

Amendment to Employment Equality (Sexual Orientation) Regulations 2003

Full Regulatory Impact Assessment

1. **Summary:** The amendment is likely to incur an additional one-off implementation cost of about **£0.8 million**. This will fall to business.
2. **Objective:** The amendments to the regulations ensure that trustees of pension funds as well as employers are not able to discriminate on the basis of a worker's sexual orientation.
3. **Risk:** At the moment there is a risk that pension fund trustees could administer the scheme so as to disadvantage workers on the basis of their sexual orientation, even though the regulations do not allow employers to do this. This would run counter to the intentions of the regulations.
4. **Costs and Benefits:** The Regulatory Impact Assessment (RIA) for the regulations assumed that workers would not be subject to discrimination in their occupational pension provision on the basis of sexual orientation. Thus the main costs and benefits of the regulations on employers, individuals and the exchequer have already been accounted for. See annex A for a copy of the RIA on the regulations.
5. However, these amendments will result in additional one-off implementation costs in that trustees of private sector occupational pension schemes will need to become familiar with the regulations. These have not been previously estimated.
6. We assume that on average each trustee takes 15 minutes to familiarise themselves with the legislation. This could either be part of a general training course for trustees, or through oral or written briefings from employers and will vary according to the type of pension managed. The cost to trustees is taken to be the opportunity cost of their time, or the average cost of their alternative employment. We assume that for 15 minutes this will be £3.60 per trustee.¹
7. In August 2003 there were about 230,000 trustees of occupational pension funds.² This would make a total cost of about **£0.8 million**, which is likely to be passed on to business.³
8. **Consultation:** The Government launched a public consultation on 15 September 2003. The consultation closed on 10 October 2003. The Government received fifteen responses.⁴

¹ The hourly cost of employment is £11.19 (average hourly wage in Great Britain, source New Earnings Survey 2002 from Nomis) times 1.3 (to take into account non-wage costs) = £14.55. The cost for 15 minutes is £14.55 x 0.25 = £3.64.

² Source: The Pension Scheme Registry Database held by the Occupational Pensions Regulatory Authority. This is probably an over-estimate as in some cases the same people may be acting as trustees to more than one scheme.

³ The total cost of becoming familiar with the legislation is £3.64 x 230,000 = £837,200.

9. As a result of the consultation the Government has reviewed the scope of the legislation and made small changes to the definitions of members and prospective members to exclude pension credit members. We have also amended our regulations to ensure it is clear that individuals can take cases to the Pensions Ombudsman as well as Employment Tribunals.

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister

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Date.....

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⁴ from consultants; insurance companies; a union; organisations that represent pension funds, actuaries and lawyers; and the Office of the Pension Ombudsman

Employment Equality (Sexual Orientation) Regulations 2003

Regulatory Impact Assessment

1. Intended Effect

The proposal will make it illegal to discriminate against individuals in any matter regarding employment because of their sexual orientation. Currently, there is no employment legislation in the UK covering discrimination on the grounds of sexual orientation. Therefore, all the possible effects of legislation, as implied by the legislation, will need to be considered. These effects generally fall under the headings of awareness; recruitment; training & promotion; pensions; and terms & conditions of employment.

2. Numbers Affected⁵

Although **all** workers are covered by the legislation, we assume, in this Regulatory Impact Assessment, that lesbian, gay men and bisexual workers are the most likely groups to be affected by discrimination on the grounds of sexual orientation⁶. Even though the legislation also covers those perceived as lesbian, gay men or bisexual, we do not attempt to quantify this aspect due to insufficient information. There are no reliable data on the sexual orientation of workers, but using various sources, we estimate that between 5% and 7% of the population are most likely to be affected by the legislation⁷. The current

⁵ The legislation will also cover various Office holders and some employees outside Great Britain but with close connection to Great Britain. The additional numbers covered will be small relative to the population - because the absolute numbers in these categories will be relatively small and only an estimated 5-7% will be affected by the legislation.

⁶ In "Discrimination against gay men and lesbians", Social and Community Planning Research (May, 1995), Dawn Snape, Katarina Thomson and Mark Chetwynd found that 40% of the total population think that there is discrimination in recruitment on grounds of sexual orientation. Similarly, the British Social Attitudes Survey (BSAS) 2001, found that just over a third of the population thought that employers hardly ever refused an applicant a job on grounds of sexuality but nearly two thirds believed that employers discriminated in recruitment a lot or sometimes. Further, just over half believed that it was sometimes right to discriminate on grounds of sexuality and that one in twenty believed that it is usually or always right to do so.

