



Tribunals Service
Gender Recognition Panel

Gender Recognition

**Gender Recognition Guidance for married couples
and civil partners where one or both partners wish
to apply for a gender recognition certificate**

Updated June 2006

How the private pension rights of married couples and civil partners may be affected if one or both partners gets a Gender Recognition Certificate

Introduction

The Gender Recognition Act allows transsexual people to apply for a Gender Recognition Certificate that gives them legal recognition in their acquired gender. However, in order to obtain a [full](#) Gender Recognition Certificate a person who is married or a civil partner must first dissolve their marriage or civil partnership because same-sex marriage or opposite-sex civil partnerships are not recognised in the UK.

This note gives information about the ways in which your private pension arrangements might be affected when your marriage or civil partnership is dissolved, even if you intend to carry on living together and sharing your financial arrangements. It also tells you what further information you may need to get from your private pension scheme. It should be read alongside the Guidance on Benefits and Pensions contained in the Gender Recognition Application Pack. Further information is also available from the National Association of Pensions Funds who have issued a Guidance Note with the Association of British Insurers (ABI) to help pension schemes deal with these matters.

Who does the information in this note apply to?

This information note is for you if:

- you are married and either you or your husband or wife is thinking about applying to a Gender Recognition Panel for a full Gender Recognition Certificate; or
- you are a civil partner and either you or your civil partner is thinking about applying to a Gender Recognition Panel for a full Gender Recognition Certificate; and
- either one of you is, or both of you are, a member of an **occupational or personal pension scheme** (see Appendix 1 for a description of these schemes).

The information does not apply to you or your husband or wife or your civil partner if you decide:

- not to dissolve your marriage or civil partnership and not apply for a Gender Recognition Certificate; or
- not to proceed beyond the interim Gender Recognition Certificate stage – the interim Gender Recognition Certificate is issued pending dissolution of marriage or civil partnership.

If the transsexual person or their husband or wife or civil partner is a member of an occupational pension scheme, the couple will need to find out the effect that dissolving their marriage or civil partnership will have on their future financial arrangements. This is

because if one of the couple dies, many occupational schemes, particularly those in the public sector, pay a widow's, widower's or surviving civil partner's pension only to a legal husband or wife or civil partner. People in this position should therefore find out what effect the ending of their marriage or civil partnership could have on their scheme benefits. Occupational pension schemes may also be known as workplace, work-based, employer, company pension schemes or superannuation schemes, although these terms are sometimes used to describe personal pensions available through an employer.

Couples who have dissolved their marriage or civil partnership so that one partner can obtain a full Gender Recognition Certificate will need to find out from their pension scheme not only what effect dissolving their marriage or civil partnership will have on their potential benefits from their scheme but also the effect of marrying or forming a civil partnership after getting the Gender Recognition Certificate.

In any interim period between dissolving a marriage or civil partnership so that one partner can obtain a full Gender Recognition Certificate and the formation of another legally recognised relationship, both partners will be treated as two separate individuals.

Where the transsexual person or their husband or wife or civil partner is a member of a personal pension scheme (including a **stakeholder pension scheme** – see Appendix 1), dissolving the marriage or civil partnership should have no effect on any arrangements that are already in place for the provision of a survivor's pension. However, where a pension is not yet in payment, ending the marriage or civil partnership may affect the way in which the pension fund must be used at retirement. People in this position should seek advice from their pension provider or adviser.

How dissolving your marriage or civil partnership could affect the benefits provided by your private pension scheme

Because same sex marriages and opposite sex civil partnerships are not recognised in the UK, the only way that a married person or a civil partner will be able to obtain a full Gender Recognition Certificate will be to dissolve their marriage or civil partnership.

Should you decide to do this, once your marriage or civil partnership has been dissolved, your pension scheme will no longer be able to treat you and your partner as being legally married or as civil partners. This could have an effect on future pension payments depending on the type of scheme you belong to and the rules of that scheme.

Also, if either you or your husband or wife or civil partner are members of a private pension scheme (either an occupational pension scheme or a personal pension scheme), it is possible that the scheme is contracted-out. Contracted-out is the term used to describe a scheme that provides benefits in place of the State Second Pension (formerly known as the State Earnings Related Pension Scheme). When people join a contracted-out scheme, most or all of the second pension is provided by the private pension scheme rather than the State.

