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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 554**

**PENSIONS**

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

*Made* - - - - 8th November 2005  
*Laid before the Scottish Parliament* - - - - 9th November 2005  
*Coming into force* - - 5th December 2005

The Scottish Ministers, in exercise of the powers conferred by sections 7, 12 and 24 of the Superannuation Act 1972<sup>(1)</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 that Act, hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Local Government Pensions Etc. (Civil Partnership) (Scotland) Amendment Regulations 2005 and shall come into force on 5th December 2005.

(2) These Regulations extend to Scotland only.

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

2. The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998<sup>(2)</sup> are amended in accordance with Schedule 1.

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(1) 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 exercised in the making of these Regulations were transferred to the Scottish Ministers as regards Scotland by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, article 2 and Schedule 1 (S.I.1999/1750).

(2) S.I. 1998/192; the relevant amending instruments are S.I. 1998/364 and S.S.I. 2000/77.

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

3. The Local Government Pension Scheme (Scotland) Regulations 1998(3) are amended in accordance with Schedule 2.

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

4. The Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998(4) are amended in accordance with Schedule 3.

### **Right to opt out**

5.—(1) Where—

- (a) apart from this regulation, the amendments made by regulation 3 and Schedule 2 would place any relevant beneficiary in a worse position than that in which he or she would otherwise be; and
- (b) that relevant beneficiary so elects by notice in writing given to the Scottish Ministers before 5th June 2006,

then the Local Government Pension Scheme (Scotland) Regulations 1998 shall have effect in relation to him or her as if those amendments had never been made.

(2) For the purposes of paragraph (1), a relevant beneficiary is a person to whom any benefit is or may become payable being a benefit payable to or in respect of a person who—

- (a) ceased to hold an employment or office in respect of which he or she was a member or qualified to participate in benefits (whether or not he or she had subsequently recommenced any such employment or office); or
- (b) died while in such employment or office,

before the date on which these Regulations come into force.

St Andrew's House, Edinburgh  
8th November 2005

*GEORGE LYON*  
Authorised to sign by the Scottish Ministers

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(3) 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.

(4) S.I. 1998/364; to which there are amendments not relevant to these Regulations.

SCHEDULE 1

Regulation 2

AMENDMENT TO THE LOCAL GOVERNMENT (DISCRETIONARY PAYMENTS AND INJURY BENEFITS) (SCOTLAND) REGULATIONS 1998

*Amendments to Part III: Compensation for Premature Retirement*

1. In regulation 5 (interpretation of Part III)–
  - (a) in paragraph (2)(c)(ii) after “married” insert “or formed a civil partnership with”; and
  - (b) after paragraph (2) insert–
    - “(2A) In paragraph (2)(c)(iii) a family includes a family resulting from the formation of a civil partnership.”.
2. For the italicised heading relating to regulations 20 and 21 substitute–

*“Awards to surviving spouses or civil partners”.*

3. Regulation 20(5) (entitlement to surviving spouse’s short-term and long-term compensation) is amended in accordance with paragraphs 4 to 9.
4. In the heading after “surviving spouse's” insert “or civil partner's”.
5. In paragraph (1)–
  - (a) for “a spouse or spouses” substitute “a spouse, spouses or a civil partner”; and
  - (b) for “(surviving spouses' pensions)” substitute “(surviving spouses' or civil partners' pensions)”.
6. In paragraph (2)–
  - (a) after “surviving spouse”, in both places in which it occurs, insert “or civil partner”; and
  - (b) after “surviving spouse's”, in both places in which it occurs, insert “or civil partner's”.
7. In paragraph (3)–
  - (a) after “marriage” insert “or formation of the civil partnership”;
  - (b) after “surviving spouse” insert “or civil partner”; and
  - (c) after “surviving spouse's”, in both places in which it occurs, insert “or “civil partner's”.
8. In paragraph (4)–
  - (a) after “surviving spouse”, in both places in which it occurs, insert “or civil partner”;
  - (b) in sub-paragraph (a) after “marriage”, in both places in which it occurs, insert “or civil partnership”; and
  - (c) in sub-paragraph (b)–
    - (i) after “surviving spouse's” insert “or civil partner's”; and
    - (ii) after “marriage” insert “, civil partnership”.
9. For paragraph (5) substitute–

“(5) Where two persons referred to in paragraph (5A), each of whom is entitled to short-term or long-term compensation under this regulation, marry each other, form a civil partnership or begin to live with each other as if they were husband and wife or as if they were civil partners–

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(5) Regulation 20 was amended by S.I. 1998/364, Schedule 3, paragraph 4 and S.I. 2000/77, regulation 5.

