



Armed forces pensions legacy issues – survivors' benefits

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Over time, improvements have been made to survivors' benefits in public service pension schemes, including those for the armed forces. These have included making pensions payable for life (rather than withdrawing them on remarriage or cohabitation) and extending entitlement to unmarried partners - see SN 6348 [Occupational pensions: survivors' benefits for cohabitants](#).

Successive governments have argued that discretionary improvements to benefits from public service pension schemes should generally not be applied retrospectively, on the basis that this would make any worthwhile improvements unaffordable. This has led to some long-running campaigns.

Following a campaign by the Royal British Legion and Forces Pension Society, the Government announced on 8 November 2014 that it would end the practice of withdrawing on remarriage or cohabitation 'non-attributable' widow's pensions from the Armed Force Pension Scheme 1975. There would also be a change to allow all those in receipt of a War Widows' Pension on or after 1 April 2015 to retain it for life (see [SN 568](#))

A further issue on which there has been a long campaign is the fact that people who left the armed forces before April 1975 did not have rights to a preserved pension. This is discussed in Library Note SN 1151 [Armed forces pension scheme and preserved pensions](#).

The development of armed forces pensions is discussed in SN 5892 [Armed forces pension reform, 1995-2005](#) and SN 5891 [Armed Forces Pension Scheme, 2011 onwards](#).

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1	Lifetime survivors' pensions	

The last Labour Government introduced reforms to public service pensions over the period 2005-06 to 2007-08. The main elements of the reforms included: changes to survivors' benefits; an increase in the pension age for new entrants and, in some cases, changes to member contribution rates. Changes to survivors' benefits - to better reflect changes in lifestyles - included the introduction of lifetime survivors' pensions and survivors' pensions for unmarried partners and civil partners. The detail of implementation varied by scheme. However, the new rules were not generally introduced with retrospective effect, a principle explained by the Ministry of Defence in 2002, as follows:

It has been the long-standing policy of successive Governments that discretionary changes to improve the benefits from public service pensions schemes should be implemented from a current date for future service only. Improvements to pension schemes are not applied retrospectively as to do otherwise would make any worthwhile improvements unaffordable. When scheme modifications are introduced on this basis, active members of the scheme may be given an opportunity to pay for the new benefit to apply to their accrued service, but pensioners and deferred pensioners should receive only those benefits which they earned when they were themselves active members. It would not be possible to make an exception for former Service personnel, as this would require a change for all public service schemes. Such a move would be at great public expense and has been judged unaffordable by successive Governments.¹

Reforms to the armed forces scheme

A consultation document on reform of the Armed Forces Pension Scheme in 2001 identified the practice of withdrawing widow(er)s' pensions on remarriage as one of the main causes of discontent with the scheme.² It was the subject of a long-standing campaign which resulted in a partial concession in advance of the review.

Following a defeat in the House of Lords during the passage of the *Child Support, Pensions and Social Security Act 2000*, the government announced that widows and widowers of armed forces personnel whose deaths are a direct result of their service were to be awarded pensions for life. This change took effect from October 2000. It was applied with some retrospective effect, in that widow(er)s already in receipt of a pension, who had not remarried

¹ Memorandum from the Ministry of Defence to the Defence Select Committee on *Legacy Issues for the Armed Forces Pension Scheme*, 12 December 2002, HC 188-i, 2002-03, 18 December 2002

² MoD, *The Armed Forces Pension Scheme Review. A consultation document*. March 2001, para 4.19

at the time at the time of the change, would be allowed to keep their pension if they later re-married or cohabitated. The then Secretary of State for Social Security, Alistair Darling, said:

The government has listened carefully to the representations of the War Widows' Association and others. Members of the Armed Forces are in a unique position. It is only right that we should look after their wives and husbands in a way the country would expect. The Government has decided that in these very exceptional circumstances the Armed Forces Pension will continue to be paid to attributable widows and widowers - including existing recipients - if they remarry or cohabit in the future.³

In the 2001 review, the MoD proposed extending lifetime widow(er)s' pensions to cases where the death was not attributable to Service.⁴ No retrospection was proposed. The MOD's memorandum to the Defence Select Committee on Legacy issues for the armed forces pension scheme explained that cost was a major factor:

AFPS—attributable widows' and widowers' pensions for life

The Department introduced a new policy with effect from 31 October 2000 to allow attributable widow(er)s' pensions to be paid to widows' and widowers' for life, regardless of remarriage or cohabitation. This change was made in recognition of the fact that many attributable widows will be young and have children. However, this improvement did not apply to those who had already remarried or co-habited before changes to the regulations were made. This group were excluded, as they had made their decision to remarry in the full knowledge of the financial consequences.

