
EXPLANATORY NOTE

(This note is not part of the Order)

Section 39A of the Social Security Contributions and Benefits Act 1992 (c. 4) and section 39A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) make provision for widowed parent's allowance to be paid to surviving spouses and civil partners with dependent children. Section 30 of the Pensions Act 2014 (c. 19), the Bereavement Support Payment Regulations 2017 (S.I. 2017/410), section 29 of the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)) and the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019 (S.R. 2019 No. 181) make provision for higher rate bereavement support payment to be paid to surviving spouses and civil partners with dependent children. Bereavement support payment replaced widowed parent's allowance for deaths on and after 6th April 2017.

In the case of *In the matter of an application by Siobhan McLaughlin for Judicial Review (Northern Ireland)* [2018] UKSC 4, the Supreme Court made a declaration of incompatibility in relation to section 39A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 on the basis that, insofar as it precluded any entitlement to widowed parent's allowance by a surviving unmarried partner, it was incompatible with Article 14, in conjunction with Article 8, of the European Convention on Human Rights.

In the case of *Jackson and others v Secretary of State for Work and Pensions* [2020] EWHC 183 (Admin), the High Court made a declaration of incompatibility in relation to section 30(4)(a) read with section 30(1) of the Pensions Act 2014 on the basis that, insofar as it empowered the Secretary of State to make regulations that bereavement support payment be paid at a higher rate in the case of a person with dependent children only if they are a spouse or civil partner of the deceased, it was incompatible with Article 14, in conjunction with Article 8, of the European Convention on Human Rights.

This Order amends the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and the Pensions Act 2014 in order to remove the incompatibilities. It also amends the Social Security Contributions and Benefits Act 1992 and the Pensions Act (Northern Ireland) 2015 to make the equivalent amendments to the legislation of Great Britain (in the case of widowed parent's allowance) and Northern Ireland (in the case of bereavement support payment) and, in relation to bereavement support payment, amends the Bereavement Support Payment Regulations 2017 and the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019.

The amendments made by articles 4 to 9 of this Order have retrospective effect - effect from a date earlier than that on which the Order is made - from 30th August 2018. Paragraph 1(1)(b) of Schedule 2 to the Human Rights Act 1998 (c. 42) enables provisions of the Order to have retrospective effect.

Article 2 of the Order makes transitional provision so that amendments made by the Order do not affect either entitlement to widowed parent's allowance or bereavement support payment before the Order comes into force or entitlement which would otherwise continue when the Order comes into force, but for the amendments made by the Order.

Article 3 makes transitional provision so that the usual periods in which a claim may be made for a widowed parent's allowance or bereavement support payment are extended where a claim is made in respect of a death before the Order comes into force.

Article 4 amends the Pensions Act 2014 to extend entitlement to bereavement support payment to survivors of cohabiting partnerships who have dependent children. It includes amendments to that

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Act to provide that only one person can be entitled to bereavement support payment in respect of a death and to determine who is entitled where there is more than one potential claimant. Article 7 makes equivalent amendments to the Pensions Act (Northern Ireland) 2015.

Article 6 amends the Bereavement Support Payment Regulations 2017 (S.I. 2017/410) to extend the higher rate of bereavement support payment to survivors of cohabiting partnerships who have dependent children and to make provision for survivors of cohabiting partnerships in respect of deaths before the Order comes into force. Article 9 makes equivalent amendments to the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019 (S.R. 2019 No. 181).

Article 5 amends the Social Security Contributions and Benefits Act 1992 to extend entitlement to widowed parent's allowance to survivors of cohabiting partnerships who have dependent children. It provides that only one person can be entitled to widowed parent's allowance in respect of a death and includes provisions to determine who is entitled where there is more than one potential claimant. Article 8 makes equivalent amendments to the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Article 10 and the Schedule amend the legislation governing means-tested benefits (Income Support, Jobseeker's Allowance, Employment and Support Allowance, Housing Benefit, Universal Credit and State Pension Credit) so that lump payments of widowed parent's allowance and bereavement support payment made to the survivors of cohabiting partnerships who are entitled in respect of a period before the Order comes into force are disregarded, for 52 weeks (or, in the case of Universal Credit, 12 months) from receipt, from capital in assessing entitlement to those means-tested benefits.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.