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- (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 period of cohabitation.

(5A) Those persons are—

- (a) a widower,
- (b) a widow, or
- (c) a surviving civil partner

of any eligible person who ceased employment before 1st April 1998.

(5B) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.”.

**10.** Regulation 21(6) (amount of surviving spouse’s short term and long term compensation) is amended in accordance with paragraphs 11 to 15.

**11.** In the heading, after “surviving spouse's” insert “or civil partner's”.

**12.** In paragraph (1) after “Surviving spouse's” insert “or civil partner's”.

**13.** In paragraph (2) after “Surviving spouse's” insert “or civil partner's”.

**14.** In paragraph (4)—

- (a) after “surviving spouse” insert “or civil partner”; and
- (b) after “surviving spouse's” insert “or civil partner's”.

**15.** In paragraph (5) after “surviving spouse” insert “or civil partner”.

**16.** In regulation 22(3)(7) (entitlement to children’s short-term compensation)—

- (a) after “surviving spouse's” insert “or civil partner's”; and
- (b) after “surviving spouse” insert “or civil partner”.

**17.** In regulation 25(2)(8) (amount of children’s long term compensation)—

- (a) after “surviving spouse”, in the three places in which it occurs, insert “or civil partner”; and
- (b) after “surviving spouse's” insert “or civil partner's”.

*Amendments to Part V: Injury Allowances etc.*

**18.** Regulation 42 (death benefits) is amended in accordance with paragraphs 19 to 23.

**19.** In paragraph (1)(b)(i) omit “and”.

**20.** After paragraph (1)(b)(i) insert—

“(ia) subject to paragraph (2), if the deceased leaves a surviving civil partner, the surviving civil partner shall be entitled to an annual allowance or lump sum; and”.

**21.** In paragraph (2)—

- (a) after “surviving spouse” insert “or civil partner”; and
- (b) after “marriage” insert “or civil partnership”.

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(6) Regulation 21 was amended by S.I. 1998/364, Schedule 3, paragraph 4.

(7) Regulation 22 was amended by S.I. 1998/364, Schedule 3, paragraph 4.

(8) Regulation 23 was amended by S.I. 1998/364, Schedule 3, paragraph 4.

22. In paragraph (4) for the words from “an allowance” to “that marriage is dissolved” substitute “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”.

23. For paragraph (5) substitute—

“(5) Where the person whom the surviving spouse or civil partner marries, or with whom he forms a civil partnership or lives as if they were husband and wife or as if they were civil partners, is also a surviving spouse or civil partner entitled to an allowance under this regulation, they may determine which of them is to be entitled to the allowance and the other shall cease to be entitled to it until the dissolution of the marriage, civil partnership or, as the case may be, the ending of the cohabitation.

(5A) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.”.

*Amendments to Part VI: Gratuities as Respects Non-Pensionable Service*

24. In regulation 46(1)(9) (death in service gratuities) after “spouse” insert “or civil partner”.

25. In regulation 47(4)(10) (retirement gratuities) after “spouse” insert “or civil partner”.

26. In regulation 48(11) (redundancy gratuities)—

(a) in paragraph (3) after “spouse” insert “or civil partner”; and

(b) in paragraph (4) after “spouse” insert “or civil partner”.

SCHEDULE 2

Regulation 3

AMENDMENTS TO THE LOCAL GOVERNMENT  
PENSION SCHEME (SCOTLAND) REGULATIONS 1998

*Amendments to Part II: Primary provisions*

1. In regulation 8(1A)(12) (periods of membership: “total membership”) after “surviving spouse's” insert “or civil partner's”.

