

2005 No. 3069

PENSIONS, ENGLAND AND WALES

**The Local Government Pension Scheme (Civil Partnership)
(Amendment) (England and Wales) Regulations 2005**

<i>Made</i> - - - -	<i>1st November 2005</i>
<i>Laid before Parliament</i>	<i>10th November 2005</i>
<i>Coming into force</i> - -	<i>5th December 2005</i>

These Regulations are made in exercise of the powers conferred by sections 7, 12 and 24 of the Superannuation Act 1972(a).

In accordance with section 7(5) of that Act, the First Secretary of State has consulted (a) such associations of local authorities as appeared to him to be concerned; (b) the local authorities with whom consultation appeared to him to be desirable; and (c) such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate.

The First Secretary of State makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Civil Partnership) (Amendment) (England and Wales) Regulations 2005.

(2) These Regulations apply in relation to England and Wales(b).

(3) These Regulations shall come into force on 5th December 2005, but the amendments made by regulation 3 shall have effect from 1st April 1998.

The Local Government (Discretionary Payments) Regulations 1996

2.—(1) The Local Government (Discretionary Payments) Regulations 1996(c) shall be amended in accordance with this regulation.

(2) In regulation 37 (death benefits)—

(a) for paragraph (1)(b)(i) substitute—

“(i) subject to paragraph (2), if the deceased leaves a surviving spouse or spouses, or a surviving civil partner, the surviving spouse or all of them, or the

(a) 1972 c. 11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).
(b) The Secretary of State's functions under sections 7, 12 and 24 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (1998 c. 46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).
(c) S.I. 1996/1680; the relevant amending instrument is S.I. 1997/1613.

surviving civil partner, as the case may be, shall be entitled to an annual allowance or lump sum; and”;

(b) in paragraph (2)—

(i) after “surviving spouse” insert “or civil partner”; and

(ii) after “marriage” insert “or civil partnership”;

(c) for paragraph (4) substitute—

“(4) Subject to paragraph (5), an allowance to a surviving spouse or civil partner shall cease if he marries or registers a subsequent civil partnership or cohabits with another person outside marriage or civil partnership, but if that marriage, civil partnership or cohabitation ceases the relevant employer may restore the allowance for such period as the employer may determine.”;

(d) for paragraph (5) substitute—

“(5) Where the person whom the surviving spouse or civil partner marries, or with whom he forms a civil partnership or cohabits, is also a surviving spouse or surviving civil partner entitled to an allowance under this regulation, only such one of them as they may choose shall be so entitled; and the other shall cease to be so entitled until the end of the marriage, civil partnership or cohabitation.”.

(3) In regulation 40(1) after “spouse” insert “, surviving civil partner”.

(4) After regulation 41(4) (retirement gratuities) insert—

“(4A) Paragraph (4) applies to surviving civil partners where after 5th April 1988 a person both—

(a) ceases to be employed; and

(b) is awarded a retirement gratuity.”.

(5) After regulation 42(4) (redundancy gratuities) insert—

“(4A) Paragraphs (3) and (4) apply to surviving civil partners where after 5th April 1988 a person both—

(a) ceases to be employed; and

(b) is awarded a redundancy gratuity.”.

The Local Government Pension Scheme Regulations 1997

3.—(1) The Local Government Pension Scheme Regulations 1997(a) shall be amended in accordance with this regulation.

(2) In regulation 2(1) after “divorce” insert “and dissolution orders”.

(3) In regulation 9(1A) after “surviving spouse’s” insert “or civil partner’s”.

(4) In regulation 19(2)(b) after “surviving spouse’s” insert “or civil partner’s”.

(5) In regulation 21(4) after “surviving spouse’s” insert “, civil partner’s”.

(6) In regulation 33(1) after “spouse” insert “, civil partner”.

(7) For the headings immediately before regulation 40, and in regulation 40 (surviving spouse’s short-term pension), for paragraphs (1) to (3), substitute—

“Surviving spouse’s or civil partner’s pensions

Surviving spouse’s or civil partner’s short-term pension

40.—(1) If an active or pensioner member dies leaving a surviving spouse or civil partner, the spouse or civil partner is entitled to a short-term pension.

(a) S.I.1997/1612; the relevant amending instruments are S.I. 1999/1212, 2000/1164, 2001/1481, 2002/206, 2004/573 and 2004/3372.

- (2) It is payable for three months after the member's death.
- (3) But if there are eligible children in the spouse's or civil partner's care, it is payable for a further three months."
- (8) In regulation 41 (surviving spouse's long-term pension)—
 - (a) in the heading after "surviving spouse's" insert "or civil partner's"; and
 - (b) for paragraph (1) substitute—
 - "(1) If a member dies leaving a surviving spouse or civil partner, the spouse or civil partner is entitled to a spouse's or civil partner's long-term pension."
- (9) After regulation 42 (reduction of some surviving spouses' pensions) insert—

"Calculation of pension for surviving civil partners

42A For the purpose of calculating the pension to which a surviving civil partner is entitled under regulation 40 or 41 (surviving spouse's or civil partner's short-term or long-term pension) account shall only be taken of the deceased member's membership after 5th April 1988. This shall include relevant additional membership (as defined in regulation 42(4))."

