

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT)
REGULATIONS 2019

2019 No. 1449

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 To provide for the provision of survivor benefits when someone who is a member of the Local Government Pension Scheme dies, leaving behind a surviving opposite-sex civil partner.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Public Service Pensions Act 2013 (“the 2013 Act”) enables the Secretary of State to make regulations creating schemes of pensions for, amongst others, local government workers.
6.2 In England and Wales, such a scheme is created by the Local Government Pension Scheme Regulations 2013 (“the 2013 Regulations”). The 2013 Regulations were made exercising powers in the Superannuation Act 1972 but section 18 of the 2013 Act provides for them to take effect as scheme regulations.

- 6.3 However, the rules on survivor benefits that accrue from members' service before the 2013 Regulations came into force are contained in the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.
- 6.4 The scheme created by both sets of Regulations is a funded scheme administered by 89 administering authorities specified in Part 1 of Schedule 3 to the 2013 regulations.

7. Policy background

What is being done and why?

- 7.1 The Government has legislated¹ to recognise opposite-sex civil partnerships. Two people who are not of the same sex may now form a civil partnership in England and Wales. Such civil partnerships are treated in law in some regards as akin to a same-sex couple who are in a civil partnership and in other regards like an opposite-sex married couple.
- 7.2 These regulations set out how this affects the survivor benefits which would be payable on account of members of the Local Government Pension Scheme who enter into such relationships.
- 7.3 Survivor benefits are insurance-style benefits that provide support to the dependent relatives of a scheme member. They are a feature of all public sector pension schemes but the rules differ slightly by different category of survivor, between schemes and have evolved over time as different kinds of relationships have been recognised.
- 7.4 Public sector schemes like LGPS will generally pay benefits based on a deceased husband's service since 6 April 1978, but on a deceased wife's service from 6 April 1988. This is because of historical differences in social security benefits and National Insurance contributions.
- 7.5 When survivor benefits were first introduced for same-sex civil partnerships these were based on the scheme member's membership from 6 April 1988. In response to the recent Supreme Court case of Walker, the government has agreed to amend all public sector schemes so that for same-sex civil partners, all service from 6 April 1978 is now included.
- 7.6 However, government policy is that public sector pension schemes should pay the same survivor benefits in relation to opposite-sex civil partnerships as they would for those in opposite-sex marriages. This means that a male survivor of an opposite-sex civil partnership would be treated the same as a widower in a traditional marriage.
- 7.7 These regulations therefore distinguish between the benefits payable depending on whether the relevant scheme member was in a same-sex or opposite-sex civil partnership.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

¹ The Civil Partnership (Opposite-Sex Couples) Regulations 2019

9. Consolidation

- 9.1 The amendments made by these Regulations are relatively minor and it is not considered appropriate to consolidate the 2013 Regulations at this time.

10. Consultation outcome

- 10.1 A consultation on allowing opposite-sex couples to form civil partnerships was carried out from 10 July to 20 August 2019². The consultation outlined the government's plans for extending eligibility and the range of rights and entitlements that should be made available to opposite-sex civil partners. Officials at the Ministry of Housing, Communities and Local Government have also met with their counterparts at the Local Government Association to discuss the most effective means of implementing the government's policy.
- 10.2 That consultation set out the government's policy on survivor benefits in public sector pensions and that position has not changed. A full government response to the consultation will be issued in due course.

11. Guidance

- 11.1 No guidance is necessary to accompany these Regulations.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because it relates to the maintenance of existing regulatory standards.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Luke Hall MP has made the following statement:

“The government believes that opposite-sex marriages and civil partnerships should enjoy similar survivor benefits in LGPS. The government has no plans to equalise treatment between female and male survivors of opposite-sex marriage in public service pension schemes. The European Court of Justice judgment in Barber found that occupational pension schemes were required to provide equal pensions to men and women, including survivors' benefits, in relation to relevant employment from 17 May 1990. We have already exceeded what was required in that judgment but I shall keep this matter under review as society and case-law evolves.”

² <https://www.gov.uk/government/consultations/civil-partnerships-next-steps-and-consultation-on-conversion>

15. Contact

- 15.1 Jeremy Hughes at the Ministry of Housing, Communities and Local Government, telephone: 0303 444 3131 or email: Jeremy.Hughes@communities.gov.uk, can answer any queries regarding the instrument.
- 15.2 Suzie Clarke, Deputy Director for Local Government Finance, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Luke Hall MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.