2. In regulation 18(2)(b) (general qualification for benefits) after “surviving spouse's”, in both places in which it occurs, insert “or civil partner's”.

3. In regulation 20(4)(13) (final pay) after “surviving spouse's” insert “or civil partner's”.

4. In regulation 32(1) (surrenders of pension) after “spouse” insert “, civil partner”.

5. In regulation 37(4) (death grants) after “marriage” insert “or on the formation of the member’s subsequent civil partnership”.

6. For the italicised heading relating to regulations 39 to 42 substitute—

(9) Regulation 46 was amended by S.I. 1998/364, Schedule 3, paragraph 4.

(10) Regulation 47 was amended by S.I. 1998/364, Schedule 3, paragraph 4.

(11) Regulation 48 was amended by S.I. 1998/364, Schedule 3, paragraph 4.

(12) Regulation 8 was amended by S.S.I. 2000/199, regulation 11.

(13) Regulation 20 was amended by S.S.I. 2000/199, regulation 18.

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

7. Regulation 39 (surviving spouse’s short term pension) is amended in accordance with paragraphs 8 to 11.

8. In the heading after “surviving spouse's” insert “or civil partner's”.

9. In paragraph (1) after “spouse”, in both places in which it occurs, insert “or civil partner”.

10. In paragraph (3) after “spouse's” insert “or civil partner's”.

11. In the heading to regulation 40 (surviving spouse’s long term pension) after “Surviving spouse's” insert “or civil partner's”.

12. In regulation 40(1)–

(a) after “spouse”, in both places in which it occurs, insert “or civil partner”; and

(b) after “spouse's” insert “or civil partner's”.

13. In the heading to regulation 41 (reduction of some surviving spouses’ pensions) after “surviving spouses” insert “or civil partners”.

14. After regulation 41(3) insert–

“(3A) Except in the case of a short-term pension payable to the surviving civil partner of an active member, the pension to which a surviving civil partner is entitled under regulation 39 or 40 (surviving spouse’s or civil partner’s short-term or long-term pension) is calculated as if the member’s retirement pension were only so much of his actual pension as is attributable to his membership after 5th April 1988.

(3B) For the purpose of paragraph (3A) relevant additional membership counts as membership after 5th April 1988.”.

15. In the heading to regulation 42 (surviving spouse’s guaranteed minimum pension) after “surviving spouse's” insert “or civil partner's”.

16. In regulation 42(1) after “surviving spouse's” insert “or civil partner's”.

17. In regulation 44 (children’s short term pensions)–

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

(b) in paragraph (6)(14)–

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

(ii) after “surviving spouse” insert “or civil partner”.

18. In regulation 45(9) (children’s long term pensions) after “surviving spouse's”, in both places in which it occurs, insert “or civil partner's”.

19. In regulation 48 (commutation: small pensions) –

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

(b) in paragraph (6) after “spouse”, in both places in which it occurs, insert “or civil partner”.

*Amendments to Part IV: Administration*

20. In regulation 87(2) (exclusion of rights to return of contributions) after “spouse” insert “or civil partner”.

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(14) Regulation 44(6) was amended by [S.S.I. 2000/199](#), regulation 26.

**21.** In regulation 98(2)(b) (appointment of persons to resolve disputes) after “widower” insert “, surviving civil partner”.

**22.** In regulation 99(2)(a) (right to apply for an appointed person to decide a disagreement) after “widower” insert “, surviving civil partner”.

**23.** In regulation 114(1) (protection of guaranteed minimum pension rights) for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.

**24.** In regulation 115(5)(b) (transfer of sums from the pension fund to compensate for former member’s misconduct) after “spouse” insert “or civil partner”.

**25.** In regulation 118(5)(a) (contracting-out requirements affecting transfers out) after “surviving spouse’s” insert “or civil partner’s”.

**26.** In regulation 123(2)(c) (rights as to service not matched by credited period) after “surviving spouse’s” insert “or civil partner’s”.