The principle of no-retrospection was maintained in so far as those who had already remarried did not benefit from this change unless they became widowed again, or became divorced or ceased co-habiting. However, it was agreed that those widow(er)s who had not remarried at the time of the change would be able to retain their pensions on re-marriage or co-habitation in spite of the fact that their pensions had come into payment before the change was made. The case was regarded by Ministers as exceptional.

This change did not affect those in receipt of non-attributable widow(er)s pensions. **The AFPS review has proposed extending "pensions for life" to non-attributable pensions under the new AFPS. This change would not benefit members of the current AFPS who choose not to transfer to the new scheme or existing non-attributable widows or widowers. No retrospection is proposed.**

The cost of extending any change is a major factor. To have done so on this issue would have been extremely costly and would have meant that we would have been unable to focus on improving the position for the most deserving cases.[...]⁵ [emphasis added]

A new scheme for new entrants was introduced from April 2005. AFPS 05 provides survivors' benefits for life, regardless of whether death was attributable to service.⁶ There was a time-limited offer to transfer to the new scheme for existing members of AFPS 75 who were in

³ [DSS press release, *Pensions for life for widows and widowers of armed forces personnel who die as a direct result of service to their country*, 20 July 2000](#) [intranet only]; This is discussed in more detail in SN 568, *War widows' pensions*

⁴ MoD, *The Armed Forces Pension Scheme Review. A consultation document*. March 2001, para 5.1

⁵ [Memorandum from the Ministry of Defence to the Defence Select Committee on *Legacy Issues for the Armed Forces Pension Scheme*](#), 12 December 2002, HC 188-I, 2002-03, 18 December 2002

⁶ AFPS05 – Family benefits

service before 6 April 2005 and still in service on 6 April 2006.⁷ The MoD explained that improved entitlement to survivors' benefits was one factor scheme members would want to take into account in deciding whether to transfer:

The benefits offered by the two schemes are different in a number of respects. However, where the new scheme offers improvements which may be to the advantage of you or your dependants, these are offset by changes which may be to your disadvantage. You need to consider which will be most to your advantage, not just now but at the point in the future when you leave the Armed Forces, whether it will be leaving mid-career, after a full career, or if you become ill and are medically discharged. The decision whether or not to transfer is an important one for you and your family. Your decision will affect the value of the benefits that will be payable when you leave or die. You will have only one opportunity to transfer, known as the Offer to Transfer (OTT), and once you have made your decision you cannot change it.⁸

MoD leaflet, [AFPS 75 – family pension benefits](#), says:

Suspending and Restoring Widow's or Widower's Pension

If your widow or widower cohabits (see Terms You Need to Understand – Cohabitation on page 5) with a new partner or remarries, the scheme will suspend their non-attributable pension. If after suspension of the pension the cohabitation stops or the new marriage ends as a result of divorce or death, the scheme can restore the pension if the widow or widower can show that they are financially worse off at the end of the cohabitation or second marriage than they would have been had they not re-married or cohabited.⁹

[AFPS 05 – family pension benefits](#) says:

Spouses's, civil partner's and partner's pensions are paid for life [...].¹⁰

The rules are in the [Army Pensions Warrant 1977](#), Part 4 and the [Armed Forces Pension Scheme Order 2005 \(SI 2005/438\), Schedule 1 \(E1\)](#).

