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**BRIEFING PAPER**

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# Inheriting pension rights

By Djuna Thurley

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# Summary


This note is an overview of the development of the different arrangements for inheriting pension rights in State and private pension schemes.

## State Pensions

Under the old State Pension system, for people who reached State Pension age before 6 April 2016, individuals could derive entitlement to the basic State Pension based on the contribution record of their late spouse or civil partner. This could provide a basic State Pension of up to £129.20 pw for a widow, widower or surviving civil partner (2019/20 amounts). It was also possible to inherit additional State Pension, with the amount they could inherit depending on when they reached State Pension age.

When it introduced the new State Pension for people reaching State Pension age from 6 April 2016, the Government's intention was that people should qualify on the basis of their own NI record, so the ability to derive or inherit State Pension entitlement ended, with limited transitional protection.

## Private pensions

There are two main types of private pension – defined contribution (where an individual makes contributions to a pension pot, which is invested, and which can then be used to provide an income at retirement) and defined benefit (which provide pension benefits based on fixed factors – salary and length of service).

The 'pension freedom' reforms gave people aged 55 and over more flexibility about when and how to draw their **defined contribution (DC)** pension savings, subject to their marginal rate of income tax from April 2015. As part of this, the Government also introduced more flexibility in the payments that could be made on death. Whereas previously, a DC scheme member had to leave unused funds to a 'dependant' (a surviving spouse/civil partner or child under age 23), from April 2015, they would be able to nominate a beneficiary to receive their funds. There were also reductions in the tax charges applying to some lump sum payments.

Under pension tax legislation, a survivor's pension from a **defined benefit** scheme can usually only be paid to a dependant of the person who died, for example a husband, wife, civil partner or child under 23. The payments that can be made in an individual case will depend on scheme rules, which in turn reflect statutory minimum requirements in occupational pensions legislation. Information is on Gov.UK: Your benefits, tax and pension after the death of a spouse

Many FAQs in this area relate to public service pensions, reflecting the fact that improvements in survivors' benefits have been introduced over time but not made retrospective on grounds of cost. As a result, survivors' pensions from the old schemes (or where the scheme member had no active service after the reforms were introduced) may be subject to restrictions – for example, they may be withdrawn on remarriage or cohabitation and there may be no provision for cohabitees. Widowers' pensions are provided on service from 1988, compared to 1978 for other survivors.

Relevant Library Briefing Papers are: CBP 7109 Lifetime survivors' pensions from public service pension schemes ; CBP 6348 Occupational pensions: survivors benefits for cohabitants; CBP 3035 Pensions: civil partnerships and same-sex marriages.


**Please note that nothing in this paper should be considered as constituting legal advice. It is not intended to address the specific circumstances of a particular**

**individual. A suitably qualified professional should be consulted if specific advice or information is required.**

Sources of information, guidance and help with individual cases include:

- The Pension Service – responsible for delivering the State Pension and Pension Credit, can also answer questions (for example, about eligibility, claims, payments), receive complaints about issues such as unreasonable delays and reports of a change in circumstances.
- Pension Wise - provides free and impartial government guidance to people aged 50 and over about their defined contribution pension options;
- The Pensions Advisory Service - funded by DWP to provide free and impartial guidance to people with workplace and personal pensions;
- The Pensions Ombudsman early dispute resolution service – for people with potential complaints about workplace or personal pensions;
- The Financial Ombudsman Service - can consider complaints about the administration of personal pensions and group personal pensions (but not complaints about the administration of occupational schemes)
- Age UK - runs an advice line and has information and factsheets about a range of issues on its website.
- Citizens Advice Bureau - can provide advice on a range of issues.

# 1. The old State Pension

## 1.1 The basic State Pension

The State Pension system for people who reached State Pension age before 6 April 2016 had two tiers:

- The basic State Pension (BSP) - paid at a flat-rate of £129.20 per week (2019/20 rates) for people with 30 'qualifying years' of National Insurance (NI) contributions or credits.
- The additional State Pension, which is partly earnings-related. This was provided through the State Earnings Related Pension Scheme (SERPS) between 1978 and 2002 and the State Second Pension from 2002 to 2016. It was possible to contract-out of SERPS into an occupational pension that met set requirements.

It also included provision for individuals to derive or inherit State Pension entitlement based on the record of a (late or former) spouse or civil partner.[1]

These rules could provide a basic State Pension of up to £77.45 pw for a married person or civil partner and up to £129.20 for a widow, widower or surviving civil partner or a person who is divorced or whose civil partnership has been dissolved (2019/20 amounts). In broad terms:

- Provided both partners had reached State Pension age, a person who was married or in a civil partnership could claim a 'Category B(L)' basic State Pension, which could increase their entitlement up to 60% of the basic State Pension (£77.45 pw in 2019/20, if the contributor has a full BSP).[2]
- A widow(er) or surviving civil partner could derive entitlement to a Category B basic State Pension, based on the contributors record[3] and inherit additional State Pension (with the amount that could be inherited depending on when the contributor died and their date of birth).[4] (There was no entitlement if the survivor was under 45, either when bereaved or when they ceased to receive Child Benefit for the youngest child. In addition, they must not have remarried before reaching SPA.[5])
- A person who was divorced, or whose civil partnership had ended, could substitute part or all of their former spouse or civil partner's NI record up to the point of divorce/dissolution, in order to qualify for the basic State Pension. This was referred to as a Category A pension (substituted).[6] It did not apply if the