**27.** In regulation 125(1) (Community scheme transferees) after “spouses” insert “or civil partners”.

#### *Amendments to Part VI: Pension Sharing*

**28.** In regulation 139(2)(**15**) (pension sharing mechanism in the Scheme) after “surviving spouse” insert “or civil partner”.

**29.** In regulation 144(**16**) (discharge of pension credit liability) after “ex spouse”, where it occurs in paragraphs (1), (2) and (4), insert “or ex civil partner”.

**30.** In regulation 148(**17**) (“implementation period” for discharge of pension credit)–

- (a) in paragraphs (1)(b)(i) and (2) omit the word “matrimonial”; and
- (b) in paragraph (2)(b) after “divorce” insert “, dissolution”.

**31.** In regulation 149(**18**) (failure to discharge liability within implementation period)–

- (a) in the heading after “ex spouse” insert “or ex civil partner”; and
- (b) in paragraph (5) after “ex spouse” insert “or ex civil partner”.

**32.** In regulation 156(4)(**19**) (charges in respect of pension sharing costs) for “the member or his spouse”, in both places in which it occurs, substitute “the member, his spouse or his civil partner”.

#### *Amendments to Schedules 1 and 1A: Interpretation*

**33.** In the definition of “guaranteed minimum” in Schedule 1 for “widows and widowers” substitute “widows, widowers and surviving civil partners”.

**34.** In Schedule 1A–

(a) after the definition of “contracted out rights” 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

(b) in the definition of “ex spouse” for “individual” substitute “former spouse”.

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(15) Regulation 139 was inserted by [S.S.I. 2001/23](#), regulation 4.

(16) Regulation 144 was inserted by [S.S.I. 2001/23](#), regulation 4.

(17) Regulation 148 was inserted by [S.S.I. 2001/23](#), regulation 4.

(18) Regulation 149 was inserted by [S.S.I. 2001/23](#), regulation 4.

(19) Regulation 156 was inserted by [S.S.I. 2001/23](#), regulation 4.

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*Amendments to Schedule 4: Revenue Restrictions*

35. In Schedule 4 (revenue restrictions)–
- (a) in paragraph 2(12) after “surviving spouse”, in both places in which it occurs, insert “, civil partner”;
  - (b) in paragraph 2(13) after “surviving spouse” insert “or civil partner”;
  - (c) in paragraph 4(8) after “surviving spouse”, in both places in which it occurs, insert “, civil partner”; and
  - (d) in paragraph 4(9) after “surviving spouse” insert “or civil partner”.

SCHEDULE 3

Regulation 4

AMENDMENTS TO THE LOCAL GOVERNMENT PENSION SCHEME  
(TRANSITIONAL PROVISIONS) (SCOTLAND) REGULATIONS 1998

1. After regulation 4 (deferred members and pensioners: general) insert–

**“Deferred members and pensioners: civil partners**

**4A.**—(1) Where a person who immediately before the commencement date was a deferred member or a pensioner member and does not on or after that date become an active member (“the member”) forms a civil partnership–

- (a) the member’s civil partner shall be treated for the purpose of regulation 4(2)(b) as a person who is or may become entitled to any benefit under the Scheme in respect of the member; and
- (b) subject to paragraph (2), the saved provisions shall entitle the civil partner to such benefits as would, if the member had been married, have been payable to the member’s spouse.

(2) For the purpose of calculating the benefit to which the civil partner is entitled under paragraph (1) account shall only be taken of the member’s membership after 5th April 1988.

(3) For the purpose of paragraph (2) any period referred to in regulation E6(3A) of the 1987 Regulations<sup>(20)</sup> also counts as membership after 5th April 1988.”.

2. In regulation 23(1) (Community scheme transferees) after “surviving spouses” insert “or civil partners”.

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(20) S.I. 1987/1850; amended by S.I. 1993/1593 and other amendments not relevant to these Regulations.



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## 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 formed 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 (Transitional Provisions) (Scotland) 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 who has been in pensionable employment after 5th April 1988 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 bodies within the business, charity and voluntary sectors are employers within the Local Government Pension Scheme. 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>.