

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (INHERITED SERPS)
(AMENDMENTS RELATING TO CIVIL PARTNERSHIP) REGULATIONS
2005

2005 No.3030

1. This Explanatory Memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1. This Instrument amends the Social Security (Inherited SERPS) Regulations 2001 (S.I.2001/1085) (“the Inherited SERPS Regulations”) in order to extend their application to civil partners.
 - 2.2. These Regulations are made under section 52(2)¹ of the Welfare Reform and Pensions Act 1999 (“WRAP Act”) (c. 30).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 This Instrument is required in order to give effect to the policy intention of the Civil Partnership Act 2004 (c.33) to extend the same treatment to civil partners in respect of State Pensions and bereavement benefits as is currently provided for spouses.
 - 4.2 This Instrument amends the Inherited SERPS Regulations which allow for the inheritable proportion of additional pension, by way of the State Earnings-Related Pension Scheme (SERPS), to be gradually reduced from 100% to 50% between October 2002 and October 2010. Where increments or a lump sum derived from the contributor’s deferred SERPS are inheritable, the same adjustment is made to the inheritable amount. People can earn an increased pension (increments) or a lump sum by deferring their claim to State Pension on reaching State Pension age or by electing to stop claiming it. Increments and lump sums may be inherited by a surviving spouse.
 - 4.3 This Instrument is one of two affirmative Instruments that are required to extend parity of treatment to civil partners in relation to Social Security pension and benefits with effect from 5 December 2005, the other set being the Civil Partnership (Miscellaneous and Consequential Provisions) Order 2005.

¹ Section 52 of the WRAP Act was amended by SI 2005/2053 to extend powers to provide for civil partners.

5. Extent

- 5.1 This Instrument applies to Great Britain. Equivalent provision will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

- 6.1 Lord Hunt of Kings Heath OBE, has made the following statement regarding Human Rights:

In my view, the provisions of the Social Security (Inherited SERPS) (Amendments relating to Civil Partnership) Regulations 2005 are compatible with the Convention rights.

7. Policy background

- 7.1 The Civil Partnership Act 2004 received Royal Assent on 18 November 2004 and will come into force on 5 December 2005. The purpose of that Act is to enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. The policy intention behind this Instrument is to ensure that civil partners have similar treatment as spouses in the area of benefit payments.
- 7.2 The amendments will allow any inheritable SERPS, or increments or lump sum derived from the contributors deferred SERPS, to be calculated for a surviving civil partner as for a widower.
- 7.3 There was no requirement to consult on this Instrument as it gives effect to the Civil Partnership Act. The Government, however, held a three-month public consultation on the proposal to create a same-sex civil partnership registration scheme in England and Wales. This ran from 30 June 2003 to 30 September 2003. There were a total of 3,167 responses of which 83 per cent expressed support for the principle of civil partnership. A more detailed analysis of these responses showed that 84 per cent of individuals who responded supported the principle of civil partnership and 74 per cent of organisations that responded supported the principle of civil partnership.
- 7.4 The Government's response to the consultation was published in November 2003 and can be found on the DTI's website at <http://www.womenandequalityunit.gov.uk/lgbt/partnership.htm>. Some respondents felt that the Government should introduce gay marriage whilst others said it should be a purely civil, separate legal status. The Government response was that civil partnership would be a civil, separate legal status distinct from marriage. Some respondents also felt that civil partnership should also be extended to opposite sex couples. The Government response was that opposite sex couples already had the option of gaining legal and social recognition for their relationships by getting married, if they wished to do so. The Government announced on 26 November 2003 that it intended to bring forward a Civil Partnership Bill.

- 7.5 On 3 June 2004 the Scottish Parliament agreed to the inclusion of Scottish provisions in the Westminster Civil Partnership Bill, following a public consultation in Scotland. Northern Ireland Ministers also agreed to include Northern Ireland provisions in the Westminster Civil Partnership Bill after a public consultation in Northern Ireland. The responses to those respective consultations can be found on the DTI's website at <http://www.womenandequalityunit.gov.uk/lgbt/partnership.htm>

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this statutory instrument, as it has no impact on business, charities, voluntary bodies or any public bodies distinct from that of the Civil Partnership Act 2004 itself. A full Regulatory Impact Assessment for civil partnership was published alongside the Civil Partnership Act 2004 and can be viewed at <http://www.dti.gov.uk/access/ria/index.htm#equality>

- 8.2 There is no impact on the public sector.

9. Contact

- 9.1 Chris Larder at the Department for Work and Pensions can answer any queries regarding the Instrument. Tel: 020 7712 2565 or e-mail: Chris.Larder@dwp.gsi.gov.uk