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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. \***

**PENSIONS**

**The Local Government (Civil Partnership)  
(Amendment)(Scotland) Regulations 2005**

*Made* - - - -

*Laid before Parliament*

*Coming into force* - - - *5th December 2005*

The Scottish Ministers, in exercise of the powers conferred by sections 7 and 12 and 24 of the Superannuation Act 1972<sup>(a)</sup> and of all other powers enabling them in that behalf, after consultation with such associations of local authorities as appeared to them to be concerned and such representatives of other persons likely to be affected by the proposed regulations as appeared to them to be appropriate, and not having considered consultation with any individual local authority to be desirable, all in accordance with section 7(5) of the Act, hereby makes the following Regulations:

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Local Government (Civil Partnership) (Amendments) (Scotland) Regulations 2005.

(2) These Regulations extend to Scotland only.

(3) These Regulations shall come into force on 5th December 2005.

**The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998**

**2.**—(1) The Local Government (Discretionary Payments) Regulations 1996 shall be amended in accordance with this regulation.

(2) In regulation 2 (General interpretation) insert in the appropriate place—

““civil partner” shall be construed in accordance with section 1 of the Civil Partnership Act 2004.”

(3) In regulation 5(2)-

(a) After “marriage” insert “or civil partnership”,

(b) In paragraph (c)(i) for “or child born out of wedlock” substitute “(whether by marriage or civil partnership) or child born outside marriage or civil partnership”, and

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<sup>(a)</sup> 1972 c. 11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc. (Order 1999, article 2 and Schedule 1 (SI 1999/1750)

- (c) In paragraph (c)(ii) after “married” insert “or formed a civil partnership with”.
- (4) At the heading immediately before regulation 20 after “surviving spouses” insert “and civil partners”.
- (5) In regulation 20 (entitlement to surviving spouse’s short-term and long-term compensation)—
- (a) at the heading after “surviving spouse’s” insert “or civil partner’s”;
  - (b) in paragraph (1) delete “spouse or spouses” and insert “spouse, spouses or civil partner”,
  - (c) in sub-paragraph (a) at paragraph (1) after “surviving spouses” insert “or civil partner”;
  - (d) in paragraph (2), in each place in which it occurs, —
    - (i) after “surviving spouse” insert “or civil partner”;
    - (ii) after “surviving spouses” insert “or civil partner”; and
    - (iii) after “surviving spouse’s” insert “or civil partner’s”
  - (e) in paragraph (3)—
    - (i) after “marriage” insert “or the formation of the civil partnership”
    - (ii) after “surviving spouse” insert “or civil partner”;
    - (iii) in each place in which it occurs after “surviving spouse’s” insert “or civil partner’s”;
- (6) After regulation 20(1) (entitlement to surviving spouse’s short-term and long-term compensation) insert—
- “(1A) This regulation applies where a person ceased employment after 5th April 1988 and subsequently dies leaving a surviving civil partner entitling the surviving civil partner to compensation under regulations 20 and 21.”.
- (7) In regulation 20(4) —
- (a) After “surviving spouse”, in the two places in which it occurs, insert “or civil partner”;
  - (b) In sub-paragraph (a) after “marriage”, in the two places in which it occurs, insert “or civil partnership”;
  - (c) In sub-paragraph (b) after “marriage” insert “, civil partnership”.
- (8) For regulation 20(5) substitute—
- “(5) Where two people referred to in paragraph (5A), each of whom is entitled to a short-term or long-term compensation under this regulation, marry each other, form a civil partnership or cohabit with each other outside marriage or a civil partnership –
- (a) only such one of them as they may determine shall be so entitled; and
  - (b) the other shall cease to be so entitled until the end of the marriage, civil partnership or cohabitation
- (5A) The people are –
- (a) a widower,
  - (b) a widow, or
  - (c) a surviving civil partner
- of any eligible person who ceased employment before 1<sup>st</sup> April 1998.
- (9) In regulation 21 (amount of surviving spouse’s short-term and long-term compensation)—
- (a) at the heading and in paragraphs (1) and (2) after “surviving spouse’s” insert “or civil partner’s”;
  - (b) in paragraph (4) after “surviving spouse” insert “or civil partner”.
  - (c) in paragraph (4) after “surviving spouse’s” insert “or civil partner’s”.
  - (d) in paragraph (5) after “surviving spouse” insert “or civil partner”.