You may belong to an occupational or personal (including stakeholder) pension scheme. But if you don't know what type of scheme you belong to or the rules it has for paying survivors' benefits to unmarried partners or those living together as if they were civil partners, you can find out by contacting the people who run your scheme

or your adviser. Appendix 1 on pages 11 and 12 gives an outline of the different types of schemes. To find out more about the basic State Pension and the State Second Pension, you should refer to the Guidance on Benefits and Pensions in the Gender Recognition Application pack.

How dissolving your marriage or civil partnership affects – widows', widowers' and surviving civil partners' survivors benefits

Defined benefit schemes (also known as salary-related schemes, see Appendix 1, Table A) that contract out must, as a condition of being allowed to contract out, make provision for benefits for widows, widowers and surviving civil partners where a scheme member dies before his or her wife or husband or surviving civil partner as long as certain conditions are met. This requirement applies only to the contracted out rights of scheme members with a husband or wife or civil partner. This means that if a member of a contracted-out salary related pension scheme dissolves his or her marriage or civil partnership, the scheme will not have to provide a survivor's pension should the member die before his or her ex-husband, ex-wife or ex-civil partner. However, where an application for ancillary relief is submitted to the Court, the value of any pension rights may be shared between the scheme member and his or her spouse or civil partner as part of the financial settlement if the couple consent to, or the court orders, pension sharing.

Some schemes do, however, pay survivor benefits to unmarried heterosexual and same-sex partners so members of these schemes may not be affected should they dissolve their marriage or civil partnership and decide to continue to live together as a couple. This may apply to the non contracted out rights in a contracted out scheme. It may also apply to a scheme which is not contracted out.

Either you or your husband/wife or civil partner will need to contact the trustees or managers of your/your husband/wife/civil partner's scheme to find out how dissolving your marriage or civil partnership might affect you or your husband/wife/civil partner's entitlement to a survivor's pension should one of you die before the other.

How registering a civil partnership may affect your pension benefits

Contracted-out Salary Related Schemes (Defined Benefit Schemes) –
see Appendix 1 – Table A

From 5 December 2005, salary related schemes that contract-out are required to make provision for a survivor's pension to be paid to civil partners. Survivor's benefits for civil partners will be based on the contracted-out pension rights built up from 6th April 1988.

However, this is a minimum requirement and applies only to the benefits which are derived from the contracted-out rights. In practice, schemes may calculate the survivor's pension by reference to the whole of the rights held in the scheme and may also provide a survivor's pension for unmarried opposite or same-sex partners but this will depend on the rules of the scheme. You should therefore find out what type of survivor's benefits are payable by your scheme and to whom the scheme makes them payable. Appendix 2 on page 13 gives more details on how survivor benefits might be affected if you register as civil partners of each other following recognition of your acquired gender.

Contracted-out Money Purchase Schemes (Defined Contribution Schemes) – Appendix 1 – Table B

Currently, the requirement for contracted-out money purchase schemes to provide a survivor's pension applies only to that part of the pension made up from the contracted out rights (these are called "protected rights") – rights derived mainly from the National Insurance contribution rebate. In practice, many schemes pay a survivor's pension on the whole of the pension in payment.

The amount of pension payable by contracted-out money purchase schemes depends upon how much money you have in your own individual pension pot. It is the scheme member who bears the cost of making the provision for a survivor's pension by way of a lower starting pension. That is why most schemes also allow their members to use the non protected rights part of their pension fund to purchase a pension providing for a survivor's pension for both same-sex and unmarried opposite sex couples.

This means that people who have dissolved their marriages or civil partnerships can still make provision (but will not be compelled to do so) for a survivor's pension to be paid to their former husband or wife or civil partner in the event that they pre-decease them, provided that they are still a couple. They will be able to do this without having to form a civil partnership. You should still, however, contact your scheme or adviser for full details of how your benefits would be affected in these circumstances, so that you can make a decision that is best suited to you. From 5 December 2005 when civil partnerships were introduced, defined contribution schemes are required to provide a survivor benefit for a surviving civil partner based on the protected rights built up from 6th April 1988, where the member is a civil partner at the point of retirement.

Pensions from a contracted-out money purchase scheme that are already in payment before any change of gender will not be affected by the new rules.

Appropriate Personal Pension Schemes (including Contracted-out Stakeholder Schemes) – see Appendix 1 – Table C

As with contracted-out money purchase schemes, the protected rights must be used to purchase an annuity (a pension payable for life). The annuity must provide for a survivor's pension when the scheme member is married or a civil partner at the time the protected rights are annuitised. The rest of the fund may be used to purchase a single-life annuity. However, there is nothing in the rules that prevents anyone using the whole of the fund to purchase an annuity providing for survivor's benefits for a partner with whom he or she is living as a couple. This provision also applies to both same-sex and unmarried opposite sex couples.

