



BRIEFING PAPER

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Occupational pensions - survivors' benefits for cohabitants

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Summary

The pension tax legislation allows schemes to provide a survivor pension to a person who was not married or a civil partner of the scheme member but was financially dependent on them.

Until reforms introduced in the mid-2000s, public service schemes did not provide survivor pensions for unmarried partners. This was in contrast to private sector schemes, where the trustees often had discretion to provide such benefits. Changes in lifestyles led to modernise, and in 1998 the Labour Government said it would extend eligibility survivors' pensions to unmarried partners if members were prepared to meet the additional costs. Subsequent reforms to all the main schemes included improvements to survivors' benefits, such as the introduction of pension for unmarried partners and allowing pensions to be paid for life rather than removed on remarriage or cohabitation. These improvements were not made retrospective – scheme members either had to have service after the date of the reform or opt to be a member of the post-reform scheme.

The fact that the scheme member needs to have service after a particular date was subject an unsuccessful legal challenge in relation to the Local Government Pension Scheme (LGPS). The claimant, [Catherine Harvey](#), was the unmarried partner of a deceased member of the LGPS who had left service before 1 April 2008, the date from which he needed to have been in employment for her to be eligible. Ms Harvey contended that the refusal to pay her a pension amounted to unlawful discrimination and a breach of her human rights. However, the [High Court](#) found in favour of the Government. It considered that the central and core justification was that “spouses in the 1997 Scheme and cohabitantes of 2008 Scheme members are entitled to a pension because it was costed into the relevant Schemes and paid for. Where a member left before April 2008 the member did not pay for a cohabitee to receive a benefit, nor was it otherwise costed into the 1997 Scheme” ([LGPS Update, December 2018](#)).

When pensions for unmarried partners were introduced, most public service schemes required a nomination to have been made. 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. HM Treasury subsequently wrote to public pension schemes saying that “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” ([PQ 105675, 16 October 2017](#)). Where schemes required a nomination, that has now been removed by statutory instrument.

In July 2019, in the case of [Langford v Secretary of State for Defence](#), the Court of Appeal held that a rule in the [Armed Forces Compensation Scheme Order](#) that for a cohabiting partner to be eligible for survivors' benefits, there must have been nothing to prevent them marrying, amounted to unlawful discrimination which was not justified or proportionate in that case. The Department was “considering the merits of an appeal to the Supreme Court, and the read over of the judgment” ([AFPS Annual Report 2018-19](#), HC 2403, July 2019, para 4.10).

However, both these judgments relate to restrictions in the rules of those schemes that do provide survivor's benefits to unmarried partners. In January 2020, the Government said it did not think the Brewster judgment had any bearing on “cases where pension schemes do not provide pensions to unmarried partners” ([HC Deb 28 January 2020 c239WH](#)).

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In 2019, in response to its [2014 review of survivors' benefits](#), the Government said it supported "equal treatment of survivors of all legal relationships." It would make changes to bring public service survivors' benefits for same-sex civil partnerships and same-sex marriages into line with those for widows of opposite-sex marriages but would not make any further retrospective changes ([HCWS 4 July 2019 c73WS](#)).

For a discussion of the legal position of cohabitants more generally, see Library Briefing Paper "[Common law marriage" and cohabitation](#) (CBP 3372 June 2018). For the pension rights of civil partners and same-sex married couples, see [CBP-03035](#) (April 2020).

The legal framework

Schemes used to contract out of the additional State Pension are subject to certain legal requirements to provide survivors' benefits for widow(ers) and civil partners.¹

Beyond this, pension tax legislation enables survivors' pension benefits to be paid to a surviving adult dependant, which includes an unmarried partner who was financially (inter)dependent.

The current pension tax regime was introduced under the *Finance Act 2004*. It was designed as a simplification - replacing eight different pension tax regimes with a single set of rules. The government explained that the reforms would include "a consistent set of rules about what kinds of benefits pension schemes may pay on the death of a member."²

Pension death benefits can be paid to a 'dependant', ie:

- 1 a person married to or a civil partner of the member;
- 2 a child of the member who has not reached the age of 23 or was dependant on the member at the time of death because of physical or mental impairment; or
- 3 an unmarried partner who was financially (inter)dependent on the member.³

HMRC's Pension Tax Manual explains:

A person who was not married to the member or was not in a civil partnership with the member at the date of the member's death and is not a child of the member is a dependant of the member if, in the opinion of the scheme administrator, at the date of the member's death the person was:

- financially dependent on the member,
- the person's financial relationship with the member was one of mutual dependence (the scheme rules will set out the criteria the scheme will use to determine mutual dependency), or
- the person was dependent on the member because of physical or mental impairment.⁴

The type of pension death benefit that may be paid include:

- **a dependant's scheme pension.** This pension death benefit is payable from both a defined benefits arrangement and a money purchase arrangement - see [PTM072100](#)

¹ State Earnings Related Pension Scheme from 1978 to April 2002; and the State Second Pension from April 2002 onwards; For more detail, see SN 4822 [Contracting out of the State Second Pension](#)

² HM Treasury and Inland Revenue, [Simplifying the taxation of pensions: increasing choice and flexibility for all](#), December 2002, para 5.29

³ *FA 2004*, Sch 28 (15); [Pension Tax Manual - glossary](#)

⁴ [HMRC Pension Tax Manual - glossary](#)

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- **a beneficiary's annuity.** This pension death benefit is payable from a money purchase arrangement only - see [PTM072200](#)
- **a dependants' drawdown pension.** This pension death benefit is payable from a money purchase arrangement only. The dependant must have become entitled to it and have designated sums or assets to a dependant's drawdown pension fund before 6 April 2015. The drawdown pension can take the form of either dependants' income withdrawal or a dependants' short-term annuity or a combination of the two - see [PTM072300](#)
- **a beneficiary's flexi-access drawdown pension.** This pension death benefit is payable from 6 April 2015 and from a money purchase arrangement only. The beneficiary must designate sums or assets to a flexi-access drawdown fund for their own benefit. The pension can take the form of either beneficiary's income withdrawal or a beneficiary's short-term annuity or a combination of the two - see [PTM072400](#).⁵

1.2 What schemes provide

Pension tax legislation provides for the tax treatment of payments to and from a pension scheme – thereby encouraging certain types of payments and discouraging others through the application of 'unauthorised payments' tax changes. Within this framework, what payments will actually be made will depend on scheme rules.

As discussed in [section 2 below](#), the right to a survivor's benefit for unmarried partners was introduced in public service pension schemes as part of reforms in the mid-2000s. It was not introduced with retrospective effect. 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. In 1991, the then Armed Forces Minister Archie Hamilton explained:

There are two important and allied points. First, entitlements under the scheme are, for any individual and through him his dependants, derived from the rules of the scheme which were in force at the date of his retirement. Secondly, when rules are changed, those changes do not apply to those who are no longer serving at the time when they are brought into effect [...] If we had applied every improvement retrospectively, the costs involved would have been significantly greater and it is unlikely that we would have been able to reach the standard which exists today.⁶

The detail of how this was done varies by scheme. In some cases, the scheme member needed to have service after the date of change. In others, they needed to join the new scheme. There are some rules in common across schemes - for example, to ensure that where there was a significant age gap, the survivor does not benefit unduly and to guard against "deathbed" marriages.⁷

⁵ [HMRC Pensions Tax Manual. Death benefits: essential principles](#)

⁶ [HC Deb 23 May 1991 1124-6](#)

⁷ Home Office, [New Police Pension Scheme for Future Entrants](#), December 2003, p21

Statistics

In 2018, 95% of private sector defined benefit schemes paid pension benefits to surviving spouses and civil partners as of right under scheme rules, and 71% of schemes paid pension benefits to surviving children as of right.