- (10) In regulation 22 (entitlement to children’s short-term compensations) —
- (a) in paragraph (3) after “surviving spouse” insert “or civil partner”;
  - (b) in paragraph (3) after “surviving spouse’s” insert “or civil partner’s”.
- (11) In regulation 25(2) (amount of children’s long-term compensation)—
- (a) in each place in which it occurs, after “surviving spouse” insert “or civil partner”;
  - (b) after “surviving spouse’s” insert “or civil partner’s”.
- (12) In regulation 42 (Death benefits) —
- (a) In paragraph (1)(i) for “a surviving spouse or spouses” substitute “one or more surviving spouse or civil partner” and for “spouse or all of them” substitute “person or persons”.
  - (b) in paragraph (2) —
    - (i) after “surviving spouse” insert “or civil partner”;
    - (ii) after “marriage” insert “or civil partnership”;
  - (c) in paragraph (4), for the words from the beginning to “but if that marriage is dissolved” substitute “Subject to paragraph (5), an allowance to a surviving spouse or civil partner shall cease if he marries, forms a civil partnership or cohabits with another person outside of marriage or civil partnership; but if that marriage or civil partnership is dissolved”;
  - (d) in paragraph (5) –
    - (i) for the words from the beginning to “entitled to an allowance” substitute “Where the person whom the surviving spouse or civil partner marries or with whom he forms a civil partnership or cohabits is also a surviving spouse or surviving civil partner entitled to an allowance” and
    - (ii) after the word “marriage” insert “or civil partnership”.
- (13) In regulation 46 (1) after “spouse” insert “, surviving civil partner”.
- (14) After regulation 47(4) (retirement gratuities) insert—
- “(4A) Paragraph (4) applies to surviving civil partners where after 5<sup>th</sup> April 1988 a person both—
- (a) ceases to be employed and
  - (b) is awarded a retirement gratuity.”.
- (15) After regulation 48(4) (redundancy gratuities) insert—
- “(4A) Paragraphs (3) and (4) apply to surviving civil partners where after 5<sup>th</sup> April 1988 a person both
- (a) ceases to be employed and
  - (b) is awarded a redundancy gratuity .”.

### **The Local Government Pension Scheme (Scotland) Regulations 1998**

**3.—(1)** The Local Government Pension Scheme Regulations (Scotland) 1998(a) shall be amended in accordance with this regulation.

- (2) In regulation 8(1A) after “surviving spouse’s” insert “or civil partner’s”.
- (3) In regulation 18(2)(b) in each place in which it occurs after “surviving spouse’s” insert “or civil partner’s”,
- (4) In regulation 20(4) after “surviving spouse’s” insert “, civil partner’s”.
- (5) In regulation 32(1) after “spouse” insert “, his civil partner”.
- (6) In regulation 37(4) for “on the member’s subsequent marriage” substitute “when the member subsequently marries or forms a civil partnership”.

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(a) S.I.1998/366; the relevant amending instruments are S.I. 1998/1129 and 1999/787, and S.S.I. 2000/199 and 460, 2002/311, 2005/293 and 2005/315; and as modified for particular purposes by S.I. 1998/364.

(7) For regulation 39(1) to (3) (surviving spouse's short-term pension) substitute—

**“Surviving spouses’ or civil partners’ pensions**

*Surviving spouse’s or civil partner’s short-term pension*

**39.—(1)** If an active or pensioner member dies leaving a surviving spouse or civil partner, the spouse or civil partner is entitled to a short-term pension.

(2) It is payable for three months after the member’s death.

(3) But if there are eligible children in the spouse’s or civil partner’s care, it is payable for a further three months.”.

(8) In regulation 40 (surviving spouse’s long-term pension)—

(a) at the heading after “surviving spouse’s” insert “or civil partner’s”;

(b) in paragraph (1)—

(i) after “surviving spouse” insert “or civil partner”;

(ii) after “spouse” (where it second occurs) insert “or civil partner”;

(iii) after “spouse’s” insert “or civil partner’s”.

(c) after paragraph (2) insert –

“(2A) The pension to which a surviving civil partner is entitled under regulation 39 or 40 (surviving spouse’s or civil partner’s short-term pension) is calculated as if the member’s retirement pension were only so much of his or her actual pension as is attributable to his or her membership after 5<sup>th</sup> April 1988.”

(d) In paragraph (3) –

(i) after “married to” insert “or surviving civil partner was the civil partner of”; and

(ii) after “she” insert “or he”.

(9) At the heading for regulation 42 and in regulation 42(1) after “surviving spouse’s” insert “or civil partner’s”.

(10) In regulation 44 (children’s short-term pensions)—

(a) in paragraph (2) after “surviving spouse” insert “or civil partner”;

(b) in paragraph (6) after “surviving spouse” insert “or civil partner”, and after “surviving spouse’s” insert “or civil partner’s”.

(11) In regulation 45(9) in each place in which it occurs after “surviving spouse’s” insert “or civil partner’s”.

(12) In regulation 48 (commutation: small pensions)—

(a) in paragraph (2) after “surviving spouse” insert “or civil partner”;

(b) in paragraph (6) in each place in which it occurs after “spouse” insert “or civil partner”.

(13) In regulation 87(2) after “spouse” insert “, civil partner”.

(14) In regulations 98(1)(b) and 99(2)(a) after “or surviving” insert “civil partner or”.