The new armed forces pension scheme to be introduced in April 2015 will provide survivors' benefits based on those currently provided in AFPS 05.¹¹

Changes in other public service schemes

Apart from the armed forces scheme, the first scheme to introduce lifetime survivors' pensions was the Principal Civil Service Pension Scheme. This happened in October 2002, with the introduction of a new scheme for new entrants – *premium*. In 2004, the then Cabinet Office Minister, Ruth Kelly, explained that this had been funded by increased member contributions and that the Government had no plans to extend lifetime survivors' pensions to the pre-October scheme – *classic*:

Until recently all public service pension schemes (and many in the private sector) only provided widows' and widowers' pensions up until the beneficiary remarries or cohabits with someone as their husband or wife. From October 2002, a new pension scheme for civil servants was introduced (known as premium) which has an improved benefit structure paid for by higher employee contributions. One of the improvements is to

⁷ [Armed Forces Pension Scheme Order 2005 \(SI 2005/438\), Schedule 1, rule K](#)

⁸ MoD, Offer to Transfer- A guide to making your pension scheme choice

⁹ [AFPS 75-Family pension benefits, page 17](#)

¹⁰ [AFPS 05-Your pension scheme explained, page 10](#)

¹¹ MoD, [A New Armed Forces Pension Scheme – Final Agreement](#), October 2012, page 1

provide widows and widowers pensions for life. To provide a similar improvement in respect of the pre-October 2002 scheme (known as classic), where higher contributions have not been paid, would not only be unfair to the members of premium who are paying higher contributions for enhanced benefits, but would also result in tax payers meeting the additional costs to the classic scheme of doing so.¹²

Existing members of the pre-October 2002 scheme were given the option to join the *classic plus*, which provided a combination of *classic* benefits up until 1 October 2002 and then *premium* benefits from that date forward.¹³

Changes were next made in the schemes for the police and firefighters. Lifetime survivors' pensions were a feature of the new schemes for new entrants (the New Firefighters' Pension Scheme 2006 and the New Police Pension Scheme 2006). The rules were not changed in the pre-reform schemes, but active members of those schemes were given the option to transfer to the new schemes.¹⁴ As with AFPS 75, survivors' benefits were only one factor members would need to take into account in deciding whether to transfer. Other factors included the normal pension age, which was higher in the post-reform schemes. On average, the post-reform schemes were less valuable to members than the pre-reform schemes.¹⁵

In the case of the Teachers' and NHS Schemes, lifetime survivors' pensions were introduced to existing members as well as new entrants, but only where they were active members of the scheme at the date of change.¹⁶

Campaign for change

The Forces Pension Society and the Royal British Legion are campaigning for a change in the rules, to allow non-attributable survivors' pensions from AFPS 75 to be payable for life. They argue that spouses of members of the armed forces are at a particular disadvantage in building pension entitlement in their own right:

Service spouses are frequently unable to contribute to their own pensions by the nature of military life, with relocations preventing them from following a career, contributing to a pension plan or qualifying for a full state pension.

"Quite apart from creating Dickensian conditions for those who have already given so much to the Nation, this is an affront to the Military Covenant", said the Director General of The Royal British Legion, Dr Chris Simpkins. "The Covenant principle is that Service life should not cause disadvantage and where it does, special corrective steps may be taken", he added. "Service widows have clearly been placed at a pensions disadvantage and this should be recognised in the Armed Forces Pensions Scheme. The Royal British Legion supports the Forces Pension Society in this campaign - Armed Forces widows should not be forced to choose between a relationship and a pension."

¹² [HC Deb, 13 October 2004, c317W](#)

¹³ See, for example, Civil Service Pensions, [Your classic plus pension benefits explained](#), March 2009

¹⁴ ['New Police Pension Scheme: Members' Guide'](#), March 2009, para 5.5; ['Police Pension Scheme 1987 Members' Guide'](#), October 2006, para 5.4.7; Home Office, [Government proposals for a New Police Pension Scheme for Future Entrants](#), December 2003; SI 1987/257, article C9; SI 2006/3415, regulation 39; FPS Order 1992 (SI 1992/129), article C9; NFPS 2006 Order (SI 2006/3432), Part 4, Chapter 1 (1)

¹⁵ [Independent Public Service Pensions Commission: Interim Report, October 2010](#), page 44

¹⁶ [Explanatory Memorandum to the Teachers' Pensions etc \(Reform Amendments\) Regulations 2006 \(SI 2006 No. 3122\)](#), p9; SI 2008/653, regulation 2.E.1 and SI 1995/300, article G1 as amended by SI 2008/654, regulation 19

Air Marshal Sir Christopher Coville, Chairman of the Forces Pension Society said: "We call upon the Government to take this issue seriously, to listen to, and understand the arguments, to lift the matter from officials and give it its due political attention."¹⁷

The Armed Forces Covenant – to which they refer - is discussed in Library Note SN 6519 [The Armed Forces Covenant](#) (January 2013).

