

2005 No. 520

CIVIL PARTNERSHIP

**The Civil Partnership Act 2004 (Amendments to
Subordinate Legislation) Order (Northern Ireland) 2005**

Made - - - - - *25th November 2005*

Coming into operation *5th December 2005*

The Department of Finance and Personnel, in exercise of the powers conferred on it by section 259 of the Civil Partnership Act 2004(a) and of all other powers enabling it in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order (Northern Ireland) 2005 and shall come into operation on 5th December 2005.

(2) The Interpretation Act (Northern Ireland) 1954(b) shall apply to this Order as it applies to an Act of the Assembly.

Amendments to Subordinate Legislation

2. The Schedule (which contains amendments to miscellaneous subordinate legislation) shall have effect.

Sealed with the Official Seal of the Department of Finance and Personnel on 25th November 2005.

(L.S.)

Ethne E. Harkness

A senior officer of the Department of Finance and Personnel

(a) 2004 c. 33.

(b) 1954 c. 33 (N.I.).

AMENDMENTS TO MISCELLANEOUS SUBORDINATE LEGISLATION

Cremation (Belfast) Regulations (Northern Ireland) 1961(a)

1.—(1) In Form A of the Schedule (Application for Cremation with Statutory Declaration)—

- (a) for “(Whether married, widow, widower, or unmarried)” substitute “(Whether married or in a civil partnership, surviving spouse or civil partner or single (never married or never having formed a civil partnership))”.
- (b) in the note to “near relatives” in question 4, for “widow or widower” substitute “surviving spouse or civil partner”.

(2) In Form G of the Schedule (Register of Cremations), after “married or unmarried” in column 5 insert “or in a civil partnership”.

Intestate Succession (Interest) Order (Northern Ireland) 1985(b)

2. In Article 2 (Interest on statutory legacy), after “spouse’s” insert “or civil partner’s”.

Enduring Powers of Attorney Regulations (Northern Ireland) 1989(c)

3. In the marginal notes to Part B of the Schedule (Prescribed Form)—

- (a) after “married” insert “or in a civil partnership”; and
- (b) for “husband or wife” substitute “spouse or civil partner”.

The Adoption Agencies Regulations (Northern Ireland) 1989(d)

4.—(1) In Part III of the Schedule (PARTICULARS RELATING TO EACH NATURAL PARENT, INCLUDING WHERE APPROPRIATE THE FATHER OF AN ILLEGITIMATE CHILD), for paragraph 2 substitute—

“2. Marital or civil partnership status and date and place of marriage or civil partnership (if any).”.

(2) In Part VI of the Schedule (PARTICULARS RELATING TO THE PROSPECTIVE ADOPTER), for paragraph 3 substitute—

“3. Marital or civil partnership status and the date and place of marriage or civil partnership (if any) and comments on stability of relationship.”.

(3) In Part VII of the Schedule (MATTERS TO BE COVERED IN REPORT ON HEALTH OF THE PROSPECTIVE ADOPTER), for paragraph 3 substitute—

“3. Marital or civil partnership history including (if applicable) reasons for inability to have children.”.

Burial Grounds Regulations (Northern Ireland) 1992(e)

5. In the definition of “relative” in paragraph 20(1) (interpretation) of Schedule 2, for “husband or wife” substitute “spouse or civil partner”.

Trade Union (Nominations) Regulations (Northern Ireland) 1992(f)

6.—(1) In regulation 2(6) (Power to make nominations), for “husband, wife” substitute “spouse or civil partner”.

(a) S.R. & O. (N.I.) 1961 No. 61.

(b) S.R. 1985 No. 8.

(c) S.R. 1989 No 64.

(d) S.R. 1989 No. 253, to which there are amendments not relevant to this Order.

(e) S.R. 1992 No. 238.

(f) S.R. 1992 No. 239.

- (2) In regulation 3(1) (Revocation of nominations), for sub-paragraph (c), substitute—
“(c) by the formation of a subsequent marriage or civil partnership by the nominator.”
- (3) In regulation 3(2)—
- (a) for “marriage of the nominator” substitute “formation of a subsequent marriage or civil partnership by the nominator”; and
- (b) after “that marriage” insert “or civil partnership”.

