

**EXPLANATORY MEMORANDUM TO
THE CIVIL PARTNERSHIP (CONTRACTED-OUT OCCUPATIONAL AND
APPROPRIATE PERSONAL PENSION SCHEMES) (SURVIVING CIVIL
PARTNERS) ORDER (NORTHERN IRELAND) 2005**

2005 No. 433

1. This explanatory memorandum has been prepared by the Department for Social Development and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Order amends primary and 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 2004 to afford to civil partners treatment as close as possible to that currently provided for spouses.

Details of the provisions of this Order are in the Annex.

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

3.1 None.

4. Legislative Background

4.1 The Order is laid in exercise of powers conferred by section 255 of the Civil Partnership Act 2004. It amends primary and secondary legislation applying to schemes that contract out of the State Second Pension Scheme to make provision for survivor benefits to be paid to surviving civil partners based on a scheme member's contracted out rights accrued from 6th April 1988, in line with the rules for widowers. The Order is subject to negative resolution procedure.

5. Extent

5.1 The Order applies to Northern Ireland.

6. European Convention on Human Rights

David Hanson MP has made the following statement regarding Human Rights:

“In my view the provisions of the Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order (Northern Ireland) 2005 are compatible with the Convention rights.”

7. Policy background

7.1 The Civil Partnership Act 2004 received Royal Assent on 18th 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. The Civil Partnership Act 2004 also contains provisions enabling certain overseas same-sex relationships to be treated as civil partnerships. Civil partners will be subject to many of the same legal rights and responsibilities as spouses.

7.2 Two people may register as civil partners of each other provided:

- they are of the same sex;
- neither of them is already a civil partner or married;
- they are not within the prohibited degrees of relationship i.e. members of the same family;
- they are both over the age of sixteen (and the consent of the appropriate persons has been obtained if either of the parties are under eighteen).

7.3 The policy intention behind this Order is to ensure that civil partners have treatment as close as possible to that for spouses in the area of contracted-out occupational and personal pensions. The Order seeks to fulfil those policy objectives by amending primary and secondary legislation relating to the rules under which people can contract out of the State Second Pension.

7.4 The policy intention will be achieved by making technical amendments to insert a reference to surviving civil partners where, currently, there are references to widows and widowers. However, there is a substantive transitional provision, concerning the survivors of scheme members who died before the civil partnership provisions came into force.

7.5 Under existing rules, schemes are not required to pay survivor benefits in certain circumstances, e.g. where the widow or widower remarries or is living together as husband and wife with another person (because they are deemed to receive financial support from their new relationship). This does not prevent the scheme from choosing to continue to pay the benefit on a voluntary basis.

7.6 In developing these provisions to include civil partners it became clear that there could be an impact on the expectations of existing widows and widowers who, at present, could only lose their survivor benefit if they remarried or started to live together as husband and wife with another person. On implementation of Civil Partnerships, survivors could also lose their benefit if they form a civil partnership or if they live together as if they were civil partners.

7.7 To ensure that legitimate expectations are met, and avoid potential loss of survivor benefits in circumstances that could not have been foreseen when those survivor benefits were paid, a transitional provision is appropriate. This transitional provision allows for widows and widowers of scheme members who died before 5th December 2005 to be excluded from the new rules i.e. existing rules apply only where survivor benefits arise when a scheme member dies before the introduction of civil partnerships.

7.8 The Department held a consultation exercise on the practical implementation of this Order. The consultation period ran for 6 weeks from 5th July 2005 to 16th August 2005. This exercise received no responses from those consulted.

7.9 The Government announced on 26 November 2003 that it intended to bring forward a Civil Partnership Bill. Northern Ireland Ministers agreed to include Northern Ireland provisions in the Westminster Civil Partnership Bill after a public consultation in Northern Ireland. The responses to that consultation can be found on the Office of Law Reform's website at:

http://www.olrni.gov.uk/archive/new_news_archive.cfm

8. Impact

8.1 A full Regulatory Impact Assessment (RIA) has not been produced for this Order. 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>

9. Contact

Tom Quinn at the Department for Social Development Tel: 028 90819108 or e-mail: tom.quinn@dndni.gov.uk can answer any queries regarding the Order.

Annex

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

This draft Order amends the Pension Schemes (Northern Ireland) Act 1993 (the “1993 Act”) and secondary legislation.

Article 1

This is a general provision about the citation, commencement and interpretation of the Order. It is intended that the Order shall come into operation on 5th December 2005 with the exception of paragraphs 5, 8, 10 and 11 of Schedule 1, which shall come into operation for the purpose of making regulations on 10th November 2005.

Article 2

Article 2 explains the purpose of each of the Schedules and their structure.

Schedule 1

Schedule 1 amends provisions of the 1993 Act, which set out the requirements that schemes must comply with in order to contract out of the State Second Pension Scheme. These requirements have been amended so that they are extended to surviving civil partners. This is achieved by amending references to widows and widowers to add references to surviving civil partners.

Paragraphs 2 to 4 amend references to widows and widowers in section 4 (meaning of “contracted-out employment”, “guaranteed minimum pension” and “minimum payment”), section 8A (the statutory standard) and section 8B (reference scheme) of the 1993 Act so that they also refer to surviving civil partners.

Paragraph 5 amends section 13 of the 1993 Act (minimum pensions for widows and widowers) so that a surviving civil partner will be paid a guaranteed minimum pension (GMPs) on the death of the member, and the minimum amount payable shall be the same as for widowers. A GMP must be paid to the surviving civil partner in the same circumstances as when one is paid to a widow or widower. In particular a GMP will cease payment where the widow, widower or surviving civil partner marries, forms a civil partnership or lives with another person as if they were husband and wife or as if they were civil partners. Where the member died before 5th December 2005 the widow or widower will not lose his or her GMP if he or she lives with a person as if they were civil partners or forms a civil partnership. This preserves existing rules for such persons. A new definition is added to determine when two people are to be regarded as if they were living together as civil partners – this will occur where two people of the same sex are living together and would be regarded as if they were husband and wife if they were of the opposite sex.