[1] *Social Security (Contributions and Benefits) Act 1992* (s48B to 51); DWP, State Pensions – your guide, 2014 (now withdrawn)
[2] *Social Security Contributions and Benefits Act 1992*, section 48A
[3] If bereaved when over SPA, or if under SPA, where widow's pension or widowed parent's allowance are in payment up to State Pension age
[4] An overview of the rules on inherited SERPS is in DWP, *The single-tier pension: a simple foundation for saving*, Cm 8528, January 2013, page 96-7; See also Pension Service, *Inheriting a state pension*, SERPS L1, December 2007
[5] *Social Security Contributions and Benefits Act 1992*, section 48B-51
[6] Ibid section 48A (4A)

dependant had subsequently remarried or entered into a civil partnership before reaching State Pension age.[7]

For the detail, see chapter 75 of DWP's Decision Maker's Guide (para 75098-9 and 75151-93).[8]

The legislation is in *Social Security Contributions and Benefits Act 1992*, (Pt II) and the regulations made under it, in particular, the *Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 (SI 1979/642)).*

## How did policy develop?

The ability to derive and inherit State Pension entitlement was initially restricted to widows, reflecting the 'male bread-winner model' that was the norm in the post-war period. It was only later extended to widowers, civil partners and survivors of same-sex marriages.

**For more…**

On the development of State Pensions for women, see Library Briefing Paper CBP 7286 Women and pensions (November 2018).

When the basic State Pension was first introduced under the *National Insurance Act 1946,* married women were not expected to participate, but could choose to pay either full or reduced rate National Insurance Contributions (NICs), in exchange for relying on their husband's contributions for a State Pension.[9] Major reforms to move away from this model were introduced under the *Social Security (Pensions) Act 1975*, included the abolition of the "married women's election" for marriages after April 1977 and the introduction of Home Responsibilities Protection (HRP) to protect the State Pension entitlement of people with caring responsibilities.[10]

### Widowers

From 1979, there was limited extension to widowers - providing cover only in respect of deaths after both members of the couple had reached State Pension age. [11]

Further steps were introduced under the *Pensions Act 1995* to comply with requirements in European to remove gender inequalities in social security.[12] However, inequality remained to the extent that widowers who reached State Pension age before 2010 would only be entitled to a survivor's pension if their spouse had already reached State Pension age when they died.[13]

### Civil partners and same-sex married couples

With the introduction of civil partnerships from April 2005 and same-sex marriages from March 2014, the Government decided that the treatment of survivors would be aligned with that of widowers. The

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[7] See also, DWP, *State Pension entitlements derived from a current or former spouse's or civil partner's national insurance contributions* (March 2013) - Annex A.
[8] See also, DWP, a detailed guide to State Pensions for advisers and others, 2008
[9] DHSS, *Better pensions fully protected against inflation: proposals for a new pensions scheme,* Cmnd 5713, September 1974, para 45; For more on the background, see Bozio A et al, *The history of state pensions in the UK: 1948 to 2010,* IFS Briefing Note BN105; Hill M, *Pensions*, Bristol, 2007, p25
[10] HM Treasury, Tax and benefit reference manual: 2009-10 edition, para 5.16-26
[11] DWP, State Pension entitlements derived from a current or former spouse's or civil partner's National Insurance contributions, Jan 2013
[12] *Pensions Act 1995*, s126 and Sch 4; House of Commons Library Research Paper 95/57 The Pensions Bill: Social security aspects, April 1995
[13] DWP, State Pension entitlements derived from a current or former spouse's or civil partner's National Insurance contributions, Jan 2013, para 9; DWP, *a detailed guide to State Pensions for advisers and others,* September 2008

reason was that, while the State Pension age was still unequal, it would not be possible to "introduce state pension rights for registered partners which are both similar to those of married couples and treat all-male and all-female couples equally."[14] As with widowers, there would be some inequality in survivors' State Pensions for people reaching State Pension age before April 2010.[15]

### Cohabiting couples

Successive governments have resisted arguments that rights to survivors' benefits from the State scheme should be extended to cohabiting couples, arguing that it is "a founding principle of the social insurance system […] that all rights to benefit derived from another person's contributions are based on the concept of legal marriage."[16] In 2016, the then Work and Pensions Minister Caroline Nokes, said:

> It is a key principle of the National Insurance system is that all rights to benefits derived from another person's contributions are based on the concept of legal marriage or civil partnership. This is a long-standing position in bereavement benefits and will continue under the new Bereavement Support Payment, the provisions of which were debated during the passage of the *Pensions Act 2014*.
>
> Marriage and civil partnerships are legal contracts that are associated with certain rights, including inheritance, recognition in the tax system and entitlement to certain benefits. Given this legal position, the Government has no plans to extend eligibility for bereavement benefits to cohabitees.
>
> However, cohabitees do have access to income-related benefits. They may also qualify for help with funeral costs from the Social Fund and may of course choose to provide security for their families by way of private pension or life insurance arrangements.[17]

Furthermore, it was argued that cohabiting couples had the option of marriage, should they wish it,[18] and that extending survivors' benefits to them might necessitate intrusive questioning about the nature of a claimant's relationship with the deceased at a difficult and sensitive time.[19]

**For more…**

See, Library Briefing Paper CBP 3372 'Common law marriage' and cohabitation (August 2019)

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14 DTI Women and Equality Unit, A framework for the legal recognition of same-sex couples, June 2003; *Civil Partnerships Act 2004* (Sch 24); Explanatory Notes, para 799-802

15 Equal marriage: The Government's response, December 2012, para 9.16-18; Letter from Rt Hon Maria Miller MP to Chair of the Joint Committee on Human Rights, 18 April 2013, Annex p 12; HC Deb. 21 May 2013 col. 1144

16 HC Deb 13 December 2004 c 849W; HL Deb 18 October 2004 GC144

17 PQ 44102 9 September 2016; See also HC Deb 29 March 2011 c250W

18 HC Deb 16 July 2003, c 436-7W; HC Deb 13 December 2004 c 849w

19 SC Deb (D) 25 March 1999 [Hugh Bayley]

## 1.2 Inherited SERPS

The State Earnings Related Pension Scheme (SERPS) was introduced in 1978. Originally, widow(er)s could inherit 100% of their late husband's SERPS.