Definition of Independent Visitors (Children) Regulations (Northern Ireland) 1996(a)

7. In regulation 2 (Independent visitors), in paragraphs (a) and (b) after “spouse” in both places where it occurs, insert “or civil partner”.

The Representations Procedure (Children) Regulations (Northern Ireland) 1996(b)

8.—(1) In the definition of “independent person” in regulation 1(2) (Citation, commencement and interpretation), after “spouse” insert “or civil partner”.

(2) In regulation 10(1)(c) (Application to voluntary organisations and registered children’s homes), after “spouse” insert “or civil partner”.

The Placement of Children with Parents etc. Regulations (Northern Ireland) 1996(c)

9. In paragraph 1(d) of Schedule 1 (Particulars to be taken into account in considering suitability of persons and households), after “marital” insert “or civil partnership” and after “marriage” insert “or civil partnership”.

Registration of Clubs (Accounts) Regulations (Northern Ireland) 1997(d)

10. For the definition of “relative” in regulation 1(2) (Citation, commencement and interpretation) substitute—

““relative” means spouse or civil partner, brother or sister (whether of the whole or half blood), parent or child and includes those connected by consanguinity, marriage or civil partnership, step relations and relations by adoption.”.

The Domestic Energy Efficiency Grants Regulations (Northern Ireland) 2002(e)

11.—(1) In regulation 2 (Interpretation), for the definition of “spouse” substitute ““spouse” or “civil partner” includes a person with whom the applicant lives as his spouse or as if they were civil partners”.

(2) In regulation 4 (Persons who may apply for a grant), in paragraphs (1) and (2) after “spouse” in each place where it occurs insert “or civil partner”.

Paternity and Adoption Leave Regulations (Northern Ireland) 2002(f)

12.—(1) In regulation 4 (Entitlement to paternity leave: birth)—

(a) in paragraph (2)(b)(ii), after “married to” insert “, the civil partner”; and

(b) in paragraph (2)(c)(ii), after “mother’s husband” insert “, civil partner”.

(2) In regulation 8(2)(b) (Entitlement to paternity leave: adoption), after “married to” insert “, the civil partner”.

(a) S.R. 1996 No. 434.

(b) S.R. 1996 No. 451, to which there are amendments not relevant to this Order.

(c) S.R. 1996 No. 463, to which there are amendments not relevant to this Order.

(d) S.R. 1997 No. 333, to which there are amendments not relevant to this Order.

(e) S.R. 2002 No. 56; regulation 4 was amended by S.R. 2003 No. 385.

(f) S.R. 2002 No. 377.

Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations (Northern Ireland) 2002(a)

13. In regulation 11(1)(a) (Conditions of entitlement to statutory paternity pay (adoption): relationship with child and with person with whom the child is placed for adoption), after “married to” insert “, the civil partner”.

Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations (Northern Ireland) 2002(b)

14. In regulation 14(2)(b) (Provision of information), after “spouse” insert “, civil partner”.

Flexible Working (Eligibility, Complaints and Remedies) Regulations (Northern Ireland) 2003(c)

15. In regulation 3(1)(b)(ii) (Entitlement to request contract variation), after “married to” insert “, the civil partner”.

Paternity and Adoption Leave (Adoption from Overseas) Regulations (Northern Ireland) 2003(d)

16.—(1) For regulation 5(2) (Application) substitute—

“(2) For paragraphs (1) and (2), substitute—

“(1) The provisions relating to adoption leave under regulation 15 have effect only where the adopter’s child enters Northern Ireland on or after 9th April 2003.

(2) The provisions relating to paternity leave under regulation 8 have effect only in relation to a person who is married to or is the civil partner or partner of an adopter whose child enters Northern Ireland on or after 9th April 2003.”.

(2) In regulation 7 (Entitlement to paternity leave: adoption from overseas)—

(a) for substituted regulation 8(2)(c) (Entitlement to paternity leave) substitute—

“(c) the employee is either married to or is the civil partner or the partner of the child’s adopter, and”;

(b) for substituted regulation 10(3) (Notice and evidential requirements for leave under regulation 8) substitute—

“(3) Where the employer requests it, an employee must give his employer, within 14 days of receipt of a request, a written declaration, signed by the employee, to the effect that his partner, spouse or civil partner has received an official notification and that he satisfies the conditions of entitlement in regulation 8(2)(c) and (d).”

Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoption from Overseas) Regulations (Northern Ireland) 2003(e)

17. For regulation 5(1)(a) (Conditions of entitlement to statutory paternity pay (adoption) in respect of adoptions from overseas: relationship with child and with adopter), substitute—

“(a) is married to or is the civil partner or the partner of a child’s adopter, and”

Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003(f)

18.—(1) After regulation 3(2) (Discrimination on grounds of sexual orientation) insert—

“(3) For the purposes of paragraph (2), in a comparison of B’s case with that of another person the fact that one of the persons (whether B or not) is a civil partner while the other

(a) S.R. 2002 No. 378, to which there are amendments not relevant to this Order.

(b) S.R. 2002 No. 379.

(c) S.R. 2003 No. 174.

(d) S.R. 2003 No. 222.

(e) S.R. 2003 No. 223.

(f) S.R. 2003 No. 497.

is married shall not be treated as a material difference between their respective circumstances.”.

(2) For regulation 28 (Exception for benefits dependent on marital status), substitute—

“Exception for benefits dependent on a person’s status

28. Nothing in Part II or III shall render unlawful—

- (a) anything which prevents or restricts access to a benefit by reference to marital status where the right to the benefit accrued or the benefit is payable in respect of periods of service prior to the coming into force of the Civil Partnership Act 2004;
- (b) the conferring of a benefit on married persons and civil partners to the exclusion of all other persons.”.

The Housing Renewal Grants (Reduction of Grant) Regulations (Northern Ireland) 2004(a)

19.—(1) In regulation 2(1) (Interpretation)—

(a) for the definition of “close relative”, substitute—

““close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister or if any of the preceding persons is one of a couple, the other member of that couple;”;

(b) after the definition of “concessionary payment”, insert—

““couple” means—

- (a) a man and woman who are married to each other and are members of the same household;
- (b) a man and woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners;”;

(c) for the definition of “family”, substitute—

““family” means—

- (a) a couple;
- (b) a couple and a member of the same household for whom one of the couple is, or both are, responsible, and who is a child or young person;
- (c) a person who is not a member of a couple and a member of the same household for whom that person is responsible and who is a child or young person;”;
- (d) omit the definitions of “married couple”, “member of a couple” and “unmarried couple”;
- (e) in the definition of “partner”, delete “married or unmarried”.

(2) For regulation 11(2)(b)(ii) (The applicable amount), substitute—

“(ii) those relevant persons who are members of a couple, the other member of which is in receipt of guarantee credit,”

(3) In the definition of “contribution” in regulation 42 (Interpretation), after “spouse” insert “or civil partner”.

(4) In paragraph 10(b) (Bereavement Premium) of Schedule 1 (APPLICABLE AMOUNTS), after “spouse” insert “or civil partner”.

(5) For paragraph 12(b) of Schedule 2 (SUMS TO BE DISREGARDED IN THE DETERMINATION OF EARNINGS), substitute—

(a) S.R. 2004 No. 8.

“(b) is a member of a couple and the other member of that couple is in receipt of guarantee credit, his earnings.”.

(6) In Schedule 3 (SUMS TO BE DISREGARDED IN THE DETERMINATION OF INCOME OTHER THAN EARNINGS)—

(a) for paragraph 4(b), substitute—

“(b) is a member of a couple and the other member of that couple is in receipt of guarantee credit,”;

(b) in paragraph 13, after “widower’s” insert “or surviving civil partner’s”;

(c) in paragraph 14(b), after “widower’s” insert “or surviving civil partner’s”;

(d) in paragraph 35, after “divorced” in each place where it occurs insert “or whose civil partnership with the relevant person has been dissolved”.

(7) In Schedule 4 (CAPITAL TO BE DISREGARDED)—

(a) in paragraphs 5 and 24, after “divorced” in each place where it occurs insert “or whose civil partnership with the relevant person has been dissolved”;

(b) for paragraph 6(b), substitute—

“(b) is a member of a couple and the other member of that couple is in receipt of guarantee credit,”;

(c) in paragraph 25(1), after “former partner” insert “or the dissolution of his civil partnership with his former partner”;

(d) in paragraph 52, after “spouse” in both places where it occurs insert “civil partner”;

(e) in paragraph 56, after “spouse” in both places where it occurs insert “or civil partner”.

