

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (the “**Act**”) was signed into law by President McAleese on 19 July 2010 and is expected to come into force before the end of this year.

Employers and pension scheme trustees should review, and if necessary, update the rules of their pension schemes to provide for the provision of benefits to a member’s civil partner and ensure that all such benefits are properly funded.

Regarding pension adjustment orders, pension scheme trustees should familiarise themselves with the detailed procedures set out in the Act and ensure that each pension adjustment order received by them in respect of a civil partner or a qualified cohabitant’s benefits is capable of implementation.

For most people, a person's pension entitlement is their second most valuable asset after the home and, before the passing of the Act, unmarried couples, whether of the same or opposite sex, had no legal rights and entitlements to lay claim to their partner’s pension entitlement on the ending of a relationship.

The Act now provides:

- a statutory mechanism for the registration of same-sex partnerships, setting out the duties and responsibilities of registered civil partners and the consequences of the dissolution of these partnerships;
- the recognition of cohabitant agreements between unmarried same-sex and opposite-sex couples and between unregistered cohabiting same-sex couples; and
- protection to financially dependent cohabitees at the end of cohabiting relationships who have not entered into cohabitant agreements.

Civil Partners

The Act deals with the civil registration of same-sex partnerships (“**civil partnerships**”) which, once registered, subject the couples to rights, obligations and protections comparable to those enjoyed by married couples. The civil partnership can then only end on the death of a civil partner or its dissolution by a court.

The Act specifically provides that a benefit under a pension scheme that is provided for the spouse of a person is deemed to provide equally for the civil partner of a person. This means that if a pension scheme provides for a spouse’s pension, the civil partner of a member of the pension scheme is entitled to the same benefit. Some pension schemes allow for discretionary benefits to be paid to spouses on the death of a member and pension scheme rules should be reviewed and, if necessary, updated so as to apply to civil partners too.

The special treatment afforded to married persons under the equal pension treatment provisions set out in the Pensions Act 1990 has been extended to civil partners by the Act.

In circumstances where a civil partnership is dissolved, the court may now make a pension adjustment order in favour of the non member civil partner which is broadly comparable to those currently available upon judicial separations and divorce. The major difference between pension adjustment orders made on judicial separation and divorce to those made on the dissolution of a civil partnership is the absence of any reference in the Act to the position of the children or dependents of civil partners.

Cohabitees

Cohabiting Couples are not accorded the same rights as married couples or registered civil partners but the Act does impose certain rights and obligations on both opposite-sex and same-sex couples who are either unmarried or not registered in a civil partnership and who have not specifically decided to opt out of these protections.

The Act provides protection to the financially dependent party at the end of a long-term cohabiting relationship whether on the breakdown of the relationship or on death and such a party can apply to the court for a pension adjustment order in favour of the non-member cohabitant. To avail of such an order, a qualified cohabitant must have been living with another cohabitant as a couple for 5 years or for 2 years where there is a child of the relationship.

Next Steps

The Act is expected to come into force before the end of this year and will fundamentally change the law in relation to non-married couples in Ireland. Employers and pension scheme trustees should review, and if necessary, update the rules of their pension schemes to provide for the provision of benefits to a member's civil partner and ensure that all such benefits are properly funded.

Regarding pension adjustment orders, pension scheme trustees should familiarise themselves with the detailed procedures set out in the Act and ensure that each pension adjustment order received by them in respect of a civil partner or a qualified cohabitant's benefits is capable of implementation.

Eugene F. Collins Employment & Employee Benefits Group will be happy to assist in implementing the required changes. Contact Liam Connellan at 202 6400 or at lconnellan@efc.ie for further advice in this regard.