow or widower, formed a civil partnership or, in the case of a surviving civil partner, formed a subsequent civil partnership while under pensionable age.”;
- (d) after paragraph (14) add the following paragraph—
 - “(15) Paragraphs (5)(c) and (9)(c) do not apply where the member dies before 5th December 2005.”.

32. Amend regulation 13 (death before effect given to protected rights: interim arrangements for widow or widower)(**34**) as follows—

- (a) in the heading preceding it, for “widow or widower” substitute “widow, widower or surviving civil partner”;
- (b) in paragraph (1), for “widow or widower” (in each place) substitute “widow, widower or surviving civil partner”;
- (c) in paragraph (2)(a)(ii), for “widow or widower” substitute “widow, widower or surviving civil partner”.

33. In regulation 14 (enforceable entitlement after death of member), after “widower” insert “, surviving civil partner”.

34. In regulation 15 (further requirements in respect of giving effect to protected rights), after “marital” insert “or civil partnership”.

(32) The heading to regulation 11 was amended and paragraph (1) numbered as such by [S.I. 2001/3649](#).

(33) Regulation 12 was amended by [S.I. 2002/681](#).

(34) Regulation 13 was amended by [S.I. 2002/681](#).

PART 8

The Occupational Pension Schemes (Modification of Schemes) Regulations 1996

(S.I. 1996/2517)

35. In regulation 6 (exemption from the restriction on powers to modify schemes), in paragraph (1)(da)(**35**), for “widow or widower” substitute “widow, widower or surviving civil partner”.

PART 9

The Personal Pension Schemes (Appropriate Schemes) Regulations 1997 (S.I. 1997/470)

36. In regulation 6A (provision of information for purposes of contracting-out)(**36**), for “widow or widower” substitute “widow, widower or surviving civil partner”.

37. In regulation 12 (circumstances in which minimum contributions are not to be paid), in paragraphs (6), (7) and (8)(**37**)

- (a) for “widow or widower” substitute “widow, widower or surviving civil partner”;
- (b) after “unmarried” insert “or was not a civil partner at the time of his or her death”.

PART 10

The Occupational Pension Schemes (Discharge of Liability) Regulations 1997

(S.I. 1997/784)

38. In regulation 1 (citation, commencement and interpretation), after paragraph (1), insert the following paragraph—

“(1A) For the purposes of these Regulations, two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex.”

39. In regulation 3 (conditions on which policies of insurance and annuity contracts may be assigned or surrendered), in paragraph (a), for “widow or widower” substitute “widow, widower or surviving civil partner”.

40. Amend regulation 4 (conditions on which policies of insurance and annuity contracts may be commuted) as follows—

- (a) in paragraph (1)(a)(i), for “his widow or her widower” substitute “the earner’s widow, widower or surviving civil partner”;
- (b) in paragraph (2), for “widow or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.

(35) Regulation 6 was substituted by S.I. 1999/3198; sub-paragraph (da) of paragraph (1) was inserted by S.I. 2002/681.

(36) Regulation 6A was inserted by S.I. 2002/681.

(37) Paragraphs (6), (7) and (8) were amended by virtue of Schedule 2 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 No. 2050*

- 41.** Amend regulation 6 (further conditions on which liability may be discharged) as follows—
- (a) in paragraph (2)(a), for “his widow or her widower” substitute “the earner’s widow, widower or surviving civil partner”;
 - (b) in paragraph (5), for “widow or widower” (in each place) substitute “widow, widower or surviving civil partner”.
- 42.** In regulation 9 (circumstances in which liability to provide pensions under a relevant scheme may be discharged), in paragraph (2), for “his widow or her widower, or if there is no such widow or widower” substitute “the member’s widow, widower or surviving civil partner or, if there is no such person”.
- 43.** Amend regulation 11 (conditions on which liability to provide pensions under a relevant scheme may be discharged) as follows—
- (a) in paragraph (3)—
 - (i) in sub-paragraphs (a) and (b), for “widow or widower” substitute “widow, widower or surviving civil partner”;
 - (ii) in sub-paragraph (b), omit “and (c)”;
 - (b) for paragraph (4) substitute the following paragraph—

“(4) Subject to paragraph (7), the circumstances referred to in paragraph (3) are—

 - (a) the beneficiary marries or forms a civil partnership after having received benefits under the policy or contract;
 - (b) the widow, widower or surviving civil partner of the beneficiary—
 - (i) remarries or, as the case may be, marries;
 - (ii) forms a civil partnership or, as the case may be, forms a subsequent civil partnership;
 - (iii) lives together as husband and wife with another person to whom he or she is not married;
 - (iv) lives together with a person of the same sex as if they were civil partners; or
 - (v) at the time of the beneficiary’s death—
 - (a) is living together as husband and wife with another person to whom he or she is not married; or
 - (b) is living together with a person of the same sex as if they were civil partners.”;
 - (c) after paragraph (6), add the following paragraph—

“(7) Sub-paragraphs (b)(ii), (iv) and (v)(b) of paragraph (4) do not apply where the beneficiary dies before 5th December 2005.”
- 44.** In Schedule 1 (form of consent to arrangement for securing benefit), after “widower” (in each place) insert “/surviving civil partner”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Pension Schemes Act 1993 (c.48) (“the 1993 Act”) and subordinate legislation, making provision for surviving civil partners to receive pensions under contracted-out occupational and appropriate personal pension schemes.