This means that both **transsexual men** and **transsexual women** (or their ex-husband/ex-wife/ex civil partner if they are the scheme member) will still be able to make provision for any surviving former husband or wife or civil partner if they continue to be a couple. The main change will be that people in this situation will no longer be compelled to make this provision from any protected rights pension unless they subsequently form a civil partnership with their former husband or wife or marry their former civil partner.

Appropriate personal pension schemes will be required to provide a survivor benefit for a surviving civil partner based on the protected rights built up from 6th April 1988, where the member is a civil partner at the point of retirement.

Pensions from appropriate personal pensions that are already in payment before any change of gender will not be affected by the new rules.

What you need to consider prior to seeking dissolution of your marriage or civil partnership

Before dissolving your marriage or civil partnership and when thinking about any financial settlement, you will need to find out which type of scheme you belong to and if your pension will be taken into account as part of any financial settlement. For example, you should find out the answers to the following questions:

- Is your scheme salary-related (defined benefit) or money purchase (defined contribution)?
- Is your scheme contracted-out of the State Second Pension scheme?
- What provision does the scheme make, or can a scheme member choose to make, for widows, widowers, surviving civil partners or other survivors?

You can find this out from information booklets provided by your scheme, from your employer, from your adviser, or from the trustees or managers of the scheme.

What the Court can do about pension arrangements when a marriage or civil partnership is dissolved

When a marriage or civil partnership is dissolved, if there is an application for ancillary relief, the Court must take account of the value of any pensions that the couple may have. The value of a pension is treated as a financial asset. As part of the financial settlement on divorce, annulment or dissolution, the court can make a pension sharing order or a pension attachment order.

Under the terms of a **pension sharing order** the couple can share the value of a pension. It is a matter for the court to decide the percentage split. For example the court could order a 20%/80% split in favour of either the ex-husband, ex-wife or ex-civil partner. This means that the amount deducted from the member's pension will be used to buy pension rights held separately in a pension scheme in the name of the former spouse or former civil partner. The pension derived from the pension sharing order will become payable when the former spouse or civil partner reaches retirement age. Pension sharing is only permissible as part of a financial settlement ordered by the court.

A **pension attachment order** will provide that a portion of the member's pension will be paid by the pension scheme direct to the former spouse or civil partner on behalf of the member from the date that payment of the pension to the member commences. The court will specify in the order the portion of the pension to pay to the former spouse or former civil partner. The former spouse or former civil partner will not be given a pension pot in his or her own name.

Frequently asked questions

The following are examples of the more general type of questions you may have about your pension rights and what will happen to them should you or your husband, wife or civil partner obtain a full Gender Recognition Certificate.

Q1 What will happen if I want to continue to live with my former husband or wife as if we were still married and continue to share the same financial arrangements?

A Same-sex marriages are not legally recognised in the UK, in circumstances where a couple who were formally married wish to remain together in a legally recognised relationship, they can choose to form a civil partnership after they have dissolved their marriage and a full Gender Recognition Certificate has been obtained.

Q2 What will happen if I want to continue to live with my former civil partner as if we were still in a civil partnership and continue to share the same financial arrangements?

A As opposite sex civil partnerships are not legally recognised in the UK, in circumstances where a couple who were formerly civil partners wish to remain together in a legally recognised relationship, they can choose to marry their former civil partner after they have dissolved their civil partnership and a full Gender Recognition Certificate has been obtained.

Q3 When did the civil partnership changes take place and how will they make a difference?

A These changes came into effect from 5 December 2005. This means that people who register as civil partners of each other will be entitled to many of the benefits and allowances that were formerly only available to married couples. For example, civil partners will qualify for a survivor's pension from their civil partner's occupational pension scheme, should he or she die first and if the other qualifying conditions are met.

Q4 When I left my previous employment, the company pension scheme bought an insurance policy/annuity contract that will pay my pension when I retire. Will this be affected?

A No. The pension rights that you built up will have been secured by a policy that was contracted on the basis of your birth gender and this will not be affected.

Q5 I am a member of my employer's salary-related occupational pension scheme. If my ex-husband or ex-wife and I obtain a pension sharing order, what will happen to that order if at some later date we become civil partners?