The Forces Pension Society argued that the Government should take advantage of the introduction of a new scheme for members of the armed forces in April 2015 to change the rules:

1. **The Position Now.** Over half of those now serving and most of those retired are on the 1975 pension scheme which requires that widows who cohabit or remarry surrender their Armed Forces widows' pension. Those who will marry or have married servicemen on that scheme will, according to the Government Actuary, form the vast majority of the demographic cohort of widows until the 2050s, after which they will be superseded by widows of the later schemes, AFPS 2005 and AFPS 2015, which do not require surrender of widows' pensions on cohabitation or remarriage.[...]

3. **What is the Case for Change?** The rules are a relic of a bygone age in which a woman had no financial standing in her own right. They condemn a widow subject to them to a solitary life. They peculiarly only affect poorer widows, more wealthy widows can evidently arrange work-arounds. While the Services have widely differing lifestyles, each makes demands which militate against the accrual of an occupational or private pension and often endows a patchy National Insurance record and an inadequate state pension. Whilst the vast majority of widows over the next 40 years will be so affected, and this includes many who are now far off widowhood and some who are not even married yet, not all widows will be so affected since the MOD has 10 classes of widows, all subject to differing rules. Widows living next door to each other may find themselves in wholly different situations. Many of those now married do not realise that they are subject to these rules. Those who are not yet married will have no idea that these rules may hit them in the future.

4. **How are the Rules Enforced?** Here is the recent testimony of one widow.

"I was woken up by the MOD police knocking on my door. I had four officers in my house, one of them read me my rights and told me he was arresting me for two counts of fraud and one for money laundering. I was shocked to my core, as I really wasn't aware that I had done anything out of place. I was taken by car to a police station where I was formally arrested, searched and booked in, then held in a cell. Once a duty solicitor arrived he told me why I was there".

The costs of keeping the rules for another 40 years have never been acknowledged by the Government but these enforcement actions come with some considerable cost and we seek to clarify them. They keep middle aged and older people apart, when a social union of mutual carers would be socially more robust. They bring shame on the Government and despair to the Armed Forces community.¹⁸

An Early Day Motion in the name of Katy Clark in 2013/14 called for a change in the rules.¹⁹

The Government argued that a change to the armed forces scheme would lead to the rules needing to be changed in other public service schemes:

¹⁷ [Legion backs Forces Pension Society campaign on behalf of service widows, 18 December 2013](#)

¹⁸ [Forces Pension Society Briefing – Justice for Widows. Why it is necessary to change the rules?](#)

¹⁹ [EDM 1157, Pension Entitlement for Military Widows and Widowers, 2013/14](#)

The cost of not suspending pensions on remarriage or cohabitation to spouses who survive members of the 1975 Armed Forces Pension Scheme, whose deaths were not attributable to service, is estimated to be in the region of £250,000 per annum; the cost is estimated to be £70,000 per annum in relation to the War Pensions Scheme. Survivors of those enrolled in the current 2005 pension scheme and the new 2015 scheme, when implemented, will retain pensions for life regardless of personal circumstance.[...]

Successive Governments have reviewed pensions for life, but changes cannot be taken in isolation from other public sector schemes, including those for the NHS, teachers, police and the fire service, which have similar rules in place for their older schemes.[...]

[...] it is a fundamental principle, which has been applied by successive Governments, including that of the noble Lord, that public service occupational pension terms should not be improved retrospectively for those who are no longer active members of these pension schemes or for their dependents.[...]

The Service Personnel and Veterans Agency checks the relationship status of war widows. This is conducted every two years, looking at a random sample of about 5% of recipients. In 2010, this exercise cost some £50,000. It is a complicated matter for the Government to consider whether to look again at extending the terms of various schemes to cover all bereaved spouses for life regardless of subsequent relationships. Nevertheless, Ministers will continue to work closely with the Forces Pension Society and the War Widows Association of Great Britain [...]