Article 1 provides for citation, commencement and extent.

Article 2 introduces Schedule 1, containing amendments of the 1993 Act, and Schedule 2, containing amendments of provisions of Regulations.

Schedule 1 amends provisions of the 1993 Act to extend to surviving civil partners existing contracting-out requirements to provide survivor benefits to widows and widowers.

Paragraphs 1 to 3, 5 to 12 and 14 to 24 extend provisions in respect of widows and widowers in the 1993 Act to surviving civil partners.

Paragraph 4 amends section 17 of the 1993 Act, to extend to surviving civil partners the provisions in relation to guaranteed minimum pensions for widows and widowers so that surviving civil partners are treated in the same way as widowers. It also extends the circumstances where pensions to survivors need not be paid. These extended circumstances are subject to a transitional provision which ensures that they do not apply to survivors of scheme members where the member dies before the civil partnership provisions come into force.

Paragraph 13 amends section 38(2) of the 1993 Act to extend its scope to allow appropriate schemes to alter their rules to make provision for survivor benefits for civil partners.

Paragraph 24 amends section 170(1)(c) of the 1993 Act in relation to questions which may be determined by the Secretary of State. Section 170 was amended by the Social Security Act 1998 but those amendments have not yet been brought into force (except for the purpose of making regulations). Accordingly it is the version of section 170(1)(c) prior to those amendments that has been amended.

Schedule 2 amends Regulations relating to contracting-out by extending to surviving civil partners existing provisions relating to widows and widowers. Where existing provisions apply only to widowers, they are extended to apply to surviving civil partners. Each Part of Schedule 2 amends a separate set of Regulations:

Part 1 amends the Personal and Occupational Pension Schemes (Abatement of Benefit) Regulations 1987 (S.I. 1987/1113);

Part 2 amends the Contracting-out (Protection of Pensions) Regulations 1991 (S.I. 1991/166);

Part 3 amends the Occupational Pension Schemes (Discharge of Protected Rights on Winding Up) Regulations 1996 (S.I. 1996/775);

Part 4 amends the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172).

Paragraph 11 substitutes a new regulation 26, to extend the circumstances in which, in relation to the reference scheme, widows’, widowers’ and civil partners’ pensions need not be paid. These extended circumstances are subject to a transitional provision which ensures that they do not apply to survivors of scheme members where the member dies before the civil partnership provisions come into force.

Paragraph 12 amends regulation 37(4) and (5) to provide for age-related payments not to be made if the member was not married or had not formed a civil partnership at the time of his or her death.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 No. 2050*

Paragraph 19 amends regulation 58 to extend the circumstances in which a guaranteed minimum pension payable to a widower or surviving civil partner need not be paid. These extended circumstances are subject to a transitional provision which ensures that they do not apply to survivors of scheme members where the member dies before the civil partnership provisions come into force.

Part 5 amends the Protected Rights (Transfer Payment) Regulations 1996 (S.I. 1996/1461);

Part 6 amends the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (S.I. 1996/1462);

Part 7 amends the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996 (S.I. 1996/1537).

Paragraph 28 amends regulation 5 to extend the circumstances in which a pension or annuity payable to a widow, widower or surviving civil partner need not be paid. These extended circumstances are subject to a transitional provision which ensures that they do not apply to survivors of scheme members where the member dies before the civil partnership provisions come into force.

Paragraph 31 amends regulation 12 to extend the circumstances in which a pension or annuity need not be paid to the widow, widower or surviving civil partner when the member dies before effect is given to his protected rights. These extended circumstances are subject to a transitional provision which ensures that they do not apply to survivors of scheme members where the member dies before the civil partnership provisions come into force.

Part 8 amends the Occupational Pension Schemes (Modification of Schemes) Regulations 1996 (S.I. 1996/2517);

Part 9 amends the Personal Pension Schemes (Appropriate Schemes) Regulations 1997 (S.I. 1997/470).

Part 10 amends the Occupational Pension Schemes (Discharge of Liability) Regulations 1997 (S.I. 1997/784).

Paragraph 43 amends regulation 11 to extend the circumstances in which a pension need not be provided for widows', widowers' and surviving civil partners. These extended circumstances are subject to a transitional provision which ensures that they do not apply to survivors of scheme members where the member dies before the civil partnership provisions come into force.

An assessment of the impact on business, charities or the voluntary sector of the provisions in this Order is included in the Regulatory Impact Assessment that accompanied the Civil Partnership Act 2004. A copy of that assessment has been placed in the libraries of both Houses of Parliament. Copies may be obtained from the DTI website at <http://www.dti.gov.uk/access/ria/index.htm#equality>.