

**EXPLANATORY MEMORANDUM TO
THE CIVIL PARTNERSHIP (MISCELLANEOUS AND CONSEQUENTIAL
PROVISIONS) ORDER 2005**

2005 No. 3029

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 following legislation

- The Civil Partnership Act 2004 (c.33) (“the Act”);
- The Civil Partnership (Pensions and Benefit Payments)(Consequential, etc. Provisions) Order 2005 (S.I.2005/2053); and
- The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes)(Surviving Civil Partners) Order 2005 (S.I. 2005/2050)

amend various social security and pensions legislation (both primary and secondary) to cater for civil partners.

- 2.2 This Order makes further necessary amendments, both to Acts which were identified after the above Orders were laid before Parliament, and to the Care Standards Act 2000 (c. 14), to extend those provisions to civil partners.

- 2.3 The Order also amends the extent provisions of S.I. 2005/2053 to remove the extent of that Order, where relevant, to Northern Ireland.

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

- 3.1 The Civil Partnership (Miscellaneous and Consequential Provisions) Order 2005 makes further amendments to primary legislation to extend those provisions to civil partners. The attention of the Committee is drawn to the amendment made to the Civil Partnership (Pensions and Benefit Payments)(Consequential, etc. Provisions) Order 2005 by Article 2 of this Order. We realise that the power contained in section 259 of the Civil Partnership Act 2004 is, on its face, limited to amending provisions coming into force before the Civil Partnership Act 2004 received Royal Assent; however, in making this amendment we are relying on section 14 of the

Interpretation Act 1978 (c. 30) which provides that a power to make an Order includes the power to amend that Order.

4. Legislative background

4.1 The Order is laid in exercise of powers conferred by sections 254(4), 255, 258 and 259 of the Act, which allow for orders to make further provisions for the general purposes of, in consequence of, and to give full effect to, any provision of the Act. The amendments made by this Order make consequential changes necessary to primary legislation as a result of the Act. The Order is subject to the affirmative resolution procedure.

4.2 This Instrument is one of two affirmative Instruments that are required to extend provisions to civil partners with effect from 5 December 2005. The other Instrument being The Social Security (Inherited SERPS) (Amendments Relating to Civil Partnership) Regulations 2005.

5. Extent

5.1 This Order extends to England, Wales and Scotland with the exception of;

- paragraph 5 of Schedule 1, which extends to England and Wales because that is the extent of the Act being amended and
- article 2, which also extends to Northern Ireland. Equivalent provision, regarding the remainder, will be made for Northern Ireland by Statutory Rules.
- Paragraph 3 of Schedule 1 and Schedule 2 extend to Northern Ireland only as the subject matter is excepted.

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 (Miscellaneous and Consequential Provisions) Order 2005 are compatible with the Convention rights.

7. Policy background

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

7.2 This Order corrects an anomaly in S.I. 2005/2053, which incorrectly extends a provision of that Order to Northern Ireland.

7.3 This Order also amends and clarifies existing primary legislation to ensure that

- surviving civil partners are given the same rights, prior to 2010, as surviving widowers to inherit Graduated Retirement Benefit¹;
- surviving civil partners are given the same rights as surviving spouses for the purposes of establishing rights over and above the Guaranteed Minimum Pension;
- a private pension, which is subject to an earmarking or attachment order, is treated in the same way for a civil partner as for a spouse. This means that the court may order the pension scheme to make payments of a pension when it becomes payable on behalf of the member direct to the former spouse or civil partner;
- the rules on contributions equivalent premium apply to surviving civil partners in Northern Ireland;
- ensures civil partners who have contracted-out pensions or appropriate personal pensions are treated in the same way as spouses and widows and widowers.

7.4 The Order also amends the Care Standards Act 2000 to exclude from the statutory scheme for the protection of vulnerable adults same-sex partners and their specified relatives who are caring for a vulnerable adult who is related to them. This puts same-sex partners on the same footing as opposite-sex partners. The statutory scheme provides for the Secretary of State to keep a list of persons who are unsuitable to work with vulnerable adults and for referrals of such persons to be made to her. The provision now being amended to take account of civil partnership excludes from that scheme care arrangements made between family members.

7.5 This Order also amends section 51 of the Pension Schemes (Northern Ireland) Act 1993 and provisions in the Occupational Pensions (Contracting-out) Regulations (Northern Ireland) 1996 and the Personal Pension Schemes (Appropriate Schemes) Regulations (Northern Ireland) 1997 to provide rights for civil partners in respect of occupational and personal pensions. Although the amendments are to Northern Ireland legislation, the provisions of section 51 of the Pension Schemes (Northern Ireland) Act 1993 are an excepted matter by virtue of paragraph 10 of Schedule 2 to the Northern Ireland Act 1998 and the functions under the regulations were transferred from the Department for Social Development to DWP by Schedule 2 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999. Officials in DSD have carried out consultation on these provisions as required by section 255(6) of the Civil Partnership Act; no issues were raised.

¹ Graduated Retirement Benefit (GRB) is an increase in the weekly rate of a Category A or B retirement pension based on the amount of national insurance contributions paid by an employee into a scheme that existed between 1961 and 1975. Prior to 1979, inheritance rights to GRB were not available to widowers. Since 1979, when the rules were changed, a widower has been entitled to inherit half of his late wife's GRB provided they were both over state pension age when she died. The amendment in this Order is to ensure that surviving civil partners receive the same inheritance rights as widowers (from 2010, inheritance rights will be equalised between men and women).

- 7.6 Subject to the requirement to consult in respect of Northern Ireland pensions legislation, there was no requirement to consult on this Order as it gives full effect to the Act. 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. There were a total of 3,167 responses 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.
- 7.7 The Government's response to the consultation was published in November 2003 and can be found on the Department of Trade and Industry's (DTI) 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. The Government announced on 26 November 2003 that it intended to bring forward a Civil Partnership Bill.
- 7.8 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 (RIA) has not been produced for this instrument as it has no impact on the costs of business, however a full RIA was produced for the Civil Partnership Act which reflects all the costs to Government, business and the voluntary sector. The RIA can be accessed at <http://www.dti.gov.uk/access/ria/pdf/ria-civilpartnerships2004.pdf>
- 8.2 There is no impact on the public sector.

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 can answer any queries regarding the instrument.