

Draft Order laid before Parliament under paragraph 3(1)(a) of Schedule 2 to the Human Rights Act 1998.

DRAFT STATUTORY INSTRUMENTS

2021 No. [laying draft]

SOCIAL SECURITY

The Bereavement Benefits (Remedial) Order 2021

Made - - - - ***

Coming into force in accordance with article 1(2)

Provisions about two bereavement benefits in the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and the Pensions Act 2014(b) have been declared(c) under section 4 of the Human Rights Act 1998(d) to be incompatible with a Convention right(e).

The Secretary of State considers that there are compelling reasons for proceeding by way of remedial order(f) to make such amendments to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and the Pensions Act 2014 as she considers necessary to remove the incompatibility.

In accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998, a draft of this instrument was laid before Parliament and was approved by a resolution of each House of Parliament, a document containing a draft of this instrument having previously been laid before Parliament in accordance with paragraph 3(1)(a) of that Schedule.

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by section 10(2) of, and paragraph 1(1), (2) and (3) of Schedule 2 to, the Human Rights Act 1998.

Citation, commencement, effect and interpretation

- 1.—(1) This Order may be cited as the Bereavement Benefits (Remedial) Order 2021.
 - (2) This Order comes into force on the day after the day on which it is made.
 - (3) The amendments made by articles 4 to 9 are to be treated as having had effect from 30th August 2018.
 - (4) In this Order—

(a) 1992 c.7.

(b) 2014 c.19.

(c) [references to McLaughlin and Jackson cases]

(d) 1998 c.42.

(e) See section 1 of the Human Rights Act 1998 for the definition of “the Convention rights” and section 21(1) of that Act for the definition of “the Convention”.

(f) See section 21(1) of the Human Rights Act 1998 for the definition of “remedial order”.

“bereavement support payment” means a bereavement support payment under section 30 of the Pensions Act 2014 or section 29 of the Pensions Act (Northern Ireland) 2015(a) (bereavement support payment);

“widowed parent’s allowance” means a widowed parent’s allowance under section 39A of the Social Security Contributions and Benefits Act 1992(b) or section 39A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(c) (widowed parent’s allowance).

Transitional provisions

2.—(1) Nothing in this Order removes a person’s entitlement to bereavement support payment or a widowed parent’s allowance for any period before this Order comes into force.

(2) A person who is entitled to bereavement support payment or a widowed parent’s allowance immediately before this Order comes into force continues to be entitled to that benefit if and for so long as the person would have been entitled to that benefit but for the making of this Order; and a person who is so entitled, apart from satisfying the condition of making a claim, may make a claim accordingly.

(3) A person’s entitlement by virtue of paragraph (2) is not affected by the fact that another person is entitled to bereavement support payment or a widowed parent’s allowance in respect of the same death by virtue of this Order.

3.—(1) This article applies where, apart from satisfying the condition of making a claim, the claimant is entitled to bereavement support payment or a widowed parent’s allowance as a result of this Order for any part of the period beginning on 30th August 2018 and ending on the day this Order comes into force.

(2) Regulation 19 of the Social Security (Claims and Payments) Regulations 1987 (time for claiming benefit)(d) is to be read in relation to that entitlement as follows—

- (a) in paragraph (2), “three months” is to be read as “12 months”; and
- (b) in paragraph (3BA), “that date of death” is to be read as “the day the Bereavement Benefits (Remedial) Order 2021 comes into force”.

(3) Regulation 19 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (time for claiming benefit)(e) is to be read in relation to that entitlement as follows—

- (a) in paragraph (2), “3 months” is to be read as “12 months”; and
- (b) in paragraph (3BA), “that date of death” is to be read as “the day the Bereavement Benefits (Remedial) Order 2021 comes into force”.

Amendment of the Pensions Act 2014

4.—(1) Section 30 of the Pensions Act 2014 (bereavement support payment) is amended in accordance with the following provisions.

