

2-23: The Bereavement Benefits (Remedial) Order 2023 - Widowed Parent's Allowance and Higher Rate Bereavement Support Payment

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INTRODUCTION

1. This memo gives guidance on the Bereavement Benefits (Remedial) Order 2023 which comes into force on 9.2.23. It extends to England, Scotland, Wales and Northern Ireland.

1 [Bereavement Benefits \(Remedial\) Order 2023, SI 2023/134](#)

BACKGROUND

2. The Supreme Court¹ and the High Court² ruled that the legislation governing Widowed Parent's Allowance (WPA) and the higher rate of Bereavement Support Payment (BSP) is incompatible with article 14 of the European Convention on Human Rights. It was found that, in restricting eligibility to people in a legal union, the current legislation discriminates between children on the grounds of the legal status of their parent's relationship.

1 McLaughlin [2018] UKSC 48; 2 Jackson & Ors v SSWP [2020] EWHC 183 (Admin)

3. The Secretary of State decided to use a Remedial Order¹ to amend the Social Security Contributions and Benefits Act 1992, the Social Security Contributions and Benefits Act 1992 (Northern Ireland), the Bereavement Support Payment Regulations 2017, the Bereavement Benefit Support Payment (No.2) Regulations (Northern Ireland), the Pensions Act 2014 and the Pensions Act (Northern Ireland) 2015 to remedy The Declaration of Incompatibility.

1 Human Rights Act 1998, s 10

4. The Remedial Order¹ was made on 8.2.23 and has retrospective effect back to the date of the Supreme Court's ruling on 30.8.18.

1 Bereavement Benefits (Remedial) Order 2023

THE EFFECT OF THE REMEDIAL ORDER

5. The Remedial Order extends eligibility for WPA and higher rate BSP to surviving cohabiting partners with dependent children, who were not in a legal union with their deceased cohabiting partner on the date of their death.

6. From **30.8.18**, a surviving cohabiting partner is entitled to:

1. WPA¹ if they satisfy the conditions as set out in DMG [63017](#) or

2. Higher rate BSP² if they satisfy the conditions as set out in DMG [59011](#) and [59051](#) and will be treated as eligible in the same way as a spouse or civil partner.

Note 1: Cohabiting partners are people who are living together as if married or in a civil partnership³.

Note 2: Entitlement to WPA ends when the surviving spouse, civil partner or cohabiting partner marries, forms a civil partnership or forms a cohabiting partnership with another person⁴.

Note 3: Entitlement to WPA and BSP ends when the surviving cohabiting partner reaches pensionable age⁵.

1 SSCB Act 92 s39A (1),(2) & (3); 2 Pensions Act 14 s30 (1) & (6A), BSP Regs, Reg 4; 3 SSCB Act 92 s39A (7), Pensions Act 14 s30 (6B); 4 SSCB Act 92 s39A (4B),(5)(a) & (6); 5 SSCB Act 92 s39A (4B), Pensions Act 14 s30 (5)

CLAIMING

7. In order to be entitled to either WPA or BSP under the Remedial Order, a claimant must also make a claim for it in the required time and manner¹. The required manner of claiming is the same as for other claims for WPA or BSP². However, the time within which a claim must be made has been changed.

1 SS A Act 92, s. 1(1); 2 SS (C&P) Regs, regs 4(1) & 4C

Time for claiming WPA

8. A claim under the Remedial Order for entitlement for any day in the period from 30.08.18 to 9.2.23 must be made within the period of 12 months that begins on 9.2.23¹.

1 Bereavement Benefits (Remedial) Order 2023 art 3(1) & (2)

Time for claiming BSP for a death before 9.2.23

9. For a claim made under the Remedial Order for a death that occurs before **9.2.23**:

1. The time for claiming the higher rate payment of £3,500 for the first month (DMG [59033](#)) ends on 8.2.24¹.

2. The time for claiming for any other period ends on 9.11.24².

1 Bereavement Benefits (Remedial) Order 2023 art 3(4) & (5)(b); 2 art 3(4) & (5)(a)

Time for claiming BSP for a death after 9.2.23

10. The legislation has not been changed for such claims. The usual times for claiming apply.

Claims where death difficult to establish

11. The legislation has not been changed for such claims. The rules in DMG [02340-2](#) continue to apply.

No twelve-month limit on entitlement

12. The rule that there can be no entitlement for a period more than 12 months before the date on which the claim is made or treated as made¹ does not apply to claims under the Remedial Order².