(15) In regulation 114(1) for “or widower’s” substitute “, widower’s or surviving civil partner’s”.

(16) In regulation 115(5)(b) after “spouse” insert “, civil partner”.

(17) In regulation 118(5)(a) after “surviving spouse’s,” insert “or civil partner’s,”.

(18) In regulation 123(2)(c) after “surviving spouse’s” insert “or civil partner’s”.

(19) In regulation 125(1) after “surviving spouses” insert “or civil partners”.

(20) In regulation 137(3) at the interpretation of “benefit” after “widower” insert “, surviving civil partner”.

(21) In regulation 139 (2) after “surviving spouse” insert “, civil partner”

(22) In regulation 144 in paragraphs (1), (2) and (4) after “ex-spouse” insert “or ex-civil partner”.

(23) In regulation 148-

(a) in paragraphs (1)(b)(i) and (2) omit the word ‘matrimonial’;

(b) in paragraph (2)(b) after “divorce” insert “, dissolution”.

(24) In regulation 149 in the heading and in paragraph (5) after “ex-spouse” insert “or ex-civil partner”.

(25) In regulation 156 in paragraph (4) in each place in which it occurs for “or his spouse” substitute “, his spouse or his civil partner”.

(26) In Schedule 1 (interpretation) insert in the appropriate place—

““civil partner” shall be construed in accordance with section 1 of the Civil Partnership Act 2004;”.

(27) In Schedule 1A

in the appropriate place, insert—

“ex-civil partner” means a former civil partner to whom pension credit rights under the Scheme have been or are to be allocated following a pension sharing order; and

in the definition of “ex-spouse” for “individual” substitute “former spouse”

(28) In Schedule 4 (revenue restrictions)—

(a) in paragraph 2—

(i) at sub-paragraph (12) in each place it occurs after “surviving spouse” insert “, civil partner”;

(ii) at sub-paragraph (13) after “surviving spouse” insert “or civil partner”;

(b) in paragraph 4-

(i) at sub-paragraph (8) in each place in which it occurs after “surviving spouse” insert “, civil partner”;

(ii) at sub-paragraph (9) after “surviving spouse” insert “or civil partner”.

#### **Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998**

**4.—(1)** The Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998 shall be amended in accordance with this regulation.

(2) In regulation 2 (interpretation) insert in the appropriate place—

““civil partner” shall be construed in accordance with section 1 of the Civil Partnership Act 2004.”

(3) After regulation 4 (deferred members and pensioners: general) insert—

#### **“4A Deferred members and pensioners: civil partners**

(1) A surviving civil partner of a deferred or pensioner member shall be treated, for the purposes of entitlement to any benefit payable in consequence of the member’s death or any provision relating to such benefit, as if he were a surviving spouse of the member.

(2) For the purpose of calculating the benefit or provision to which a surviving civil partner is entitled under paragraph (1) account shall only be taken of the deceased member’s membership after 5<sup>th</sup> April 1988. This shall include periods of membership which are treated as membership after 5<sup>th</sup> April 1988 as defined in regulation E6(4) of the Local

Government Superannuation (Scotland) Scheme Regulations 1987 as amended by SI 1992  
No. 172.”

St Andrew’s House  
Edinburgh

A member of the Scottish Executive

October 2005

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The amendments in these Regulations provide survivor benefits for same sex partners of Local Government Pension Scheme members or eligible persons where the same sex partners have registered a civil partnership under the terms of the Civil Partnership Act 2004. The Regulations amend—

- (1) The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (“the Discretionary Payments & Injury Benefits Regulations”);
- (2) The Local Government Pension Scheme (Scotland) Regulations 1998 (“the 1998 Regulations”); and
- (3) The Local Government Pension Scheme (Scotland) (Transitional Provisions) Regulations 1998 (“the Transitional Provisions Regulations”).

–The changes to the Discretionary Payments & Injury Benefits Regulations provide that surviving civil partners will qualify for survivor benefits in the same way as spouses where a person ceases employment after 5<sup>th</sup> April 1988 and subsequently dies.

The changes to the 1998 Regulations and the Transitional Provisions Regulations are as follows—

- surviving civil partners will qualify for survivor benefits in the same circumstances as spouses;
- where a surviving civil partner is eligible for benefits and a person’s “membership” is relevant to the eligibility and level of those benefits, only such “membership” after 5th April 1988 is taken into account.

In addition, the changes to the 1998 Regulations include minor amendments dealing with pension sharing on divorce and its application to the dissolution of a civil partnership.

Some Scheme employers are in the business, charity and voluntary sectors. An assessment of the impact on these sectors together with the cost implications to public sector pension schemes of the provision of this instrument is included in the regulatory impact assessment published with the Civil Partnership Act 2004. A copy of that assessment can be viewed at <http://www.dti.gov.uk/access/ria/index.htm#equality>.