

2005 No. 3074

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

CIVIL PARTNERSHIP

The National Health Service (Pension Scheme, Injury Benefits, Additional Voluntary Contributions and Compensation for Premature Retirement) (Civil Partnership) Amendment Regulations 2005

Made - - - - - *2nd November 2005*
Laid before Parliament *8th November 2005*
Coming into force - - *5th December 2005*

The Secretary of State for Health, with the consent of the Treasury(a), makes the following Regulations in exercise of the powers conferred by sections 10(1), (2), (3) and (3A), 12(1) and (2), and 24(1) and (3) of, and Schedule 3 to, the Superannuation Act 1972(b).

In accordance with section 10(4) of that Act she has consulted with representatives of those whom she considers likely to be affected by these Regulations(c).

Citation and commencement

1. These Regulations may be cited as the National Health Service (Pension Scheme, Injury Benefits, Additional Voluntary Contributions and Compensation for Premature Retirement) (Civil Partnership) Amendment Regulations 2005 and shall come into force on 5th December 2005.

Amendment of the National Health Service Pension Scheme Regulations 1995

2.—(1) The National Health Service Pension Scheme Regulations 1995(d) shall be amended in accordance with the following paragraphs.

(2) In paragraph (3)(d) of regulation D2 (contributions by employing authorities) after “widow, widower”, insert “, surviving civil partner”.

(3) In paragraph (3) of regulation F5(e) (payment of lump sum)—

(a) for “widow or widower”, insert (in each place) “widow, widower or surviving civil partner”; and

(a) See section 10(1) of the Superannuation Act 1972 (c. 11) and article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).
(b) Section 10 was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c. 2) and by section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).
(c) See section 10(4) of the Superannuation Act 1972.
(d) S.I. 1995/300; the amending instruments are S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428, 2002/561 and 2469, 2003/631, 2004/665 and 2005/661.
(e) Sub-paragraph (3) was amended by S.I. 2003/2322.

(b) for “widow’s or widower’s”, insert “widow’s, widower’s or surviving civil partner’s”.

(4) In the heading to Part G for “Widows and widowers”, substitute “Widows, widowers and surviving civil partners”.

(5) In regulation G1 (widow’s pension)—

(a) in paragraph (2)—

(i) in sub-paragraph (a) omit “and”;

(ii) in sub-paragraph (b) after “remarries” insert—

“;

(c) no widow’s pension shall be payable in respect of any period during which the widow and a woman who is not her civil partner are living together as if they were civil partners; and

(d) the widow shall cease to be entitled to a widow’s pension if she forms a civil partnership.

(2A) Paragraph (2)(c) and (d) shall not apply where the member dies before 5th December 2005.”.

(6) After regulation G9 add—

“Surviving civil partner’s pension

G10.—(1) Subject to the following provisions of this regulation, if a member who is in a civil partnership dies in the circumstances described in any of regulations G2 to G6 and leaves a surviving civil partner, the surviving civil partner shall be entitled to a pension as described in this regulation.

(2) Subject to paragraph (3), regulations G1 to G6 (pensions for widows) apply to the calculation and payment of pensions for surviving civil partners in like manner as they apply to pensions for widows.

(3) When calculating a surviving civil partner’s pension, any part of the member’s benefit that is based on pensionable service before 6th April 1988 will, subject to paragraphs (4) and (5), be disregarded.

(4) Where regulation G2(3) or G4(2) applies to the calculation of the surviving civil partner’s pension on a member’s death in pensionable employment or with a preserved pension—

(a) the whole of the member’s pensionable service will be taken into account when calculating whether and (if so) to what extent there would have been an increase, by virtue of regulation E2(3), in the pensionable service on which the member’s pension under regulation E2 (early retirement pension on grounds of ill-health) would have been based; and

(b) the whole period (if any) by which the member’s pension would have been increased will be treated as pensionable service after 5th April 1988.

(5) Where regulation G3(2) applies to the calculation of the surviving civil partner’s pension, so that the surviving civil partner’s pension is equal to the member’s pension for a limited period, the surviving civil partner’s pension for that limited period will be equal to the whole of the member’s pension (including any part of the member’s pension that is based on pensionable service before 6th April 1988).

(6) Any reference in these Regulations to regulations G1 to G6 means, in relation to benefits in respect of a member who has formed a civil partnership, those regulations as applicable to the member’s surviving civil partner (if any).

Dependent surviving civil partner’s pension

G11.—(1) A member who has formed a civil partnership may, by giving notice in writing to the Secretary of State prior to leaving pensionable employment, nominate the other party to the civil partnership to receive a dependent surviving civil partner’s pension on the member’s death.

