

**EXPLANATORY MEMORANDUM TO THE
CIVIL PARTNERSHIP (PENSIONS, SOCIAL SECURITY AND CHILD
SUPPORT) (CONSEQUENTIAL, ETC. PROVISIONS) ORDER 2005**

2005 No. 2877

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 makes amendments to several sets of pensions, social security and child support regulations in order to extend their application to civil partners.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative background**
 - 4.1 This Order is made in exercise of the powers conferred by sections 254(3) and (4), 258 and 259 of the Civil Partnership Act 2004 (“the Act”), which allow for further provisions to be made which are substantive, transitional and transitory, for the general purpose of, in consequence and supplementary to, and to give full effect to the Act. The amendments in this order cater for the consequential changes needed to subordinate legislation. The order also makes transitional and transitory provision.
 - 4.2 This Instrument is one of three sets of negative Instruments being made by DWP that are required to extend provisions to civil partners with effect from 5 December 2005. The other Instruments being the Social Security (Civil Partnership) (Consequential Amendments) Regulations 2005 (which is being made and laid at the same time as this Instrument) and a further Instrument making consequential amendments in relation to Graduated Retirement Benefit titled the Social Security (Retirement Pensions and Graduated Retirement Benefit) (Widowers and Civil Partnership) Regulations 2005, which will be made and laid after the Civil Partnership (Miscellaneous and Consequential Provisions) Order 2005 has been made.
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 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The purpose of the Act is to enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. The Act 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 The Order makes consequential amendments to a number of statutory instruments to ensure that same sex couples are afforded the same rights and responsibilities as opposite sex couples in matters of pension, social security and child support. These have been grouped together by subject matter in Schedules for ease of reference.

Amendments of subordinate legislation relating to occupational and personal pensions

- 7.3 Schedule 1: the policy intention is to treat same sex couples who have entered a civil partnership in the same way as married couples for pension legislation purposes, including arrangements for pension sharing on divorce. Schedule 1 sets out the amendments which are required to the Pension Sharing on Divorce regulations in order to achieve the policy intention. The amended legislation will ensure that pensions are treated in the same way for civil partners whose civil partnerships are dissolved as for married couples whose marriages end in divorce or nullity.
- 7.4 Schedule 2: relates to occupational and personal pension schemes and the amendments ensure that civil partners and surviving civil partners are treated in the same way as spouses and widows/widowers, respectively.

Amendments of subordinate legislation relating to social security and child support

- 7.5 The civil partnership policy is achieved in a substantial number of cases by inserting a new definition of 'couple' to provide for four different categories of couple: married couples; unmarried opposite-sex couples who are living together as husband and wife; civil partners; and same-sex couples who are living together as if they were civil partners, and amend the definition of 'partner' to mean the other member of a couple so defined. The amendments also provide for the inclusion of civil partners where there is reference to spouses, provide for inclusion of surviving civil partners where there is a reference to widows or widowers, and extend the definition of 'war widower's pension' to include war pensions paid to surviving civil partners.

- 7.6 Schedule 3: For the purposes of income related benefits (income support, income based jobseeker's allowance, pension credit, housing benefit and council tax benefit) civil partners will be a family unit in the same way as married couples are. Furthermore, same-sex couples who have not formed a civil partnership, but who live together as if they were civil partners, will be treated as a family unit. This mirrors the treatment of opposite-sex unmarried couples.
- 7.7 Currently, where income related benefits are concerned, same-sex couples who are living together are treated as individuals and, therefore, may receive a greater amount of benefit than opposite-sex couples. Under the new rules those same sex couples may receive reduced (or no) benefits because they will be treated as a couple, in the same way as unmarried opposite-sex couples who are living together as husband and wife. A transitional protection will not be applied to income support, income-based jobseeker's allowance and pension credit claimants who may be affected by the change¹ because it would delay the achievement of the key aim of creating equality between same-sex and opposite-sex couples.
- 7.8 The new rules will be applied from 5 December 2005. However, if overpayments of income support, income based jobseeker's allowance or pension credit arise as a result of claimants not advising the Department immediately about being civil partners, or living together as if they were civil partners, the intention is that overpayments should not be recoverable if the claimants can show that they could not reasonably be expected to know that their position would affect their entitlement to benefit.
- 7.9 Article 3 of the Order includes a transitional provision relating to housing benefit and council tax benefit to ensure that an overpayment of those benefits will not arise where the local authority consider that the claimant could not reasonably have been expected to know that the law had changed at an earlier date than the date the superseding decision set out in the transitional provision takes effect. This will enable local authorities to mirror the DWP intention of not recovering overpayments in such circumstances without the local authority incurring subsidy penalties, as it ensures that no overpayment will occur for the period before the effective date of the decision.
- 7.10 Schedule 4: The child support legislation currently provides for two "schemes", the "old scheme" and the "new scheme". The old scheme is that provided for by the Child Support Act 1991 ("the 1991 Act") as amended by the Child Support Act 1995 and the Social Security Act 1998. The new scheme is the 1991 Act (including the amendments made by the 1995 and 1998 Act) as amended by the Child Support, Pensions and Social Security Act 2000 ("the 2000 Act").
- 7.11 The new scheme has been brought into force in relation to applications for child support maintenance which have an "effective date" (as determined under specific provisions) on or after 3rd March 2003 by the Child Support,