⁷ The National Survey of Sexual Attitudes and Lifestyles (NATSAL 2000) of 16-44 year olds, found that 5.4% of men and 4.9% of women had ever had a homosexual partner compared to just 2.6% of both genders who had had recent experience in Johnson et al, Sexual behaviour in Britain: Partnerships, Practices and HIV Risk Behaviours, The Lancet, Volume 358, Number 9296, Dec 1, 2001, pp 1835-42. About 5% of those questioned in exit polls identified themselves as 'gay' in US Voter News Service exit polls 1996 and 2000. Plug, E and Berkhout, P (2001) found that about 5% of their Dutch sample had gay, lesbian or bisexual sexual preferences in Effects of Sexual Preferences on Earnings in the Netherlands. About 6% of a national sample of Americans identified as gay or lesbian in Yankelovich Monitor Research (1994). Laumann et al found the incidence of homosexual desire was just over 7%

level of employment in Great Britain is just under 28 million,⁸ which suggests that the legislation may be expected to cover between about 1.3 and 1.9 million workers.⁹

There is some evidence of discrimination on grounds of sexual orientation. Stonewall (1993) found that 15% of lesbians and gay men had suffered at least one experience of discrimination in relation to their working lives¹⁰. The National Survey of Sexual Attitudes and Lifestyles (1990) found that just over a fifth of lesbian and gay workers had been harassed due to their sexuality¹¹. We, therefore, assume that about 20% of lesbian, gay men and bisexual employees have suffered discrimination at work due to their sexuality. This implies that between 275,000 and 390,000 employees have experienced discrimination due to their sexual orientation¹². In addition, there will be individuals who suffer from the fact that they cannot disclose their sexual orientation because of fear of discrimination¹³. Further, between 4 and 8% (55,000 to 156,000) claimed to have lost their jobs because of their sexuality.¹⁴

3. Awareness of the Legislation

A key stage in the implementation of the legislation will be to communicate to employers the nature and extent of the changes being introduced, and employers will need to consider, and possibly seek advice on, any changes required by their organisation. The format of the guidance, and the method of communicating it, will naturally help determine the response by employers. It will also be necessary for employees and other workers to gain awareness of their new employment rights.

of both men and women in the USA. Janus and Janus (1993) found that 9% of men and 5% of women identified as gay or lesbian. Some studies have found higher estimates, such as Kinsey (1948) and Sell et al (1995), whilst others using estimates of cohabiting same sex couples have found much lower estimates, for example the LFS finds just 0.2% of UK households consist of same sex couples.

⁸ From the LFS (March 2002 – May 2002), it was estimated that the level of employment in Great Britain was 27,784,000 (Table A.11, Labour Market Trends, August 2002).

⁹ The number of lesbians, gay men and bisexual people in employment is estimated to be between 27.784 million * 0.05 = 1.389 million and 27.784 million * 0.07 = 1.945 million.

¹⁰ "Less equal than others: A Survey of Lesbians and Gays at Work", Stonewall 1993. Further, it found that 21% of lesbian and gay male workers suspected they had been discriminated against.

¹¹ In contrast, a survey conducted by the TUC in 1999 of 450 lesbian and gay male employees shows that 44% have suffered some form of discrimination.

¹² The estimate is from 1.389m*0.2 = 277,840 to 1.945m*0.2 = 388,976.

¹³ About a half of all lesbians and gay men, in all above-mentioned surveys, concealed their sexuality from their work colleagues.

¹⁴ Stonewall (1993) and NATSAL (1990) found 8% and 4%, respectively, had been dismissed due to their sexuality. This works is about (1.389m*0.04) = 55,560 to (1.945m*0.08) = 155,600 people.

3.1. Costs to business

3.1.1. Reading and understanding guidance

There will be a time cost to employers of reading guidance and/or seeking advice initially. All businesses will have to spend some time considering the guidance published by the DTI. The amount of time, and number of businesses spending time, is dependent upon the size of the business, the current equal opportunity policies of that business and the awareness of the managers towards these issues.

It is envisaged that each employer will have access to a leaflet that explains the changes to employment law resulting from all the Article 13 regulations. We assume that a manager in every business spends about 15 minutes reading this guidance. Further consultation regarding the regulations can be obtained by telephone. Currently, it is assumed that ACAS will take on this dissemination role. Further follow up calls may take about 15 minutes for questions related to sexual orientation.

In total, small employers, those with less than fifty employees, may be expected to spend about 30 minutes in total reading and understanding the guidance on sexual orientation. Medium to large employers will be expected to take more time, about an hour, in reading and considering the guidance, as they may sometimes produce and disseminate guidance for personnel departments and other staff. These are assumptions of the average time spent dealing with the guidance. There may be variation around these averages.

There are about 1.18 million businesses in Great Britain,¹⁵ of which about 1.14 million are small employers and just over 37,000 are medium to large employers¹⁶.

The costs for each small business will be about £11¹⁷. The total cost for small businesses of reading and understanding the guidance is, therefore, about **£13 million**¹⁸. The cost for medium to large business is about £25 each¹⁹.

¹⁵ There are 1,207,995 businesses with employees in the UK, Source: Small Business Service Statistics (SBS) 2001. There were 31,555 businesses with employees in Northern Ireland in 1999, Source: SBS 1999 (no regional data is, as yet, available for 2000 or 2001). This implies that there were about 1,176,440 businesses with employees in Great Britain in 2001.

¹⁶ There are 1.169 million small employers out of a total of 1.208 million employers in the United Kingdom. Using this ratio, we estimate that there are about 1.14 million small employers in Great Britain ($1.169\text{m}/1.208\text{m} * 1.18\text{m} = 1.14\text{m}$). Similarly there are about 38,175 medium to large size firms in the United Kingdom. We estimate that there are about 37,290 medium to large firms in Great Britain. ($38,175/1.208\text{m} * 1.18\text{m} = 37,290$).