(2) In subsection (1)—

- (a) in paragraph (a), for “or civil partner” substitute “, civil partner or cohabiting partner”;
- (b) after paragraph (a), insert—
 - “(aa) in the case of a person whose cohabiting partner dies, the person is pregnant or entitled to child benefit in circumstances specified under subsection (4) or, where no such circumstances are specified, in such circumstances as the Secretary of State may specify by regulations,”; and

(a) 2015 c.5.
(b) 1992 c.4. [Insertions]
(c) [Insertions]
(d) [Amendments]
(e) [Amendments]

(c) in paragraphs (b) and (c), for “spouse or civil partner” substitute “spouse, civil partner or cohabiting partner”.

(3) After subsection (1), insert—

“(1A) Only one person is entitled to bereavement support payment in respect of one death.

(1B) Where, apart from subsection (1A), more than one person would be so entitled, entitlement is to be determined in accordance with subsections (1C) and (1D).

(1C) Where only one of those persons is a member of the same household as the deceased, that person is entitled.

(1D) Where there is more than one person who is a member of the same household of the deceased and would (apart from subsection (1A)) be entitled—

- (a) if one of those persons is the deceased’s spouse or civil partner and is pregnant or entitled to child benefit in circumstances specified under subsection (2)(aa) or (4), that person is entitled;
- (b) if there is no spouse or civil partner entitled under paragraph (a), the deceased’s cohabiting partner who is pregnant or entitled to child benefit in circumstances specified under subsection (2)(aa) or (4) is entitled (but this is subject to paragraphs (c) to (e));
- (c) if there is more than one cohabiting partner within paragraph (b), the cohabiting partner who has been a member of the same household as the deceased for longest is entitled;
- (d) if there is more than one cohabiting partner within paragraph (b) and they have been members of the same household as the deceased for the same length of time, the cohabiting partner who has the eldest child is entitled;
- (e) in any case where the preceding paragraphs do not determine who is entitled, the Secretary of State must do so.”.

(4) After subsection (6), insert—

“(6A) For the purposes of this section, the Secretary of State may by regulations prescribe—

- (a) circumstances in which the fact that two persons are married to each other, or are civil partners or cohabiting partners of each other, is to be disregarded;
- (b) circumstances in which two persons are to be treated as if they were married to each other or were civil partners or cohabiting partners of each other;
- (c) circumstances in which people are to be treated as being, or as not being, members of the same household.

(6B) For the purposes of this section, two persons are cohabiting partners if they are not married to, or civil partners of, each other but are living together as if they were married or civil partners.”.

Amendment of the Social Security Contributions and Benefits Act 1992

5.—(1) The Social Security Contributions and Benefits Act 1992 is amended in accordance with the following provisions.

(2) In section 39A (widowed parent’s allowance)—

- (a) for “spouse or civil partner” substitute “spouse, civil partner or cohabiting partner” in each place it appears;
- (b) in subsection (1)(b), after “formed a civil partnership” insert “or a cohabiting partnership”;
- (c) in subsection (2)(c), after “civil partner” insert “or cohabiting partner” in both places it appears;

(d) after subsection (3), insert—

“(3A) Only one person is entitled to bereavement support payment in respect of one death.

(3B) Where, apart from subsection (3A), more than one person would be so entitled, entitlement is to be determined in accordance with subsections (3C) and (3D).

(3C) Where only one of those persons is a member of the same household as the deceased, that person is entitled.

(3D) Where there is more than one person who is a member of the same household of the deceased and would (apart from subsection (3A)) be entitled—

(a) if one of those persons is the deceased’s spouse or civil partner and is pregnant or entitled to child benefit as described in subsection (2), that person is entitled;

(b) if there is no spouse or civil partner entitled under paragraph (a), the deceased’s cohabiting partner who is pregnant or entitled to child benefit as described in subsection (2) is entitled (but this is subject to paragraphs (c) to (e));

(c) if there is more than one cohabiting partner within paragraph (b), the cohabiting partner who has been a member of the same household as the deceased for longest is entitled;

(d) if there is more than one cohabiting partner within paragraph (b) and they have been members of the same household as the deceased for the same length of time, the cohabiting partner who has the eldest child is entitled;

(e) in any case where the preceding paragraphs do not determine who is entitled, the Secretary of State must do so.”;

(e) in subsection (4), after “forms a civil partnership” insert “or a cohabiting partnership”;