For nominated persons other than the deceased member's spouse/civil partner or child, the position is different – only 6% of schemes provide survivor's pensions to such nominees as of right, while in 82% of schemes this was done at the scheme trustees' discretion.⁸

The reason for the difference in treatment may be that HMRC rules leave to scheme administrators to form an opinion as to the level of financial or other dependence that someone other than a surviving spouse, civil partner or child may have had on the deceased member.⁹

DB schemes offering benefits payable on death after retirement, UK, 2018				
As percentage of pensions in payment in private sector defined benefit workplace schemes				
Type of survivor's benefit	As of right under scheme rules	At trustees' discretion	Benefit not payable	
Lump sum or pension guarantee	75%	21%	4%	
Pension to a surviving spouse/civil partner	95%	5%	0%	
Pension to surviving children	71%	20%	9%	
Pension to other nominated person	6%	82%	12%	

[Source ONS Occupational Pensions Scheme Survey 2018, table 15](#)

1.3 Legal challenges

The restrictions on survivors' benefits built up in the past have been subject to multiple legal challenges.

Harvey

Like other public service pension schemes, the rules of the Local Government Pension Scheme (LGPS) were changed in the 2000s to provide survivors' pensions for unmarried partners, but not with retrospective effect. In the case of the LGPS, the scheme member had to be in employment after 1 April 2008. This was challenged in the Court by Ms Catherine Harvey who was the unmarried partner of a deceased member of the Local Government Pension Scheme (LGPS) who'd left work in 2003 and died in 2016. She applied for judicial review on the basis that this amounted to unlawful discrimination and a breach of her human rights. For example, the partner of someone who had worked alongside her partner for ten years up to 2003 and continued working until May 2008 would be entitled to survivors' pension for their service

⁸ ONS [Occupational Pensions Scheme Survey 2018](#), table 15

⁹ HMRC Pensions Tax Manual, section [PTM071200: Death benefits: essential principles: definition of dependant](#), updated 11 February 2020

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including the ten years up to 2003, whereas Ms. Harvey was not entitled to receive anything for the same service.¹⁰

In October 2018, the High Court dismissed the challenge. The judge, Mr Justice Knowles, said that the central and core justification running throughout this case is that spouses in the 1997 Scheme and cohabitants of 2008 Scheme members are entitled to a pension because it was costed into the relevant Schemes and paid for. Where a member left before April 2008 the member did not pay for a cohabitee to receive a benefit, nor was it otherwise costed into the 1997 Scheme. He took issue with the claimant's assertion that the costs were tiny, compared to the size of the overall scheme. In [the judgment](#) he stated: "the broader impact on the public purse, and on other LGPS members, if the claimant were to receive the benefit she contends for, would be very significant." The Government Actuary's Department estimated that making these changes would cost from £600 million to £1,100 million and could rise to £4.5 billion for all public service pension schemes.¹¹

Brewster

In February 2017, the Supreme Court handed down its judgement on the [application for judicial review by Denise Brewster \(Northern Ireland\)](#).¹² The case related to the Local Government Pension Scheme in Northern Ireland, which included a rule that unmarried cohabiting partners had to be nominated by their pension scheme member partner in order to be eligible for a survivor's pension. The Court found that the requirement should be disapplied and that Ms Brewster was entitled to receive a survivor's pension under the scheme. Its press release said:

This case concerns a requirement in the *Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2009* (the "2009 Regulations") that unmarried cohabiting partners be nominated by their pension scheme member partner in order to be eligible for a survivor's pension. The survivor must also show that he or she has been a cohabitant for two years before the date on which the member sent the nomination and has been in that position for two years before the date of death. There is no similar nomination requirement for married or civil partner survivors. The Department of the Environment of Northern Ireland (DENI) included a nomination requirement in the 2009 Regulations in order to ensure "parity" with other local government pension schemes in Scotland and England and Wales, which at the time had similar requirements.

The appellant, Denise Brewster, lived with her partner, William Leonard McMullan, for around ten years before December 2009. On Christmas Eve that year, they became engaged. Mr McMullan died two days later. At the time of his death, Mr McMullan was employed by Translink, a public transport operator, for whom he had worked for approximately 15 years. Throughout that time he had been a member of, and had paid into, the Local Government

¹⁰ ['Discrimination prevails between married and cohabiting couples in the LGPS', posted by Bindmans LLP, Sterling Law, 21 November 2018](#)

¹¹ [LGPS Update – Technical Group](#), December 2018; Gov.UK, [Case study: GAD's expertise supports Government's legal defence](#), July 2019; [R v Catherine Harvey and Ministry of Communities and Local Government and London Borough of Haringey. \[2018\] EWHC 2871 \(Admin\)](#)

¹² Case ref: [2017] UKSC 8

Pension Scheme (the scheme). Ms Brewster believes that Mr McMullan had completed a form in which he nominated her to be eligible for a survivor's pension, but the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC), which administers the scheme, says it did not receive any form. Accordingly, NILGOSC refused to pay her a survivor's pension. Ms Brewster applied for a judicial review of this decision.

The High Court held that the requirement of nomination of a cohabiting partner in the 2009 Regulations was incompatible with article 14 of the European Convention on Human Rights (which prohibits discrimination) read together with article 1 protocol 1 (peaceful enjoyment of possessions) ("A1P1"). The Court of Appeal allowed the respondents' appeal, finding that the nomination requirement was neither unjustified nor disproportionate. In the meantime, prompted by the judgment of the High Court, the equivalent regulations in England and Wales and in Scotland were amended to remove the nomination requirement in those schemes. When the appellant became aware of these changes, she applied to the Court of Appeal for her appeal to be re-opened. Her application was refused and she now appeals to the Supreme Court.

JUDGMENT - The Supreme Court unanimously allows Ms Brewster's appeal and declares that the requirement in the 2009 Regulations that the appellant and Mr McMullan should have made a nomination be disapplied; and that the appellant is entitled to receive a survivor's pension under the scheme. Lord Kerr gives the judgment, with which the other Justices agree.¹³

The ruling relates to the Local Government Pension Scheme in Northern Ireland. However, lawyers representing Ms Brewster expected the ruling to have a wider impact:

Denying bereaved cohabitants access to survivor pensions causes huge distress as well as significant financial hardship. Now that around 1 on 6 families in the UK are cohabiting families, reform is long overdue.

The Supreme Court has decided that there was unlawful discrimination on grounds of marital status. This is the first marital status discrimination claim to reach the Supreme Court and it is likely to have a significant wider impact, both in relation to pensions and in other areas where long-term cohabitants are treated less favourably.

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.

In addition, while the Human Rights Act does not bite on private sector schemes, members of those schemes will rightly expect

¹³ [UK Supreme Court press release, 8 February 2017](#)

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their employers not to operate schemes which discriminate unfairly on grounds of marital status.¹⁴

Following the judgment, HM Treasury wrote to public pension schemes saying that cases previously refused solely because of lack of a nomination form should be reconsidered:

Chris Evans: To ask Mr Chancellor of the Exchequer, pursuant to the Answer of 3 March 2017 to Question 652450, what assessment he has made of the implications for his policies of the judgment of the Supreme Court of 8 February 2017 in the matter of an application by Denise Brewster for Judicial Review (Northern Ireland) [2017] UKSC8; and whether schemes will be required to revisit past cases where a survivor's pension was refused because no nomination had been made.

Elizabeth Truss: HM Treasury officials wrote out to public sector pension schemes in England, Wales, Scotland and Northern Ireland on 6 April 2017. The letter made 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.¹⁵

Langford

In July 2019, the Court of Appeal gave its judgment in the case of *Langford v Secretary of State for Defence*.¹⁶ It held that a rule in the [Armed Forces Compensation Scheme](#) (AFCS) providing that for an unmarried couple to qualify for survivors' benefits, they must not have been *prevented* from marrying or forming a civil partnership, amounted to unlawful discrimination.

The facts of the case were that Mrs Langford, the partner of a Military Officer who died in 2011, was seeking to claim under the AFCS. Article 30(c) of the AFCS Order provides that one of the criteria for determining a "surviving adult dependent" is that the couple "were not prevented from marrying or forming a civil partnership."¹⁷ Mrs Langford was deemed ineligible for AFCS death benefits, as she had not divorced her previous spouse at the time of the Officer's death.

The Court of Appeal held that the rule was discriminatory, and that the foundation for the discrimination was not reasonable in this case. It said that, while it was a "legitimate aim of the scheme to achieve parity of treatment between married and unmarried partners of scheme members," this was in reality achieved "not by imposing restrictions based on a partner's marital status but by requiring the demonstration of a substantial, exclusive and financially dependent relationship in practice."