¹⁷ In 2002, the average hourly pay, excluding overtime, of a manager/administrator (1 digit SOC90) in Great Britain was £17. 93. Source: New Earnings Survey (NES) 2002 from NOMIS. The cost of a manager's time includes non-wage costs and overheads, estimated at 30% of wage costs. The hourly cost of a manager's time is, therefore, £17. 93 * 1.3 = £23.31. Half an hour reading and understanding the guidance will cost £ 23.31 * 0.5 = £ 11.65.

¹⁸ The cost for small firms is $1.14\text{m} * 11.65 = £13.29$ million.

The total cost for medium to large businesses of reading and understanding the guidance is, therefore, just under **£1 million**²⁰.

The total costs for awareness and guidance are, therefore, around **£14 million**²¹. These are one off implementation costs.

3.1.2. Production cost of guidance

There may be some medium to large employers who produce official guidance for personnel departments and other staff, detailing the changes. This guidance would cover the range of recruitment and development issues affected by the legislation. We assume that these employers update this information regularly and this legislation will be incorporated into these routine revisions. This will involve a small additional cost, which has not been quantified here.

4. Recruitment

A person's sexual orientation may not usually be observable, but there can still be discrimination in recruitment. The Social and Community Planning Research (1995) found that about 6% of lesbians and gay men had tried to get a job and failed. Currently, recruiters might ask pointed questions, for example, about an applicant's marital status such as whether they have a wife/girlfriend (husband/boyfriend). Some employers may encourage family involvement in work-related activities. Protection under the law in other aspects of the employment relationship (such as training, promotion and dismissal) may also encourage a greater number of lesbians, gay men and bisexual people to apply for jobs increasing the pool of possible candidates. Employers benefit from improved efficiency in the selection process, in terms of reduced turnover costs from better matched workers. Employers, however, may incur costs associated with considering a greater number of applications in the selection process (including interviews).

4.1. Benefits to individuals

The main benefits arise from a larger pool of potential applicants. The total labour force (including those unemployed or self-employed) is just over 29 million²², of which about 1.5 to 2 million will be lesbians, gay men or bisexual

¹⁹ In Great Britain in 2001, the average hourly wage, excluding overtime, of a personnel manager (3 digit SOC90 code 124) was £ 18.59. Source: New Earnings Survey (NES) 2002 from NOMIS. The cost of a worker's time includes non-wage costs and overheads, estimated at 30% of wage costs. The hourly cost of a personnel manager's time is, therefore, £ 18.59 * 1.3 = £ 24.17. The cost for medium to large firms to read and understand the guidance is, therefore, £ 24.17.

²⁰ The cost for medium to large firms is 37,290* 24.17= £ 901,299.

²¹ Total cost will be £ 13.29m + £0.901299 million = £ 14.19 million.

²² From the LFS (March 2002 – May 2002), it was estimated that the level of economic activity in Great Britain was 29,315,000 (Table A.11, Labour Market Trends, August 2002).

people.²³ If we assume that about half of those, in the SCPR finding above, were not as productive as other applicants, then about 3% of lesbians, gay men and bisexual workers may have suffered discrimination in recruitment. This suggests that the number of potential applicants who have experienced this form of discrimination in the recent past is about 44,000 to 62,000 individuals (about 0.2 to 0.3% of total employment)²⁴. If we assume that these individuals eventually found less well paid jobs, the effect of the legislation may be a better matched and rewarded job. Assuming that these individuals gain a 10% increase in wages, these individuals will be able to earn an extra £2,000 each²⁵. This gives a benefit of between £88 and £124 million pounds²⁶. In most cases, other workers will be displaced. Even if 90% were pure displacement (affected groups just replacing other workers), the gain would still be between **£9m** and **£12 million** each year.

4.2. Benefits to business

The implications of discrimination for business are a reduced number of potential applicants and the risk of not employing the best person for the job. A CIPD survey found that around 70% of all employers experienced some difficulties in recruiting people in 2001.²⁷ Most of these vacancies, however, will have been filled. The benefit to business of better matching using the increased pool of talent will be the gain in productivity in these difficult to fill vacancies. These gains may be small. We do not attempt to quantify them.

Employers benefit in terms of increased productivity resulting from the better match. This is equivalent to the wage premium and any savings made from a reduction in recruitment costs. Indeed, on average, recruitment costs employers about £4,000 per new worker.²⁸

4.3. Cost to business

The removal of discrimination may encourage more applicants to apply. We have no information on those adverts that specify sexual orientation. Only a small number of advertisements may need to be checked. We assume that a personnel officer spends, on average, about 15 minutes checking the templates for each of these advertisements. Even assuming that 1% of all vacancies, about 60,000, may require attention from personnel staff on the

²³ The total labour force is about 29.315 million. We, therefore, estimate there to be between $29.315m \times 0.05 = 1.466$ million and $29.315m \times 0.07 = 2.052$ million lesbians, gay men and bisexual people in the labour force.

²⁴ Potential applicants who may have suffered discrimination are estimated at between $1.466m \times 0.03 = 43,973$ and $2.052m \times 0.03 = 61,562$.

²⁵ This is derived from 10% of £ 20,098 = £ 2010.0.

²⁶ Estimates are from $43,973 \times £2,010.0 = £ 88.39$ million to $61,562 \times £ 2,010 = £123.7$ million.