In 1986, the Conservative Government, concerned at the emerging costs of SERPS, passed legislation which reduced the percentage of SERPS which could be inherited from 100% to 50% in respect of a death on or after 6 April 2000.

However, as a result of inadequate publicity for this change, the Labour Government decided to postpone it until 6 October 2002 and to phase-in the reduction so that the full 50% cut would not be achieved until 6 October 2010. For those who had been misinformed and were not fully covered by the new arrangements, there was a departmental compensation scheme.[20]

As a result, the proportion of their late spouse or civil partner's State Earnings Related Pension Scheme (SERPS), with the proportion depending on their age. There is an overview of the rules on Gov.UK - inheriting additional State Pension.

**For more detail, see…**

Gov.UK – inheriting additional State Pension

Library Briefing Paper CBP 706 Reductions in inherited SERPS (June 2016).

### Why is there a cap?

There is a cap on the total amount of SERPS an individual can receive. This is to ensure that an individual who inherits SERPS does not receive more in total than someone could have built up in their own right:

> 7.1 Where a pensioner is entitled to combine his or her own Additional State Pension with that inherited from their late spouse or civil partner the total amount payable is capped. The cap is equivalent to the amount of Additional State Pension which a person reaching State Pension age in the year in which entitlement to the inherited Additional State Pension arises would have accrued if they had earnings at 53 times the Upper Earnings Limit throughout their working life.
>
> 7.2 This rule has been applied to Additional State Pension since 1979 when the first Additional State Pensions became payable. It was put in place to ensure security following bereavement, but without exceeding the pension a person could realistically build up on their own contribution record. In this respect it mirrors the cap applied to basic pension which restricts the total amount payable by way of own and inherited pension to the full rate of basic pension.[21]

### What about people were also contracted-out?

The State Pension was designed to work in conjunction with occupational pensions – providing a minimum level of income, while incentivising individuals to save on top.[22] So, from the time the additional State Pension was introduced in 1978 (in the form of the State Earnings-Related Pension Scheme or 'SERPS') it was possible to

[20] For more on the background, see Library Briefing Paper CBP 706 Reductions in inherited SERPS (June 2016)

[21] Explanatory Memorandum to SI 2010 No. 426

[22] Sir William Beveridge, Social Insurance and Allied Services, Cm 6404, Nov 1942, para 9

contract-out of it into an occupational pension that met certain criteria. People who contracted-out paid a lower rate of National Insurance (NI) on the basis that they were building up a workplace pension to replace the SERPS they had contracted-out of.[23]

At State Pension age, a calculation is done of the SERPS an individual has built up and a deduction made of in respect of any Guaranteed Minimum Pension (that part of an occupational pension that relates to having been contracted-out between 1978 and 1997) that they built up in their own right or inherited.

A Social Security Commissioner's decision from 2006 explained that, in such cases, the maximum SERPS entitlement is calculated, and then contracted-out deductions made:

> 21. Widows and other survivors who inherit pensions also have the inherited pensions set against their entitlement to additional pension […] The GMPs for both the pensions to which a widow is personally entitled directly and those to which she is entitled by inheritance are to be deducted from the maximum entitlement of the widow under section 52. In other words, the widow's maximum entitlement is calculated before, not after, any additional pension is deducted. This may mean that the widow's total additional pension is limited by the "prescribed maximum" before the occupational pensions are offset.[24]

The rationale is that the contracted-out occupational pensions were funded through reduced NI contributions:

> Those rules reflect the receipt by her of a widow's pension from her late husband's occupational pension scheme as well as receipt of her own occupational pension scheme. Parliament has provided that both should be taken into account as both were contracted-out schemes for which lower levels of national insurance contribution were payable.[25]

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[23] See Library Briefing Paper CBP-07202 Pensions 2015 (May 2015), section 2.3; DWP Guidance, Contracting out and why we may have included a Contracted Out pension Equivalent (COPE) amount when you used the online service, April 2017

[24] CP 3577-2006

[25] Ibid para 41

# 2. New State Pension

A new State Pension was introduced for people who reach State Pension age from 6 April 2016. People who had already reached SPA continue to get their pension under the 'old rules.'[26] The new State Pension is different in several ways. In particular, it is single-tier (combining the old basic and additional State Pension), set above the set above the basic means-tested guarantee (£168.60 pw in 2019/20) and designed for individuals to build entitlement based on their own NI record.

As discussed in section one, the old system enabled individuals to derive entitlement to the basic State Pension based on the NI record of their spouse or civil partner.[27] Except for those transitionally protected, individuals are now expected to qualify for the new State Pension based on their own NI record. The 2013 White Paper explained why:

> 25. In addition to adding to the complexity of the current system, these arrangements often mean that women have had low entitlement to state pension for much of their retirement, but then gain significantly after the death of their partner, which of course cannot be predicted.
>
> 26. The single-tier pension has been designed to ensure the large majority of individuals will be able to get the full rate in their own right. In steady state, there will be no rationale for allowing people to inherit or derive state pension income based on the National Insurance record of their spouse or civil partner.[28]

There was transitional protection for married women or widows who opted to pay reduced rate NI contributions (the 'married women's stamp') in the last 35 years. This was because the Government said they had "entered into a deal" with the State whereby they would pay a lower rate of NI, in the expectation that - although they would not build up a pension in their own right - they would get "something based on [their] husband's rights."[29]

When the legislation was before Parliament, concern was expressed about the impact on people who were not covered by the transitional arrangements but had nonetheless expected to claim based on their spouse/civil partner's record.[30] However, the Government argued that there was "no longer a substantial need for the provisions."[31]

**For more information, see**

DWP, Your State Pension - explained, April 2019

DWP, Decision Makers' Guide, chapter 74 (State Pension)

**For background, see**

Library Briefing Paper, CBP-07414 The new State Pension – transitional issues (Feb 2019), section 3.2.