The Personal Social Services and Children’s Services (Direct Payments) Regulations (Northern Ireland) 2004(a)

20. In regulation 7(2) (Conditions in respect of direct payments), after “spouse” in each place where it occurs insert “or civil partner”.

Limited Liability Partnership Regulations (Northern Ireland) 2004(b)

21. In Schedule 3 (MODIFICATIONS TO THE 1989 ORDER), in the modification relating to Article 4, new paragraph (3A) of the Insolvency (Northern Ireland) Order 1989(c) (“associate”), after “wife” insert “or civil partner”.

(a) S.R. 2004 No. 120.
(b) S.R. 2004 No. 307.
(c) S.I. 1989/2405 (N.I. 19).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to various provisions of subordinate legislation. The amendments are consequential upon the Civil Partnership Act 2004 (“the Act”), which comes into force in Northern Ireland on 5th December 2005. The Act enables same-sex couples to form a civil partnership by registering as civil partners of each other. The Act also makes provision for civil partners to be treated in the same or similar way as spouses in relation to certain benefits and obligations.

The Schedule contains amendments to miscellaneous subordinate Northern Ireland legislation. The effect of the amendments is to ensure that civil partners are treated in the same way as spouses.

Paragraph 1 amends the Cremation (Belfast) Regulations (Northern Ireland) 1961 (S.R. & O. (N.I.) 1961 No. 61). The amendments relate to the definition of who is to be regarded as “near relative” of the deceased, as well as the status of the deceased (ie single, a civil partner etc).

Paragraph 2 amends Article 2 of the Intestate Succession (Interest) Order (Northern Ireland) 1985 (S.R. 1985 No. 8) which fixes the percentage interest payable on a surviving spouse’s statutory pecuniary legacy. The amendment ensures that the percentage interest fixed by the Order also applies to a surviving civil partner’s statutory pecuniary legacy.

Paragraph 3 amends the Schedule to the Enduring Powers of Attorney Regulations (Northern Ireland) 1989 (S.R. 1989 No. 253) which prescribes the Form in which an enduring power of attorney should be made. Notes to Part B of the Form advise that a donor’s husband or wife should not witness the making of the enduring power of attorney. The amendment extends this guidance to include references to the civil partner of the donor witnessing the making of an enduring power of attorney.

Paragraph 4 amends the Adoption Agencies Regulations (Northern Ireland) 1989 (S.R. 1989 No. 253). The Schedule to the Regulations lists the particulars which an adoption agency shall obtain relating to a child being considered for adoption, as well as the child’s natural parents and prospective adopters. The amendment requires the adoption agency to obtain details of the civil partnership history of both the natural parents and prospective adopters in the same way as it obtains details of their marital history.

Paragraph 5 amends paragraph 20(1) of Schedule 2 to the Burial Grounds Regulations (Northern Ireland) 1992 (S.R. 1992 No. 238). Paragraph 20 is an interpretation provision and defines “relative” for the purposes of Schedule 2, which is concerned with the removal of memorials and the levelling of graves. Under Schedule 2, if a relative objects to proposals to remove a memorial or to levelling a grave, a district council may not proceed in relation to those proposals unless the Department of Environment approves the proposals. The effect of the amendment is to include a civil partner within the definition of a relative and so put a civil partner in the same position as a spouse.

Paragraph 6 amends the Trade Union (Nominations) Regulations 1992 (S.R. 1992 No. 239) which deal with nominations made by members of trade unions as to the payment of any union funds which may be made on their death. The effect of the amendment to regulation 2 is to place a civil partner in the same position as a spouse in relation to an exception from a provision which renders a nomination void. The amendments to regulation 3 provide that, in relation to a nomination, forming a subsequent civil partnership is treated in the same way as entering into a subsequent marriage.