²⁷ Table 8: Recruitment difficulties and the average number of weeks to fill a vacancy in 2001 in "Labour Turnover: Survey report, October 2002", Chartered Institute of Personnel and Development (CIPD).

²⁸ The overall average cost of turnover per employee in 2001 was £ 3,462. Table 10: Estimated total cost of labour turnover cost per year (per leaver) 2000 in CIPD (October 2001).

grounds of sexual orientation, the costs are not large²⁹. The total costs, under these generous assumptions, would be **£0.2 million**.³⁰ These are one-off implementation costs.

5. Training and Promotion

Training and promotion are key issues with respect to an individual's career, job satisfaction and general motivation.³¹ Apart from the direct effect on the employer's performance in terms of increased human capital there are benefits arising from improved motivation and staff morale. The legislation will prevent employers from taking discriminatory actions in the fields of training and promotion.

5.1. Promotion

In line with good practice, promotion decisions should be transparent and based on competence related factors. Following the implementation of the legislation, management decisions may come under greater scrutiny and consequently businesses may invest in training and awareness programmes in order to minimise the risk of litigation.

Palmer (1993) found that 5% of lesbian and gay male workers felt that they have been denied promotion because of their sexuality, with a further 19% suspecting that they had been denied promotion. Taking account of misperceptions, we assume that about 5% of all gay and lesbian employees may have been denied promotion because of their sexuality.³² These are between about 69,000 and 97,000 workers³³. Denial of promotion has direct effects on the individuals themselves in terms of reduced income as well as for business in terms of inefficient use of the human capital available. This will have effects on the motivation and productivity of the respective workers.

5.1.1. Benefits to individuals

²⁹ There are an estimated 8 million annual vacancies in the economy. The Employment Service handled around 2.664m vacancies in the twelve months to April 2001 (the latest available figure). About a third of all vacancies are advertised in jobcentres. Not all vacancies, however, are formally advertised. Based on the Age Code of Practice survey evidence, about three quarters of vacancies are advertised. This implies that about 6 million vacancies are advertised each year.

³⁰ In Great Britain in 2002, the average hourly wage of a personnel officer (3 digit SOC90 code 363) was £ 11.33. Source: New Earnings Survey (NES) 2001 from NOMIS. The hourly cost of a personnel officer's time is £ 11.33* 1.3 = £ 14.729. It is assumed it takes 15 minutes to check an advert. Total costs are 60,000 x £ 14.729 (average hourly wage costs of a personnel officer) x 0.25 (15 minutes) = £ 3.68 *60,000 = 220,900.

³¹ See: Measuring the quality of Job, by Rannia M. Leontaridi and Peter J. Sloane, European Low-Wage Employment Research Network, April 2001

³² In "Less equal than others: A survey of lesbian and gay men at work", Anya Palmer, Stonewall, 1993.

³³ The number of lesbians, gay men and bisexual people in employment is estimated to be between 1.389 million and 1.945 million. Therefore, between 1.389m*0.05 = 69,450 and 1.945m*0.05 = 97,250 may have been denied promotion.

We assume that a promotion leads to a 5% increase in annual wage in addition to the increases observed anyway.³⁴ Using the average weekly wage, this increase would be around £1,000 per year.³⁵ Total potential benefits for individuals are, therefore, between £70 and £ 98 million.³⁶ Even if we assume that about 90% of these benefits will displace wage increases of other individuals who are promoted under the current legislation, the total benefits are, therefore, estimated to be between about **£ 7.0 and £ 9.8 million** per year.³⁷

5.1.2. Benefits to business

The increased wages paid to the promoted individuals reflects their increased productivity. Employers also gain from the lower turnover of staff resulting from the better matched workers. We do not attempt to quantify this benefit.

5.1.3. Cost to business

Employers may feel the need to adopt more formal job descriptions and undertake performance and development reviews for staff in order to avoid the possibility of litigation. This is regarded as good practice but it is not a requirement of the legislation, and is, therefore, not costed as such.

5.2. Training

As mentioned above, training is closely related to promotion. Training also has implications for the productivity and the motivation of the workforce.

5.2.1. Benefits

Workers increase their productivity as a result of training. This could be reflected in a higher wage³⁸. Individuals also benefit from increased employability as a result of newly acquired skills. Workers who are denied access to training will feel less valued by the organisation. This can have a negative impact on their performance as well as their general well-being and the morale of other workers. Similarly, employers gain from the increased productivity and motivation of their workers. We do not attempt to quantify any

³⁴ Booth, Francesconi and Frank (2002) find that promotion leads to average wage increases of about 5% for men in “A Sticky Floors Model of Promotion, Pay and Gender”, European Economic Review, forthcoming.

³⁵ Average gross weekly pay in Great Britain in 2002 was £ 386.50. This gives average annual earnings in Great Britain as £ 20,098. Source: New Earnings Survey (NES) 2002 from NOMIS. There is, however, some evidence to suggest that gay and lesbians receive higher than average pay but these studies are based on small samples, such as Arabsheibani, Marin and Wadsworth (2002) “Gay Pay in the UK”, mimeo, Royal Holloway University of London. An increase by 5% is equal to £ 1,005 per year.

³⁶ The benefit is, therefore, from about $69,450 * £1005 = £ 69.79$ million to $97,250 * £1005 = £ 97.736$ million.