¹⁴ [Supreme Court upholds cohabitee discrimination claim, 8 February 2016, Deighton Pierce Glynn](#)

¹⁵ [PO 105675, 16 October 2017; NHS Pensions website. Payment of survivor benefits for unmarried partners](#)

¹⁶ [Langford v Secretary of State for Defence, \[2019\] EWCA Civ 2017 July 2019](#)

¹⁷ [Armed Forces and Reserve Forces Compensation Scheme Order 2011 \(SI 2011/517\), Article 30 and Sch 1](#)

The Government has estimated the capitalised cost of removing the rule across the AFCS and the AFPS at £110 million. In July 2019, the Ministry of Defence was “considering the merits of an appeal to the Supreme Court, and the read over of the judgment.”¹⁸

Wider implications?

There are similar rules in other public service pension schemes.¹⁹ Some have argued the ruling has wider implications. A lawyer representing Mrs Langford described it as “a gateway to justice” for others who had been denied pension rights following the death of a partner.²⁰

The Court of Appeal said in a concluding paragraph that it had been dealing with a single case which was decided on its own particular facts:

68. In the result, the discrimination is, in my judgment unlawful and cannot be justified or proportionate in Mrs Langford’s case. We have been dealing with her case and her case alone. I would not exclude the possibility that, in other cases (perhaps in relation to other public service schemes) it might be possible on material adduced at the proper stage of the proceedings, for an exclusionary rule of this character to be justified and proportionate. I do not say it would be possible; I simply do not rule out the possibility. The exercise was not undertaken properly in this case.²¹

An article by a pensions lawyer in the *Financial Times* said that “each case turns on its own facts. It would be for members of other public service schemes to bring claims if they wanted to test whether similar discriminatory rules in their respective schemes could be objectively justified.”²² Unions representing members of the civil service pension scheme were considering the implications and were keen to discuss those with the Cabinet Office.²³

1.4 Review of survivors’ benefits

As required under the [Marriage \(Same Sex Couples\) Act 2013](#), the Coalition Government conducted a review of survivors’ benefits in occupational pension schemes. The report of this [review](#) was published in June 2014. However, the Government did not respond to this review until 2019, after it had considered the judgment of the Supreme Court in *Walker v Innospec*.

In this judgment, the Supreme Court allowed the appeal of Mr Walker, who had argued that his pension scheme should provide equal pension

For more on the background, see

Library Briefing paper [Pensions: civil partnerships and same-sex marriages](#) (CBP 3035, July 2019).

¹⁸ [AFPS Annual Accounts 2018-19, July 2019](#), HC 2403, July 2019

¹⁹ [Teachers’ Pensions Regulations 2010 \(SI 2010/990\)](#), reg 90 and [\(SI 2015/512\)](#), reg 135; [Public Service \(Civil Servants and Others\) Pensions Regulations 2014](#), reg 101; [NHS Pension Scheme Regulations 2015 \(SI 2015/94\)](#), reg 114; [Firefighters Pension Scheme Regulations 2014 \(SI 2014/2848\)](#), reg 76; [Police Pension Scheme Regulations 2015 \(SI 2015/445\)](#), reg 135

²⁰ [Woman wins right to late partner’s military pension in landmark ruling, BBC News, 17 July 2019](#)

²¹ [Langford v Secretary of State for Defence, \[2019\] EWCA, Civ 2017 July 2019](#)

²² [What the landmark pensions ruling means, Financial Times, 9 August 2019](#)

²³ [Unions seek government talks after court ruling on partner pension entitlement, Civil Service World, July 2019](#)

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benefits for his partner, 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.²⁴

Responding in July 2017, the Government said it was reviewing the implications.²⁵

In a Written Statement of 4 July 2019, in response to *Walker v Innospec*, the Government said it had decided that in public service schemes, surviving male same-sex and female same-sex spouses and civil partners of public service pension scheme members would, in the majority of cases, receive benefits equivalent to those received by widows of opposite-sex marriages. The exception to this may be in specific schemes where, in the past, improvements in female members' survivor benefits have led to increased contributions.²⁶ It had decided "not to equalise treatment between female and male survivors of opposite-sex marriages in public service pension schemes."²⁷

At the same time the Government responded to the 2014 review of survivor's benefits.²⁸ It confirmed that it supported "equal treatment of survivors of all legal relationships." Public service pension schemes would implement changes to provide that survivors of registered same-sex civil partnerships or same-sex marriage would be provided with benefits that replicated those provided to widows of opposite-sex marriages, with the exception of specific schemes where survivor benefits depended on making the correct contributions. It would not make any further retrospective changes:

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.²⁹

This was confirmed by Universities' Minister, Chris Skidmore, in response to a Westminster Hall debate on 28 January 2020:

The hon. Member mentioned the Brewster Supreme Court case in relation to any possible discrimination. In 2017, the Supreme Court judgment determined that where a pension scheme provides for a pension for unmarried partners on the member's death, there should be no requirement for the member to nominate their partner for the pension to be paid. The

²⁴ [Press summary, Walker v Innospec, 12 July 2017](#)

²⁵ [PQHL761 25 July 2017](#); TPS, [Survivors' benefits in the Teachers' Pension Scheme, 27 April 2018](#)

²⁶ [HCWS 4 July 2019 c73WS](#)

²⁷ Government Equalities Office, [Implementing Opposite-Sex Civil Partnerships](#), July 2019

²⁸ DWP, [Review of survivors' benefits in occupational pension schemes](#), June 2014

²⁹ [HCWS 4 July 2019 c73WS](#)

Government believe that that decision has no bearing on cases where pension schemes do not provide pensions to unmarried partners.

As I have said, the Government's established position is to avoid making retrospective improvements to public service pension schemes at taxpayer expense, other than in very exceptional circumstances, and we do not envisage that policy changing in future.³⁰

2. Public sector schemes

2.1 Background

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.³¹

The TUC published a pamphlet in December 1995, *Pensions and prejudice: how public sector pension schemes discriminate against non-married partners*. There were also Early Day Motions on the issue in 1997/98 and 2001/02.³²

Pressure for reform came from a number of factors, including changes in lifestyles.³³ 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:

58 Since 1978, all occupational pension schemes and personal pensions used to contract out SERPS have had to provide for a survivor's pension for a widow, and from 1998 this requirement was extended to a surviving widower. The same provision will apply to stakeholder pension schemes

59 Beyond these minimum requirements, the precise package of survivors' benefits provided by occupational pension schemes depends on what the sponsoring employer finds it worthwhile to provide (for example, in terms of recruitment and retention), given the views of members. Most large occupational pension schemes in the private sector now provide survivors' benefits for unmarried partners of the opposite sex of scheme members, although in the overwhelming majority of cases, this is at the discretion of the trustees. In a minority of schemes, same-sex partners are also eligible, again at the trustees' discretion.

60. The public service schemes at present provide survivors' pensions only for the legal spouse of a deceased member. If the general membership of a public service scheme wanted, in future, to extend eligibility for survivors' pensions to unmarried partners and were prepared to meet the additional costs, the Government would be prepared to consider how practicable arrangements could be devised for achieving this in the context of a statutory scheme. In many cases, this would be most effectively achieved by developing a new pension scheme.³⁴

³¹ [NAO, The impact of the 2007-08 changes to public sector pensions, HC 662, 8 December 2010](#)

³² EDM 1582 1997/98 [Gisela Stuart]; EDM 1135 2001/02 [James Purnell]

³³ NAO, [The impact of the 2007-08 changes to public sector pensions](#), HC 662, 8 December 2010

³⁴ DSS, [A new contract for welfare: partnership in pensions](#), December 1998, Cm 4179, chapter 8

A Parliamentary Written Answer in April 2003 gave estimated costs.³⁵

The Labour Government reformed the main public service schemes over the period 2002 to 2008. Although the new schemes had features, such as improved survivors' benefits, that would be advantageous to some members, overall the new schemes were less valuable to members than the existing schemes.³⁶

Improvements to survivors' benefits included:

- The introduction of survivor pensions for civil partners, consequent on the implementation of the *Civil Partnership Act 2004*, with effect from 5 December 2005;
- The introduction of survivor pensions for nominated cohabiting partners subject to certain conditions; and
- The abolition of rules under which a widow(er)'s pension was lost on remarriage, cohabitation or the formation of a new civil partnership.

