

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

2005 No. 2050

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 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 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 annex A.

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

- 3.1 The commencement provisions in article 1(2)(a) of the Order are to enable regulations to be made under section 21 of the Pension Schemes Act 1993 ("PSA"), as amended by the Order, which take account of section 17 of the PSA, as amended by the order, before 5th December 2005. It is intended for those regulations to come into force on 6th April 2006. The provisions in articles 1(2)(b) and (c) of the Order are to enable regulations to be made under sections 28 and 28A PSA, as amended by the Order, so that those powers may be exercised to add provision for civil partners to regulations that have been made under sections 28 and 28A PSA since the Civil Partnership Act obtained Royal Assent in November 2004. It is intended for those regulations to come into force on 5th December 2005.

4. **Legislative background**

- 4.1 The Order is laid in exercise of powers conferred by section 255 of the Civil Partnership Act. It amends primary and secondary legislation applying to schemes that contract out of the State 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 6 April 1988, in line with the rules for widowers. The Order is subject to the affirmative resolution procedure.

5. Extent

- 5.1 This Order extends to England and Wales and Scotland. Equivalent provision will be made for Northern Ireland by statutory rules.

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 (Contracted-out Occupational and Appropriate Personal Pension Schemes)(Surviving Civil Partners) Order 2005 are compatible with the Convention rights.

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. 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 who are forbidden by law to marry;
 - 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, we decided that a transitional provision is appropriate. This transitional provision allows for widows and widowers of scheme members who died before 5 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 Government held a public consultation exercise on the practical implementation of this Order. The consultation period ran for 6 weeks from 21 March 2005 to 3 May 2005. Of those questions that were not of a technical nature, two raise matters concerning the timing of implementation of Civil Partnerships and, in response, the Government will reiterate its commitment to implement the Civil Partnership Act as quickly as possible after Royal Assent. Further respondents are seeking reassurance, which the Government will confirm, that the Order will work properly together with the Gender Recognition Act 2004 and the Sexual Orientation Regulations. No questions were raised in respect of the transitional provision described in paragraphs 7.5 to 7.7 above. A summary of the responses will be published within 3 months at <http://www.dwp.gov.uk/resourcecentre>.
- 7.9 From 30 June 2003 to 30 September 2003 the Government held a public consultation exercise on the proposal to create a same-sex civil partnership registration scheme in England and Wales, which generated substantial public and media interest. There were a total of 3,167 responses to the public consultation 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. Organisations included gay, lesbian and bisexual groups, private sector organisations, public sector organisations, trade unions, voluntary organisations, nationally based religious groups and individual congregations.
- 7.10 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> 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.

- 7.11 The Government announced on 26 November 2003 that it intended to bring forward a Civil Partnership Bill. 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 was published alongside the Civil Partnership Act 2004 and outlines the cost implications for the public and private sector of the amendments to the contracting-out rules. Relevant extracts from that Regulatory Impact Assessment are attached at annex B. There will be no direct impact on charities and voluntary organisations other than their own responsibilities as employers.
- 8.2 The annual cost to private sector employers providing survivor benefits to civil partners, could amount to between £1.25m and £2.5m, depending upon the take-up rate of civil partnership. In addition there will also be a one-off cost of between £20m and £40m to provide survivor benefits on the basis of service from 1988 up to the introduction of civil partnership. There are estimated one-off administrative costs of £7m.

9. Contact

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

Annex A

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

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

Article 1

2. This is a general provision about the citation, commencement and extent of the Order. It is intended that the order shall come into force on 5th December 2005 with the exception of paragraphs 4 and 7 of Schedule 1, which shall come into force for the purpose of making regulations on the day following that on which the Order is made;

Article 2

3. 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 Pension Scheme. These requirements have been amended to 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 1 to 3 amend references to widows and widowers in section 8 (meaning of “contracted-out employment”, “guaranteed minimum pension” and “minimum payment”), section 12B (reference scheme) and section 12A (the statutory standard) of the 1993 Act so that they also refer to surviving civil partners.

Paragraph 4 amends section 17 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 5 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 5 to 12 amend references to widows and widowers in section 19 (discharge of liability where guaranteed minimum pensions secured by insurance policy or annuity contract), section 20 (regulations relating to transfer of accrued

rights), section 21 (commutation, surrender and forfeiture), section 23 (securing of benefits), section 28 (ways of giving effect to protected rights), section 28A (requirements for interim arrangements), section 29 (the pension and annuity requirements), section 37 (alteration of rules of contracted-out schemes) of the 1993 Act, so that they also refer to surviving civil partners.

Paragraph 13 amends section 38(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 Pension Scheme.

Paragraphs 14 to 24 amend section 47 (further provisions concerning entitlement to guaranteed minimum pensions for the purposes of section 46), section 48 (reduced benefits where minimum payments or minimum contributions paid), section 55 (payment of state scheme premiums on termination of certified status), section 60 (effect of payment of premium on rights), section 87 (general protection principle), section 88 (the relevant sum), section 89 (the appropriate addition), section 90 (the later earnings addition), section 109 (annual increase of guaranteed minimum pensions), section 110 (requirement as to resources for annual increase of guaranteed minimum pensions) and 170 (determination of questions by Secretary of State), 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 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 1987 (SI 1987/1113).

Part 2 amends the Contracting-out (Protection of Pensions) Regulations 1991 (SI 1991/166).

Part 3 amends the Occupational Pension Schemes (Discharge of Protected Rights on Winding Up) Regulations 1996 (SI 1996/775).

Part 4 amends the Occupational Pension Schemes (Contracting-out) Regulations 1996 (SI 1996/1172). 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 8 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 11 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 5 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 12 amends regulation 37(4) and (5) to provide that age-related payments need not be made if the member was not married or had not formed a civil partnership at the time of his or her death.

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 5 December 2005. In that case a pension need not be paid where he remarries or lives with someone as if they married. This preserves existing rules for such persons.

Part 5 amends the Protected Rights (Transfer Payment) Regulations 1996 (SI 1996/1461).

Part 6 amends the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (SI 1996/1462).

Part 7 amends the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996 (SI 1996/1537).

Paragraph 28 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 5 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 31 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 5 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 1996 (SI 1996/2517).

Part 9 amends the Personal Pension Schemes (Appropriate Schemes) Regulations 1997 (SI 1997/470).

Part 10 amends the Occupational Pension Schemes (Discharge of Liability) Regulations 1997 (SI1997/784).

Paragraph 43 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 5 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.

Annex B

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>
High Take-Up Scenario	2010	2	1.0	3.0
	2020	6	1.7	7.7
	2030	9	2.4	11.4
	2040	12	2.8	16.8

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.

	2050	19	3.2	22.2
Low Take-Up Scenario	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>
High take-up	0.016	14.0
Low take-up	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
Total	19.77

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.