- (10) In the heading for regulation 43 and in regulation 43(1) after "surviving spouse's" insert "or civil partner's".
- (11) In regulation 45 (children's short-term pensions)—
 - (a) in paragraph (2) and in paragraph (6) after "surviving spouse" in each place in which it occurs insert "or civil partner"; and
 - (b) in paragraph (7) after "surviving spouse's" insert "or civil partner's".
- (12) In regulation 46(9)(a)(i) and 46(9)(b)(i) after "surviving spouse's" insert "or civil partner's".
- (13) In regulation 49 (commutation: small pensions)—
 - (a) in paragraph (2) after "surviving spouse" insert "or civil partner"; and
 - (b) in paragraph (6) after "spouse" in each place in which it occurs insert "or civil partner".
- (14) In regulation 88(2) after "spouse" insert ", civil partner".
- (15) In regulations 99(1)(b) and 100(2)(a) after "or surviving" insert "civil partner or".
- (16) In regulation 114(1) for "or widower's" substitute ", widower's or surviving civil partner's".
- (17) In regulation 115(5)(b) after "spouse" insert ", civil partner".
- (18) In regulation 118(5)(a) after "surviving spouse's" insert "or civil partner's".
- (19) In regulation 123(2)(c) after "surviving spouse's" insert "or civil partner's".
- (20) In regulation 124(1) for "surviving spouses, dependants and children" substitute "surviving spouses or civil partners, dependants and children".
- (21) In the definition of "guaranteed minimum" in Schedule 1 (interpretation) for "widows and widowers" substitute "widows, widowers and surviving civil partners".
- (22) In the heading to Schedule 1A after "divorce" insert "and dissolution orders".
- (23) In Schedule 4 (revenue restrictions)—
 - (a) in paragraph 2—
 - (i) in sub-paragraph (11) after "surviving spouse" in each place in which it occurs insert ", civil partner"; and
 - (ii) in sub-paragraph (11A) after "surviving spouse" insert "or civil partner";
 - (b) in paragraph 4 in sub-paragraph (8) after "surviving spouse" in each place in which it occurs insert ", civil partner"; and
 - (c) in sub-paragraph (9) of paragraph 4 after "surviving spouse" insert "or civil partner".

(24) In Schedule 8 (councillor members)—

- (a) in the heading for paragraphs 16 and 17 after “Surviving spouses” insert “or Civil Partners”; and
- (b) in paragraphs 16 and 17 after “surviving spouse’s” insert “or civil partner’s”.

Local Government Pension Scheme (Transitional Provisions) Regulations 1997

4.—(1) The Local Government Pension Scheme (Transitional Provisions) Regulations 1997(a) shall be amended in accordance with this regulation.

(2) After regulation 4 (deferred members and pensioners: general) insert—

“Deferred members and pensioners: civil partners

4A.—(1) Where a person falling within regulation 4(2)(a) dies and leaves a surviving civil partner, the surviving civil partner is entitled to benefits the same as those that would, if the member had been married, have been payable to his surviving spouse, and any provisions which would have applied, if the member had been married, to his surviving spouse’s benefits shall apply to the benefits payable to his civil partner.

(2) For the purpose of calculating the benefit to which a surviving civil partner is entitled under paragraph (1) account shall only be taken of the deceased member’s membership after 5th April 1988. This shall include periods of membership which are treated as membership after 5th April 1988 as defined in regulation F8(3) of the Local Government Pension Scheme Regulations 1995.”.

(3) In regulation 25(1) after “surviving spouses” insert “or civil partners”.

The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000

5.—(1) The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000(b) shall be amended in accordance with this regulation.

(2) In the heading immediately before regulation 20 after “SURVIVING SPOUSES” insert “, CIVIL PARTNERS”.

(3) In regulation 20(4) after “spouse” insert “, civil partner”.

(4) In regulation 21 (awards to surviving spouses)—

- (a) in the heading after “surviving spouses” insert “or civil partners”;
- (b) in paragraph (1)—
 - (i) after “surviving spouse” insert “or civil partner”; and
 - (ii) in sub-paragraph (a), after “surviving spouses” insert “or civil partners”;
- (c) in paragraph (3)—
 - (i) after “surviving spouse” in each place in which it occurs insert “or civil partner” and after “marriage” insert “or civil partnership”;
 - (ii) after “surviving spouse’s” in each place in which it occurs, insert “or civil partner’s”; and
- (d) for paragraph (5) substitute—

“(5) Subject to paragraphs (6), (6A), (6B) and (7), the surviving spouse or civil partner of an eligible person who ceased employment before 1st April 1998 is not entitled to any compensation under this regulation during any subsequent marriage, civil partnership or

(a) S.I. 1997/1613, to which there are amendments not relevant to these Regulations.

(b) S.I. 2000/1410; the relevant amending instruments are S.I. 2001/3649, 2002/769, 2003/1027.

period of cohabitation outside marriage or civil partnership, and is entitled to long-term compensation from the end of such marriage, civil partnership or period only if the employing authority so decide.”.