Paragraphs 7, 8 and 9 make amendments to a number of sets of Regulations which govern the placement, representation and independent visitors of children looked after by authorities

in exercise of their functions under the Children (Northern Ireland) Order 1995. Paragraph 7 amends the definition of “Independent Visitor” in the Definition of Independent Visitors (Children) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 434) to exclude the civil partners of members, directors, trustees etc or employees of the authority or organisation making appointments of Independent Visitors from being Independent Visitors. Paragraph 8 amends the definition of “independent person” in the Representations Procedure (Children) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 451) to exclude the civil partners of members, directors, officers etc of organisations appointing independent persons from being an independent person to whom representations are made. Paragraph 9 amends the Placement of Children with Parents etc. Regulations (Northern Ireland) 1996 (S.R. 1996 No. 463) and requires authorities to take into account, inter alia, the civil partnership history of a person with whom the authority is considering placing a child.

Paragraph 10 amends the Registration of Clubs (Accounts) Regulations (Northern Ireland) 1997 (S.R. 1997 No. 333). It adds civil partners and people related to each other by civil partnership to the list of people who fall within the meaning of the term “relative” in regulation 1(2).

Paragraph 11 amends the Domestic Energy Efficiency Grants Regulations (Northern Ireland) 2002 (S.R. 2002 No. 56) which enable the Department for Social Development to make or arrange for the making of grant for the improvement of energy efficiency in dwellings occupied by people in receipt of certain benefits. The amendments ensure that civil partners and people living together as if they were civil partners are treated in the same way as spouses and people living together as if they were spouses.

Paragraphs 12, 13, 14, 16 and 17 amend the Paternity and Adoption Leave Regulations (Northern Ireland) 2002 (S.R. 2002 No. 377), the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 378), the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 379), the Paternity and Adoption Leave (Adoption from Overseas) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 222) and the Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoption from Overseas) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 223). These regulations extend entitlement to paternity leave, adoption leave (including adoption from overseas), statutory paternity pay, statutory adoption pay (including adoption from overseas) to civil partners.

Paragraph 15 amends the Flexible Working (Eligibility, Complaints and Remedies) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 174) to extend the entitlement to request a contract variation for flexible working to civil partners.

Paragraph 18 amends the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 497). These regulations implement in Northern Ireland Directive 2000/78 EC (establishing a general framework for equal treatment in employment) so far as it relates to discrimination on grounds of sexual orientation. The regulations make it unlawful to discriminate on grounds of sexual orientation in employment and vocational training. Sub-paragraph (1) inserts a new paragraph — paragraph (3) into regulation 3 to make it clear that the status of a civil partner is comparable to that of a spouse. The effect of the amendment is that if a spouse receives different treatment to a civil partner, the employer or training provider etc, cannot successfully argue that there is no discrimination because married persons are not comparable to civil partners. Sub-paragraph (2) substitutes a new regulation 28. Regulation 28(a) preserves the existing exemption for benefits dependent on marital status when the right to the benefit accrued or the benefit is payable in respect of periods of service prior to the coming into force of the Act. Regulation 28(b) permits benefits to be conferred on married people and civil partners to the exclusion of all others.

Paragraph 19 amends the Housing Renewal Grants (Reduction of Grant) Regulations (Northern Ireland) 2004 (S.R. 2004 No. 8). These Regulations provide for the reduction of the amount of renovation grant, disabled facilities grant and replacement grant which may be paid to applicants. The amendments insert references to civil partners and persons living together

as if they were civil partners for the purposes of calculating the applicable amount of the reduction of grant payable to the applicant “relevant person”.

Paragraph 20 amends the Personal Social Services and Children’s Services (Direct Payments) Regulations (Northern Ireland) 2004 (S.R. 2004 No. 120). Regulation 7 prohibits a direct payment from being used to secure a service from certain persons, except in specified circumstances, and is amended to include references to a civil partner and to a person who lives as if they were a civil partner.

Paragraph 21 amends the Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004 No. 307) so that the definition of “associate” in the Insolvency (Northern Ireland) Order 1989, as applied to limited liability partnerships by those regulations, extends to civil partners of members of limited liability partnerships in the same way that it applies to the spouses of such members.

A regulatory impact assessment has not been prepared for this Order, as it has no impact on the costs of business, charities, voluntary bodies or any public bodies distinct from that of the Act itself. A full regulatory impact assessment for civil partnership was published alongside the Act and can be viewed at <http://www.dti.gov.uk/access/ria/index.htm#equality>.