Making married partner survivors' pensions payable for life (instead of ceasing on remarriage of the survivor) was conventionally assumed to be a change which should be associated with the introduction of unmarried partner survivor pensions for life.³⁷

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

Policy responsibilities - devolved administrations

Public service pensions schemes are provided for under primary legislation – most recently the [Public Service Pensions Act 2013](#) – that applies to Great Britain.

The Civil Service Pension Scheme applies across Great Britain and Armed Forces Pension Schemes are UK-wide ([Public Service Pensions Act 2013](#), Sch1).

The Scottish Government has power to make regulations for the schemes for the NHS, teachers, local government, police and firefighters in Scotland ([Scotland Act 1998](#), sch 5).

The National Assembly for Wales has the power to make regulations for firefighters' pensions in Wales ([Government of Wales Act 2006](#), s94 and Sch 5 and 7).

For Northern Ireland, policy on public service pensions is devolved (except for the armed forces and higher judiciary) ([Northern Ireland Act 1998](#)). However, by long-standing convention, the main provisions in the Northern Ireland schemes tend to mirror those in Great Britain.

³⁵ [HC Deb 2 April 2003 c715-6W](#)

³⁶ PPI, [An assessment of the Government's reforms to public sector pensions](#), October 2008, p3

³⁷ [HC Deb 2 April 2003 c715-6W](#)

2.2 Armed Forces Pension Scheme

There are different schemes for members of the Armed Forces, depending on the date of joining the armed forces.

Unmarried partners of members of the scheme introduced in 1975 (**AFPS 75**) are only eligible for survivors' benefits if the death was attributable to service. A leaflet for scheme members explained:

Surviving Spouse/Civil Partner may receive up to 50% of the member's pension. Pensions for eligible children may also be payable. Pensions for eligible partners may be payable if death is attributable to service.³⁸

A 2001 Ministry of Defence consultation on reforms to the scheme did not address the question of benefits for unmarried partners.³⁹ However, a 2003 report on the consultation said:

In view of the responses received concerning unmarried partners, those within a substantial relationship will be eligible for 'widow's' benefits under the new scheme. Further work is being undertaken in this area to define the arrangements for the registration of partners.⁴⁰

A number of cases of servicemen killed in action, leaving long-term partners and children with no pensions, highlighted this omission and on 20 March 2003 the Government announced that unmarried partners of service people who died as a result of service related to conflict would qualify for ex-gratia payments equivalent to benefits paid to surviving spouses.

The Parliamentary Under-Secretary of State for Defence (Dr Lewis Moonie): The Government is aware of the concerns of Service personnel whose unmarried partners are currently ineligible for pension benefits. While this is being considered as part of the reviews of pension and compensation arrangements for the Armed Forces, we have concluded that it would be appropriate to address now the particular risks associated with conflict. We have therefore decided that, as of today, where a Service person dies as a result of service related to conflict, ex-gratia payments equivalent to benefits paid to a surviving spouse under the Armed Forces Pension Scheme may be awarded to their unmarried partner, where there is a substantial relationship. Eligibility for such benefits will be assessed against a set of criteria which would include financial dependence or interdependence, children, shared commitments such as a mortgage, prime beneficiary of a will, shared accommodation, the length of the relationship and no legal spouse. The decision on eligibility would be based on a broad assessment of the substance of the relationship and not all of these criteria would need to be met for entitlement to exist.⁴¹

On 15 September 2003 it was announced that the AFPS would provide survivor benefits to unmarried partners where the death was

³⁸ AFPS75, [Your pension scheme explained](#), (MMP/106, February 2015), p 3 and 20

³⁹ MoD, *The Armed Forces Pension Scheme Review - A consultation document*, March 2001

⁴⁰ MoD, *New Armed Forces Pension Scheme. Report on consultation process*, September 2003, p5

⁴¹ HC Deb, 20 March 2003, c54WS

attributable to service. Unmarried partners for non-attributable deaths would be provided under the new AFPS:

The Ministry of Defence will also be extending the provisions introduced on 20 March 2003 which provided benefits to unmarried partners for attributable deaths related to conflict. The current AFPS will provide attributable benefits to unmarried partners where there is a substantial relationship for all attributable deaths with an effective date of 15 September 2003. The current AFPS does not provide unmarried partner benefits for non-attributable deaths, but this benefit will be available under the new AFPS.⁴²

The October 2003 *Framework document for the new Armed Forces Pension Scheme* said that registered unmarried partners would also be eligible to receive a widow/widower's pension subject to the relationship being substantial at the time of death.⁴³

AFPS 75 was closed to new entrants from April 2005 and a new scheme - AFPS 05 - was introduced for new entrants from that date. This provides dependants' pensions for "eligible" unmarried partners. These are payable for life, irrespective of re-marriage or cohabitation:

Partners, other than civil partners, are also eligible to receive a pension, providing that it can be demonstrated that a substantial relationship existed and there is no spouse or civil partner. These examinations will be conducted with sensitivity so far as possible.⁴⁴

The rules are in the [Armed Forces Pension Scheme Order 2005 \(SI 2005 No. 438\)](#), Schedule 1, Part E. Rule E.2 provides for an 'adult dependant' to be entitled to a survivors' pension provided that the Secretary of State is satisfied that at the time of the member's death:

- (a) the person and the member were cohabiting as partners in an exclusive and substantial relationship,
- (b) the person and the member were not prevented from marrying (or would not have been so prevented apart from both being of the same sex), and
- (c) either the person was financially dependent on the member or the person and the member were financially interdependent.

Survivors' benefits in the new scheme introduced in April 2015 are based on those in AFPS 05.⁴⁵

For more detail see, Library Standard Note SN 5892 [Armed forces pension reform – 1995-2005](#) (September 2015) and [Armed forces pensions - 2015](#) (August 2015).

⁴² [HC Deb, 15 September 2003, cc39-40WS](#)

⁴³ MoD, *A Framework Document for the new Armed Forces Pension Scheme*, October 2003, para 6.1

⁴⁴ AFPS 05, [Your Pension Scheme Explained](#), (MMP/124, August 2012)

⁴⁵ [HC Deb 16 October 2012 c15-16WS](#); See Library Briefing Paper SN-05891 [Armed forces pensions - 2015](#) (August 2015).

2.3 Civil Service Pension Scheme

Summary

The 1972 section of the PCSPS (*classic*), which closed to new entrants in October 2002, provides survivors' pensions for surviving spouses and civil partners only. Scheme members who have been single throughout their career have the option of applying for a contribution refund, although a deduction is made to cover the cost of providing a post-retirement widow(er)'s pension in the event of remarriage after retirement.

The new scheme for civil servants introduced in October 2002 (*premium*) provided survivors' pensions for unmarried partners. Contribution rates were higher, reflecting the Government's view that the cost of benefit improvements should be met by members. Members of *classic* had the option of transferring to *classic plus* which also provided the modernised survivors benefits in return for higher contributions. The schemes after that also provide modernised survivors' benefits. Following the introduction of *alpha* in 2015, contribution rates are the same for all civil service schemes.

Classic

The scheme for civil servants introduced in 1972- *classic* - pays survivors' pensions to legal spouses and civil partners (although a lump sum death benefit may be paid to a person nominated by the member). A review of the scheme resulted in the introduction of a new scheme for new entrants – *premium* – in October 2002. The existing scheme – *classic* - was closed to new members and existing members were given the option to transfer to *classic plus* from 1 October 2002. *Classic plus* benefits are a combination of classic benefits up to 30 September 2002 and premium benefits after that.⁴⁶ Member contribution rates in the new schemes were higher than in the existing scheme, reflecting the Government's view that scheme members who benefit should meet the cost of such improvements.