³⁷ The benefit arising, after accounting for the deadweight loss, is from $£ 69.79 \text{ m} * 0.1 = £ 6.97\text{m}$ to $£ 97.736 * 0.1 = £ 9.736\text{m}$.

³⁸ Booth, Francesconi and Zoega (2002) found that males gain, on average, about a 3% wage premium from training in the last twelve months. “Unions, Training and Wages: Evidence for British Men” (www.iser.essex.ac.uk/staff/cv/mfrancv.php)

of these, as the available data do not show the extent of discrimination in training decisions on the grounds of sexual orientation.

5.2.2. Costs to Business

If training is undertaken, employers may incur the costs of paying for the training and any loss of output foregone by workers undergoing the training as well as those teaching the trainees. We do not attempt to quantify these costs.

6. Pensions

Many lesbian, gay men and bisexual people affected by the legislation feel that they are discriminated against in terms of some aspects of pension rights, namely the right to survivor benefits. Survivor benefits are granted to a named partner, usually to a spouse, on the death of a pension scheme member. The regulations will require changes to schemes, which allow such benefits to unmarried opposite sex partners, but not to same sex partners. However, schemes will be able to continue to restrict such benefits to spouses, as the regulations expressly provide for benefits which are dependent on marital status to be permitted. The legislation has a derogation that allows states to apply their national laws on marital status. In the United Kingdom, legally married couples can continue to be treated differently to common-law, including same sex, couples. The legislation, therefore, could only apply where pension rights would be accessible to a common-law opposite sex partner but not available to a same sex partner. Research by Stonewall (1993) shows that only 14% of lesbian and gay male workers could, for certain, nominate a same sex partner as a dependent with respect to their pension scheme. A large share did not know (46%). In two fifths of the cases it was either a partner of the opposite sex or a spouse. Taking into account these don't knows, we assume that the share of those who can currently nominate a same sex partner is about 20% of non-heterosexuals whose pay package includes a pension or super-annuation scheme.

To calculate the possible effect of current discrimination we need to identify the number of affected employees covered by a pension scheme. In Great Britain, only 26% of private sector employers with 1 – 19 employees provided any pension provision compared to 64% with 20 or more employees.³⁹ Just over a quarter (26%) of all employees (6.3 million) work in the public sector (including education and health).⁴⁰ These employees are usually covered by a pension. There are about 6.1 million employees working in the private sector for employers with up to 20 employees⁴¹. Of these about 1.6 million are

³⁹ Source: Table 4.1 (p39) in *Employers' Pension Provision 2000*, Alison Smith and Stephen McKay, December 2001.

⁴⁰ Source: LFS, March-May 2002. There are about 6,316,000 employees in the public sector and 17,976,000 employees in the private sector.

⁴¹ Source: LFS, March-May 2002. There are about 6,112,000 employees working in the private sector for employers with fewer than 20 employees.

covered by a pension scheme⁴². There are also 11.9 million employees in larger private sector companies (20+ employees).⁴³ Of these, two thirds are covered by a pension scheme, that is, about 7.8 million⁴⁴. About 8.6 million private sector employees are, therefore, not covered by a pension scheme⁴⁵. In total, about 15.7 million employees are covered by a pension scheme (including 6.3 million in the public sector). Many of these, however, are private pensions, which will not be affected by this legislation.

In order to determine the effect of the proposed legislation, it is necessary to concentrate on occupational pension schemes and distinguish between defined benefit pensions and other pension schemes. In defined contribution schemes and group personal pensions, each member has a share of the overall fund from their and their employer's contributions plus a proportionate share of overall investment returns. When the member reaches pension age, their pot of money is used to purchase an annuity from an insurance company to provide a pension. The member can then choose whether to buy an annuity that provides benefits for a named survivor. These types of pension schemes would not be affected by the regulations, so there would be no additional costs for employers that provide such schemes.

The regulations may, however, give rise to additional costs for employers who provide defined benefit schemes. These will be affected if survivor benefits are granted to non-married opposite-sex partners, but not the same-sex partners.

Public sector

The effect of the legislation will depend upon the nature of the pension scheme. In the public sector, these comprise of (i) public service schemes, such as the Local Government, NHS, Teachers and Civil Service schemes, and (ii) wider public sector schemes, such as nationalised industries and public corporations (see below).

In public service schemes, survivor benefits can only be paid to married spouses. These schemes will not be affected by the new regulations. The Government's policy is that public service schemes may extend survivor benefits to include unmarried partners where that is the wish of members and where members are prepared to pay for the cost of the benefit improvement. Where this is the case, as in the new Civil Service scheme introduced in October 2002, same sex partners would be included in the scheme but employers would not bear any extra cost. There are currently about 5.5 million employees in such public services⁴⁶.

⁴² This is 26% of 6.1 million = 1.589 million.

⁴³ Source: LFS, March-May 2002. There are about 11,865,000 employees working in the private sector for employers with 20 or more employees.

⁴⁴ This is 66% of 11.8 million = 7.83 million

⁴⁵ That is, 4.1 million employees in larger firms (20 or more employees) and 4.5 million employees in small firms (less than 20 employees).