(2) The Secretary of State shall accept a member’s nomination only if she is satisfied that the member’s civil partner is permanently incapable of earning a living because of physical or mental infirmity and is wholly or mainly dependent on the member.

(3) If the Secretary of State has accepted a member's nomination and the member subsequently dies before the other party to the civil partnership, the dependent surviving civil partner shall be entitled to a dependent surviving civil partner's pension.

(4) The dependent surviving civil partner's pension shall be calculated in the same way as a widow's pension under regulations G1 to G6 (pension for widows), but based only on the member's pensionable service before 6th April 1988.

(5) If the Secretary of State has accepted a member's nomination for a dependent surviving civil partner's pension and the member's pensionable service started before 6th April 1988 any lump sum payable to the member will be reduced by an amount equal to 1.4 times the yearly rate of the part of the member's pension that is based on pensionable service before 6th April 1988 (except to the extent that any reduction has been off-set under regulation Q2 (right to buy an unreduced retirement lump sum)).

(6) Where regulation E2(10) or regulation L1(8) applies to a member who has formed a civil partnership, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member to whom paragraph (5) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

Purchase of surviving civil partner's pension in respect of service prior to 6th April 1988

G12.—(1) Subject to the following provisions of this regulation an officer or a practitioner, unless he is a person in respect of whom a pension has already become payable under regulation E2 and to whom E2(11) applies, may, in respect of the whole or any part of his contributing service prior to 6th April 1988, elect to purchase an increase in the amount of any surviving civil partner's pension which may become payable by virtue of regulation G10.

(2) The purchase of an increase pursuant to paragraph (1) may be made only in respect of complete years of service unless the officer or practitioner wishes to purchase an increase in respect of all of his service before 6th April 1988 in which case the whole of the requisite period may be purchased whether or not it constitutes a multiple of complete years of service.

(3) An election pursuant to paragraph (1)—

- (a) shall not be made later than 28th February 2007 by giving notice in writing to the Secretary of State specifying the period in respect of which the election is made;
- (b) must be accompanied by a declaration in writing signed by the officer or practitioner that he is of sound health for his age; and
- (c) shall be irrevocable.

(4) Schedule 1, tables 2 and 4 multiplied by a factor of 0.7 shall have effect with regard to the cost of providing the increase provided pursuant to paragraph (1).

Increased surviving civil partner's pension

G13.—(1) If a member who has formed a civil partnership elected on or before 28th February 2007 to buy an increased surviving civil partner's pension pursuant to regulation G12(1), the surviving civil partner's pension described in regulation G10 will be based on pensionable service after 5th April 1988 plus the period of pensionable service before that date that the member elected to buy for this purpose under regulation G12(1).

(2) Subject to paragraph (3) any retirement lump sum payable to a member under regulation E6 (lump sum on retirement), in respect of any period of pensionable service that the member elected to buy as described in paragraph (1), will be reduced by 1.4 times the yearly rate of the member's pension plus the relevant daily proportion of that rate for each additional day (except to the extent that any lump sum reduction has been off-set under regulation Q2 (right to buy an unreduced retirement lump sum)).

(3) Where regulation E2(10) or regulation L1(8) applies to a member who has formed a civil partnership, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member to whom paragraph (2) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

(4) Subject to paragraph (5) where by virtue of an election under regulation G12(1) the amount of the retirement lump sum would fall to be reduced by 1.4 times the yearly rate of the member's pension plus the relevant daily proportion of that rate for each additional day, he may make an election to purchase an unreduced lump sum under regulation Q2 (right to buy an unreduced retirement lump sum) provided that the election is made no later than 28th February 2007.

(5) A member who has purchased additional service in accordance with regulation Q1 (right to buy additional service) by way of a payment under regulation Q6 (paying for additional service or an unreduced retirement lump sum by regular additional contributions) may not make an election under paragraph (4) in respect of the purchase of an unreduced lump sum.”.

