



PENSION SCHEMES (MARRIAGE AND CIVIL PARTNERSHIP (AMENDMENT) ACT 2016) ORDER 2016

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Statutory Document No. 2016/0199



Pension Schemes Act 1995

PENSION SCHEMES (MARRIAGE AND CIVIL PARTNERSHIP (AMENDMENT) ACT 2016) ORDER 2016

Approved by Tynwald: 20 July 2016
Coming into Operation in accordance with article 2

The Treasury makes the following Order under section 1 of the Pension Schemes Act 1995.

1 Title

This Order is the Pension Schemes (Marriage and Civil Partnership (Amendment) Act 2016) Order 2016.

2 Commencement

If approved by Tynwald, this Order comes into operation on 22 July 2016¹.

3 Effect of extension of marriage: further provision

- (1) This Order makes provision corresponding to Part 6 (occupational pensions and survivor benefits) of Schedule 4 to the Marriage (Same Sex Couples) Act 2013² (of Parliament) (effect of extension of marriage: further provision).
- (2) The Schedule (which makes provision in relation to the Pension Schemes Act 1993³ as it has effect in the Island⁴) has effect.

¹ Tynwald approval is required by section 1(4) of the Pension Schemes Act 1995.

² 2013 c.30.

³ 1993 c.48.

⁴ See SD 531/95.

MADE 19TH JULY 2016

W E TEARE
Minister for the Treasury

SCHEDULE

[Article 3(2)]

**PROVISION CORRESPONDING TO PART 6 (OCCUPATIONAL PENSIONS AND
SURVIVOR BENEFITS) OF SCHEDULE 4 TO THE MARRIAGE (SAME SEX
COUPLES) ACT 2013 (OF PARLIAMENT) (EFFECT OF EXTENSION OF
MARRIAGE: FURTHER PROVISION)**

1 Pension Schemes Act 1993 (of Parliament) amended

The entries relating to the provisions of the Pension Schemes Act 1993⁵ in the Schedule to the Pension Schemes Act 1993 (Application) Order 1995⁶ specified in this Schedule are amended, and are subject to other provision, in accordance with paragraphs 2 to 9.

2 Meaning of certain terms

- (1) Section 8 (meaning of certain terms) is amended as follows.
- (2) In subsection (2) in the definition of “guaranteed minimum pension”⁷, after “widower’s” insert **aa**, surviving same sex spouse’s **bb**.

3 Minimum pensions for widows and widowers

- (1) Section 17 (minimum pensions for widows and widowers) is amended as follows.
- (2) In subsection (2)—
 - (a) in paragraph (a) after “man” insert **ca**, or a woman in a relevant gender change case, **bb**; and
 - (b) after paragraph (c)⁸ insert—

ca	(d) if the earner is a man who has a guaranteed minimum under that section, the weekly rate of the widower’s pension will not be less than the surviving same sex spouse’s guaranteed minimum;
cb	(e) if the earner is a woman (other than in a relevant gender change case) who has a guaranteed minimum under that section, the weekly rate of the widow’s pension will not be less than the surviving same sex spouse’s guaranteed minimum. bb .

⁵ 1993 c.48.

⁶ SD 531/95.

⁷ Section 8(2) amended by paragraph 1 of Schedule 1 to S.I. 2005/2050 (see SD 744/05).

⁸ Paragraph (c) added by paragraph 4 of Schedule 1 to S.I. 2005/2050 (see SD 744/05).

- (3) In subsection (4)⁹ after “partner’s” insert **“or surviving same sex spouse’s”**.
- (4) In subsection (5) at the beginning insert **“In the case of a woman who is the widow of a man,”**.
- (5) In subsection (6)—
- (a) at the beginning insert **“In any other case,”**;
- (b) after “widower’s” insert **“, widow’s”**.
- (6) After subsection (9)¹⁰ insert—
- “(10)** In relation to an earner who is a woman, a reference in this section to a relevant gender change case is a reference to a case where—
- (a) the earner is a woman by virtue of a full certificate (within the meaning given by section 1 of the Gender Recognition Act 2009) having been issued, and
- (b) the marriage of the earner and her widow (that ends with the earner’s death) subsisted before the time when the certificate was issued.
- (11)** This section is subject to regulations under section 38A.

4 Survivors’ benefits

- (1) Section 24D¹¹ (survivors’ benefits) is amended as follows.
- (2) In subsection (2) after “earner”, in the first place where it appears, insert **“is a man married to a woman or a woman married to a woman in a relevant gender change case, and the earner”**.
- (3) In subsection (3)—
- (a) after “earner”, in the first place where it appears, insert **“is a married woman (other than in a relevant gender change case), a man married to a man, or a civil partner, and the earner”**; and
- (b) after “widower” insert **“, widow”**.
- (4) After subsection (3) insert—
- “(4)** In relation to an earner who is a woman, a reference in this section to a relevant gender change case is a reference to a case where—
- (a) the earner is a woman by virtue of a full certificate (within the meaning given by section 1 of the Gender Recognition Act 2009) having been issued, and

⁹ Subsection (4) amended by paragraph 4 of Schedule 1 to S.I. 2005/2050 (see SD 744/05).

