

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (CIVIL
PARTNERSHIP) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2005

2005 No. 3164

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 This instrument amends secondary legislation, which relates to occupational and personal pensions that are contracted-out of the State Second Pension. The amendments follow the main policy of the Civil Partnership Act to afford to surviving civil partners, treatment as close as possible to that currently provided for widows and widowers. In the case of contracted out rights, surviving civil partners are treated in the same way as widowers, who are entitled to benefits in respect of contracted-out rights accrued since 1988.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative background**
 - 4.1 The Regulations will require schemes that contract out of the State Second Pension to make provision for survivor benefits to be paid to surviving civil partners based on a scheme member's contracted out rights accrued from 6 April 1988. The Regulations are subject to the negative resolution procedure.
 - 4.2 The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (SI 2005/2050) amended the bulk of the provisions relating to contracting-out. The powers conferred by Section 255 of the Civil Partnership Act used to make SI 2005/2050 could only be used to amend legislation, as it stood, when Royal Assent was granted to the Civil Partnership Act in November 2004. The Occupational and Personal Pension Schemes (Civil Partnership) (Miscellaneous Amendments) Regulations 2005 will amend regulations that have been amended by other SIs since Royal Assent was granted, but where provision has not be made for civil partners.

5. Extent

- 5.1 Regulations 2 to 5 extend to England, Wales and Scotland and regulations 6 and 7 extend to Northern Ireland. Equivalent provision to that made in regulations 2 and 4 will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The Civil Partnership Act 2004 received Royal Assent on 18 November 2004. The purpose of the Civil Partnership Act 2004 is to enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership.
- 7.2 These provisions amend the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996, the Personal Pension Schemes (Appropriate Schemes) Regulations 1997, the Occupational Pension Schemes (Discharge of Liability) Regulations 1997, the Occupational Pension Schemes (Contracting-out) (Amount Required for Restoring State Scheme Rights and Miscellaneous Amendment) Regulations 1998, the Personal Pension Schemes (Appropriate Schemes) Regulations (Northern Ireland) 1997 and the Occupational Pension Schemes (Contracting-out) (Amount Required for Restoring State Scheme Rights and Miscellaneous Amendment) Regulations (Northern Ireland) 1998.
- 7.3 The policy intention behind these Regulations is to ensure that surviving civil partners are treated as much as possible in the same way as widows and widowers. The Regulations seek to fulfil those policy objectives by amending secondary legislation relating to the rules under which people can contract out of State Second Pension by inserting a reference to surviving civil partners where, currently, there are references to widows and widowers.
- 7.4 The Government held a three-month public consultation on the proposal to create a same-sex civil partnership registration scheme in England and Wales. This ran from 30 June 2003 to 30 September 2003 and generated substantial public and media interest. The Government's response to the consultation was published in November 2003 and can be found on the DTI's website at <http://www.womenandequalityunit.gov.uk/lgbt/partnership.htm>.
- 7.5 The Department for Work and Pensions held a six-week public consultation period which ran from 21 March 2005 to 3 May 2005 on the draft Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 (SI 2005/2050). The regulations contained in the Occupational and Personal Pension Schemes (Civil Partnership) (Miscellaneous Amendments) Regulations 2005 were

consulted on as part of this consultation exercise but could not form part of SI 2005/2050 because of amendments made since Royal Assent was granted. The Government's response to the consultation was published in June 2005 and can be found on the Department's website at <http://www.dwp.gov.uk/resourcecentre/>. The amendments to the equivalent Northern Ireland regulations were not consulted on as there is no requirement in their legislation relied on, to consult.

8. Impact

8.1 An assessment of the impact on business, charities or the voluntary sector of the provisions in this Regulation is included in the Regulatory Impact Assessment (RIA) that accompanied the Civil Partnership Act 2004. The relevant extracts are attached. The RIA can be viewed at <http://www.dti.gov.uk/access/ria/index.htm#equality>

9. Contact

Maureen Rafferty at the Department for Work and Pensions Tel: 020 7962 8742 or e-mail Maureen.Rafferty@dwp.gsi.gov.uk can answer any queries regarding the instrument.