- (7) In paragraph (1) of regulation H1 (dependent child)—
- (a) in sub-paragraph (b) after “marriage entered into”, insert “or a civil partnership formed”; and
 - (b) in sub-paragraph (c) after “spouse”, insert “or civil partner”.
- (8) In regulation H3 (member dies in pensionable employment)—
- (a) in paragraphs (4), (7) and (8) after “spouse”, insert (in each place) “or civil partner”;
 - (b) in paragraphs (5), (6) and (8) for “widow’s or widower’s”, substitute (in each place) “widow’s, widower’s or surviving civil partner’s”; and
 - (c) in paragraphs (5) and (6) for “widow or widower”, substitute (in each place) “widow, widower or surviving civil partner”.
- (9) In regulation H4 (member dies after pension becomes payable)—
- (a) in paragraphs (3), (4) and (5) after “spouse”, insert (in each place) “or civil partner”;
 - (b) in paragraphs (5), (6) and (7) for “widow’s or widower’s”, substitute (in each place) “widow’s, widower’s or surviving civil partner’s”; and
 - (c) in paragraphs (6) and (7) for “widow or widower”, substitute (in each place) “widow, widower or surviving civil partner”.
- (10) In regulation H5 (member dies with preserved pension)—
- (a) in paragraphs (4), (5) and (6) after “spouse”, insert (in each place) “or civil partner”; and
 - (b) in paragraph (6) for “widow’s or widower’s”, substitute “widow’s, widower’s or surviving civil partner’s”.
- (11) In regulation H7 (dependent child not being maintained by surviving parent or spouse of parent)—
- (a) in the heading after “spouse”, insert “or civil partner”; and
 - (b) in paragraphs (1) and (2) after “spouse”, insert (in each place) “or civil partner”.
- (12) In the heading to Part J after “spouse”, insert “, civil partner”.
- (13) In regulation J1 (allocation of pension)—
- (a) in paragraph (1) after “spouse”, insert “, civil partner”; and
 - (b) in paragraph (2)—
 - (i) after “spouse”, insert “or civil partner”; and
 - (ii) for “widow’s or widower’s”, substitute “widow’s, widower’s or surviving civil partner’s”.
- (14) In regulation J2 (limits on allocation of pension)—
- (a) in paragraph (1) after “spouse”, insert “, a civil partner”;
 - (b) in paragraph (2) for “or spouse’s pension”, substitute “, spouse’s pension or civil partner’s pension”; and
 - (c) in paragraph (3) for “or spouse”, substitute “, spouse or civil partner”.

- (15) In paragraph (2)(b) of regulation J3 (date on which allocation has effect) for “or spouse”, substitute “, spouse or civil partner”.
- (16) In regulation K2 (guaranteed minimum pensions)—
- (a) after paragraph (4) insert—
- “(4A) If the member is in a civil partnership and dies leaving a surviving civil partner, the weekly rate of the surviving civil partner’s pension will not be less than one-half of the part of the member’s guaranteed minimum that is attributable to earnings for the tax year 1988—1989 and subsequent tax years.”; and
- (b) in paragraph (6) for “widow’s or widower’s”, substitute “widow’s, widower’s or surviving civil partner’s”.
- (17) In paragraph K6 (protected rights transferred to the scheme) after “spouse”, insert (in each place) “or civil partner”.
- (18) In paragraph (2) of regulation K7 (State scheme premiums) for “widow or widower”, substitute (in each place) “widow, widower or surviving civil partner”.
- (19) In paragraph (3) of regulation L2 (refund of contributions) after “spouse”, insert “or civil partner”.
- (20) In paragraph (3)(a) of regulation L4 (early leavers returning to pensionable employment) after “spouse”, insert “or civil partner”.
- (21) In regulation Q1 (right to buy additional service and unreduced retirement lump sum) after paragraph (5) insert—
- “(5A) For the purposes of regulation G10 (surviving civil partner’s pension) if a civil partner exercised his right to buy additional service before 6th April 1988, the additional service bought as a result of the exercise of that right will be treated as service before 6th April 1988.”.
- (22) In paragraph (1) of regulation Q2 (right to buy an unreduced retirement lump sum) after “married”, insert “or in a civil partnership”.
- (23) In regulation Q5 (paying for an unreduced lump sum by a single payment), after subparagraph (2) insert—
- “(2A) A member who has formed a civil partnership who wishes to pay for an unreduced lump sum by a single payment must elect to do so within 12 months after nominating his civil partner to receive a dependent surviving civil partner’s pension under regulation G11 (dependent surviving civil partner’s pension).”.
- (24) In paragraph (7)(b) of regulation R3 (mental health officers) for “widow’s or widower’s”, substitute “widow’s, widower’s or surviving civil partner’s”.
- (25) In the heading to regulation R12 after “marriage”, insert “or, dissolution or nullity of civil partnership”.
- (26) In regulation S4 (benefits on death in pensionable employment after pension becomes payable)—
- (a) in paragraphs (4) and (7) after “spouse”, insert (in each place) “or civil partner”;
- (b) in paragraphs (4), (5), (6) and (8) after “spouse’s”, insert (in each place) “or civil partner’s”; and
- (c) in paragraph (6) after “widower’s”, insert “or surviving civil partner’s”.
- (27) In paragraph (1A)(a) of regulation T6 (loss of rights to benefits)(a) for “widow or widower”, substitute “widow, widower or surviving civil partner”.
- (28) In paragraph (b) of regulation U1A(b) (determination by medical practitioners) after “regulation G8(2)”, insert “or regulation G11(2)”.
- (29) In Schedule 2(c) (medical and dental practitioners)—
- (a) in the heading to paragraph 15 for “Widows or widowers”, substitute “Widows, widowers or surviving civil partners”; and

(a) Paragraph (1A) was inserted by S.I. 2003/631.