¹⁰ Subsection (9) added by paragraph 4 of Schedule 1 to S.I. 2005/2050 (see SD 744/05).000

¹¹ Section 24D inserted by section 14 of the Pensions Act 2007 (see SD 193/09).

(b) the marriage of the earner and her widow (that ends with the earner's death) subsisted before the time when the certificate was issued.

(5) This section is subject to regulations under section 38A. **22**.

5 Alteration of rules of contracted-out schemes

(1) Section 37¹² (alteration of rules of contracted-out schemes) is amended as follows.

(2) For subsection (4)¹³ substitute—

23(4) The reference in subsection (3) to a person entitled to receive benefits under a scheme includes a person who is so entitled by virtue of a qualifying relationship only in such cases as may be prescribed.

(5) For that purpose a person is entitled to receive benefits by virtue of a qualifying relationship if the person is so entitled by virtue of being—

(a) the widower of a female earner;

(b) the widower of a male earner;

(c) the widow of a female earner, except where it is a relevant gender change case; or

(d) the survivor of a civil partnership with an earner.

(6) In relation to a widow of a female earner, the reference in subsection (5)(c) to a relevant gender change case is a reference to a case where—

(a) the earner is a woman by virtue of a full certificate (within the meaning given by section 1 of the Gender Recognition Act 2009) having been issued, and

(b) the marriage of the earner and her widow (that ends with the earner's death) subsisted before the time when the certificate was issued.

(7) This section is subject to regulations under section 38A. **22**.

6 Regulations about relevant gender change cases


(1) Before section 39 insert—

23 38A Regulations about relevant gender change cases

(1) The Treasury may, by regulations, make provision for—

¹² Section 37 substituted by paragraph 39 of Schedule 5 to the Pensions Act 1995 c.26 (see SD 501/97).

¹³ Subsection (4) amended by paragraph 12 of Schedule 1 to S.I. 2005/2050 (see SD 744/05).

- (a) section 17,
 - (b) section 24D, or
 - (c) section 37,
- to have its special effect in relevant gender change cases only if conditions prescribed in the regulations are met.
- (2) Regulations under subsection (1) may, in particular, prescribe conditions that relate to the provision of information by—
- (a) one or both of the members of married same sex couples, or
 - (b) the survivors of such couples.
- (3) The Treasury may, by regulations, make further provision about cases where (because of regulations under subsection (1))—
- (a) section 17,
 - (b) section 24D, or
 - (c) section 37,
- does not have its special effect in relevant gender change cases.
- (4) Regulations under subsection (3) may, in particular, provide for the section in question to have its ordinary effect in relevant gender change cases.
- (5) Regulations under subsection (1) or (3) may, in particular, modify or disapply any enactment that concerns information relating to—
- (a) the gender or sex of a person, or
 - (b) the change of gender or sex of a person,
- including any enactment that concerns requests for, or disclosure of, such information.
- (6) In this section, in relation to section 17, 24D or 37—
- (a) **“relevant gender change case”** has the same meaning as in that section;
 - (b) **“special effect”** means the effect which the section has (if regulations under subsection (1) of this section are ignored) in relation to relevant gender change cases, insofar as that effect is different from the section’s ordinary effect;
 - (c) **“ordinary effect”** means the effect which the section has in relation to same sex married couples in cases that are not relevant gender change cases. .

7 Further provisions about effect of entitlement to guaranteed minimum pension on payment of social security benefits

- (1) Section 47 (further provisions about effect of entitlement to guaranteed minimum pension on payment of social security benefits) is amended as follows.
- (2) In subsection (1) after “widower” insert **66**, surviving same sex spouse **67**.

8 Basis of revaluation

- (1) Section 84 (basis of revaluation) is amended as follows.
- (2) In subsection (5) after “widower”¹⁴ insert **66**, surviving same sex spouse **67**.

9 Methods of revaluing accrued pension benefits

- (1) Schedule 3 (methods of revaluing accrued pension benefits) is amended as follows.
- (2) In paragraph 1(1E)(b)¹⁵ after “widower” insert **66**, surviving same sex spouse **67**.

¹⁴ Subsection (5) amended by paragraph 12 of Part 3 of the Schedule to S.I. 2005/2053 (see SD 745/05).

¹⁵ Subparagraphs (1E) substituted by paragraph 2 of Schedule 2 to the Pensions Act 2008 (see SD 851/09).

*EXPLANATORY NOTE**(This note is not part of the Order)*

The Marriage and Civil Partnership (Amendment) Act 2016 provides that, as a result of the extension of marriage to same sex couples under that Act, marriage has the same effect in law in relation to such a couple as it does in relation to an opposite sex couple.

This Order makes provision in relation to the Pension Schemes Act 1993 (as it has effect in the Island) to give effect to the extension of marriage to same sex couples so as to extend requirements on occupational pension schemes that are or have been contracted out to provide survivor benefits to widows or widowers of a marriage of a same sex couple.

The provision made corresponds to Part 6 (occupational pensions and survivor benefits) of Schedule 4 to the Marriage (Same Sex Couples) Act 2013 (of Parliament) (effect of extension of marriage: further provision).