The NHS, teachers, police and fire services' scheme administrators were consulted last year and highlighted their concerns. Should the MoD accede to the retrospective change, the Government Actuary's Department confirmed that, if all public sector schemes were to change their rules to accommodate this, the cost would be in the region of £3 billion over a 40-year period—the NHS cost alone would amount to about £1 billion.²⁰

In February 2014, Parliamentary Under-Secretary of State for Defence Anna Soubry said she could see no prospect of a change in the rules:

Armed Forces Widows' Pensions

6. Julie Elliott (Sunderland Central) (Lab): What recent progress his Department has made on its study of the surrender of armed forces widows' pensions. [902318]

The Parliamentary Under-Secretary of State for Defence (Anna Soubry): Under the 2005 pension scheme, widows and widowers retained their benefit for life. The older schemes are of course subject to Treasury rules, which is no doubt one of the reasons why the previous Government did not amend them. If we were to make changes for our service personnel, we would have to do so for all public service pensions, and it has been estimated that that would cost about £3 billion. I know that this has disappointed many, but I can see no prospect of the rules changing.

Julie Elliott: I thank the Minister for that response, but there is real confusion among widows, with many unclear about which scheme they are under. What steps are the Government taking to provide widows with the information they need to make informed decisions on their future?

²⁰ [HL Deb 21 January 2014 c572-4; See also DEP2014-0078](#)

Anna Soubry: There are all manner of helplines and organisations available to any widow and widower who is in any way confused about what scheme he or she may be under. I urge the hon. Lady and other hon. Members who have constituents with such complaints to come my way, but an extensive system is available through the various charities and the armed forces to ensure that everybody is fully informed.

Gemma Doyle (West Dunbartonshire) (Lab/Co-op): Lord Astor recently revealed that it would cost in the region of £250,000 a year to put this matter right, and that the Ministry of Defence spends about £50,000 a year enforcing the current rules. I appreciate that there are concerns about the impact on other pension schemes, but there is support and agreement across the House for special provisions to be put in place, where necessary, for the armed forces community. The Minister will appreciate the difficulties for armed forces spouses in building up their own pension pots, so may I urge her to look again at this matter?

Anna Soubry: I can assure the hon. Lady that this is a matter I am always considering, because I know of the representations from the Forces Pension Society and the War Widows' Association of Great Britain. The difficulty is that this is not within our gift; it is a matter for the Treasury. The very important point to make is that if this is done for the armed forces, others will come forward. Presumably, that is why the previous Government did not do it. One could imagine that the widows and widowers of police officers and fire officers would make just the same sort of case.²¹

However, on 16 October the Government said it was considering representations that had been made to it.²² On 8 November 2014, it announced that the rules would change, such that from 1 April 2015, "all survivors' pensions awarded to armed forces spouses and civil partners would be for life":

From 1 April 2015 all survivors' pensions awarded to armed forces spouses and civil partners will be for life.

Those already in receipt of a survivor's pension will be entitled to keep their pension for life if they decide to remarry, cohabit or form a civil partnership after this date. Previously, some may have had to surrender their pensions upon such changes in their circumstances. The decision highlights the government's commitment to the [Armed Forces Covenant](#) by recognising the difficulties many partners of armed forces personnel face in earning their own occupational pensions, often due to having to relocate their homes within in the UK as well as overseas.

Defence Secretary Michael Fallon said:

"It's vital that we do right by those who put their lives on the line for their country – that's why this government enshrined the Armed Forces Covenant in law.

These changes reflect the huge commitment which service families make to our country.

We recognise that the unique nature of service life has left widows, widowers and surviving civil partners of members of the armed forces at a disadvantage."

The changes, which apply to members of the [Armed Forces Pension Scheme 75](#) (AFPS 75) and the War Pensions Scheme, will allow those who qualify after 1 April 2015 to retain their armed forces pension for life – regardless of whether the AFPS 75

²¹ [HC Deb, 3 February 2014 c10](#); See also, [HC Deb 9 January 2014 c289W](#)

²² [PQ 208933 10 September 2014](#); See also, [HC Deb 20 October 2014 c680](#)

member's death was caused by service or whether the surviving partner remarries or cohabits.