(f) in subsection (4A), after “subsequent civil partnership” insert “or a cohabiting partnership”;

(g) after subsection (4A), insert—

“(4B) The surviving cohabiting partner shall not be entitled to the allowance for any period after she or he forms a subsequent cohabiting partnership or a civil partnership or marries, but, subject to that, the surviving cohabiting partner shall continue to be entitled to it for any period throughout which she or he—

(a) satisfies the requirements of subsection (2)(a) or (c) above; and

(b) is under pensionable age.”;

(h) in subsection (5)(a), for “spouse’s or civil partner’s” substitute “spouse’s, civil partner’s or cohabiting partner’s”; and

(i) after subsection (5), insert—

“(6) For the purposes of this section, the Secretary of State may by regulations prescribe—

(a) circumstances in which the fact that two persons are married to each other, or are civil partners or cohabiting partners of each other, is to be disregarded;

(b) circumstances in which two persons are to be treated as if they were married to each other or were civil partners or cohabiting partners of each other (or as marrying or forming a civil partnership or a cohabiting partnership);

(c) circumstances in which people are to be treated as being, or as not being, members of the same household.

(7) For the purposes of this section and section 39C, two persons are cohabiting partners if they are not married to, or civil partners of, each other but are living together as if they were married or in a civil partnership (and “cohabiting partnership” is to be read accordingly).”.

(3) In section 39C (rate of widowed parent’s allowance)—

- (a) in subsection (3), for “spouse or civil partner” in each place it appears substitute “spouse, civil partner or cohabiting partner”; and
- (b) in subsection (4), for “spouse or civil partner” substitute “spouse, civil partner or cohabiting partner”.

Amendment of the Bereavement Support Payment Regulations 2017

6.—(1) The Bereavement Support Payment Regulations 2017(a) are amended in accordance with the following provisions.

- (2) In regulation 2 (period for which bereavement support payment is payable)—
 - (a) for “spouse or civil partner” substitute “spouse, civil partner or cohabiting partner” in each place it appears; and
 - (b) after paragraph (3), insert—
 - “(4) Paragraphs (5) and (6) apply where the person is entitled to bereavement support payment—
 - (a) as a result of the amendments made by the Bereavement Benefits (Remedial) Order 2021,
 - (b) on or after 30th August 2018 and before the day the Bereavement Benefits (Remedial) Order 2021 comes into force, and
 - (c) as a result of the death of their cohabiting partner.
 - (5) The period starts—
 - (a) on the day the Bereavement Benefits (Remedial) Order 2021 comes into force, where the person claims the payment twelve months or less after that date; or
 - (b) at the beginning of the period of three months preceding the date the person claims the payment, where the person claims the payment—
 - (i) more than twelve months after the day the Bereavement Benefit (Remedial) Order 2021 comes into force; and
 - (ii) no more than three months after the date the period finishes under paragraph (6).
 - (6) The period finishes at the end of the period of 18 months beginning with the day after the day the Bereavement Benefits (Remedial) Order 2021 comes into force.”.
- (3) In regulation 3 (rate of bereavement support payment)—
 - (a) in paragraphs (1), (2) and (8), for “spouse or civil partner” substitute “spouse, civil partner or cohabiting partner”; and
 - (b) in paragraph (7), insert at the end “(the same applies where a cohabiting partner dies for the purposes of paragraph (1))”.
- (4) In regulation 4 (persons entitled to the higher rate of bereavement support payment), for “spouse or civil partner” in each place it appears substitute “spouse, civil partner or cohabiting partner”.

Amendment of the Pensions Act (Northern Ireland) 2015

7.—(1) Section 29 of the Pensions Act (Northern Ireland) 2015 (bereavement support payment) is amended in accordance with the following provisions.

- (2) In subsection (1)—
 - (a) in paragraph (a), for “or civil partner” substitute “, civil partner or cohabiting partner”;
 - (b) after paragraph (a), insert—

(a) S.I. 2017/410.