(b) Regulation U1A was inserted by S.I. 2004/665.

(c) Schedule 2 has been amended. Those amendments are not relevant to this instrument.

(b) after paragraph 16 insert—

“Increased surviving civil partner’s pension

(16A) In the case of a civil partner who made a nomination under regulation G11 (dependent surviving civil partner’s pension) or an election under G13 (increased surviving civil partner’s pension) those regulations are modified so that the lump sum payable on the member’s retirement will be reduced by 1.96 per cent of uprated earnings for each complete year of practitioner service plus the relevant daily proportion for each additional day.”.

(30) In the heading to Schedule 2A after “MARRIAGE”, insert “OR, ON THE DISSOLUTION OR NULLITY OF A CIVIL PARTNERSHIP”.

Amendment of the National Health Service (Injury Benefits) Regulations 1995

3.—(1) The National Health Service (Injury Benefits) Regulations 1995(a) shall be amended in accordance with the following paragraphs.

(2) In regulation 7 (widow’s or widower’s allowance)—

- (a) in the heading for “Widow’s or widower’s”, substitute “Widow’s, widower’s or surviving civil partner’s”;
- (b) in paragraphs (1) and (2) for “widow or widower”, substitute (in each place) “widow, widower or surviving civil partner”; and
- (c) for paragraph (3) substitute—

“(3) Except where paragraph (3A) applies, a widow, widower or surviving civil partner shall not be entitled to receive an allowance—

- (a) if the marriage took place or the civil partnership was formed after—
 - (i) the deceased last ceased to be employed as a person to whom these Regulations apply; or
 - (ii) the date on which his or her earning ability was permanently reduced as a result of the injury or disease, whichever is the later;
- (b) if at the date of the deceased’s death such widow, widower or surviving civil partner and a man or, as the case may be, a woman to whom she or he is not married or with whom she or he is not in a civil partnership are living together as husband and wife or as civil partners; or
- (c) in respect of any period after such widow, widower or surviving civil partner—
 - (i) remarries or forms a civil partnership; or
 - (ii) during which she or he lives together with another person as if she or he were married to or in a civil partnership with that other person, so, however, that where such marriage or civil partnership has terminated, the Secretary of State may restore an allowance to a widow, widower or surviving civil partner if she is satisfied that such widow, widower or surviving civil partner is suffering hardship.

(3A) This paragraph applies where—

- (a) the deceased referred to in paragraph (3) died before 5th December 2005, and
- (b) his widow, or as the case may be, her widower forms a civil partnership or lives with another person of the same sex as if they were civil partners.”.

(3) In regulation 8 (child’s allowance)—

- (a) in paragraph (2)(b) after “marriage”, insert “or civil partnership”; and
- (b) in paragraph (2)(c) after “spouse”, insert “or civil partner”.

(4) In regulation 9 (dependent relative’s allowance)—

- (a) in paragraph (1)(a) after “spouse’s”, insert “or civil partner’s”;

(a) S.I. 1995/866; the amending instruments are S.I. 1997/646, 1998/667 and 2217, 2000/606, 2002/2469, 2003/631, 2004/696, 865 and 1016, and 2005/661.

- (b) in paragraph (2)—
 - (i) for “widow or widower”, substitute “widow, widower or surviving civil partner”; and
 - (ii) after “spouse”, insert (in each place) “or civil partner”;
 - (c) in paragraph (4) after sub-paragraph (a) insert—
 - “(aa) if he or she subsequently forms a civil partnership or lives together with another person as if they were civil partners of each other; or”; and
 - (d) after paragraph (4) insert—
 - “(4A) Paragraph (4)(aa) shall not apply where the member dies before 5th December 2005.”.
- (5) In paragraph (1) of regulation 11 (lump sum payment on death)—
- (a) in sub-paragraph (a) for “widow or widower”, substitute “widow, widower or surviving civil partner”; and
 - (b) in sub-paragraph (b) after “spouse”, insert “or civil partner”.
- (6) In paragraph (3) of regulation 12 (incidental provisions) for “the widow’s or the widower’s pension”, substitute “the widow’s, the widower’s or the surviving civil partner’s pension”.
- (7) In regulation 22 (determination of questions) after “or widower”, insert “or surviving civil partner”.