The [Forces Pension Society](#) and the [War Widows' Association](#), which sought to harmonise pension rules from 1 April 2015, have welcomed the move.

This change will come into force in conjunction with the launch of the new [Armed Forces Pension Scheme 15](#).

The Armed Forces Covenant is a key commitment of this government. It was introduced into law to ensure that personnel and veterans, and their families, do not suffer disadvantage due to service.²³

Detailed proposals for changes in the rules have not yet been published. However, the wording of the announcement indicates that the change is not intended to apply retrospectively to widows who have already lost their pension through remarriage or cohabitation. (There is provision in the current rules for a pension to be restored in certain circumstances if the new marriage, cohabitation or civil partnership ceases.²⁴) A PQ regarding the estimated cost of enabling all armed forces widows to retain their pension in the event of later cohabiting or remarrying has not yet been answered.²⁵

The announcement was welcomed by organisations such as the War Widows' Association and the Forces Pension Society.²⁶

2 “Pre-1973 widows”

Before the introduction of improvements in the early 1970s, public service pension schemes provided for an eligible widow to receive a pension at one-third of the rate of her husband's own pension. The relevant improvement to the Armed Forces Pension Scheme (AFPS) took effect from 31 March 1973. Therefore, widows of men who left the armed forces before 31 March 1973 only receive one third of their husband's pension, as compared with the half payable to those whose husbands served after this date. Coupled with the change, which applied to future service, opportunities were provided for those serving on or after that date to make increased contributions in order to qualify previous service for half rate widows' pensions.

In its memorandum to the Defence Select Committee on Legacy issues for the armed forces pension scheme, the MOD confirmed:

AFPS—uprating widows' pensions to half rate of spouses

Until 1973, the widow of a retired Serviceman, irrespective of rank, was entitled to a pension equal to one-third of that of the spouse. In 1973 a number of improvements to the AFPS were introduced, one of which was to increase Service widows' pensions to half the spouse's rate of pension, but this improvement applied only to that part of the spouse's pension earned by his/her service on or after 31 March 1973. Opportunities were, however, provided for those already serving at that point to make direct contributions to buy-in former service at the half rate. For those who did not take up this option, only service given after 31 March 1973 counted at the higher rate.

²³ [Ministry of Defence, Pensions for life for surviving spouses and civil partners of personnel, 8 November 2014](#)

²⁴ [AFPS 75-Family pension benefits, page 17; Army Pensions Warrant 1977, regulation 220B](#)

²⁵ [PQ 210696 15 October 2014](#)

²⁶ [‘War widows pension penalty ditched’, The Daily Telegraph, 8 November 2014; BBC News, ‘Pensions for life for military spouses who remarry’, 8 November 2014](#)

Again the retrospective uprating of pre-1973 widows' pensions up to the half rate has not been allowed because it would breach the no-retrospection policy. The Department does not know exactly how many people are affected by this. However, on the basis of a broad actuarial assumption, it is estimated that it would cost about £25-£30 million per year to change all pre-1973 widows' pensions from third rate to half rate pensions.

The action in the European Court of Human Rights in January 2002 included a challenge on the rate of widows' pensions. Again, the Court ruled the challenge inadmissible, as the retired officers could not be victims because they were not entitled to the pension conditions which they sought under the rules in force at the time they retired: they received their entitlements and the 1973 rule changes did not alter their entitlements.²⁷

3 Post-retirement marriages

The issue of "post retirement" widows has been raised in relation to the major public service pension schemes, although it does not apply exclusively to them. The problem, as seen by campaigners, is that widows who married their husbands after the husband retired are only entitled to a pension based on the amount earned since April 1978; service before that date does not count towards a pension for a widow who married her husband after his retirement. In particular the issue was raised during the passage of the *Pensions Act 1995*, where several speakers argued that the armed forces were a special case. This issue is discussed in more detail in a separate note.²⁸

In its memorandum to the Defence Select Committee on Legacy issues for the armed forces pension scheme, the MOD confirmed:

AFPS—post-retirement widow and widower pensions (PRWP)

Service personnel are treated the same as public sector employees on this issue. Post-retirement widow and widower pensions (PRWP) are given to those Servicemen with service on or after 6 April 1978 and Servicewomen with service on or after 6 April 1989. Those Service personnel who left before the qualifying date and who married after leaving the Armed Forces have no entitlement to widows' benefits. Personnel who left shortly after the qualifying dates have an entitlement, but the PRWPs are low in value, as benefits only accrued from the date of introduction. The Department has not extended this improvement, applying the no-retrospection policy. The cost of extending PRWP entitlement to all current and deferred AFPS pensioners is estimated to be in the order of £50 million. To extend the PRWP concession to survivors of members of all public service occupational schemes would cost between £300 and £500 million.

In January 2002 the European Court of Human Rights ruled on a challenge by a number of retired officers on the PRWP issue. The retired officers' complaint was that the calculation under the AFPS of their widows' pension entitlements in the event of their deaths, based as it is upon the date of marriage or the date of retirement, was arbitrary and discriminatory. The Court ruled the challenge inadmissible, as the retired officers could not be victims because they received their entitlements under the rules in force at the time they retired, and the 1978 rule changes did not alter their entitlements.

²⁷ Memorandum from the Ministry of Defence to the Defence Select Committee on *Legacy Issues for the Armed Forces Pension Scheme*, 12 December 2002, HC 188-I, 2002-03, 18 December 2002

²⁸ SN 224 *Post-retirement marriages in occupational pension schemes* [Parliamentary intranet]

This ECHR ruling provides all public sector schemes with a clear conclusion on this issue.²⁹

In a Parliamentary Written Answer in November 2006, Parliamentary Under Secretary of State in the Ministry of Defence, Derek Twigg, said successive governments had considered retrospective changes to public service pension schemes to be unaffordable:

Mr Harper: To ask the Secretary of State for Defence what representations he has received on extending the widow's and widower's pension under the armed forces pension scheme to post-retirement marriages and if he will make a statement.

Derek Twigg: Ex-service and widow's groups continue to campaign to make retrospective certain pension improvements that have been made since they left the armed forces. One such improvement is in respect of the change in 1978 to the requirement for a widow/widower to have been married to the ex-serviceman during their service to receive certain benefits. Successive Governments have considered retrospective changes to public sector pension schemes to be unaffordable. For this reason the Government opposed the amendments.³⁰

Asked about the cost of extending pension provision to widows and widowers of all post-retirement marriages in the armed forces pension scheme he said:

The 1975 Social Security Act required all occupational pension schemes to introduce pensions for widows who married their husbands after they retired from service. The change was introduced in April 1978 for future service only. The change for widowers was not introduced until April 1989. Widows of men who joined the armed forces after April 1978 and widowers of women who joined after 1989 are not affected by this issue and are eligible for pension benefits in respect of their entire service. The Government Actuary confirmed a figure of £50 million to extend benefits to all post-retirement widows and widowers in the armed forces pension scheme 1975 (AFPS 75) as part of the review which led to the introduction of the Armed Forces (Pensions and Compensation) Act 2004. This figure should not be viewed in isolation: if the concession were to be made for affected members of AFPS 75, there would be pressure to extend it across other public sector pension schemes at an estimated cost of between £300 million and £500 million. The cost for AFPS 75 represented the total capitalised value of future widows' and widowers' benefits which would be payable if marriages after leaving service were treated on the same basis as if the marriage had taken place in service. The value has been assessed using data relating to membership of pensioners and deferred pensioners of AFPS 75 and marriage patterns adopted for costing the scheme as a whole.³¹

The background to this issue is discussed in more detail in Library Note SN 244 [Post retirement marriages in occupational pension schemes](#) (March 2006).

