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## CIVIL PARTNERSHIP AND OCCUPATIONAL PENSION SCHEMES

### 1 INTRODUCTION

The Civil Partnership Act 2004 (CPA) comes into force on 5 December 2005 which will allow the first civil partnerships to be formed by Christmas. CPA is designed to provide a system of registration for same-sex relationships and does not apply to heterosexual couples. Civil partners will be in a relationship akin to marriage in respect of the laws of survivorship and entitlement to benefits, and pensions are no exception.

### 2 KEY POINTS

Civil partners will have rights akin to spouses in respect of pensions. Schemes will need to ensure that they operate so that civil partners will be entitled to receive:

- contracted-out survivors' benefits relating to service on or after 6 April 1988; and
- all other survivors' benefits relating to service on or after 5 December 2005.

Schemes will need to amend their rules to confirm that the contracting-out benefits are to be paid to a civil partner.

### 3 CIVIL PARTNERSHIPS

CPA will allow two individuals to register as civil partners provided that:

- they are of the same sex;
- they are not already in an existing civil partnership or lawfully married;

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- they are not within the prohibited degrees of relationship (mirroring the prohibited degrees of relationship for heterosexual marriage);
- they are both over the age of 18 or are over 16 and have consent of the appropriate people or bodies (in England and Wales and Northern Ireland) or are 16 or over in Scotland.

Those wishing to enter into a civil partnership must give 15 days' notice before the registration ceremony can take place, so the first civil partnerships can be formed on 21 December 2005.

## **4 IMPACT ON PENSIONS**

From 5 December 2005, it will be unlawful to treat a civil partner differently to a married person in relation to benefits under a pension scheme. The "marital status" protection under the Sexual Orientation Regulations (which came into force almost two years ago)<sup>1</sup> allowed more favourable benefits to be paid to spouses. This reference to "marital status" has therefore been amended to ensure equivalence between spouses and civil partners.

CPA (and the Regulations made under this Act) treats contracted-out rights and benefits over and above contracted-out rights separately in respect of the period before 5 December 2005, so we have followed this distinction in this Alert. For information on:

- contracted-out rights, please see section 5
- other rights, please see section 6.

As always, a key issue relates to making changes to scheme rules. Section 67 of the Pensions Act 1995 prevents a change being made to a scheme which would or might affect a member's accrued rights or entitlements unless the member

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<sup>1</sup> Please see our Sackers Extra Alert: "New anti-discrimination laws come into force" dated 20 November 2003

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consents or the scheme actuary certifies that the change would not adversely affect such rights or entitlements. But it is clearly the intention of the CPA that, within the parameters, wherever scheme rules refer to spouses they should also include civil partners.

### **5 CONTRACTED-OUT RIGHTS**

Regulations made under the CPA provide for a surviving civil partner to receive survivors' benefits in contracted-out schemes on the same basis as the contracted-out rights that must be provided for widowers. These provisions will be retrospective to 6 April 1988, the date that contracted-out benefits for widowers were introduced.

#### *Guaranteed minimum pensions (GMP)*

From 5 December 2005, if a member dies leaving a civil partner, the survivor will be entitled to a GMP calculated in the same way as a widower's GMP. Because a widower's GMP is payable on the death of a member regardless of whether the member married before or after their own GMP came into payment, GMPs will be payable to a surviving civil partner even if the member's GMP is already in payment or comes into payment before the civil partnership is formed.

#### *Reference scheme test*

If the scheme is contracted-out on the reference scheme test basis, surviving civil partners will be entitled to reference scheme survivors' benefits on the same basis as a spouse. But because the reference scheme test does not require a pension to be paid if the deceased scheme member was not married when they started to receive their pension, unless the scheme rules say otherwise, the new law will not require a surviving civil partner to be provided with a benefit if the member's pension was already in payment before their partnership was registered.

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### *Protected rights*

In a contracted-out money purchase scheme (COMP) the protected rights element of a member's pension pot must be used to provide survivors' benefits on the death of the member – either before or after retirement. But since April 2002 if the member is unmarried at the date they start to draw a pension, they can opt for a single life annuity instead.

### *Making contracting-out changes*

The contracting-out changes are not overriding and so schemes which are contracted-out will need to make changes to accommodate civil partners. Although section 67 is a consideration here, it is clearly the Government intention that civil partners should be entitled to survivor's contracted-out benefits. So we believe that it is reasonable to conclude that, although retrospective, the changes can be made to scheme rules. Remember also that if the scheme is contracted-out on the reference scheme basis the scheme actuary will need to certify that the test will still be met (by way of a section 37 certificate).

## **6 BENEFITS OTHER THAN CONTRACTED-OUT RIGHTS**

### *Benefits relating to accrual on and from 5 December 2005*

As a minimum, civil partners must be provided with a survivor's pension on the same terms as a legal spouse for service from 5 December 2005.

As the changes are overriding the amendments to implement this change could be made at any time – although in the meantime the trustees must of course operate the scheme in accordance with the CPA. The trustees do have power to amend the scheme by resolution, although we expect that most will prefer to wait until the next available opportunity to include the changes in a deed of variation – such as when tax simplification changes are made.

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### *Benefits relating to accrual before 5 December 2005*

The new law will not require provision of survivors' pensions for civil partners relating to accrual before 5 December 2005 (except in relation to contracted-out benefits as described above). But employers may wish to make such benefits available for civil partners. There has been some debate within the pensions industry regarding the possibility of making a retrospective amendment. If you are thinking of making a change of this type, because of the limits on scheme amendment powers (including section 67), please discuss this with your usual contact as Sackers.

## **7 OTHER ISSUES**

*Pension sharing on divorce* - It will be possible to dissolve or annul a civil partnership. Accordingly, the existing legislation relating to pension sharing on divorce will be amended to allow pension sharing and earmarking between former civil partners.

*Tax Simplification* - We also understand that the tax simplification legislation will be amended to make reference to civil partners, where appropriate.

## **8 KEY ISSUES FOR EMPLOYERS / TRUSTEES**

- If your scheme is contracted-out, discuss with your advisers how to introduce and administer the retrospective contracting-out changes.
- Schemes will need to ensure that they operate so that civil partners will be entitled to receive survivors' benefits relating to service on or after 5 December 2005.
- Consider whether you wish to go further than the minimum and, for example, treat civil partners equally with spouses in respect of pre-5 December 2005 pensionable service (section 67 would need careful consideration here).