Amendment of the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000

- 4.—(1) The National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000(a) shall be amended in accordance with the following paragraphs.
- (2) In paragraph (1) of regulation 2 (interpretation) in the definition of “dependant”, after paragraph (a) insert—
 - “(aa) a surviving civil partner;”.
- (3) In paragraphs (3) and (5) of regulation 15 (payments by the Secretary of State) after “spouse”, (in each place) insert “or civil partner”.
- (4) In the heading to regulation 17A after “marriage”, insert “or, dissolution or nullity of civil partnership”.
- (5) In Schedule 2—
- (a) in the heading to the Schedule after “MARRIAGE”, insert “OR, DISSOLUTION OR NULLITY OF CIVIL PARTNERSHIP”; and
 - (b) in paragraph 11(2) for “widow or widower”, substitute (in each place) “widow, widower or surviving civil partner”.

Amendment of the National Health Service (Compensation for Premature Retirement) Regulations 2002

- 5.—(1) The National Health Service (Compensation for Premature Retirement) Regulations 2002(b) shall be amended in accordance with the following paragraphs.
- (2) In regulation 7 (partial surrender of annual allowance) after “spouse”, insert “or civil partner”.
- (3) In regulation 8 (compensation payable to widow, widower or dependants)—
- (a) in the heading after “widower”, insert “, surviving civil partner”; and
 - (b) in paragraphs (1), (2) and (3) after “widower”, insert (in each place) “surviving civil partner.”.

(a) S.I. 2000/619; the amending instruments are S.I. 2001/1428 and 3649, and 2002/610.

(b) S.I. 2002/1311; the amending instruments are S. I. 2002/2469, 2003/631 and 2004/696.

(4) In paragraph (1) of regulation 9 (compensation where lump sum on death becomes payable) after “widower”, insert (in each place) “surviving civil partner,”.

Signed by authority of the Secretary of State for Health

2nd November 2005

Warner
Minister of State,
Department of Health

We consent.

2nd November 2005

Gillian Merron
Vernon Coaker
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further amendments to the National Health Service Pension Scheme Regulations 1995 (“the Principal Regulations”), the National Health Service (Injury Benefits) Regulations 1995 (“the Injury Benefits Regulations”), the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (“the Additional Voluntary Contributions Regulations”) and the National Health Service (Compensation for Premature Retirement) Regulations 2002 (“the Compensation for Premature Retirement Regulations”). The amendments extend these provisions to civil partners, their dependants and surviving civil partners to enable them to receive benefits under the relevant legislation following the introduction of civil partnership on 5th December 2005 when the Civil Partnership Act 2004 (c. 33) comes into force.

Regulation 2 amends the Principal Regulations. In particular, it provides for a survivor’s pension to be payable in respect of the member’s service from 1988 onwards. It also provides for the member to nominate their civil partner for a dependant’s pension. It sets out the conditions on which an officer or a practitioner with pensionable service before 1988 may elect to buy an increased survivor’s pension.

Regulation 3 amends the Injury Benefits Regulations. In particular, it sets out the circumstances in which an allowance is payable to a surviving civil partner and where a child allowance or a dependant’s allowance is payable. It further provides for the civil partner to receive a lump sum payment on death.

Regulation 4 amends the Additional Voluntary Contributions Regulations. In particular, it provides for a surviving civil partner or a dependant civil partner to receive a pension where the member has elected to make additional voluntary contributions.

Regulation 5 amends the Compensation for Premature Retirement Regulations. In particular, it provides for the officer to allocate part of his annual allowance in favour of his surviving civil partner. It also provides for compensation payments to be payable to the surviving civil partner and for the payment of a lump sum to be payable on the death of the officer.

A Regulatory Impact Assessment has not been prepared for this Instrument as it has no impact on business, charities, voluntary bodies or any public bodies distinct from that of the Civil Partnership Act 2004 itself. A full Regulatory Impact Assessment for civil partnership was published alongside the Civil Partnership Act 2004 and can be viewed at <http://www.dti.gov.uk/access/ria/index.htm#equality>.

2005 No. 3074

**NATIONAL HEALTH SERVICE, ENGLAND AND
WALES**

CIVIL PARTNERSHIP

**The National Health Service (Pension Scheme, Injury
Benefits, Additional Voluntary Contributions and
Compensation for Premature Retirement) (Civil
Partnership) Amendment 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.
E1495 11/2005 151495 19585