

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (CIVIL PARTNERSHIP)
(AMENDMENT) (ENGLAND AND WALES) REGULATIONS 2005

2005 No. 3069

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. **Description**
 - 2.1 These Regulations amend the Local Government (Discretionary Payments) Regulations 1996, the Local Government Pension Scheme Regulations 1997, the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 and the Local Government (Early Termination of Employment)(Discretionary Compensation)(England and Wales) Regulations 2000.
 - 2.2 The regulations mentioned above have been amended so that survivor benefits under the schemes to which they relate are provided to surviving civil partners with service or membership, where relevant, from 5 April 1988.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.

4. **Legislative Background**
 - 4.1 Civil partnership has been created by the Civil Partnership Act 2004, with registration effective from 5 December 2005, as a new form of legal relationship that will enable those same-sex couples who chose to do so to obtain legal recognition of their relationship, since they are unable to marry. Civil partnership is not marriage and is not to be treated as such.
 - 4.2 However, it is Government policy that all rights, responsibilities or other treatment afforded to spouses under the law should also be afforded to civil partners (unless there is an objective justification for treating civil partners differently). These Regulations give effect to that policy in relation to survivor benefits under local government pension schemes. The changes will apply, in relation to the benefit structures thus affected, for service or membership from 5 April 1988.

5. **Extent**
 - 5.1 This instrument applies to England and Wales.

6. **European Convention on Human Rights**

- 6.1 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 Local Government Pension Scheme (LGPS) is the statutory pension scheme for employees of local government and associated bodies (excluding firefighters, police and teachers who have their own pension schemes). The Local Government (Discretionary Payments) Regulations 1996 include provisions for the payment of a death grant where such an employee dies from a work-related injury or disease. They also provide for the payment of a gratuity where an employee who was excluded from joining the LGPS ceases employment. The Local Government (Termination of Employment) (Discretionary Compensation) Regulations 2000 contain provisions allowing local authorities to award compensation for loss of employment which in some cases is payable in the same way as a pension in the form commonly known as “added years”.
- 7.2 All these regulations at present provide survivor benefits for a widow or widower of a married member, but not for unmarried partners. Amendments are therefore required in each case to provide survivor benefits for a civil partner in the event of the member’s death, in line with the Government’s policy now embodied in the Civil Partnership Act 2004.
- 7.3 The new LGPS provisions will apply to the civil partners of current members and those who ceased employment after 5th April 1988, with benefits being calculated on LGPS membership accrued after that date. Civil partners will be eligible for the payment of death grant where the member dies from a work-related injury or disease with effect from 5 December 2005. While gratuities are not awarded by reference to membership of the LGPS, it is considered that to ensure parity of treatment with pensions, civil partners should be entitled to survivor benefits where the criteria for payment of a spouse’s benefit are met. In the case of added years, a civil partner’s benefits will be payable where the employee ceased employment after 5th April 1988.
- 7.4 An 8 week consultation on the draft regulations was carried out with local authorities, trade unions, specialist groups, the Audit Commission, and other government departments. In all 485 interested parties were consulted, of which 27 responded. A small number of technical points were made by consultees and where necessary the draft regulations have been amended. A few respondents referred to costs; the costs for public service pension schemes were analysed in the RIA to the Civil Partnership Act 2004. Many of the consultees commented on whether it was desirable to extend the provisions to allow membership before 6th April 1988 to count in calculating a civil partner’s benefit, and if so, how the cost should be met. Such extension will be considered as part of the future development of the LGPS. A detailed analysis of the responses can be found on the Office’s website.

8. Impact

- 8.1 A Regulatory Impact Assessment was published alongside the Civil Partnership Act 2004 and outlines the cost implications to public service pension schemes. Accordingly, a separate Regulatory Impact Assessment has not been prepared for these Regulations. The Regulations may have minor

impact on the costs of businesses, charities or voluntary bodies where they are employers within the Local Government Pension Scheme.

- 8.2 The total cost to the Government in relation to public service pension schemes will depend upon the take-up rate of civil partnerships. The annual cost to all public service pension schemes could amount to between £7m and £14m. There will also be a one off capital addition to outstanding liabilities of between £60m and £125m to provide survivor benefits on the basis of service from 1988 up to the introduction of civil partnerships.

9. Contact

- 9.1 Keith Bloomfield and Elizabeth Bickford at the Office of the Deputy Prime Minister can answer any queries regarding the instrument. Their details are as follows: (telephone) 020 7944 6002 and 020 7944 6003 respectively or (e-mail) keith.bloomfield@odpm.gsi.gov.uk and elizabeth.bickford@odpm.gsi.gov.uk.