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26 *Pensions Act 2014* (PA 2014)

27 *Social Security Contributions and Benefits Act 1992*, s48-51; DWP, The 'old' State Pension - your guide, (Oct 2014)

28 DWP, The single-tier pension: a simple foundation for saving, Annex 3.D, Cm 8528, January 2013

29 PBC Deb 3 July 2013 c191

30 HC 1000, April 2013, para 155

31 Cm 8620, May 2013, p 20

## Inherited additional State Pension

A feature of the old system was that people could inherit additional State Pension from a late spouse or civil partner. It is not a feature of the new system, although there is some transitional protection, depending on when the survivor and deceased reach SPA:[32]

- Where the **contributor reached SPA or died in the old system and the dependant reached SPA in the nSP,** the basic principle is that the dependant is entitled to an inherited amount equal to what they would have been entitled to, had the old system continued.
- Where the **survivor reached SPA in the old system and the deceased reached SPA in the new one, or died under SPA after April 2016**, the old rules continue to apply, but only contributions made by the deceased before April 2016 will count. The maximum amount the survivor will be able to inherit is 50% because the deceased's SPA will be after 5 October 2010.
- Where both the **contributor and dependant reach SPA in the nSP,** the dependant can inherit half the contributor's 'protected payment.' The term 'protected payment' refers to any amount the contributor had built up by April 2016 under the old system that was in excess of the full amount of the new State Pension - £164.35 pw.[33]
- Section 7 (4) provides for a cap to be set in regulations on the amount that can be inherited. However, no such regulations have been made.[34]

Individuals might also be able to inherit extra State Pension or a lump sum if their late spouse/civil partner had put off claiming their State Pension.[35]

The Government said that the impact would depend on individual circumstances:

> While people may lose the ability to inherit additional pension from a spouse or civil partner, they may nevertheless suffer no overall notional loss due to gaining from another aspect of the reform package.[36]

In a response to the Work and Pensions Select Committee in June 2016, the Government said it was working to raise awareness and understanding of these changes.[37] It produced a factsheet to inform the debates on the legislation.[38]

**For more information see**

DWP, Your State Pension explained (April 2019), section 9

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32 *Pensions Act 2014*, s7 and Schedule 3; DWP, The new State Pension, April 2016, p9
33 DWP, *The single-tier pension: a simple foundation for saving*, Cm 8528, January 2013, para 86 and Annex3, p12; *Pensions Act 2014*, s5 and Schedule 1 and 2; DWP's Decision Maker's Guide, para 74326-33
34 DWP, Decision Makers' Guide, para 74306
35 DWP, Your State Pension Explained, April 2017, section 9; DWP, Decision Makers' Guide, (para 74302ff)
36 DWP, Single-tier pension: a simple foundation for private saving: impact assessment, October 2013, para 92
37 Government response to the Work and Pensions Select Committee's Eight Report of 2015-16, Communication of the new state pension (June 2016)
38 DWP, State Pension entitlements derived from a current or former spouse's or civil partner's National Insurance contributions (January 2013).

# 3. Private pensions

There are two main types of private pension:

- Defined benefit (DB) schemes, that promise to pay pension benefits based on fixed factors, typically salary and length of service; and
- Defined contribution (DC) or money purchase schemes, that pay out a sum based on the value of a member's fund on retirement. The level of pension depends on factors including the contributions invested, the returns on that investment (minus any charges applied) and the rate at which the fund is converted to a retirement income.

The type of payment that can be made and who it can be made to, depends on the type of pension arrangement (whether it is a defined benefit scheme or defined contribution), the type of pension pot, and the age the pot's owner was when they died.

The framework for this is in pension tax legislation, which provides that payments on death of a scheme member, can be made either in the form a pension or a lump sum.[39]

Gov.UK explains who payments can be made to on death:

> The person who died will usually have nominated you (told their pension provider to give you money from their pension pot).
>
> But sometimes the provider can pay the money to someone else, for example if the nominated person cannot be found or has died.
>
> A pension from a defined benefit pot can usually only be paid to a dependant of the person who died, for example a husband, wife, civil partner or child under 23. It can sometimes be paid to someone else if the pension scheme's rules allow it - but it will be taxed at up to 55% as an unauthorised payment.
>
> **Passing on a pension pot you inherited**
>
> If you inherit a defined contribution pot you can nominate someone to get any money you do not use before your death. The money must be in a flexi-access drawdown fund when you die.
>
> **When you pay tax**
>
> Whether you pay tax usually depends on the:
>
> - type of payment you get
> - type of pension pot
> - age of the pension pot's owner when they died