In debate in 2006, the then Cabinet Office Minister, Jim Murphy explained why the Government did not intend to make the change retrospective to members of *classic*:

When we introduced a new civil service pension scheme in October 2002, the deal agreed with the unions was that the entire cost of the scheme improvements would be met by members paying higher contributions [...] Although the new scheme was intended for new entrants, it is important to note that we gave civil servants in service when the new scheme was introduced the option to transfer to the premium scheme, if they were prepared to pay the higher contributions. Those who chose to transfer all their service across also agreed that it would be reduced to reflect the improved, and more costly, benefits.

Inevitably, comparisons have been drawn between the more generous provisions of premium and the benefits paid under classic, which apply both to those who left the civil service before October 2002 and to the majority of serving civil servants who opted to stay put rather than transferring to premium. My hon. Friend understandably made that comparison this evening.

It is true that premium is more generous in certain aspects of the benefits available to widows and widowers of members. It

⁴⁶ See, Civil Service Pensions, [Classic plus scheme guide](#)

provides a pension based on the member's entire service, even if the marriage began after the member left service. It also provides for a pension for life for a widow or widower, even if she or he remarries or cohabits, and pensions for unmarried partners.

Many other improvements have been made to public service pensions over the years, which, it has been argued, should be applied retrospectively. They all have clear benefits for members so it would be difficult to implement some and not others.⁴⁷

In 2007, a Q&A on the Civil Service Pensions website said it was "highly unlikely" that pensions for unmarried partners would be extended to the classic scheme. This was "one of the reasons we offered members the option, in 2002, to go into premium or classic plus."⁴⁸

Contribution refunds

Members of *classic* who remain unmarried throughout their careers have the option to apply for a refund of contributions. A deduction is made from this refund to cover the cost of providing a survivors' pension in the event of a post-retirement remarriage or civil partnership. A leaflet for scheme members explains:

Refund of widow(er)s' pension contributions

Men

Men who have been unmarried throughout their service are entitled to refund of all their widows' pension contributions. From 1 April 2012, you will only receive a refund of the 1.5% WPS contributions paid. You will not receive a refund of the additional contributions above 1.5% paid from that date. If you have been married or in a civil partnership for only paid of your service, you are entitled to a refund of the contributions you have paid since your marriage ended. Contributions are refunded as follows:

Contributions paid for service before 6 April 1978 (including any contributions paid as part of an added years option before that date) will be refunded with interest and paid when you take your pension.

Contributions paid for service on or after 6 April 1978 (including any contributions paid as part of an added years option made on or after that date) will be refunded when you retire. They will be refunded with interest and the deduction of a single, non-returnable payment. That payment is to cover the cost to the scheme of providing a postretirement widow's pension if you marry or enter a civil partnership after leaving and die before your wife or civil partner. We will not ask you to repay the refund if you do marry or enter a civil partnership. The estimated amount of your refund and the current value of the post-retirement widow's pension are shown on your Estimate Statement.

Women

Women who have been unmarried throughout their service are entitled to a refund of all their widowers' pension contributions. From 1 April 2012, you will only receive a refund of the 1.5% WPS contributions paid. You will not receive a refund of the additional contributions above 1.5% paid from that date. If you

⁴⁷ [HC Deb 27 February 2006 c102](#)

⁴⁸ Questions and Answers for Scheme Members. Last updated 09/08/2007 (viewed October 2007)

have been married or in a civil partnership for only part of your service, you are entitled to a refund of the contributions you have paid since your marriage ended. Contributions are refunded as follows.

Contributions paid for service before 6 April 1988 (including any contributions paid as part of an added years option before that date) will be refunded with interest and paid when you take your pension.

Contributions paid for service on or after 6 April 1988 (including any contributions paid as part of an added years option made on or after that date) will be refunded when you retire. They will be refunded with interest and the deduction of a single, non-returnable payment. That payment is to cover the cost to the scheme of providing a postretirement widow's pension if you marry or enter a civil partnership after leaving and die before your wife or civil partner. We will not ask you to repay the refund if you do marry or enter a civil partnership. The estimated amount of your refund and the current value of the post-retirement widow's pension are shown on your Estimate Statement.

Important note: There may be circumstances in which we cannot pay your refund as a cash lump sum. If that is the case, MyCSP will confer some or all of it into extra pension and a smaller lump sum.⁴⁹

A Parliamentary Written Answer of January 2019 explains the rationale for the deduction:

Marion Fellows: To ask the Minister for the Cabinet Office, for what reasons (a) the Civil Service Widows Pension Scheme rules include the 1972 Section in which premium deductions are taken should an individual marry after retirement and (b) the premium deduction is not paid out to children following the death of the policyholder; and whether MyCSP retains premium deductions.

Oliver Dowden: (a) Widows/widowers/civil partners' pension provisions exist in all parts of the Civil Service pension arrangements. The facility whereby a 'premium deduction' is taken from any refund of contributions payable to an unmarried member only exists in the 1972 Section (none of the other parts of the Civil Service pension arrangements provide refunds to unmarried members). The deduction is there to cover the scheme against the risk that the member marries/enters a civil partnership in retirement and then pre-deceases their spouse/civil partner, giving rise to a widow(er)/civil partner's pension payable from the scheme.

(b) If the premium were to be repaid to the member's estate should they subsequently die without marrying or entering a civil partnership, the amount of the premium would need to be significantly higher as it would only be retained by the scheme in circumstances where a spouse/civil partner's pension was payable.

(c) The Civil Service pension arrangements are funded through the Civil Superannuation Vote. Contributions (both member and employer) are paid into the Vote, and benefits and refunds are paid out of the Vote. MyCSP are the scheme administrator. They arrange for refunds of contributions to be paid, where

⁴⁹ Civil Service Pensions, [Your classic pension benefits explained](#), April 2016, Appendix A; Rule L.19 ([archived version of the rules from 2007](#)). See also the current [classic scheme guide](#)

appropriate. But if a premium deduction is necessary, MyCSP do not retain that deduction themselves. It is retained in the Vote.⁵⁰

Premium, classic plus and alpha

A Civil Service pensions guide on [how to claim death benefits](#) explains:

If the deceased member was in classic plus, premium, nuvos, or alpha, we will pay a pension to their partner if they were cohabiting in an exclusive and committed long-term relationship. We work out a partner's pension in the same way as the pension for a husband, wife or civil partner.⁵¹

Reflecting the Labour Government's view that the cost of improvements should be met by members, employee contribution rates in *premium* and *classic plus* were higher than in *classic*. A Parliamentary Written Answer from 2002 said:

We are moving to the new arrangements on a cost-neutral basis, with the entire cost of benefit improvements being met by increased contributions by members. None of the cost of the benefit improvements will fall on the taxpayer. All premium and classic plus members will pay the new contribution rate of 3.5 per cent. Members opting to remain in the classic scheme will continue to pay contributions of 1.5 per cent of pay.⁵²

However, from the introduction of the new scheme in 2015, contribution rates are the same, tiered according to pay, across civil service pension schemes.⁵³

Guides to the schemes are on the [Civil Service Pensions website](#)

For more information see Library Standard Note [Civil service pensions – current reforms](#) (CBP 6744, June 2014) and [Civil Service Pension Scheme](#) (CBP 3224, October 2013).

2.4 Firefighters' Pension Scheme

The Firefighters Pension Scheme 1992 provides a survivors' pensions for widows, widowers and surviving civil partners.⁵⁴

An independent review of the fire service, *Reducing Risk, Saving Lives*, conducted by Sir George Bain and published in December 2002, recommended that the firefighters' pension scheme should be modernised. Amongst other things, it said:

There could be other changes to reflect social developments such as the increasing proportion of those with unmarried partners, and to provide greater incentives for the rehabilitation of those who have become ill or have been injured on duty.

In October 2004, the Labour Government proposed introducing a New Firefighters' Pension Scheme (NFPS) for new entrants from April 2006.