A When a pension sharing order is made one spouse's pension is reduced by the percentage ordered by the court. An amount equivalent to the deduction must be used to provide a package of rights in a pension scheme for the other spouse. This means that each spouse will have a pension in his or her own right. The member's pension will become payable when he or she reaches the scheme's retirement age and the former spouse's pension will become payable from his or her normal benefit age. Please note that during the period between the marriage being dissolved and forming a Civil Partnership, the couple will be

treated as separate individuals. However, once a civil partnership has been formed, the beneficiary of the pension sharing order will also be entitled to a survivor's pension from his or her civil partner's occupational scheme should the civil partner, who is the scheme member, die first.

Q6 I am a member of my employer's salary-related occupational pension scheme. If my ex-civil partner and I obtain a pension sharing order, what will happen to that order if at some later date we marry?

A When a pension sharing order is made one civil partner's pension is reduced by the percentage ordered by the court. An amount equivalent to the deduction must be used to provide a package of rights in a pension scheme for the other civil partner. This means that each civil partner will have a pension in his or her own right. The member's pension will become payable when he or she reaches the scheme's retirement age. Please note that during the period between the civil partnership being dissolved and a marriage taking place, the beneficiary of the pension sharing order will also be entitled to survivor's pension from his or her husband/wife's occupational scheme should the husband/wife, who is a scheme member, die first.

Q7 I have a personal pension. If I get divorced or dissolve my civil partnership and obtain a pension sharing order, what would happen to that order if at sometime in the future I remarry or form a civil partnership?

A When a pension sharing order is made, one spouse's/civil partner's pension is reduced by the percentage ordered by the court. An amount equivalent to the deduction must be used to provide a package of rights in a pension scheme for the former spouse or former civil partner. This means that each spouse/civil partner will have a pension in his or her own right. The member's pension will become payable when he or she reaches the scheme's retirement age. Please note that during the period between the civil partnership being dissolved and a marriage taking place, the beneficiary of the pension sharing order will also be entitled to survivor's pension from his or her husband/wife's occupational scheme should the husband/wife, who is a scheme member, die first.

Q8 My husband/ wife or civil partner is a member of a salary-related occupational pension scheme and we are thinking of dissolving our marriage/civil partnership so that one of us can get a full Gender Recognition Certificate. My ex-husband/ex-wife or ex-civil partner is then likely to re-marry or register a Civil Partnership with someone else. What will happen to the widow's/widower's or surviving civil partner's pension that I would have been entitled to if we had stayed married/civil partners?

A After your marriage/civil partnership has been dissolved you will no longer be entitled to widow's/widower's/civil partner's benefit under the rules on contracting out. The widow's/widower's/surviving civil partner's pension or benefit which may be payable on the basis of your ex-husband's/ex-wife's or ex-civil partner's pension rights will be payable to the new partner when your ex-husband/ex-wife or ex-civil partner dies. If the scheme is not contracted-out, the payment of a survivor benefit will depend on the rules of the scheme. The section entitled 'What the Court can do about pension arrangements when a marriage or civil partnership is dissolved' details how the value of pension rights can be shared as part of your financial settlement on dissolution of marriage or civil partnership.

Q9 I am a member of my employer's salary related occupational pension scheme which does not provide survivors' benefits for unmarried couples. What will happen if my husband/wife or civil partner and I dissolve our marriage or civil partnership but continue to live together with the same financial arrangements as when we were married/civil partners?

A When this happens, the scheme will no longer be legally required to pay a survivor's pension to your former husband/wife or civil partner should you die before him or her. It is therefore important that you find out if the scheme is still prepared to pay a survivor's pension in these circumstances. If they aren't, you may wish to make alternative provision for your partner. For example, you could ask the court to make a pension sharing order or earmarking order as part of the financial settlement on dissolution of marriage/civil partnership and/or consider forming a civil partnership or marrying.

Q10 Who can I contact to find out more about my pension scheme?

A If you belong to an occupational pension scheme you will need to approach the pension scheme manager or the trustees of the scheme. You might also have been given a scheme booklet when you joined the scheme which might be of some assistance. If you have a personal or stakeholder pension, you should approach the pension provider or Financial Adviser who set up your pension arrangement.

Q11 I am unhappy with the advice and information I have been given. How can I resolve any outstanding issues?

A In the first instance, you should seek to clarify and resolve any outstanding queries/issues with your scheme administrators/advisers.

If a satisfactory solution cannot be reached, members of occupational and personal pension schemes have the right to go to OPAS (the Pensions Advisory Service) and the Pensions Ombudsman if they have a grievance about their scheme. The Pensions Ombudsman will usually suggest that grievances are first considered by OPAS and will usually only investigate complaints that have been through the scheme's own internal dispute procedure.