¹ In the past, transitional protection, in the form of preserved rights or special additions to prevent financial loss, has generally been introduced to cushion social security customers against the adverse effects of legislative changes.

Pensions and Social Security Act 2000 (Commencement No. 12) Order 2003 (S.I. 2003/192 (C.11))². When the new scheme is working well in relation to those cases, it will be brought into force on a later date in relation to maintenance assessments made under the 1991 Act before its amendment by the 2000 Act. The commencement arrangements for the remaining maintenance assessment cases in the old scheme will be provided for in future commencement orders. In the meantime, the old scheme remains in force in respect of such cases. Some such old scheme assessments will move into the new scheme before that date, where a case has a link to another case which falls into the new scheme (article 3(1)(b) and (c) of the Child Support, Pensions and Social Security Act 2000 (Commencement No.12) Order 2003 refers).

- 7.12 Until 5 December 2005 a non-resident parent or parent with care who lives with a same-sex partner is not regarded as being one of a couple – they are treated as if they were single. This applies in either child support scheme.
- 7.13 From 5 December 2005 child support legislation will apply to same-sex couples so that it applies to civil partners who are parents in the same way as it applies to married couples and to those living together as if they were civil partners who are parents in the same way as those who live together as husband and wife. Schedule 4 to the Order amends various sets of Child Support Regulations in order to achieve this. Some of the amendments apply just to the old scheme, some to the new and others to both schemes.
- 7.14 The effect of the Act on a particular child support liability may vary depending on the particular circumstances of the case. For example in the old child support scheme, if the same-sex partner has earnings, liability could be higher than if the non-resident parent continued to be assessed as a single person; but if that partner does not work, the liability could be lower. In the new child support scheme the Act has less impact since, for the most part, liability is calculated solely on the net weekly income of the non-resident parent. A partner's income is usually disregarded.
- 7.15 Schedule 5: This Schedule makes transitory provision which lasts until the new scheme comes into force for all cases. Schedule 5 to the Act deals with the issue of financial relief in the High Court and a county court and Schedule 6 to the Act deals with financial relief in magistrates' courts. Both include material that refers to child support matters. Schedule 5 to this Order provides that specified paragraphs of Schedules 5 and 6 to the Act shall apply to an old scheme case as if the specified substitutions and insertions were made.
- 7.16 There was no requirement to consult on this Order as it gives effect to the Act. 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. There were a total of 3,167 responses of which 83 per cent expressed support for the principle of civil partnership. A more detailed analysis of these responses showed that 84 per

² As amended by the Child Support, Pensions and Social Security Act 2000 (Commencement No.13) Order 2003 (S.I. 2003/346 (C.21)).

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.

- 7.17 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. The Government announced on 26 November 2003 that it intended to bring forward a Civil Partnership Bill.
- 7.18 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 (RIA) has not been produced for this instrument as it has no impact on the costs of business, 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>.

There is no impact on the public sector.

9. Contact

- 9.1 Carol Krahe at the Department for Work and Pensions Tel: 0113 232 4646 or e-mail Carol.Krahe@dwp.gsi.gov.uk can answer any queries regarding the instrument.