⁵⁰ [PQ 211200, 29 January 2019](#)

⁵¹ Civil Service Pensions, [How to claim death benefits](#), December 2019

⁵² [HC Deb, 22 July 2002, c728-30W](#)

⁵³ [Civil service pensions: contribution rates; SI 2014/1964\) reg 134; Civil service pensions letter](#)

⁵⁴ [Short guide to the Firefighters' Pension Scheme \(FPS\)](#), May 2013

22 Occupational pensions - survivors' benefits for cohabitants

One of the proposals was to introduce survivors' pensions for unmarried partners:

2.35. It is Government policy that survivor pensions can be extended to unmarried partners if:

- the costs of the extra benefits are met by scheme members through higher employee contributions or a scaling back of other member benefits;
- the general membership of the scheme want the change; and
- there are practicable arrangements for defining eligibility

2.36. We would be ready to extend survivors' benefits to unmarried partners on these terms provided they were financially dependent on or interdependent with the scheme member. To ensure that such partnerships are binding commitments, we also propose to require that the partner had been nominated by the member before death, that the couple had been living together in an exclusive relationship for at least two years and that they are free to marry.⁵⁵

The new scheme for firefighters introduced in April 2006 provided for a survivor's pension to be payable to a nominated unmarried partner, where they were financially dependent on the firefighter member or in a state of mutual financial dependency.⁵⁶ In 2018, in line with the judgment of the Supreme Court in the Brewster case, the requirement for a nomination was removed.⁵⁷

The Firefighters' Pension Scheme 1992 was closed to new entrants from 6 April 2006. The Government explained why it was not introducing pensions for unmarried partners in that scheme:

Issues and comments

1.8 The introduction of pensions for partners in the new scheme should be extended to the existing scheme. As the proposals stand existing firefighters will only be able to secure a pension for their partner if they give up the advantages of the current scheme. This is an unreasonable choice.

Government responses

We have had very limited requests for extension of the FPS to provide partners pensions. As the benefit could only be provided at cost to members of the scheme and any member who wished for such provision will be able to do so through the new scheme, we do not propose to make such provision.⁵⁸

Members of the FPS were given the option to transfer to the NFPS.⁵⁹

⁵⁵ ODPM, [Government Proposals for a New Firefighters' Pension Scheme](#), October 2004.

⁵⁶ [Firefighters' Pension Scheme \(England\) Order 2006 \(SI 3243\)](#). Sch 1, Part 2 (1) and Part 4, Chapter 1, rule 1

⁵⁷ [SI 2018/997](#), reg 4

⁵⁸ ODPM, [Proposals for amendments to the Firefighters' Pension Scheme – Government response to the consultation](#), September 2005; [The Firefighters' Pension Scheme \(Amendment\) \(No.2\) \(England\) Order 2006 \(SI 2006/3433\)](#)

⁵⁹ [Firefighters' Pension Scheme 1992 – New Firefighters' Pension Scheme 2006 – Your choice](#) (2007) (viewed 2012); [Firefighters Pension Scheme \(England\) Order 2006 \(SI 2006/3423\)](#), Sch 1, Par4 4, Chapter 1, rule 1

The new scheme introduced from April 2015 provides for survivor's pensions to be payable to a surviving spouse, civil partner or a cohabiting partner provided they were in a long-term relationship and either financially dependants or in a state of mutual financial dependency. There is no requirement for a nomination to have been made.⁶⁰

For more detail background, see Library Standard Note SN 3260 [Firefighters' Pension Scheme – background](#) (August 2013) and SN-06585 [Firefighters pension schemes – current reforms](#) (February 2013).

2.5 Local Government Pension Scheme

Following a consultation exercise, the then local Government Minister, Phil Woolas, announced in November 2006 that a new scheme for present and future members would be introduced from 1 April 2008. It would include survivor benefits for unmarried partners:

The consultation package will propose that the scheme remains as a final salary pension arrangement and be based on an accrual of 1/60th of salary for each year of membership. It will continue to have a normal pension age of 65, and will move towards providing, by 2010, for pensions to be paid no earlier than age 55, rather than the current minimum age of 50, except on grounds of ill-health. A revised and better targeted ill-health retirement package is to be proposed, and survivor benefits, which are available for spouses, civil partners, and children, will be extended to include other co-habiting partners. In order to help equality-proof the scheme, tiered employee contribution rates, linked to salary, will be introduced, as well as more flexible retirement provisions. Arrangements will be included which protect the accrued rights of all existing scheme members up to 31 March 2008. All present and future members of the scheme will build up rights in the new-look scheme from 1 April 2008.⁶¹

The new scheme was provided for in the [Local Government Pension Scheme \(Benefits, Membership and Contributions\) Regulations 2007 \(SI 2007/11\)](#). Regulation 24 (1) provides that:

if a member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension

Regulation 25 provided that:

“nominated cohabiting partner” means a person nominated by a member in accordance with the terms of this regulation.

The rules were changed to remove the ‘nomination requirement’ when reforms were introduced in 2014 (England and Wales) and 2015 (Scotland). The schemes now provide for a survivors’ pension to a cohabiting partner, which means:

[...] a person whom the appropriate administering authority is satisfied fulfils the following conditions—

⁶⁰ [Firefighters' Pension Scheme \(England\) Regulations 2014, SI 2014/2848](#), reg 76; [Firefighters' Pension Scheme \(Scotland\) Regulations 2015 \(SSI 2015/19\)](#), reg 76; [A Guide to the Firefighters' Pension Scheme Wales 2015](#), October 2015, p25

⁶¹ HC Deb, 23 November 2006, c69-70; See also, [Minister's statement and letter to chief executives](#), 23 November 2006 [viewed January 2011]

(a) the person (P) has fulfilled the condition in paragraph (b) for a continuous period of at least 2 years on the date the member (M) died, and

(b) the condition is that—

- (i) M is able to marry, or form a civil partnership with P,
- (ii) M and P are living together as if they were husband and wife or as if they were civil partners,
- (iii) neither M nor P is living with a third person as if they were husband and wife or as if they were civil partners, and
- (iv) either P is financially dependent on M, or M and P are financially interdependent;⁶²

For more detail on these reforms see Library Standard Note SN 4115 [Local Government Pension Scheme – 2008 reforms](#) (June 2012) and SN 5823 [Local Government Pension Scheme - 2010 onwards](#) (July 2012).

2.6 NHS Pension Scheme

Before April 2008, the NHS Pension Scheme provided survivors pensions for widow(ers) and surviving civil partners but not to unmarried partners.⁶³

A review in 2002 concluded that while there was a strong demand for the extension of survivors' benefits to unmarried partners, scheme members were unwilling to pay extra to finance this:

8. There is a general consensus that extending dependants' cover to non-spouses would be a positive first step to modernising the pension scheme. It was generally the one issue on which there was common ground on principles. Scheme managers and employers would welcome this improvement but, at present, unless the general membership was prepared to fund the new cover, it would seem that this major change could only realistically be achieved in the context of a new Scheme. This has been the approach in the Civil Service where a new pension package has been developed, with enhanced benefits but at higher contribution rates.⁶⁴

In August 2006, NHS Employers and trade unions set out proposals for reform. They asked for views on a recommendation for the new scheme to provide pensions for unmarried partners:

8.38 The new scheme will have to provide survivor benefits to same-sex partners who have registered their relationship, as a result of the legislation. The Review examined whether these benefits should be extended. Two options were considered: extending benefits should be extended. Two options were considered: extending benefits to partners or extending benefits to any nominee. The option of extending benefits to any nominee

⁶² [Local Government Pension Scheme Regulations 2013 \(SI 2013/2356\)](#), Reg 41, Sch 1; [Local Government Pension Scheme \(Scotland\) Regulations 2014 \(SI 2014/164\)](#), reg 39 and Sch 1

⁶³ NHS Pensions Regulations 1995, SI 1995/300, part 5

⁶⁴ NHS Pensions Agency, [Modernisation: A Millennium Health Check for the NHS Pension Scheme](#), 17 December 2002

was discounted. It was felt that the scheme was not intended to pay survivor benefits as a general right regardless of relationship. Such proposals were both difficult to scope and appeared expensive.

8.39 The proposed pensions for the surviving partners of people who are in relationships but who are not married (including same-sex relationships), assumes that the definition of partner broadly follows that adopted by the Principal Civil Service Pensions Scheme. That is that, to qualify for a partners' pension, the member would need to have nominated their partner and, together, completed a joint declaration of partnership. At the time of the members' death, they would need to have been living in an exclusive, committed long-term relationship, have been free to marry or have a civil registration, and there would need to have been financial dependence or interdependence.