OPAS provides a free source of informal advice and help on all matters relating to occupational and personal pension schemes. Many of the cases it deals with are resolved by explanation and an agreed settlement. OPAS has no statutory powers of enforcement and must rely on explanation and persuasion. OPAS refers the small proportion of individuals whose cases it cannot resolve to the Pensions Ombudsman if it believes there is a case to be answered. OPAS can be contacted at 11 Belgrave Road, London, SW1V 1RP. The telephone number for OPAS is 0845 601 2923.

Further information on the following is available in the Benefits and Pensions Guidance contained in the Gender Recognition Application Pack.

War Disablement Pensions and War Widows Pensions

Bereavement Benefits

Widow's Benefits

Income-Related Benefits

Incapacity Benefit (IB)

Contracted-Out information for those aged 60-65

State Pensions

This leaflet is for guidance only. It is not a complete statement of the law.

Appendix 1

Please see the boxes below and on the next page for more information on contracting out and the different types of pension schemes available:

Box A tells you about contracted-out Salary-Related Schemes

Box B tells you about contracted-out Money Purchase Schemes

Box C on the next page tells you about Appropriate Personal Pension Schemes and Stakeholder Pension Schemes

There are two main types of contracted-out occupational pension schemes run by employers, these are shown in boxes A and B:

(A) Contracted-out salary-related (COSR) schemes – also called Defined Benefit Schemes

- Contracted-out salary-related schemes will give you a pension related to your earnings (usually during the years leading to retirement) and the number of years you have been in the scheme. Contracted-out salary-related schemes must meet certain requirements before they are allowed to contract out. From April 1978 to April 1997, contracted-out salary related schemes were required to provide a Guaranteed Minimum Pension (GMP) which was broadly equivalent to rights given up in the State scheme. This requirement changed in April 1997 and from that date schemes no longer have to provide a GMP. Instead, as a condition of contracting out, schemes must satisfy a test of overall quality. This change does not affect your entitlement to any GMP that you may have built up before April 1997.

(See the Guidance on Benefits and Pensions to find out how gender recognition might affect the payment of your Guaranteed Minimum Pension.)

(B) Contracted-out money purchase (COMP) schemes – also called Defined Contribution schemes

- Contracted-out money purchase schemes will give you a pension that is based on the value of the fund you have built up during the years you have been in the scheme. In general, the greater the value of your pension fund at retirement, the greater the pension payable. As with contracted-out salary related schemes, such schemes must meet certain requirements before they are allowed to contract out. The main requirement being that the employer must make contributions, known as 'Minimum Payments' directly to the scheme on a monthly basis.

Like Personal Pensions, contracting-out began for money purchase schemes in 1988.

Appendix 1 continued

(C) Appropriate Personal Pension Schemes, Stakeholder Pension Schemes and Group Personal Pension schemes

Since April 1988, an employee has been able to start a personal pension which, if it meets certain conditions, can be used in place of what is now the State Second Pension (formerly SERPS). Such schemes are known as Appropriate Personal Pension (APP) schemes and, as with contracted-out money purchase schemes, are money purchase arrangements. The main difference being that an APP is an individual contract between the employee and the pension provider. This means that you can continue to make payments to the scheme even when you switch employments on a regular basis.

Group Personal Pension schemes are a collection of individual personal pensions grouped together by a pension provider, following a request from an employer.

Individuals who contract-out of the State Second Pension scheme receive a rebate of National Insurance Contributions. The amount of rebate is paid directly into the individual's personal or stakeholder pension scheme and becomes protected rights (rights made up mainly of the rebate on National Insurance Contributions and their investment return), which must be used to purchase an annuity (pension payable for life) at retirement.

If you take out an APP, you will get a pension based on the value of the fund you have built up during the years you have been in the scheme, usually after buying an annuity. Here again, the greater the value of your pension fund at retirement, the greater the pension payable.

Stakeholder pension schemes were introduced on 6 April 2001 and like personal pensions are an option for employees who wish to contract out of the State Second and the pension payable at retirement is based on the value of the fund you have built up during the years you have been in the scheme.