Paragraphs 6 to 13 amend references to widows and widowers in section 15 (discharge of liability where guaranteed minimum pensions secured by insurance policy or annuity contract), section 16 (regulations relating to transfer of accrued rights), section 17 (commutation, surrender and forfeiture), section 19 (securing of benefits), section 24 (ways of giving effect to protected rights), section 24A (requirements for interim arrangements),

section 25 (the pension and annuity requirements) and section 33 (alteration of rules of contracted-out schemes) of the 1993 Act, so that they also refer to surviving civil partners.

Paragraph 14 amends section 34(2) of the 1993 Act (alteration of rules of appropriate schemes) to extend its scope to allow appropriate personal pension schemes to alter their rules to make provision for survivor benefits for civil partners. Appropriate personal pension schemes are personal pension schemes which have contracted out of the State Second Pension Scheme.

Paragraphs 15 to 24 amend section 43 (further provisions concerning entitlement to guaranteed minimum pensions for the purposes of section 42), section 44 (reduced benefits where minimum payments or minimum contributions paid), section 56 (effect of payment of premium on rights), section 83 (general protection principle), section 84 (the relevant sum), section 85 (the appropriate addition), section 86 (the later earnings addition), section 105 (annual increase of guaranteed minimum pensions), section 106 (requirement as to resources for annual increase of guaranteed minimum pensions) and section 165 (determination of questions by Department) of the 1993 Act so that they also refer to surviving civil partners.

Schedule 2

Schedule 2 amends regulations which set out further requirements applying to occupational pension schemes and personal pension schemes which contract out of the State Second Pension Scheme. Provisions relating to widows and widowers have been amended so that they also extend to surviving civil partners. 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 (Northern Ireland) 1987 (S.R. 1987 No. 291).

Part 2 amends the Contracting-out (Protection of Pensions) Regulations (Northern Ireland) 1991 (S.R. 1991 No. 39).

Part 3 amends the Occupational Pension Schemes (Discharge of Protected Rights on Winding Up) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 94).

Part 4 amends the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 493). In addition to adding references to surviving civil partners where there is a reference to a widow and widower, or widower, the following amendments have also been made:

Paragraph 11 adds a definition of when two people of the same sex are to be regarded as living together as if they were civil partners. This will arise if they would be regarded as living together as husband and wife if they were instead two people of the opposite sex;

Paragraph 14 substitutes a new regulation 26 to deal with the circumstances when a scheme will not be required to provide a pension to a widow, widower or surviving civil partner. A pension need not be paid to a widow or widower where he or she remarries, forms a civil partnership, lives with someone else as if they were married or civil partners or at the time of the member's death is living with someone as if they were married or civil partners. Where the member died before 5th December 2005 a pension need not be paid to a widow or widower where he or she remarries or lives with someone as if they were married or if at the member's death is living with someone as if they were married. This preserves existing rules for such persons. A pension need not be paid to a surviving civil partner where he or she

marries, forms a civil partnership, lives with someone as if they were married or civil partners or at the time of the member's death is living with someone as if they were married or civil partners;

Paragraph 19 amends regulation 58 and in particular makes amendments to provide for when a pension need not be paid to a widower or surviving civil partner. This will arise where a widower or surviving civil partner has remarried or married, or formed a civil partnership or formed a subsequent civil partnership, or is living together with another person as if they were married or as if they were civil partners. Transitional provision has also been made where a man became a widower before 5th December 2005. In that case a pension need not be paid where he remarries or lives with someone as if they were married. This preserves existing rules for such persons.

Part 5 amends the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 509).

Part 6 amends the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 618).

Part 7 amends the Personal and Occupational Pension Schemes (Protected Rights) Regulations (Northern Ireland) 1997 (S.R. 1997 No. 56):

Paragraph 29 amends regulation 5 to provide that a pension need not be paid where a widow, widower or surviving civil partner who is under pensionable age has remarried or married, or formed a civil partnership or formed a subsequent civil partnership. Transitional provision has been made so that where the member dies before 5th December 2005 a pension need not be paid where the widow or widower remarried while under pensionable age. This preserves existing rules for such persons;

Paragraph 32 amends regulation 12 to provide that a pension need not be paid to a widow, widower or surviving civil partner where he or she marries or forms a civil partnership while under pensionable age. Transitional provision has been made for widows and widowers where the member dies before 5th December 2005 as in that case a pension need not be paid if he or she remarries while under pensionable age. This preserves existing rules for such persons.

Part 8 amends the Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 1997 (S.R. 1997 No. 97).

Part 9 amends the Personal Pension Schemes (Appropriate Schemes) Regulations (Northern Ireland) 1997 (S.R. 1997 No. 139).

Part 10 amends the Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1997 (S.R. 1997 No. 159):

Paragraph 44 amends regulation 11 to provide that a pension need not be paid to a widow, widower or surviving civil partner where the person in receipt of a pension (beneficiary) marries or forms a civil partnership after payment of the pension commenced.

A pension need not be paid to a widow, widower or surviving civil partner where he or she marries, forms a civil partnership, lives with someone as if they were husband and wife or as if they were civil partners, or at the time of the beneficiary's death he or she was living with someone in such a relationship. Transitional provision has been made so that where the member died before 5th December 2005 a pension need not be paid to a widow or widower where he or she remarries or lives with someone as if they were married or if at the member's death is living with someone as if they were married. This preserves existing rules for such persons.