[39] HMRC, Pension Tax Manual – Death benefits – general principles

| Payment | Type of pot | Age | Tax you usually pay |
|---|---|---|---|
| Most lump sums | Defined contribution or defined benefit | Under 75 | No tax |
| Most lump sums | Defined contribution or defined benefit | 75 or over | Income Tax deducted by the provider |
| Trivial commutation lump sums | Defined contribution or defined benefit | Any age | Income Tax deducted by the provider |
| Annuity or money from a new drawdown fund (set up or converted and first accessed from 6 April 2015) | Defined contribution | Under 75 | No tax |
| Money from an old drawdown fund (a 'capped' fund or a fund first accessed before 6 April 2015) | Defined contribution | Under 75 | Income Tax deducted by the provider |
| Annity or money from a drawdown fund | Defined contribution | 75 or over | Income Tax deducted by the provider |
| Pension provided by the scheme | Defined contribution or defined benefit | Any age | Income Tax deducted by the provider |

Source: Gov.UK - Tax on a private pension you inherit

You may also have to pay tax if the pension pot's owner was under 75 when they died and any of the following apply:

- you're paid more than 2 years after the pension provider is told of the death
- they had pension savings worth more than £1,055,000 (the lifetime allowance')
- they died before 3 December 2014 and you buy an annuity from the pot.[40]

The legislation is in the *Finance Act 2004*, s167 and 168, and schedules 28 and 29. Detailed guidance is in the death benefits section of HMRC's Pension Tax Manual.

## 3.1 Defined contribution pensions

The tax treatment of payments from a DC pension on death will depend on the type of arrangement and the age of the pot-holder on death. The type of payment that can be made will also depend on the type of arrangement.

If the individual has purchased an annuity, then whether payment will continue after their death will depend on the type of annuity. For example, payments from a 'joint-life' annuity continue to the beneficiary. An annuity with a 'guaranteed period' will continue until the end of that period, if the person dies before that period ends.[41]

If the funds are in a 'drawdown' arrangement (which allows an individual to make withdrawals from a fund, which continues to be invested), they can nominate a beneficiary in the event of their death. As explained above, the tax treatment will depend on whether the

[40] Gov.UK, Tax on a private pension you inherit

[41] Pension wise – your pension when you die

arrangement was set up before or after April 2015 and the age of the pot-holder at their time of death.

This was part of the 'pension freedom' reforms, introduced in April 2015 to give people aged 55 and over more flexibility about when and how to draw their pension savings.[42] The Government thought that in this context, a 55% tax charge applying to some lump sums on death might be too high.[43] It therefore changed the rules to allow individuals with a drawdown arrangement or uncrystallised pension funds (i.e. funds that have not been drawn on at all) to nominate a beneficiary to receive their unused funds on the event of their death. It also changed the tax treatment of any payments so that:

- If the individual died under the age of 75, funds could be paid tax-free to the beneficiary if they are uncrystallised, in flexi-access drawdown, or in a joint-life or guaranteed annuity set up after 6 April 2015;
- If they were 75 or over at the time of their death, the nominated beneficiary could access the funds flexibly and pay tax at their marginal rate. They also have the option to receive the pension as a lump sum payment, subject to income tax at their marginal rate.

The Money Advice Service gives the following overview of current arrangements:

> **If the person died before age 75:**
>
> - if they received income from a single life annuity, this will stop unless there was a 'guaranteed period' attached to the annuity. In which case, it will continue to be paid tax-free until the end of the guarantee period (usually 5 or 10 years).
> - if it was a joint life annuity, income will continue to be paid to the survivor (also tax-free) until their death. But this is usually at a reduced rate (half is common). If you are not sure which they had, ask the annuity provider.
> - if the deceased had a flexi access drawdown pension which was set up or first accessed after 5 April 2015, any money paid within two years of the pension holder's death will be paid tax-free.
> - however, if the pension is claimed more than two years after the pension holder's death, tax might be payable.
> - any money taken out of the pension scheme before death (or any investments bought with cash from the pension scheme), will count as part of the deceased's estate and might be subject to Inheritance Tax.
> - the money in the pension will continue to grow tax-free as long as it stays invested.
>
> **If the person died age 75 or over**:
>
> - if they received income from a single life annuity, this will stop unless there was a 'guaranteed period'

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[42] CBP 6891 Pension freedoms: the freedom and choice reforms (September 2018)
[43] HM Treasury, Freedom and choice in pensions: consultation, Cm 8835, March 2014

- In which case, it will be paid to the beneficiaries until the end of the guaranteed period. Income tax will apply to the payments.
- if it was a joint annuity, income will continued to be paid to the survivor, and income tax will apply.
- any money taken as a lump sum or as an income from a flexi-access drawdown scheme or from any untouched pension pot, will be added to the beneficiary's' other income and taxed in the normal way.[44]

Individuals with DC pensions approaching retirement should seek guidance on the options available and the implications of them. The Government has set up a free guidance service - Pension Wise – for this purpose.[45]

The legislation is in the *Finance Act 2004*, s167 and 168, and Schedules 28 and 29. Detailed guidance is in the death benefits section of HMRC's Pension Tax Manual.

These reforms are discussed in more detail in Library Briefing Paper CBP 7318 The tax treatment of DC pensions on death (September 2019).

## 3.2 Defined benefit pensions

Members of DB schemes build up entitlement to a level of pension, calculated according to a formula set out in the rules of the scheme. DB schemes may also provide other benefits, including death benefits. Under pension tax legislation, DB schemes have less flexibility than DC schemes about the payments that can be made to survivors. They can take the form of either:

- A **dependant's scheme pension** i.e. paid to a dependant of the scheme member, defined as a former spouse, civil partner or nominated unmarried partner, or a child under age 23;[46]
- A **lump sum death benefit** – a common example being where a member dies in employment and their pension scheme pays out a multiple of their salary;[47]

What is actually paid in a particular case, will depend on the scheme rules. There are some statutory minimum requirements in pensions legislation, which developed over decades in response to changing patterns of living and working and in social expectations.

