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Same sex marriage – Survivors' benefits

Background

Under the Civil Partnership Act 2004, the legal 'minimum' requirement was for civil partners to be granted the same pension rights as spouses in relation to:

- all pension benefits accrued on and after 5 December 2005

and for contracted-out schemes:

- all contracted-out benefits earned on or after 6 April 1988

Employers and Trustees had to decide whether they wished to provide only the legal 'minimum' benefits or to recognise civil partners as spouses in relation to all benefits accrued by the member regardless of the period the benefits were earned, or the date the civil partnership took place.

The DWP estimates that one third of all DB Schemes chose to restrict the benefits payable to civil partners and adopted the legal 'minimum' requirement only.

Marriage (Same Sex Couples) Act 2013

The Government decided that further changes were required in relation to same sex partnerships and from the summer of 2014 it will be lawful for same sex couples to marry.

The Marriage (Same Sex Couples) Act 2013 received Royal Assent on 17th July 2013, and states that "***marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples***".

Impact of the Act on Pension Benefits

The Act also contains an exemption which allows schemes to prevent a **same** sex spouse from

receiving the same survivors' benefit as an **opposite** sex spouse.

This legislation is, in fact, similar to that relating to the civil partnership legislation, in that, the 'minimum' requirement is to base survivors' benefits payable to a **same** sex survivors on:

- Pensionable service the member had completed from 5 December 2005 (rather than full service)

and for contracted- out schemes

- Any contracted-out benefits payable must be based on rights built up from 6 April 1988.

Actions required

The trustees should consider the following:

What did the employer decide to do in 2005 with regard to Civil Partners. Were they provided with the minimum restricted benefit required by law or were they allowed the same full benefits as those enjoyed by an opposite sex spouse? How does the employer wish to treat survivors of same sex marriages?

The definitions in the rules of "marriage" and "spouse" etc. may need to be reviewed. For example, is it clear that the term "spouse" means only an opposite sex spouse and does not include a same sex spouse? A rule amendment may be required.

A dispute in *Walker v Innospec*. challenges whether it is lawful to treat a Civil Partner differently to an opposite sex partner under EU law. The appeal in this case will not be heard until 2014.

Finally, the Act requires the Secretary of State to carry out a review of the differences in treatment between same sex and opposite sex partners. His report is required to be published by 1 July 2014.

In view of these uncertainties the trustees should seek legal advice on whether a rule amendment is required and if so the timing, as it may be prudent to await the outcome of the Secretary of State's review.



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