1 SSCB Act 92, s. 1(2); 2 Bereavement Benefits (Remedial) Order 2023 art 3(7)

PERIOD OF PAYMENT AND AMOUNT PAYABLE

13. For deaths of cohabiting partners that occur after 9.2.23, payments will be made in the normal way. See DMG [59071](#) to [59072](#) for when a payment period starts and when a payment period ends for BSP. This applies to surviving cohabiting partners in the same way as a spouse or civil partner from 9.2.23¹.

1 BSP Regs, reg 2(2)(a),(b)(i),(b)(ii) & (3)

Retrospective payment periods

14. For deaths of cohabiting partners that occurred before 9.2.23, the retrospective payment period of WPA and higher rate BSP will depend on when the claim is made and if it is made within the claim time limits. It will also depend on whether the death occurred before, on or after 30.8.18.

WPA

15. For claimants that satisfy WPA entitlement conditions under the Remedial Order (RO) and their cohabiting partner

- 1.** died before 6.4.2017 **and**
- 2.** they continue to satisfy entitlement to WPA on 30.8.2018 **and**
- 3.** they make a claim within the period of 12 months from 9.2.23 (by 8.2.24)

they will be eligible to the remaining payments of WPA due to them on or after 30.8.2018¹.

Note 1: For WPA, the rate payable will be based on the claimant's late cohabiting partner's National

Insurance Contributions². See DMG [63038](#) to [63044](#) that applies to surviving cohabiting partners in the same way as a spouse or civil partner.

1 Bereavement Benefits (Remedial) Order 2023 art 3(1) & (2);

2 SS CB Act 92, s 39C(3) & (4)

BSP (higher rate)

16. For claimants that satisfy BSP (higher rate) entitlement conditions under the Remedial Order (RO) whose cohabiting partner

- 1.** Died on or after 30.8.2018 **and**
- 2.** Died before 9.2.23¹ (the date RO comes into force) **and**
- 3.** make a claim within the period of 12 months from 9.2.23 (by 8.2.24)

will be paid from the date the RO comes into force, 9.2.23², and the payment period will end on 9.8.24, this being 18 months after the RO comes into force on 9.2.23³.

1 BSP Regs, reg 2(4)(a),(b)&(13); 2 BSP Regs, reg 2(5)(a) & (13); 3 BSP Regs, reg 2(6) & (13)

17. For claimants that satisfy BSP (higher rate) entitlement conditions under the Remedial Order (RO) whose cohabiting partner

- 1.** Died on or after 30.8.2018 **and**
- 2.** Died before 9.2.23¹ (the date RO comes into force) **and**
- 3.** make a claim more than 12 months after 9.2.23² **and**
- 4.** that claim is made no more than 3 months after 9.8.24³ (by 8.11.24)

will be paid from the beginning of the period of 3 months before the date of their BSP claim⁴ and the payment period will end on 9.8.24, this being 18 months after the RO comes into force on 9.2.23⁵.

1 BSP Regs, reg 2(4)(a),(b)&(13); 2 BSP Regs, reg 2(5)(b)(i)&(13); 3 BSP Regs, reg 2(5)(b)(ii) & (13); 4 BSP Regs, reg 2(5)(b) & (13); 5 BSP Regs, reg 2(6)&(13)

18. For claimants that satisfy BSP (higher rate) entitlement conditions under the Remedial Order (RO) whose cohabiting partner

- 1.** Died after 6.4.17 **and**

2. Died before 30.8.18¹and

3. Make a claim within the period of 12 months from 9.2.23 (by 8.2.24)

will be paid from the date the RO comes into force, 9.2.23². The payment period will finish at the end of a period of 'W' months later³ (See Note 1).

Note 1: 'W' is 18 less 'Y', where 'Y' is number of monthly occurrences of the day of the month the cohabiting partner died beginning with the day after death and ending on 29.8.18⁴. 'Y' represents the number of monthly payments that would have occurred before the date the Remedial Order commenced. This is subtracted from 18 to establish the number of monthly payments due after 30.8.18.