### Policy development

The first statutory requirement to provide a survivors' benefit was introduced as part of the requirements for schemes used to contract-out of the State Earnings Related Pension Scheme (SERPS) from 1978.

Pension schemes used for contracting out had to meet certain requirements, which changed over time. Initially, it was only possible to contract-out into a scheme that provided a Guaranteed Minimum

44 The Money Advice Service, What to do about someone's pension when they have died

45 For more on the background, see Library briefing paper -CBP 7042 Pensions guidance: Pension Wise (September 2018)

46 *Finance Act 2004*, Sch 28 (15 and 16); HMRC's Pension Tax Manual PTM072100;

47 *Finance Act 2004*, Sch 29 (13); HMRC's Pension Tax Manual PTM073100

Pension (GMP), which at least equalled the additional State Pension they would have earned had the remained contracted-in.[48] Alongside this, there was a requirement to provide a survivor's GMP. Gov.UK explains:

> **Widow's GMP**
>
> If a married man dies with an entitlement to a GMP, his widow is entitled to half the GMP accrued by, or in payment to him, at the date of his death providing she qualifies for one of the following state benefits:
>
> 1. Bereavement Allowance
> 2. Widowed Parent's Allowance
> 3. Retirement Pension, based on her late husband's National Insurance contributions (NICs)
> 4. Retirement Pension, based on her own NICs but with underlying title to a Retirement Pension based on her late husband's NICs
> 5. Bereavement Support Payment[49]

As explained in DWP's 2014 review of survivors' benefits in occupational pension schemes, subsequent developments included the extension of the requirement to provide survivors benefits to opposite-sex widowers, surviving civil partners and surviving spouses from same-sex marriages:

> **Survivor benefits in DB schemes**
>
> 2.10 Survivor benefits are the benefits paid to the dependant of a scheme member who has died either before or after the member has started to draw the pension income. Dependants can include opposite sex and same sex spouses, and surviving civil partners. Many occupational schemes also include options for scheme members who are co-habiting to nominate their partner to receive survivor benefits in the event the scheme member dies before their partner. Survivor benefits commonly include a continuing survivor pension. The detailed arrangements for these pensions vary considerably between schemes and between categories of survivor. The formulae for calculating the amount of pension can also vary considerably depending on the scheme rules and the circumstances of the deceased member at the time of death. As such, these pensions are also a form of defined benefit, as how a survivor pension is to be calculated is fixed in advance by the scheme rules.
>
> **Survivor benefits for opposite sex spouses**
>
> 2.11 Eligibility for survivor pensions has changed over time. Provision of survivor pensions for females who survive their male spouse developed much earlier than provision for males who survive their female spouse. In the post-war period many schemes began to provide survivor benefits for women who survived their male spouse. However, survivor pensions for men who survived their female spouse were not routinely provided until much later. In some circumstances, women (and unmarried men) often received a larger pension than married men to reflect these differences. In some schemes married men paid a contribution towards a survivor's pension that most female members of that

48 HMRC guidance – how to calculate your scheme member's Guaranteed Minimum Pension

49 HMRC guidance, Provide a pension for your scheme member, published 19 December 2018

scheme did not. Member benefits therefore also potentially differed between men and women in addition to the differences in benefits for their survivors.

2.12 There are a number of historical reasons for the later provision of survivor benefits for surviving male spouses. These reflect the societal expectations of previous decades and the difference in life expectancies between men and women at that time. When survivor pensions were first introduced, men were generally expected to be the breadwinner and most women who outlived their husbands were expected to have no income or pension of their own. On average women also lived longer than men, and so it was more likely that they would require this form of income protection.

2.13 The *Social Security Pensions Act 1975* created the first overarching legal framework for the provision of survivor pensions for women who survive their male spouse. This Act imposed on all schemes which are "contracted out" of the additional state pension a requirement to provide a surviving woman with a survivor's GMP [Guaranteed Minimum Pension] based on any of her deceased husband's service since 6 April 1978.

2.14 Over time, changes in society meant that the reasons for these differences in provision began to be eroded. Women's greater participation in the labour market, and their greater participation in occupational pension schemes, meant these differences in survivor benefits began to be perceived as increasingly unfair.

2.15 Accordingly, action was taken to correct this inequality. *The Social Security Act 1986* provided that a GMP accrued after 6 April 1988 should provide for a survivor pension to be paid to a surviving male whose female spouse was a member of the scheme. At the same time, in most public service schemes survivor benefits taking into account all of the female member's service since 6 April 1988 onwards (not just that part necessary to meet the minimum requirements for "contracted out" schemes) were introduced for men who survive their female spouse. The difference in treatment between male and female scheme members for the purpose of survivor benefits in public service pension schemes for service prior to 1988 was held in 2011 to be lawful.

2.16 After the European Court of Justice judgment in *Barber*, occupational pension schemes were required to provide equal pensions to men and women (including equal pension ages), and to provide equal survivor benefits for males who survive their female spouse, in relation to accruals from 17 May 1990 (the date of the judgment).

**Survivor benefits for civil partners**

2.17 The introduction of civil partnerships in 2005 represented a further change in social attitudes, as it allowed for the legal recognition of same sex partnerships for the first time.

2.18 Private sector schemes that are not contracted out are not obliged to pay survivor benefits at all. However, following the introduction of civil partnerships those that do provide survivor benefits to surviving opposite sex spouses have been required to provide them to surviving civil partners. However, non-contracted out schemes are permitted to provide survivor benefits to surviving civil partners taking into account only service since 5 December 2005, the date that civil partnerships were introduced.