⁴⁶ Source: LFS, March-May 2002. There are about 5,470,000 employees working in the public services. These include central government, Civil Service, local government, police, teachers and NHS workers.

Many schemes in the wider public sector have rules or trustee discretion that allow them to pay pensions to unmarried partners. The new legislation may require these schemes to change their rules towards same sex partners. There are only about 500,000 employees in the wider public sector.⁴⁷ This suggests that, roughly, between 25,000 and 35,000 lesbians, gay men and bisexuals may be employed in the wider public sector.⁴⁸

Private sector and wider public sector

The Government Actuary's Department undertakes periodic surveys of private occupational pension schemes. The last survey also included public sector schemes that were not public service schemes. In 2000, they found about 4.6 million employees in the private sector were covered by defined-benefits occupational pension schemes⁴⁹. A further 100,000 may also be affected as they have hybrid schemes that the regulations may affect.⁵⁰ Between 235,000 and 330,000 lesbians, gay men and bisexual people may be covered by such schemes⁵¹. Roughly, 5% of private schemes provide pensions, as of right, to unmarried partners⁵². About three quarters of private sector schemes have discretion to provide pensions to unmarried partners.⁵³ About four fifths of private sector schemes provide pensions for common-law partners.⁵⁴ Only 38% of these, however, give equal treatment to same sex relationships⁵⁵. On equalising rights, this implies that just over 50% of these private sector schemes may need to change⁵⁶. Therefore about 122,000 to 171,000

⁴⁷ Source: Individual corporation websites. There are about 500,000 employees working in the public sector for nationalised industries, state corporations and other public bodies. These include, amongst others, the Bank of England; British Broadcasting Corporation (BBC); British Nuclear Fuels Ltd; British Railways Board; Channel Four Television Corporation; Civil Aviation Authority; Independent Television Commission; London Transport; and the Post Office.

⁴⁸ The estimate of gay, lesbian, bisexual and transsexuals in the wider public sector is from $500,000 \times 0.05 = 25,000$ and $500,000 \times 0.07 = 35,000$.

⁴⁹ Source: "Occupational Pension Schemes 2000: Eleventh Survey by the Government Actuary – Preliminary results for private sector schemes", Government Actuary's Department, 2001. (www.gad.gov.uk).

⁵⁰ Hybrid schemes combine certain features of defined-benefits and defined-contribution schemes. GAD 2001.

⁵¹ The numbers affected range from $4.7m \times 0.05 = 235,000$ to $4.7m \times 0.07 = 329,000$.

⁵² Source: "Twenty-seventh Annual Survey of Occupational Pension Schemes, 2001" National Association of Pension Funds, 2001.

⁵³ Source: NAPF 2001. 49% of private schemes give trustee's discretion to provide pensions for unmarried partners. A further 25% can provide pensions if the unmarried partner is financially dependent.

⁵⁴ 12% of private pensions do not provide for unmarried couples at all. This issue has not arisen in a further 9%. This gives about 20% of private pension funds that do not provide for unmarried partners.

⁵⁵ Source: NAPF 2001.

⁵⁶ Source: NAPF 2001: Of the 81% of funds which provide pensions for common-law partners, 62% do not provide pensions for same sex couples on equal terms to unmarried opposite sex relationships. In 5% of funds, unmarried couples are already entitled as a matter of course, however, in only about 38% of these are same sex relationships treated on equal terms. Therefore, about 52% may be affected by the regulations. It should be noted that 20% of occupational pension funds, which do not give any provision to unmarried relationships, would not be affected by the regulations.

employees in the private sector may be discriminated against with respect to pensions⁵⁷.

6.1. Benefits to the individual

The benefits to the individual are the benefits to the partner of the employee covered by the pension scheme. We assume a value of the pension scheme of about £3000 per year on average.⁵⁸ Survivor pensions are usually paid at 50% of the rate paid to the pensioner⁵⁹. Thus, the average survivor pension is just £1,500 a year.

Survivor benefits are only paid out in the event of a death to a scheme member. In order to calculate the survivor benefits to the affected groups, it is necessary to look at three different groups of pension members - those that die early (in service); those that retire early and then die; and those who die after retirement. It is the life expectancy of their partners that will determine the duration that survivor benefits are paid. These benefits will initially be low in the first year but gradually increase over time before flattening off.

We can work out an annual probability of dying using GAD life tables. With information on the numbers in employment; having a discriminatory occupational pension; being in the affected groups; having a partner; and living longer than them, we can estimate the number of survivor pensions being paid. The benefits can then be approximated.

6.1.1. Pension members who die early

There are 12.2 million men, aged 20-64, and 10.7 million women, aged 20-59, in employment. Using annualised death rates, 34,500 male employees aged 20-64 and 16,700 female employees, aged 20-59, die each year. This implies that about 1,700 to 2,400 gay men and about 800 to 1,200 lesbians die each year. On average, only 19% have defined-benefit occupational pensions. Just over half of these may be discriminatory. This implies that about 165 to 240 men, and 80 to 120 women may be affected. Assuming that half of these have partners and that they die after the pension member, we have an initial estimate of about 80 to 120 men, and 40 to 60 beneficiaries. This involves an initial first year cost to employers of **£190,000 to £260,000**.

