

OCCUPATIONAL AND PERSONAL PENSIONS

Government response to the consultation

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

June 2005

DWP Department for
Work and Pensions

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INTRODUCTION

1. In April 2005 the Government consulted on a draft Order to amend the Pension Schemes Act 1993 and subordinate legislation, under a power contained in the Civil Partnership Act 2004. The amendments will have the effect of requiring contracted-out occupational and personal pension schemes to provide survivor benefits for surviving civil partners based on the member's contracted out rights accrued from 6 April 1988. The consultation ended on 3 May 2005.
2. We received five responses to the consultation. A list of respondents is at **Annex A**. The Government is very grateful to all who contributed to the consultation. The comments have been very helpful in finalising the draft order.
3. The Civil Partnership (Contracted-Out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 will be laid shortly, in time for the introduction of civil partnership on 5 December 2005.
4. The regulations will be available on HMSO's website at <http://www.legislation.hmso.gov.uk/stat.htm/2005>
5. This document is available on the Department's website at <http://www.dwp.gov.uk/consultations/2005/index.asp>
6. A paper copy of this document can be obtained from:

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7. This document describes the policy underpinning the changes being made. Comments on the order should not however be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a court.

RESPONSES TO CONSULTATION

Introduction

1. This document sets out the main points made in response to the consultation exercise and provides the Government's response. Three topics attracted interest and comments were received on drafting matters. This response therefore discusses comments received on:

- the interaction between civil partnership and gender recognition
- the interaction between the requirements for contracting-out and the effect on pension rights of the Employment Equality (Sexual Orientation) Regulations 2003
- the timing of implementation of the civil partnership legislation
- drafting points

2. There was a general welcome for the introduction of civil partnerships as this would give same sex couples the opportunity to enter a legally recognised partnership.

Gender Recognition

Point made

3. A respondent sought reassurance that the Order would work properly together with the Gender Recognition Act 2004. An example was given where a couple had formed a civil partnership and one partner then subsequently sought to change gender.

Response

4. The Civil Partnership Act 2004 ensures that a married couple who have annulled their marriage on the grounds that one of the parties has obtained an interim gender recognition certificate, may form a civil partnership with one another on the same day the marriage is annulled. This ensures the couple are not left in a long period where their relationship has no legal recognition. The Marriage Act 1949 will be amended by subordinate legislation made under the Civil Partnership Act to ensure that, similarly, where a civil partnership is annulled on the grounds that one of the civil partners has obtained an interim gender recognition certificate, they will be able to marry one another on the same day as their civil partnership is annulled.

5. The situation regarding the provision of survivor benefits in contracted-out pension arrangements is more complex for married couples and civil partners where one party wishes to change gender.

Guidance has been published for married couples in this situation. Copies of the current guidance can be obtained when gender recognition application packs are requested or by following the link below; http://www.grp.gov.uk/forms/guide_married_couples.pdf

6. On implementation of civil partnership on 5th December 2005, this guidance will be updated to include civil partners who are seeking to change gender.

Sexual Orientation Regulations

Points made

7. There were concerns as to whether the amendments to the Employment Equality (Sexual Orientation) Regulations 2003 were sufficient to ensure that the non-discrimination rule in Regulation 9A would apply directly to the rules, thus avoiding the need for amending scheme rules in respect of benefits accruing from 5 December 2005. It was also asked whether the non-discrimination rules would cover the contracting-out requirements introduced by this set of draft regulations or whether contracted-out occupational pension schemes would have to amend their rules by 5 December as well.

Response

8. The Civil Partnership (Contracted-Out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order 2005 will introduce specific rules for schemes that are contracted-out.

9. Questions about the Sexual Orientation Regulations are a matter for the Department of Trade and Industry. The DTI produced draft amendments to the Employment Equality (Sexual Orientation) Regulations 2003 to take account of the introduction of the Civil Partnership Act and has received feedback on the technical drafting from a number of stakeholders which is currently being considered.

10. If the benefits of a non contracted-out scheme are made dependant on marital status then the rules will have to be amended to cater for civil partners in relation to service after December 2005. Where there is no such rule in relation to spouses then the rules will not have to be amended in light of civil partnership status as the non-discrimination rule will prohibit trustees and managers from discriminating against civil partners as compared to spouses in respect of service after December 2005 (unless there is a material difference between them). The non-discrimination rule in the Sexual Orientation

Regulations binds managers/trustees of all occupational pension schemes, including those offering contracted out benefits.

Implementation Date

Points made

11. The implementation date attracted two comments. The respondents felt that the implementation date of 5 December 2005 would increase the financial burden on schemes as interim changes would have to be put in place to cover the period from 21 December 2005 to 5 April 2006. An implementation date of 6 April 2006 would have been better from the schemes' perspective.

Response

12. The Government made a commitment to implement the Civil Partnership Act as quickly as possible, there has been huge demand for this legislation. It was always said that the Civil Partnership Act would take about a year to bring into force after being passed by Parliament and after careful consideration with Other Government Departments it was announced that the Act will come into force on 5 December 2005

Other comments

Drafting comments

13. There were a number of minor drafting suggestions. We have taken these on board where relevant. Other suggested amendments, which did not apply to contracting-out, will be dealt with by a separate affirmative Order to be made under Section 259 of the Civil Partnership Act 2004.

Thanks

We are most grateful to everyone who took the time to comment on this consultation document.

List of respondents

Actuarial Profession
Association of Pension Lawyers
SPC
Standard Life
Watson Wyatt