The Occupational and Personal Pension Schemes (Civil Partnership) (Miscellaneous Amendments) Regulations 2005

The draft Regulations amend the secondary legislation as shown below

Regulation 1 is a general provision about the citation, commencement and application of the Regulations.

Regulation 2 amends Regulation 12(4)(b)(ia) of the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996 by extending provisions relating to widows and widowers to surviving civil partners.

Regulation 3 is a technical amendment which will clarify who should benefit from minimum contributions which become payable in circumstances where an earner has died after giving effect to his protected rights but was neither married nor in a civil partnership. For clarification, the word “or” has been replaced with “and” in the Personal Pensions Schemes (Appropriate Schemes) Regulations 1987. This will ensure that the Secretary of State’s discretion in determining the recipient of any minimum contributions is confined to cases where the deceased was at the time of his or her death, neither married nor a civil partner.

Regulation 4 amends Regulation 5(1)(c)(ii) of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997 to extend provisions relating to widows and widowers to surviving civil partners. Regulation 4 also extends the provision relating to widows and widowers to surviving civil partners by amending Regulation 11(3)(c) of the conditions on which liability to provide pensions under a relevant scheme may be discharged.

Regulation 5 amends the Occupational Pension Schemes (Contracting-out) (Amount for Restoring State Scheme Rights and Miscellaneous Amendment) Regulations 1998 so that an insolvent scheme may restore the state scheme rights of a surviving civil partner who has a right to payment of a pension from the scheme by virtue of his deceased partner.

Regulation 6 is the same technical amendment shown at Regulation 3 above required to Northern Ireland legislation. It amends the Personal Pensions Schemes (Appropriate Schemes) Regulations (Northern Ireland) 1997

Regulation 7 makes corresponding amendments, as shown at Regulation 5 above, to Northern Ireland legislation. It amends the Occupational Person Schemes (Contracting-out) (Amount Required for Restoring State Scheme Rights and Miscellaneous Amendment) Regulations (Northern Ireland) 1998.

Final Regulatory Impact Assessment: Civil Partnership Act 2004

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

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

Executive Summary

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

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

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

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

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

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

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

	<i>Year</i>	<i>State Pension and Bereavement Benefits¹</i>	<i>Public Funding for Dissolution</i>	<i>TOTAL</i>
<i>High Take-Up Scenario</i>	2010	2	1.0	3.0
	2020	6	1.7	7.7
	2030	9	2.4	11.4
	2040	12	2.8	16.8
	2050	19	3.2	22.2
<i>Low Take-Up Scenario</i>	2010	1	0.5	1.5
	2020	3	1.0	4.0
	2030	4	1.2	5.2
	2040	6	1.4	7.4
	2050	10	1.6	11.6

Table 2 – Total Annual Costs To Public Service Employers

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

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

Table 3 – One off Administrative Costs to Government

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

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

Costs to Private Sector Employers

Total annual costs to private sector employers are summarised in Table 4 below. In addition to these annual costs there will be a one-off cost of between £20m and £40 (depending on the take-up rate of civil partnership) to meet the costs of providing survivor benefits on the basis of service from 1988 up to the introduction of civil partnership. These one off costs could be spread over a number of years rather than met in totality when civil partnership is implemented (with costs of between £2m to £4m a year over fifteen years). The estimated one-off administrative costs are around £7m.

Table 4 - Annual Costs² To Private Pension Defined Benefit Schemes of Private Sector Employers (Benefits accrue from date of implementation)

	<i>Annual cost increase as % of contributions</i>	<i>Annual Increase (£m) pa</i>
<i>High take-up³</i>	0.016%	2.5
<i>Low take-up</i>	0.008%	1.25

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

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