Using GAD estimates for survival rates (and a proportional hazard), and making assumptions concerning re-coupling rates (based on remarriage

⁵⁷ Numbers affected in the private sector could be between $235,000 \times 0.52 = 122,200$ and $329,000 \times 0.52 = 171,080$.

⁵⁸ It should be noted that the distribution of occupational pensions is highly skewed. The mean occupational pension income for a recently retired single pensioner was £95 per week in 2000/1. This is equivalent to £4940 per year. In contrast, the median occupational pension income for a recently retired single pensioner was £57 per week in 2000/1. This is equivalent to £2964 per year. Source: Table 12: The proportion of pensioner units with occupational pension income and the average amount for those in receipt, 1994/5-2000/1, p55, "The Pensioners' Incomes Series 2000/1", The Pensions Group, DWP, May 2002.

⁵⁹ Source: "Occupational Pension Schemes 1995: Tenth Survey by the Government Actuary", Government Actuary's Department, 1995. Table 10.11 shows that most recipients of survivor pensions are entitled to about a half of their partners pension levels.

rates), this cost rises to **£0.9-£1.3 million** after five years, **£1.7-2.5 million** after 10 years, **£3.4-4.7 million** after 20 years and **£6.2-8.7 million** after 40 years.

6.1.2. Pension members who retire early and die before normal retirement age

About 395,000 men and 195,000 women retire early. Using annualised death rates, 4,600 of these men and 900 of these women die each year. This implies that about 230 to 325 gay men and about 45 to 65 lesbians in this group die each year. On average, only 19% have defined-benefit occupational pensions. Just over half of these may be discriminatory. This implies that about 22 to 32 men and 4 to 6 women may be affected. Assuming that half of these have partners and that they die after the pension member, we have an initial estimate of about 11 to 16 male and 2 to 3 female beneficiaries. This involves an initial first year cost to employers of **£20,000 to £28,000**.

Using GAD estimates for survival rates (and a proportional hazard), and making assumptions concerning re-coupling rates (based on remarriage rates), this cost rises to **£0.1-0.14 million** after five years, **£0.19-0.26 million** after 10 years, **£0.34-0.48 million** after 20 years and **£0.58-0.81 million** after 40 years.

6.1.3. Pension members who die after retirement age

About 5.3 million men and 6.9 million women are above the retirement age. Using annualised death rates, 230,000 of these men and 290,000 of these women die each year. This implies that about 11,300 to 15,900 gay men and about 13,800 to 19,400 lesbians in this group die each year. On average, only 19% have defined-benefit occupational pensions. Just over half of these may be discriminatory. This implies that about 1,100 to 1,500 men and 1,400 to 2,000 women may be affected. Assuming that half of these have partners and that half die after their partner, we have an initial estimate of about 275 to 285 male and 350 to 490 female beneficiaries. This involves an initial first year cost to employers of **£930,000 to £1.3 million**.

Using GAD estimates for survival rates (and a proportional hazard), and making assumptions concerning re-coupling rates (based on remarriage rates), this cost rises to **£4.4-6.1 million** after five years, **£8.1-11.3 million** after 10 years and **£13.9-19.5 million** after 20 years and **£21.2-29.7 million** after 40 years.

6.1.4. Summary of pension benefits

The total benefit of the legislation in the first year is, thus, **£1.1-1.6 million**. This rises to **£5.3-7.6 million** after 5 years, **£10-14 million** after 10 years, **£17.7-24.7 million** after 20 years and **£28-39.2 million** after 40 years⁶⁰.

6.2. Costs to business

⁶⁰ A spreadsheet detailing the derivation of these results is available on request.

These additional benefits to pension scheme members need to be paid for. Employers usually foot the bill for these but it is possible for employees to contribute more to their pension schemes in order to cover these extra costs. Pension funds are expected to derive income from their investments. The benefits to beneficiaries (pensioners and survivors) should therefore be above the increased contributions paid by the employer. Using the benefits to individuals to estimate the costs is, therefore, likely to be an overestimate. We use this to ensure that costs on employers are not underestimated⁶¹.

Pension costs to private employers are expected to be no more than, between **£1.1-1.6 million** in the first year. This rises to **£5.3-7.6 million** after 5 years, **£10-14 million** after 10 years, **£17.7-24.7 million** after 20 years and **£28-39.2 million** after 40 years.

7. Other Terms and Conditions

There are other terms and conditions, which may be available to heterosexual employees but not to lesbians, gay men and bisexual employees. These may include time-off for dependants, special leave or travel expenses paid. We have no measure for the value of these benefits but there seems to be some evidence that lesbians, gay men and bisexual employees are discriminated against. A majority of people asked, in the survey by Stonewall (1993), did not know whether all couples were entitled to these. Indeed, 16% said that only heterosexual couples were covered. This discrimination can have costs to employers in terms of low morale and increased absenteeism. It should be noted that, for example, sick leave costs employers about £500 per year per employee.⁶²

8. Other Benefits

One main benefit of the proposal will be an increase the labour market participation of these workers, which can be viewed as an efficiency improvement for the labour market and the economy (increased employment).

In addition, legislation sending a clear signal that discrimination on grounds of sexual orientation is unacceptable may produce a more tolerant workplace culture, where employees who choose to can be more open about their sexuality.

9. Enforcement

⁶¹ It should be further noted that employers pension contributions are exempt from taxation. This tax concession is worth about 30%.