8.40 There is a clear issue of the pension scheme needing to reflect current social patterns of behaviour and to treat all members and their partners fairly. This change would also mean that the practice of cessation of survivor pension on remarriage would cease. This affects surviving widows/widowers who have to give up their survivor pension if they remarry. We strongly recommend that the new scheme includes survivors benefits for partners.

The Review partners welcome views on the recommendation that the new scheme provide partner pensions including ending cessation of survivor pension on remarriage.⁶⁵

A final agreement on reform was announced in March 2007. This said there would be two schemes – an updated scheme for existing members and a new one for new members, implemented on 1 April 2008. There would be a “choice exercise” during which existing scheme members would be given the option to move to the new scheme.

Members of the existing scheme (the 1995 section) with pensionable service on or after 1 April 2008 and members of the 2008 section would be able to nominate a partner to receive a pension after their death.⁶⁶ The regulations provide that:

“surviving adult dependant” in relation to a deceased member or former member, means the member’s or former member’s surviving spouse, civil partner or nominated partner.

A person could be a surviving nominated partner if:

- (a) the person and the member jointly made and signed a declaration in such form as the Secretary of State requires that remains effective at the member’s death, and
- (b) the person satisfies the Secretary of State that for a continuous period of 2 years ending with the member’s death—
 - (i) the person and the member were living together in an exclusive relationship as if they were husband and wife or civil partners,

⁶⁵ NHS Employers, *Moving to the future: the NHS Pension Scheme Review: joint proposals from NHS Employers and the NHS trade unions*, August 2006, p27

⁶⁶ [SI 2008/654; Explanatory Memorandum](#), p10; NHS Staff Council, [NHS Pension Scheme Review – Agreement between NHS Employers and NHS trade unions](#)

- (ii) the person and the member were not prevented from marrying or forming a civil partnership, and
- (iii) the person was financially dependent on the member or the person and the member were financially interdependent.

Members' survivors would receive "spouse/partners pensions for life."⁶⁷

The new scheme introduced in April 2015 - [NHS Pension Scheme 2015](#) - provides dependant's pensions to a surviving spouse, civil partner or nominated qualifying partner.⁶⁸

Following the judgment of the Supreme Court in Brewster, the [NHS Business Services Authority](#) issued guidance to employers. The requirement for a nomination was removed by [SI 2019/148, reg 87](#).

For more on the scheme see, Library Standard Note SN 3281 [NHS Pension Scheme](#) (March 2020).

2.7 Police Pension Scheme

The Police Pension Scheme 1987 provides survivors pensions to widows and widowers.⁶⁹ [A Member's Guide](#) to the scheme explained that:

Adult survivors under the PPS include widows, widowers and civil partners but not cohabitants who were not married or in a civil partnership.⁷⁰

Proposals for reform of the scheme in December 2003 included extending survivors' pensions to unmarried partners:

Survivor benefits for unmarried partners

14 Under the present Police Pension Scheme, only spouses are entitled to survivor benefits. Government proposals on civil partnerships for same-sex couples would give registered partners a status akin to that of a married partner. This includes a proposal that for future service members of public service schemes will earn an entitlement to survivor benefits, including a survivor pension, for a civil partner in the same way as an unmarried partner.

15 Widening the scope of survivors' benefits is likely to be an attractive feature for officers. The proposed scheme would extend partners to unmarried, include same-sex, partners for life provided they were financially interdependent with the scheme member, whether the marriage or other partnership was formed before or after retirement.

16 Safeguards would be needed to ensure that partnerships were real and binding commitments (rather than artificial devices to obtain pension benefits for friends and relatives who are not financially dependant). It is proposed that the new scheme would provide for a partner's pension only if at the time of death:

- The partner had been nominated and a joint declaration of partnership had been completed;

⁶⁷ NHS Pensions Regulations 2008 (SI 2008/653): Chapter 2 (E); SPPA, [NHS Superannuation Scheme \(Scotland\) Members' Guide 2008 section](#),

⁶⁸ [NHS Pension Scheme 2015 – members' guide: NHS Pension Scheme Regulations 2015 \(SI 2015/94\)](#), reg 113-4; SPPA, [Guide to the NHS Pension Scheme \(Scotland\) 2015](#), p11

⁶⁹ [Police Pensions Regulations 1987 \(SI 1987/257\)](#), Part C

⁷⁰ Page 12

- The officer and partner were living together in an exclusive committed long term relationship (or at least two years);
- The officer and partner were free to marry (or would have been to if they had not been of the same sex); and
- Either the officer's partner was financially dependent on the officer or the two were financially interdependent.

17 It would also be prudent to include arrangements, common in pension schemes, to ensure that where there is a very significant age gap between the scheme member and the partner/spouse the potential survivor does not benefit unduly and, for example, to guard against artificial "deathbed" marriages. It is proposed that in the case of partners (both married and unmarried) who are more than 12 years younger than the officer, the partner's pension should be reduced by 2 ½% for every year or part year the age gap exceeds 12 years, up to a maximum of 50%. Also, if the member and a surviving spouse married less than six months before the member's death without having, for example, satisfied the conditions that would have applied to an unmarried partner's pension, the police authority would be given discretion not to pay a spouse's pension.

18 It is proposed that the new scheme should extend survivor benefits to unmarried and same-sex partnerships for life and that safeguards should be put in place to limit these benefits to genuine partners and to limit the age gap between scheme member and survivor. Such safeguards have already been applied when extending unmarried partner benefits to the civil service.⁷¹

The 1987 scheme was closed to new entrants and a new scheme - the New Police Pension Scheme 2006 – introduced on 6 April 2006. Existing members were given the option to transfer to the NPPS on "favourable terms" between 1 November 2006 and 31 January 2007. A Home Office leaflet explained:

When do I make my decision?

Any time between 1 November 2006 and 31 January 2007. Any decision to change must be made in writing on the form provided and submitted to your force within these dates. After this period, the terms under which service can be transferred from PPS to NPPS will be much less generous, and you will only be able to transfer your service if you have less than 25 years' pensionable service in PPS.⁷²

[A guide to the New Police Pension Scheme 2006](#) explained:

5.5.2 Unmarried partners who are not civil partners

An unmarried partner who is not a civil partner is someone with whom you have a long-term relationship but to whom you are not married (if you are of opposite sexes) or with whom you have not formed a civil partnership (if you are of the same sex). If you have no spouse or civil partner, it may be possible for a survivor's pension to be paid (for life) to your partner on the same basis as if he/she had been your spouse or civil partner. For this, you and your partner must have completed and sent to the police

⁷¹ Home Office, [New Police Pension Scheme for Future Entrants](#), December 2003, p21

⁷² Home Office leaflet, ["Understanding your choice"](#), October 2006, p5; [Explanatory Memorandum](#) to SI 2006/3145

authority a joint declaration form to confirm that all of the following apply:

- there has been cohabitation for a period during which your partner has been financially dependent on you, or both of you have been financially interdependent
- the relationship is a committed relationship intended to continue indefinitely
- you each have mutual responsibility for the other's welfare • you are free to marry each other (if you and your partner are of opposite sexes) or free to form a civil partnership (if you are of the same sex) and neither of you is married or a civil partner or nominated as the partner of anyone else
- you agree to inform the scheme administrator if the relationship ends. A pension will not be paid to an unmarried partner who is not a civil partner unless he or she is the subject of a joint declaration form – referred to below as a nominated partner.⁷³

This was provided for in the [Police Pensions Regulations 2006 \(SI 2006/3415\)](#), reg 40.

The new scheme introduced in April 2015 also provides survivors' pensions to unmarried partners, providing the couple has made a declaration that:

- you have lived together for a period during which your partner has been financially dependent on you, or both of you have been financially interdependent.
- the relationship is an exclusive, committed long-term relationship.
- you are free to marry each other (or form a civil partnership with each other), and
- you agree to inform the Police Pension Authority if the relationship ends.

In order for a pension to be paid to a partner who is not your spouse or civil partner, s/he will need to be a declared partner following the completion of a joint declaration form.⁷⁴

Guides to the Police Pension Schemes are on [Gov.UK](#). See, for example, [Police Pension Scheme 2006: guidance on pensions for unmarried partners](#) (April 2007).