1 BSP Regs, reg 2(7)(a),(b)&(13); 2 BSP Regs, reg 2(8)&(13); 3 BSP Regs, reg 2(9)(a) & (13) 4 BSP Regs, reg 2(9)(a),(10),(11),(12)&(13)

Example 1

- RO comes into force on 9 February 2023
- Claim made on 8 March 2023
- The death occurred on 24 June 2018
- The number of relevant monthly occurrences is 2 = Y (24 Jul, 24 Aug)
- 18-2 is 16 (18 less Y is X)
- Therefore **16** monthly retrospective payments are due, with the last one on 24 December 2019, when the period ends.

Example 2

- RO comes into force on 9 February 2023
- Claim made on 8 March 2023
- The death occurred on 8 April 2017
- The number of relevant monthly occurrences is 16 = Y (8 May, 8 Jun, 8 Jul, 8 Aug, 8 Sep, 8 Oct, 8 Nov, 8 Dec, 8 Jan, 8 Feb, 8 Mar, 8 Apr, 8 May, 8 Jun, 8 July, 8 Aug)

- 18-16 is 2 (16 less Y is X)
- Therefore **2** monthly retrospective payments are due, on 8 Sep and 8 Oct 2018, when the period ends.

19. For claimants that satisfy BSP (higher rate) entitlement conditions under the Remedial Order (RO) whose cohabiting partner

1. Died after 6.4.17 **and**

2. Died before 30.8.18¹**and**

3. make a claim more than 12 months after 9.2.23 **and**

4. that claim is made before 9.11.24

will be paid from the date the RO comes into force, 9.2.23². The payment period will finish either

1. at the end of a period of 'W' months later ('W' is 18 less 'Y' see Note 1)³**or**

2. at the period of 'X' months later (see Note 2)⁴,

whichever is **shorter**.

Note 1: 'W' is 18 less 'Y', where 'Y' is number of monthly occurrences of the day of the month the cohabiting partner died beginning with the day after death and ending on 29.8.18. 'Y' represents the number of monthly payments that would have occurred before the date the RO commenced. This is subtracted from 18 to establish the number of monthly payments due after 30.8.18.

Note 2: 'X' is 21 less 'Z', where Z is the number of occurrences of day of the month on which the RO commencement date occurs during the period beginning with day after the RO commencement date (9.2.23) and ending with the date of claim.

1 BSP Regs, reg 2(7)(a),(b)&(13); 2 BSP Regs, reg 2(8)&(13); 3 BSP Regs, reg 2(9)(b)(i)&(13); 4 BSP Regs, reg (9)(a),(b)(ii),(10),(11),(12)&(13)

Example 1

- RO comes into force on 9 February 2023
- Claim made on 12 April 2024

- The death occurred on 24 June 2018
- For W, the number of relevant monthly occurrences is 2 (24 Jul, 24 Aug)
- $18 - 2 = 16$ so $W = 16$
- For Z, the number of relevant monthly occurrences is 14 (9 Mar, 9 Apr, 9 May, 9 Jun, 9 Jul, 9 Aug, 9 Sep, 9 Oct, 9 Nov, 9 Dec, 9 Jan, 9 Feb, 9 Mar, 9 Apr)
- X is 21 less Z (14), which is 7.
- X is 7 and W is 16. X is less than W, so X applies.
- So there are **7** monthly retrospective payments due.

Example 2

- RO comes into force on 9 February 2023
- Claim made on 17 September 2024
- The death occurred on 24 June 2018
- For W, the number of relevant monthly occurrences is 2 (24 Jul, 24 Aug)
- $18 - 2 = 16$ so $W = 16$
- For Z, the number of relevant monthly occurrences is 19 (9 Mar, 9 Apr, 9 May, 9 Jun, 9 Jul, 9 Aug, 9 Sep, 9 Oct, 9 Nov, 9 Dec, 9 Jan, 9 Feb, 9 Mar, 9 Apr, 9 May, 9 Jun, 9 Jul, 9 Aug, 9 Sep)
- X is 21 less Z (19), which is 2
- X is 2 and W is 16. X is less than W, so X applies.
- So there are **2** monthly retrospective payments due.

BSP (higher rate) payment amounts

20. The higher rate of BSP is £350 for each monthly recurrence of the day of the month on which cohabiting partner died during the period for which BSP is payable¹.

21. Where the BSP claim is made 12 months or less after the cohabiting partner died, the higher rate of BSP is £3,500 for the first month of the period for which it is payable¹.