⁶² IPD survey 13, May 2000

As with religion/belief there may be forms of discrimination (such as discriminatory 'canteen culture'), which are difficult to eradicate and hence complaints, cases and tribunals, will inevitably arise.

We assume that, in line with other forms of discrimination, there will be a maximum of about 1,000 cases a year. We further assume that, if employers have complied with the legislation, they will win these cases. On this basis, the compliance cost to business is expected to be around **£2 million**,⁶³ and the cost to government of around **£0.5 million**⁶⁴. These are all recurring annual costs.

10. Impact on Small Businesses

The legislation on sexual orientation should have a smaller impact on small businesses than medium and large businesses. Small businesses will be expected to spend up to 30 minutes each reading the guidance and seeking advice on issues raised. In contrast, larger firms are expected to spend up to an hour on this process although, as a proportion of turnover, the cost may be greater for small firms. The costs of reading and understanding the guidance for each small business will be about £11. The total cost to small businesses is, therefore, about **£13 million**. Further, small firms are unlikely to produce any guidance on these matters. As regards to enforcement, however, there may be a larger impact on small firms, as these are more likely to be taken to employment tribunals than larger firms.

11. Competition

Competition in the labour market will be enhanced by removing firms' ability to discriminate on the grounds of sexual orientation. Labour market competition may also benefit from an increased pool of applicants, increased training and improved promotion prospects. We have been unable to identify any market where competition between firms may be affected by this regulation.

12. Benefits to the Taxpayer

Recruitment, training and promotion lead to income gains to workers and the profit gains to employers. At least 20% of any additional earnings due to promotion, training, recruitment are paid as taxes and national insurance contributions. These gains are just transfers from employers and workers to the Exchequer.

⁶³ The average costs of a tribunal case to an employer are £ 2,000. The calculation above will be an overestimate as it includes awards paid to individuals. We assume full compliance in an RIA and therefore do not include cases won by the applicant. £2000*1000 = £4 million

⁶⁴ The average costs of a tribunal are £540 to the Employment Tribunal Service. Extra costs incurred by the ETS will be, at most, 1000*£540 = £0.54 million.

13. Summary

This summary consists of the quantifiable costs and benefits as well as the non-quantifiable ones. There are many non-quantifiable benefits such as the improved working atmosphere, greater opportunities, and a more diverse workforce.

In total there are net benefits to the proposed legislation. Even considering employers only there is scope for net benefits. The costs to employers consist of a one-off cost is just over **£14 million** for getting to grips with the legislation and an annual recurring cost of **£2 million** for defending tribunal cases. Individuals gain **£15.8 to £22.2 million** each year. The costs of the increased employer pension provision are just a transfer to employees. There is, therefore, a **net gain to the economy** from the removal of discrimination on the grounds of sexual orientation of between **-£0.2 to £6.2 million** in the first year, followed by about **£14-20 million** a year thereafter.

The costs and benefits are summarised on the following page.

| Summary of Costs and Benefits | |
|---|---|
| Employers | |
| Benefits | |
| General | Benefits for business are significant but difficult to quantify precisely. They include ensuring more effective matching of abilities to jobs; better retention of skills and knowledge; avoiding sickness and long-term absences; and better motivation more generally among the workforce. Employment policies based on equality help to avoid complaints and costly tribunal cases. A diverse workforce can be more creative, help business reach wider markets, and create a more positive image. All of these benefits aid productivity. |
| Costs | |
| Awareness & guidance | £14.2 million (one-off) plus small additional cost for producing guidance |
| Recruitment/Advertising | £0.2 million |
| Training | Costs of providing additional training |
| Promotion | Costs of identifying the right workers |
| Pensions | £1.1-£1.6 million in year 1 rising to £28-39.2 million in year 40 (not discounted) less any increased employee contributions, investment gains and any tax concessions (recurring) |
| Non-wage | Some additional costs incurred for non-wage benefits given to employees |
| Enforcement | £2 million (recurring) |
| Total Quantifiable Costs to Employers | £14.4 million (one-off) £3.1-3.6 million in year 1 rising to £30-£41 million in year 40 (recurring) |
| Individuals | |
| Benefits | |
| General | Greater opportunities to match abilities to available jobs; to secure development and training; and plan career progression. Avoiding sickness and long-term absences. Ability to work flexibly, allowing time off for dependents, special leave, travel and accommodation expenses. |
| Recruitment | £ 8.8- 12.4 million (recurring) |
| Training | Greater opportunities, increased wages and improved skills. |
| Promotion | £ 7.0 - 9.8 million (recurring) |
| Pensions | £1.1-£1.6 million in year 1 rising to £28-39.2 million in year 40 (not discounted) less any increased contributions (recurring) |
| Total Quantifiable Benefits to Individuals | £16.9-23.8 million in year 1 rising to £43.8-61.4 in year 40 (recurring) |
| Taxpayers | |
| Benefits | |
| General | Benefits are difficult to quantify but include increased tax and National Insurance Contributions from recruitment, training and promotion. There may also be some marginal reductions in social security payments as more people are encouraged into the labour force. |
| Costs | |
| Awareness and Guidance | Information and awareness costs |
| Enforcement | £0.5 million |
| Total Costs to Taxpayers | £0.5 million |