This is provided for in paragraph 18 of Schedule 9 of the Equality Act 2010, which provides that it is not unlawful sexual orientation discrimination to restrict access to survivor pensions payable to civil partners in relation to rights accrued or employment service before that date.

2.19 In 2005, the then government also decided that contracted out schemes would be required to pay surviving civil partners of either gender a survivor's GMP based on accruals since 6 April 1988. This meant that civil partners were placed in a comparable position to widowers. However, it remained an option for contracted out schemes to not provide survivor benefits for civil partners in relation to the scheme excess (scheme benefits provided over and above the GMP) (because those benefits were accrued prior to 2005), or to provide more limited survivor benefits on the scheme excess because of the effect of paragraph 18 of Schedule 9 of the Equality Act 2010.

2.20 Most public service pension schemes went further than this legal minimum, and the scheme rules were changed so that survivor benefits for civil partners would be payable on the basis of all service accrued by the scheme member since 6 April 1988, and not just that part necessary to meet the minimum requirements on all "contracted out" schemes (i.e. the GMP).

***The Marriage (Same Sex Couples) Act 2013***

2.21 Following the passing into law of the *Marriage (Same Sex Couples) Act 2013* it became lawful for same sex couples to enter into a marriage. Married same sex couples are treated in the same way as civil partners for the purposes of determining survivor benefits. For the purposes of GMPs, as well as wider benefits in most public service pension schemes, this means that surviving same sex spouses have their survivor pension calculated on service accrued after 6 April 1988, in line with surviving civil partners and most men who survive their female spouse.[50]

## 3.3 Differences in requirements for survivors' benefits

### Widowers

The Government did not respond to its 2014 review of survivors' benefits in occupational pension schemes until it had considered the implications of the judgement of the Supreme Court in *Walker v Innospec*. In 2017, the Supreme Court had ruled in favour of Mr Walker, who had argued that his pension scheme should provide equal pension benefits for his husband, based on service before December 2005. It made a declaration that:

i) paragraph 18 of Schedule 9 of the *Equality Act 2010* is incompatible with EU law and must be disapplied, and

ii) Mr Walker's husband is entitled on his death to a spouse's pension, provided that they remain married.[51]

In response to the judgement, the Government said that in public service pension schemes, survivors' benefits for survivors of civil

[50] DWP, Review of Survivor Benefits in Occupational Pension Schemes, June 2014
[51] Press summary, Walker v Innospec, 12 July 2017

partnerships and same-sex marriages would be aligned with those for widows of opposite-sex marriages. It decided not to make further retrospective changes (i.e. not to fully equalise survivors benefits for widowers of opposite-sex marriages with those of widows):

> The Walker judgment has clearly changed the legal position relating to survivor benefits in respect of same-sex unions, and the Government have acted; public service pension schemes will now implement changes to provide that survivors of registered same-sex civil partnerships or same-sex marriage will be provided with benefits that replicate those provided to widows of opposite-sex marriages, with the exception of specific schemes where survivor benefits depend on making the correct contributions. As was made clear earlier in this statement, private pension schemes must take advice and act accordingly in complying with the judgment.
>
> Following careful consideration of the review's findings, the Government have concluded that, aside from those changes brought about by the Supreme Court judgment, they will not make any further retrospective changes to the existing provisions in respect of occupational pension schemes to equalise survivor benefits. While this means that the differences in survivor benefits for accruals in past periods will remain for some, these will work their way out of the system in time.[52]

Private sector DB schemes were "individually responsible for ensuring that they are compliant with the judgment":

> It is therefore not for the Government to direct private sector schemes in this instance, and any action taken by the Government in respect of public service pension schemes should not be interpreted as the minimum requirement for private pension schemes in considering how they respond to this judgment. These schemes will need to take their own advice to ensure that they are legally compliant with the judgment going forward.[53]

## Cohabiting couples

Until reforms introduced in the first decade of the 21st century, public service pension scheme did not provide survivor pensions for unmarried partners. This was in contrast to private sector schemes, where the trustees were able to exercise discretion to provide such benefits. However, changes in lifestyles had led to pressure for schemes to be modernised.[54]

**For more information see**

Library Briefing Paper SN-06348 Occupational pensions: survivors' benefits for cohabitants (January 2019).

In its 1998 Pensions Green Paper, *A new contract for welfare: partnership in pensions*, the Labour Government conceded that the public sector lagged behind the private in terms of provision of survivors' benefits for unmarried partners. It would be prepared to consider change if the membership were prepared to meet the additional costs.[55]

The way in which the reforms were introduced varied by scheme. However, the scheme member generally either had to have service after

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52 HC 73-76WS, 4 July 2019
53 HC 73-76WS, 4 July 2019
54 NAO, The impact of the 2007-08 changes to public sector pensions, HC 662, 8 December 2010
55 DSS, A new contract for welfare: partnership in pensions, December 1998, Cm 4179, chapter 8

the date of the reform (as in the Teachers' and NHS schemes) or to opt to transfer to the new, post-reform scheme (as in the schemes for the uniformed services). This is in line with the long-standing principle that improvements to public service pension schemes are not applied retrospectively, largely on grounds of cost.[56] For details of how the reforms were introduced in individual schemes, see SN-06348.

**Can a nomination be required?**

When pensions for unmarried partners were introduced, most public service schemes required a nomination to have been made. Over time, these rules were removed from some schemes but remain in the schemes for civil servants, police, NHS staff and teachers.