1 BSP Regs, reg 3(2)(c)

22. Where the cohabiting partner died

- 1.** on or after 30.8.18 **and**
- 2.** before 9.2.23 **and**
- 3.** the BSP claim is made by 8.2.24

the higher rate of BSP is £3,500 for the first month of the period for which it is payable¹.

1 BSP Regs, reg 3(2)(b)

PAYMENT WHERE THERE IS MORE THAN ONE CLAIMANT IN RESPECT OF THE SAME DEATH

23. Only one claimant per household can be entitled to WPA¹ or higher rate BSP² in respect of the same death.

1 SSCB Act 92 s39A (3A); 2 Pensions Act 14 s 30(1A)

24. The claimant who was living with the deceased on the date of death will be entitled to WPA¹/BSP².

1 SSCB Act 92 s39A (3C); 2 Pensions Act 14 s 30(1C)

25. Where two potential claimants were living with the deceased on the date of death, the following applies:

- 1.** the claimant who is married or has a civil partnership with the deceased would be entitled (if they are entitled to Child Benefit or were pregnant)¹**or**
- 2.** if neither were married or in a civil partnership (or the spouse/civil partner did not have dependent children with the deceased), the claimant with entitlement to Child Benefit and/or were pregnant, would be entitled²**or**
- 3.** if neither were married or in a civil partnership and more than one claimant has entitlement to Child Benefit and/or were pregnant, the claimant who had lived with the deceased for the longest

on the date of death would be entitled³or

4. If there were two or more potential claimants that may still satisfy entitlement after the eligibility criteria, as set out above is applied, entitlement would be determined by exercise of the Secretary of State's discretion⁴.

1 SSCB Act 92 s39A (3D)(a), Pensions Act 14 s30 (1D)(a); 2 SSCB Act 92 s39A (3D)(b), Pensions Act 14 s30 (1D)(b); 3 SSCB Act 92 s39A (3D)(c), Pensions Act 14 s30 (1D)(c); 4 SSCB Act 92 s39A (3D)(d), Pensions Act 14 s30 (1D)(d)

TRANSITIONAL PROVISIONS

26. Claimants that have been in receipt of WPA and BSP before 9.2.23 do not lose their entitlement for the duration of their award as a result of the Remedial Order¹.

27. A claimant may have been entitled to WPA or higher rate BSP before the Remedial Order came into force as a result of the death of their spouse or civil partner because they had not divorced. From 9.2.23, the deceased's co-habiting partner may also become entitled for the same period and the Remedial Order enables both claimants to receive WPA or BSP.

28. This means that WPA/BSP already paid to a claimant, that was still married or in a civil partnership with the deceased at the date of death, can continue to receive payments and it is not recovered as a result of any new entitlement satisfied by a cohabiting partner arising from the Remedial Order².

1 Bereavement Benefits (Remedial) Order 2023 art 2(1); 2 Bereavement Benefits (Remedial) Order 2023 art 2 (2)&(3)

Example

Colin died on 1.10.18. Colin was married to Amanda and they had two dependent children together. They had separated and were living apart. Colin was living with Mary when he died and they had a dependent child together. Amanda made a claim for BSP and was entitled to receive higher rate BSP as she had two dependent children with Colin and she was still legally married to Colin as they had not divorced on the date of his death. Mary also satisfies entitlement to higher rate BSP as she was cohabiting with Colin and had a child with him on the date of his death. Both Amanda and Mary are entitled to higher rate BSP for Colin's death.

CAPITAL DISREGARDS

29. The Remedial Order¹ provides that any payment of WPA or BSP in relation to the entitlement conditions set out above will be disregarded for a period of 52 weeks for ESA², JSA³, IS⁴ and SPC⁵.

1 Bereavement Benefits (Remedial) Order 2023

2 ESA Regs Sch 9 para 11 & 60

3 JSA Regs Sch 8 para 12 & 65

4 IS (Gen) Regs Sch 10 para 7 & 72

5 SPC Regs Sch 5 para 20AA & 23E

Note: See ADM Memo 4-23 for Capital Disregards applied to UC

ANNOTATIONS

The number of this memo should be annotated against the following paragraphs of the DMG; [02330](#), [02339](#), [29495](#), [52495](#), [59001](#), [59011](#), [59032](#), [59051](#), [59071](#), [59072](#), [63017](#), [84561](#)

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E zone E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in – Memo [4/19](#) Requesting case guidance from DMA Leeds for all benefits.

DMA Leeds: February 2023

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