- “(aa) in the case of a person whose cohabiting partner dies, the person is pregnant or entitled to child benefit in circumstances specified under subsection (4) or, where no such circumstances are specified, in such circumstances as the Department may specify by regulations;”; and
- (c) in paragraphs (b) and (c), for “spouse or civil partner” substitute “spouse, civil partner or cohabiting partner”.
- (3) After subsection (1), insert—
- “(1A) Only one person is entitled to bereavement support payment in respect of one death.
- (1B) Where, apart from subsection (1A), more than one person would be so entitled, entitlement is to be determined in accordance with subsections (1C) and (1D).
- (1C) Where only one of those persons is a member of the same household as the deceased, that person is entitled.
- (1D) Where there is more than one person who is a member of the same household of the deceased and would (apart from subsection (1A)) be entitled—
- (a) if one of those persons is the deceased’s spouse or civil partner and is pregnant or entitled to child benefit in circumstances specified under subsection (2)(aa) or (4), that person is entitled;
 - (b) if there is no spouse or civil partner entitled under paragraph (a), the deceased’s cohabiting partner who is pregnant or entitled to child benefit in circumstances specified under subsection (2)(aa) or (4) is entitled (but this is subject to paragraphs (c) to (e));
 - (c) if there is more than one cohabiting partner within paragraph (b), the cohabiting partner who has been a member of the same household as the deceased for longest is entitled;
 - (d) if there is more than one cohabiting partner within paragraph (b) and they have been members of the same household as the deceased for the same length of time, the cohabiting partner who has the eldest child is entitled;
 - (e) in any case where the preceding paragraphs do not determine who is entitled, the Department must do so.”.

(4) After subsection (6), insert—

- “(6A) For the purposes of this section, the Department may by regulations prescribe—
- (a) circumstances in which the fact that two persons are married to each other, or are civil partners or cohabiting partners of each other, is to be disregarded;
 - (b) circumstances in which two persons are to be treated as if they were married to each other or were civil partners or cohabiting partners of each other;
 - (c) circumstances in which people are to be treated as being, or as not being, members of the same household.
- (6B) For the purposes of this section, two persons are cohabiting partners if they are not married to, or civil partners of, each other but are living together as if they were married or in a civil partnership.”.

Amendment of the Social Security Contributions and Benefits (Northern Ireland) Act 1992

8.—(1) The Social Security Contributions and Benefits (Northern Ireland) Act 1992 is amended in accordance with the following provisions.

(2) In section 39A (widowed parent’s allowance)—

- (a) for “spouse or civil partner” substitute “spouse, civil partner or cohabiting partner” in each place it appears;
- (b) in subsection (1)(b), after “formed a civil partnership” insert “or a cohabiting partnership”;

- (c) in subsection (2)(c), after “civil partner” insert “or cohabiting partner” in both places it appears;
- (d) after subsection (3), insert—
 - “(3A) Only one person is entitled to bereavement support payment in respect of one death.
 - “(3B) Where, apart from subsection (3A), more than one person would be so entitled, entitlement is to be determined in accordance with subsections (3C) and (3D).
 - “(3C) Where only one of those persons is a member of the same household as the deceased, that person is entitled.
 - “(3D) Where there is more than one person who is a member of the same household of the deceased and would (apart from subsection (3A)) be entitled—
 - (a) if one of those persons is the deceased’s spouse or civil partner and is pregnant or entitled to child benefit in accordance with subsection (2), that person is entitled;
 - (b) if there is no spouse or civil partner entitled under paragraph (a), the deceased’s cohabiting partner who is pregnant or entitled to child benefit in accordance with subsection (2) is entitled (but this is subject to paragraphs (c) to (e));
 - (c) if there is more than one cohabiting partner within paragraph (b), the cohabiting partner who has been a member of the same household as the deceased for longest is entitled;
 - (d) if there is more than one cohabiting partner within paragraph (b) and they have been members of the same household as the deceased for the same length of time, the cohabiting partner who has the eldest child is entitled;
 - (e) in any case where the preceding paragraphs do not determine who is entitled, the Department must do so.”.
- (e) in subsection (4), after “forms a civil partnership” insert “or a cohabiting partnership”;
- (f) in subsection (4A), after “subsequent civil partnership” insert “or a cohabiting partnership”;
- (g) after subsection (4A), insert—
 - “(4B) The surviving cohabiting partner shall not be entitled to the allowance for any period after she or he forms a subsequent cohabiting partnership or a civil partnership or marries, but, subject to that, the surviving cohabiting partner shall continue to be entitled to it for any period throughout which she or he—
 - (a) satisfies the requirements of subsection (2)(a) or (c) above; and
 - (b) is under pensionable age.”;
- (h) in subsection (5)(a), for “spouse’s or civil partner’s” substitute “spouse’s, civil partner’s or cohabiting partner’s”; and
- (i) after subsection (5), insert—
 - “(6) For the purposes of this section, the Department may by regulations prescribe—
 - (a) circumstances in which the fact that two persons are married to each other, or are civil partners or cohabiting partners of each other, is to be disregarded;
 - (b) circumstances in which two persons are to be treated as if they were married to each other or were civil partners or cohabiting partners of each other (or as marrying or forming a civil partnership or a cohabiting partnership);
 - (c) circumstances in which people are to be treated as being, or as not being, members of the same household.
- (7) For the purposes of this section and section 39C, two persons are cohabiting partners if they are not married to, or civil partners of, each other but are living together as if they were married or in a civil partnership (and “cohabiting partnership” is to be read accordingly).”.