For more on the scheme, see Library Standard Note SN 700 [Police Pension Scheme](#) and SN-06965 [Police pensions – current reforms](#) (March 2015).

2.8 Teachers' Pension Scheme

The [Teachers' Pensions Regulations 1997 \(SI 1997/3001\)](#) enabled a single person to nominate certain individuals (such as a parent, brother

⁷³ Page 13

⁷⁴ [Police Pensions Regulations 2015 \(SI 2015/445\)](#), Part 9 (chapter 2); [The Police Pension Scheme 2015 Members' Guide](#), p51; See also, [SPPA – Police Pension Scheme – Family benefits](#)

or sister who was wholly financially dependent on them) to receive a pension.⁷⁵

In June 2006, the Department for Education and Skills issued proposals for reform, including improvements to survivors' benefits for those retiring on or after 1 January 2007:

Surviving partner benefits would be introduced for both existing members and new entrants from 1 January 2007;

Pensionable employment undertaken on or after 1 January 2007 will count towards surviving partner benefit and, as with widower's and civil partner's pensions, there will be a two year qualifying period;

A consequence of the introduction of benefits for surviving partners is that the existing provisions under which widow(er) pensions are stopped following re-marriage or co-habitation need to be reviewed.

We, therefore, propose that for members who retire on or after 1 January 2007, dependants' (including widow(er)s') benefits will be payable for life i.e. not stopped on remarriage or co-habitation.⁷⁶

The change was legislated for in the *Teachers' Pensions etc (Reform Amendments) regulations 2006 (SI 2006 No. 3122)*. The Explanatory Memorandum said:

(30) Schedule 3 paragraph 41: - new regulation E22A (nomination of partner) is inserted to enable a single scheme member who is in an exclusive, committed long-term relationship to nominate his or her partner (same-sex or opposite-sex) to receive a beneficiary's pension. Paragraphs (1) to (3) prescribe the conditions that must be met for a partner to be nominated. The scheme member and the partner are required to make a joint declaration that prescribed conditions have been met (for a continuous period of two years) when the nomination is made. Paragraph (4) deals with the circumstances under which a nomination ceases to have effect.

Paragraph (5) sets out the circumstances in which a person nominated in accordance with the new regulation becomes entitled to benefits under the scheme as a "surviving nominated partner" (SNP). The SNP will be required to provide evidence at death that the prescribed conditions are met.

(31) Schedule 3 paragraph 46 inserts regulation E27(2B) (relevant service) to define the relevant service that will count in the calculation of a SNP pension. Pensionable employment will automatically accrue from 1 January 2007 onwards, as will service credited on transfer-in for scheme members who enter pensionable employment on, or after, that date. Paragraph (d) caters for the specific terms under which transfers are received from other UK pension schemes for teachers.⁷⁷

Following consolidation of the rules, this was provided for in the [*Teachers' Pensions Regulations 2010* \(SI 2010 No. 990\)](#), reg 90.

⁷⁵ Reg E23

⁷⁶ [Department for Education and Skills, *First class, adaptable and sustainable, June 2006*](#), p6; See also, [DfES, *Modernisation of the Teachers' Pension Scheme \(TPS\), December 2004*](#);

⁷⁷ [Explanatory Memorandum to the Teachers' Pensions etc \(Reform Amendments\) Regulations 2006 \(SI 2006 No. 3122\)](#), p9

The new scheme introduced from April 2015 made provision for spouses and partners in accordance with the existing provisions.⁷⁸ The requirement for there to be a nomination was removed by [SI 2019/1134](#).⁷⁹

[Members' guides](#) are on the Teachers' Pensions website – see [Bereavement and family benefits](#).

For more on the scheme, see Library Standard Note SN 405 [Teachers' Pensions – background](#) (February 2013) and SN-06731 [Teachers Pension Schemes – current reforms \(July 2014\)](#).

2.9 MPs' Pension Scheme

A report by the Senior Salaries Review Body (SSRB) in 2001 made a number of recommendations on the subject of survivors' benefits from the pension scheme for MPs – the Parliamentary Contributory Pension Fund (PCPF). This included a recommendation that the "Trustees should canvas the views of Members of the PCPF on the issue of survivor pensions for unmarried partners."⁸⁰

This recommendation was the subject of an amendment by Dr Evan Harris when the SSRB report was debated by Parliament in July 2001:

"And that this House believes that survivors' benefits could apply to unmarried partners as well as spouses"—[*Dr. Harris.*]⁸¹

This amendment was passed by 289 votes to 33.

In his written answer of 15 July 2002 the then Leader of the House Robin Cook said the Government's policy was that the cost of improvements to survivor's benefits should not fall on the taxpayer:

There are two remaining issues, whether survivor pensions should be extended to unmarried adult dependants and whether survivor pensions should continue if a spouse remarries. It is the Government's policy that neither the cost of extending pensions to surviving adult dependants, nor that of the SSRB recommendation to pay pensions to surviving spouses for life, should fall on the taxpayer. Following the vote last year, the trustees of the pension scheme were asked to consider how these proposals could best be implemented at no cost to the Exchequer. The trustees only reported on 5 July. There has not therefore been sufficient notice for the Government to reach a view on these proposals and whether they do protect the taxpayer against any additional cost. I expect to bring forward proposals to the House in the autumn. Changes will be backdated to today's date.⁸²

In 2004, a further report by the SSRB recommended that the Trustees should decide what action to take on three recommendations outstanding from the SSRB's March 2001 report, including:

⁷⁸ [HC Deb 20 December 2011 c157-8WS](#)

⁷⁹

⁸⁰ *Review Body on Senior Salaries, Review of the Parliamentary Pension Scheme*, Cm 4996, March 2001, p7-8

⁸¹ HC Deb 5 July 2001, c474

⁸² HC Deb 15 July 2002 c83-4W

That the provision for curtailing widows' and widowers' pensions upon their remarriage should be removed, at Exchequer cost...

That the Trustees should canvas the views of the members of the PCPF on the issue of survivor pensions for unmarried partners.

It considered that an increase in the retirement age (see below) could enable the proposed improvements to survivors' benefits to be made.^{F⁸³}

On 3 November 2004, the House resolved (without division) that these changes should be implemented as part of a package that was cost-neutral to the Exchequer:

That this House notes recommendation 3 contained in the report of the Review Body on Senior Salaries on parliamentary pay and allowances (Cm. 6354-1), a copy of which was laid before this House on 21st October, and is of the opinion that, subject to consultation with the Trustees of the PCPF and the Government Actuary as to the detailed implementation, the proposals set out in paragraphs (1) to (3) below should be adopted as a package which is, overall, at least cost neutral to the Exchequer:

(1) Pensions calculated on the same basis as pensions for widows and widowers should be introduced for surviving unmarried partners of members in service on or after 3rd November 2004.

(2) Pensions for the widows, widowers and unmarried partners of members in service on or after 3rd November 2004 should be payable for life.^{F⁸⁴}

The *Parliamentary Pension (Amendment) Regulations 2005* introduced provisions for surviving partners who were neither married nor a civil partner and made pensions to adult survivors payable for life (although the amount payable can be reduced where the adult survivor is more than 12 years younger than the participant).⁸⁵

The new schemes introduced from 2015 provide survivors pensions for a surviving spouse, civil partner or nominated partner.⁸⁶

For more on reforms to the PCPF, see Library Briefing Papers SN 1884 [MPs Pension Scheme - background](#) (January 2013) and SN 6282 [MPs Pensions](#) (May 2016).

⁸³ *Review Body on Senior Salaries, Review of Parliamentary Pay and Allowances 2004*, Cm 6354-1, October 2004, para 3.22

⁸⁴ [House of Commons. Votes and proceedings: 3 November 2004 ; HC Deb, 3 November 2004, c368-9](#)

⁸⁵ *Parliamentary Pension (Amendment) Regulations 2005* (SI 2005. No. 887)

⁸⁶ *MPs' CARE Pension Scheme, PCPF – a guide for members*, May 2015; PCPF [MP's Pension Scheme](#), 2012, p19

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