



All things being equal

Preparing your pension scheme for Opposite-Sex Civil Partnerships (“OSCPs”)

From 2 December 2019, legislation will be implemented which will enable opposite-sex couples to apply for civil partnerships in England and Wales. Legislation is expected in Scotland and Northern Ireland in the near future for the same purpose.

The government’s stated policy intention is that, for the purposes of occupational pension scheme rights, OSCP’s will be treated in law in the same way as opposite-sex marriages.

Whilst there is uncertainty as to the expected take-up of OSCP’s, an impact assessment undertaken by the government in July of this year has estimated that take-up over the next ten years could be in the region of 20,000 OSCP’s per year. This would result in additional DB occupational pension scheme liabilities of £0.5 to £2 million per year in England and Wales. It is therefore worth acting as soon as you can to ensure that your scheme is ready for OSCP’s. Both public and private pension schemes will be affected.

OSCP’s entered into in England or Wales will be capable of being registered from 31 December 2019. However, it is also worth noting that existing overseas OSCP’s from jurisdictions which already allow them (for example the Isle of Man and the Netherlands, where almost a quarter of registered partnerships are now OSCP’s), will automatically be recognised in England and Wales with effect from 2nd December 2019.

What should schemes do?

1 Scheme rules –

- Review your scheme’s rules and make any required changes to properly reflect OSCP’s, for example to the scheme’s death benefit provisions and definitions of, or referring to, civil partners.

Note that, as legislation stands at present, female survivors of OSCP’s will be entitled to receive a widower’s GMP, rather than the more generous widow’s GMP that is payable to female survivors of marriage. This position is inconsistent with the government’s stated position that OSCP’s should be treated in the same way as opposite-sex marriages. (see “Future developments” overleaf).

- Required changes should ideally be made under the scheme’s amendment power. Where the scheme trustees or managers either do not have the power to make such amendments, or the process is liable to be unduly complex, lengthy or difficult (for example where the employer is uncooperative), trustees may consider making use of the statutory power to amend by resolution.

- 2 Timing** – changes should be effective from 2 December 2019. While OSCP’s in England and Wales can only be registered from 31 December 2019 (because of the required 28-day notice period), overseas OSCP’s will be recognised from 2 December 2019.
- 3 Scheme documentation** – make any updates to scheme documentation, including booklets, forms, websites and scheme administration records (both manual and electronic).
- 4 Communications** – it may be worthwhile considering whether any of the scheme’s members have entered into overseas OSCP’s. All members should, in due course, be informed of the relevant changes.
- 5 Pension liabilities** – consider the impact of OSCP’s on pension scheme liabilities. OSCP’s are expected to increase pension liabilities because of the additional cost of survivor benefits for people in OSCP’s who would not otherwise have entered into an opposite-sex marriage. This is anticipated to affect around a third of schemes providing survivor benefits who do not already provide these for unmarried opposite-sex couples.



Future developments

- 1 Conversion of marriages to OSCPs** – it is anticipated that the government will legislate to permit conversion of marriages to OSCPs following the consultation on this issue which closed in August 2019. While updating the scheme rules for OSCPs, it would therefore be worth considering what changes may need to be made to allow for this possibility (if any).
- 2 Anomaly in relation to survivors' pensions which include a GMP element** – as noted above, female survivors of OSCPs will be treated differently when compared to female survivors of marriage when it comes to the calculation of survivors' pension which include GMPs. The government may, in due course, wish to address this anomaly because it contradicts its stated policy intentions.

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