(3) In section 39C (rate of widowed parent's allowance)—

- (a) in subsection (3), for “spouse or civil partner” in each place it appears, substitute “spouse, civil partner or cohabiting partner”; and
- (b) in subsection (4), for “spouse or civil partner” substitute “spouse, civil partner or cohabiting partner”.

Amendment of the Bereavement Support Payment (No.2) Regulations (Northern Ireland) 2019

9.—(1) The Bereavement Support Payment (No.2) Regulations (Northern Ireland) 2019(a) are amended in accordance with the following provisions.

(2) In regulation 2 (period for which bereavement support payment is payable)—

- (a) in paragraph (1), for “is as follows” substitute—

“is determined—

- (a) in the case mentioned in paragraph (4), in accordance with paragraphs (5) and (6); and
 - (b) in any other case, in accordance with paragraphs (2) and (3);
- (b) in paragraphs (2) and (3), for “spouse or civil partner” substitute “spouse, civil partner or cohabiting partner” in each place it appears; and
 - (c) after paragraph (3), insert—

“(4) Paragraphs (5) and (6) apply where the person is entitled to bereavement support payment—

- (a) as a result of the amendments made by the Bereavement Benefits (Remedial) Order 2021,
- (b) on or after 30th August 2018 and before the day the Bereavement Benefits (Remedial) Order 2021 comes into force, and
- (c) as a result of the death of their cohabiting partner.

(5) The period starts—

- (a) on the day the Bereavement Benefits (Remedial) Order 2021 comes into force, where the person claims the payment twelve months or less after that date; or
- (b) at the beginning of the period of three months preceding the date the person claims the payment, where the person claims the payment—
 - (i) more than twelve months after the day the Bereavement Benefit (Remedial) Order 2021 comes into force; and
 - (ii) no more than three months after the date the period finishes under paragraph (6).

(6) The period finishes at the end of the period of 18 months beginning with the day after the day the Bereavement Benefits (Remedial) Order 2021 comes into force.”.

(3) In regulation 3 (rate of bereavement support payment)—

- (a) in paragraphs (1), (2) and (8), for “spouse or civil partner” substitute “spouse, civil partner or cohabiting partner”; and
- (b) in paragraph (7), insert at the end “(the same applies where a cohabiting partner dies for the purposes of paragraph (1)).”.

(4) In regulation 4 (persons entitled to the higher rate of bereavement support payment), for “spouse or civil partner” in each place it appears substitute “spouse, civil partner or cohabiting partner”.

(a) S.R. 2019/181.

Signed by authority of the Secretary of State for Work and Pensions.

DRAFT – NOT FOR SIGNING

Date

Name
Parliamentary Under-Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Order)

This Order [to be completed].

This Order has retrospective effect – it has effect from a date earlier than that on which it is made. Paragraph 1(1)(b) of Schedule 2 to the Human Rights Act 1998 (c.42) enables the Order to have retrospective effect.