In February 2017, on an application by Denise Brewster for judicial review relating to the local government scheme in Northern Ireland, the Supreme Court held that the nomination requirement should be disapplied and that she should be entitled to a survivor's pension under the scheme.[57] Ms Brewster' lawyers expected there to be a knock-on effect on public service schemes with similar provisions:

> The rule which the Supreme Court has declared was unlawful is found in most of the UK's public sector pension schemes of which there are around 12 million members. This includes the NHS, teachers and civil service schemes. It is also found in many defined benefit pension schemes in the private sector.
>
> Although the Supreme Court has only declared the Northern Ireland local government scheme to be unlawful, the reasoning behind the Court's decision means that the identical provisions found in many other public sector schemes are likely to be unenforceable.[58]

In October 2017, the Government said HM Treasury had written to public sector schemes in April 2017 to make it clear that: "cases like that of Ms Brewster should be dealt with in line with the UK Supreme Court's decision. Cases previously refused solely because of a lack of nomination form should be reconsidered and schemes should pay survivor benefits from the date of the member's death in eligible cases, regardless of when a claim is made."[59]

## Withdrawal of survivors' pensions on remarriage

Until the mid-2000s, most public service pension schemes provided for a surviving partner's pension to be lost on remarriage. The rationale was that widow(er)'s pensions were intended to provide a measure of compensation for the loss of financial support the beneficiary had received from their late husband or wife. So, if the beneficiary remarried or cohabited, the expectation was that they would look to their new spouse or partner for financial support.[60]

**For more information see**

Library Briefing Paper SN-07109 Lifetime survivors pensions from public service pension schemes (April 2019)

Reforms to public service pensions in the mid-2000s included changes to survivors' partners to reflect changes in social patterns of behaviour.

56 HC Deb 23 May 1991 1124-6
57 Case ref: [2017] UKSC 8
58 Supreme Court gives woman right to late partners' LGPS pension, 8 February 2017; Supreme Court press release 8 February 2017
59 PQ 105675, 16 October 2017
60 HC Deb 27 February 2006 cc 100-101

They included the introduction of pensions for civil partners and nominated unmarried partners and the removal of rules ending pensions on remarriage.[61] However, the new rules were not generally changed with retrospective effect. This reflected a long-standing policy applied by successive governments that improvements to public service schemes should be implemented from a current date for future service only because to do otherwise would make any worthwhile improvements unaffordable.[62]

The Coalition Government made an exception for two groups, in recognition of their particular circumstances:

- All survivors of members of the armed forces in receipt of a pension on 1 April 2015 would be entitled to keep it for life if they decided to remarry, cohabit or form a civil partnership after that date. This was in recognition of the particular challenges they face building up an occupational pension in their own right.[63] However, this change did not extend to those who had already surrendered a pension on remarriage or cohabitation.[64]
- Survivors of police officers and firefighters who died on duty.[65] For the police scheme, this meant that surviving widow(er)s, and civil partners, who remarried, formed a civil partnership or cohabitation on or after 1 April 2015 (provided they were in receipt of their survivor benefits immediately before that date, or those benefits were reinstated after that date and prior to their remarriage etc. those benefits included a special or augmented award).[66]

There are ongoing campaigns for widows not covered by these announcements. On example is the campaign for the reinstatement of War Widows' Pensions for those widows who had remarried or cohabited before 1 April 2015 is being considered.[67]

The National Association of Retired Police Officers (NARPO) is calling for survivors of police officers to be treated equally across the UK, pointing to wider coverage of lifetime survivors' pensions elsewhere:[68]

- The Northern Ireland Executive provided for all survivors of members of the RUC pension scheme to retain their pensions for life from July 2014. It has also provided for reinstatement of pensions already withdrawn;[69]

61 For more detail, see Library Note SN 6348 Occupational pensions: survivors benefits for cohabitants (June 2012) and SN 3035 Pensions: civil partnerships and same sex marriages (July 2014)

62 HC Deb, 1 February 2008, c629-30; HL Deb 21 January 2014 c572-4; See also DEP2014-0078

63 MoD, Pensions for life for surviving spouses and civil partners of personnel, 8 November 2014; SI 2015/208

64 MoD, Pensions for life for surviving spouses and civil partners of personnel, 8 November 2014; PQ 212562, 18 November 2014

65 HC Deb 18 March 2015 c774;

66 SI 2015/2057 – Explanatory memorandum, para 2.2

67 War widows' association of Great Britain – our campaigns; PQ147986, 6 June 2018; HC Deb 19 February 2019 c1187

68 NARPO, Widows' pensions for life petition

69 Northern Ireland Executive press release, 21 March 2014; *Public Service Pension Act (NI) 2014* (ss30-1); *Police Pensions Regulations Northern Ireland (SI 2015/113)*, Sch 5

- The Scottish Government provided for all police survivors' pensions to be payable for life from October 2015, including reinstating pensions already withdrawn.[70]

In response to a series of PQs on the issue in early 2019, the UK Government indicated that it did not intend to go further for survivors of police officers in England and Wales. In June 2019, the then Police Minister, Nick Hurd, said:

> Survivors of officers who were members of the 2006 and 2015 police pension schemes are, since 2006, paid survivor pensions for life.
>
> On 18 January 2016, the *Police Pensions Regulations 1987 and the Police (Injury Benefit) Regulations 2006* were amended to allow widows, widowers and civil partners of police officers in England and Wales who have died on duty and who qualified for a survivor pension after 1 April 2015 to continue to receive their survivors' benefits for life. Successive governments have been clear that there is a general presumption against making retrospective changes to public service pension schemes. However, the Government believes the arguments for making a limited exception for the widows of police officers who died on duty are sufficiently compelling in this case.[71]

70 SPPA, Police and firefighters' survivors' pensions, 15 October 2015
71 PQ 259292 10 June 2019; PQ 246 511, 26 April 2019

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