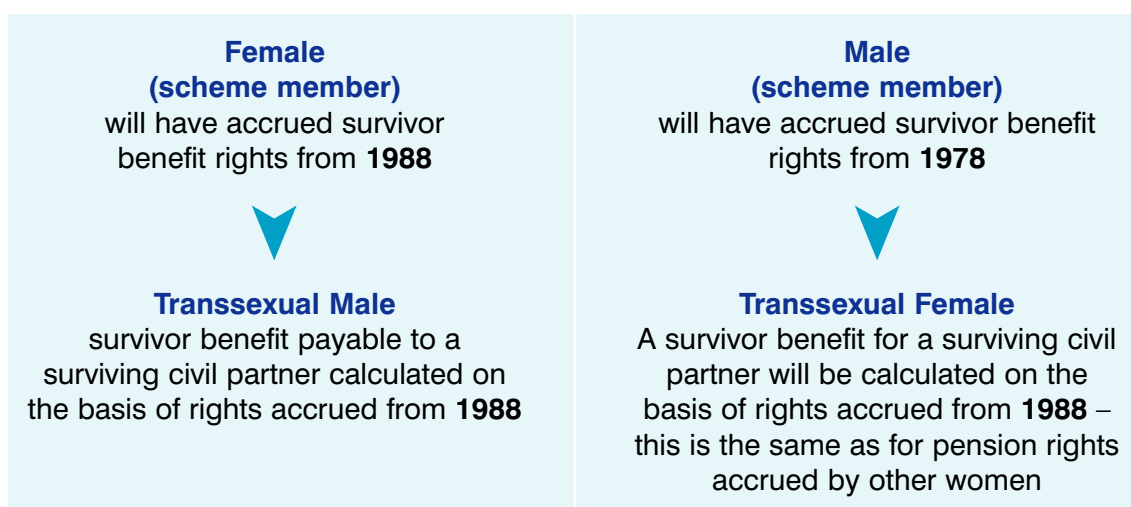
Appendix 2

How registering a civil partnership may affect the pension benefits arising from contracted-out rights¹

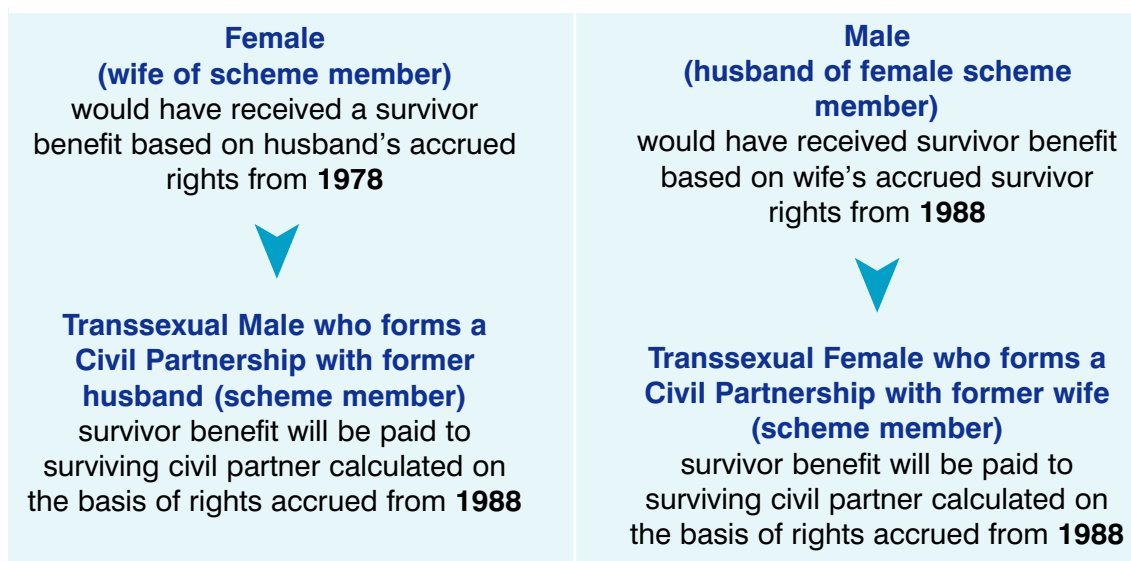
Contracted-out Salary Related Schemes (Defined Benefit Schemes)

From 5 December 2005, when the Civil Partnership Act was introduced, members of schemes that are contracted-out accrue rights to survivor benefits for a civil partner based on service from 1988. This replicates the position for widowers.

If you are a scheme member who changes gender and registers a Civil Partnership with your former husband or wife



If your partner is the scheme member and you are the one changing gender and subsequently enter into a Civil Partnership with your former husband or wife



¹ The effect on non-contracted-out rights will depend on the scheme's own rules.