(5) After regulation 21(6) (awards to surviving spouses) insert—

“(6A) Where two surviving civil partners register a civil partnership or cohabit with each other outside civil partnership and both—

- (a) are entitled to short-term or long-term compensation under this regulation; and
- (b) are the surviving civil partners of eligible persons who ceased employment before 1st April 1998,

only such one of them as they may choose shall be so entitled; and the other shall cease to be so entitled until the end of the civil partnership or cohabitation.

(6B) Where a surviving spouse and a surviving civil partner marry, register a civil partnership or cohabit with each other outside marriage or civil partnership and both—

- (a) are entitled to short-term or long-term compensation under this regulation; and
- (b) are the surviving spouse or civil partner of eligible persons who ceased employment before 1st April 1998,

only such one of them as they may choose shall be so entitled; and the other shall cease to be so entitled until the end of the marriage, civil partnership or cohabitation.”.

(6) For regulation 21(7) substitute—

“(7) The employing authority may determine by resolution in any case where the surviving spouse or civil partner has not, as at 1 April 1998, entered into a subsequent marriage, civil partnership or period of cohabitation that paragraph (5), (6), (6A) or (6B), as appropriate, shall not apply.”.

(7) In regulation 22 (amount of surviving spouse’s short-term and long-term compensation)—

- (a) in the heading and in paragraphs (1) and (2) after “surviving spouse’s” insert “or civil partner’s”; and
- (b) in paragraph (4) after “surviving spouse” insert “or civil partner”.

(8) In regulation 23(3) after “surviving spouse” insert “or civil partner”.

(9) In Schedule 1 (interpretation) in paragraph 1—

- (a) in sub-paragraph (c)(ii) of the definition of “eligible child” after “married” insert “or formed a civil partnership with”;
- (b) in the definition of “periodic payment”—
 - (i) after “surviving spouse” insert “, civil partner”; and
 - (ii) after “spouse” insert “, civil partner”; and
- (c) in the definition of “relevant fraction”—
 - (i) after “surviving spouse” in each place in which it occurs insert “or civil partner”; and
 - (ii) after “surviving spouse’s” insert “or civil partner’s”.

Signed by authority of the First Secretary of State

1st November 2005

Phil Woolas
Minister of State
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Regulations)

The amendments in these Regulations provide survivor benefits for same sex partners of Local Government Pension Scheme members or eligible persons where the same sex partners have registered a civil partnership under the terms of the Civil Partnership Act 2004. Section 12 of the Superannuation Regulations 1972 provides that regulations made under section 7 of that Act may have retrospective effect: the changes made to the 1997 Regulations have effect from 1st April 1998. This retrospection, and the amendments to the Transitional Provisions Regulations, are necessary to apply the provisions to deferred or pensioner members who enter into a civil partnership having ceased employment before these Regulations come into force.

The Regulations amend—

- (1) The Local Government (Discretionary Payments) Regulations 1996 (“the 1996 Regulations” – amended by regulation 2);
- (2) The Local Government Pension Scheme Regulations 1997 (“the 1997 Regulations” – amended by regulation 3);
- (3) The Local Government Pension Scheme (Transitional Provisions) Regulations 1997 (“the Transitional Provisions Regulations” – amended by regulation 4); and
- (4) The Local Government (Early Termination of Employment) (Discretionary Compensation)(England and Wales) Regulations 2000 (“the 2000 Regulations” – amended by regulation 5).

The changes to the 1996 and 2000 Regulations provide that surviving civil partners will qualify for survivor benefits in the same way as spouses where a person ceases employment after 5th April 1988 and subsequently dies.

The changes to the 1997 Regulations and the Transitional Provisions Regulations are as follows—

- surviving civil partners of scheme members, including those who left the scheme between 6th April 1988 and 5th December 2005, will qualify for survivor benefits in the same circumstances as spouses;
- where a surviving civil partner is eligible for benefits and a person’s “membership” is relevant to the eligibility for and level of those benefits, only such “membership” after 5th April 1988 is taken into account.

In addition, the changes to the 1997 Regulations include minor amendments dealing with pension sharing on divorce and its application to the dissolution of a civil partnership.

Some bodies within the business, charity or voluntary sectors are employers within the Local Government Pension Scheme. There will be costs in public service pension schemes from extending survivor benefits to include civil partners. A Regulatory Impact Assessment was published alongside the Civil Partnership Act 2004, which assesses the impact of the Act on the business, charity and voluntary sectors, and outlines the cost implications to public service pension schemes. Accordingly, a separate Regulatory Impact Assessment was not produced for these Regulations. The final Regulatory Impact Assessment for the Civil Partnership Act 2004 has been placed in the library of each House of Parliament and can be viewed at <http://www.dti.gov.uk/access/ria/index.htm#equality>.

2005 No. 3069

PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme (Civil Partnership)
(Amendment) (England and Wales) Regulations 2005

£3.00

© Crown copyright 2005

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1567 11/2005 151567T 19585