4 *Forces Widows' Pensions (Equality of Treatment) Bill*

On 5 December 2007, Michael Mates introduced a Private Members Bill with the aim of addressing some of the "legacy" issues referred to in section four above. The [Forces Widows' Pensions \(Equality of Treatment\) Bill 2007-08](#) would:

²⁹ Memorandum from the Ministry of Defence to the Defence Select Committee on *Legacy Issues for the Armed Forces Pension Scheme*, 12 December 2002, HC 188-I, 2002-03, 18 December 2002

³⁰ HC Deb, 6 November 2006, c821W

³¹ HC Deb, 6 November 2006, c796W

Provide for the equal treatment of Forces Widows' pensions in respect of retirement from military service for the periods before 1973 and between 1973 and 2005; and for connected purposes.

The Bill would require regulations to be made to:

provide for pensions paid to surviving spouses and civil partners of deceased armed forces personnel who retired from service—

(a) before 31 March 1973, and

(b) between 31 March 1973 and 6 April 2005,

to be calculated and paid on the same basis.³²

The Bill commenced its Second Reading in the House of Commons on 1 February 2008. Patrick Mercer explained the function of the Bill:

I will give a bit of background first, but I will be extremely brief. Improvements to the armed forces pension scheme in 1973 led to an increase in the provision for service widows. As with all improvements to public sector pension schemes, the change was not retrospective. In this case, that meant that an anomaly was created whereby widows whose husbands served before 31 March 1973 receive only one-third of their late husband's pension, whereas the widows of servicemen who served on or after 31 March 1973 receive one half of their husband's pension.

Those who served in the forces on or after 31 March 1973 contributed to the higher rate of widows' pensions through the deductions from their salaries. Although those who were serving at the time could "buy in" their pre-1973 service, so as to ensure that their wife was eligible for a half-rate pension on their death, those who retired before the change could not do so.

In 2002, the European Court of Human Rights ruled out various challenges to the armed forces pension scheme in respect of widows. It rejected the argument that the changes in 1973 had treated service personnel unfairly. Therefore, my right hon. Friend the Member for East Hampshire wishes to introduce the following provisions.

The Bill does not provide an increase from one third to one half of the relevant forces widows' pensions, because to do so would breach the ban on private Members' Bills spending public money. Instead, the Bill provides for the Government, through regulation within 12 months of the Bill becoming law, to provide pensions to the spouses or civil partners of servicemen or servicewomen who retired before 31 March 1973 and between 31 March 1973 and 6 April 2005 on an equal basis. That means that the Government can either increase the pensions of those currently receiving a one-third pension, or reduce the pensions of those receiving one-half. Clearly, the latter is a non-starter.

It is difficult to be exact about the cost of that. The cost of raising pensions to one-half does not seem to be available from the Ministry of Defence. However, it has said that it does not know how many widows are in this position. In evidence to the Select Committee on Defence in 2002, the MOD estimated the cost of making the 1973 change retrospective at between £25 million and £30 million a year. The cost of course is falling all the time as, sadly, widows die. The Ministry of Defence figure is a gross cost; part of the expense would presumably be recouped through higher tax receipts.

³² Clause 1, *Forces Widows' Pensions (Equality of Treatment) Bill 2007-08*

I fully understand the arguments against my right hon. Friend's Bill, but every Member represents widows who are caught in this anomalous position; we have all had mail, pressure or surgery cases involving such widows. I personally know many widows—not so much from my generation, but certainly from my father's generation—who are now in this pensions trap.³³

Annette Brooke placed on record the Liberal Democrat's support for the Bill. Andrew Selous explained that the official Opposition were "sympathetic to the sentiments behind the Bill."³⁴

Responding, Parliamentary Under-Secretary of State for the Ministry of Defence, Derek Twigg, said:

It is a long-standing principle that, where changes are made to the benefits of public service pension schemes, they are implemented from a current date for future service only and are not made retrospective.³⁵

He went on to address "three key legacy issues relating to the Bill":

On pensions for life, following a change of policy in 2000, widows and widowers whose spouses died for reasons associated with service life have been able to retain their pensions on remarriage or cohabitation. However, the change was extended only to those individuals who had not already remarried or cohabited; it was not made retrospective. The change made in 2000 was exceptional and for a very special group of war widows; it was not extended to widows and widowers whose spouses had died for reasons unrelated to service. The one-off cost of buying back the liability to restore the attributable pensions of those who remarried before the change would be about £40 million. The future cost of providing pensions for life for non-attributable widows and widowers would be £14 million a year, with retrospective costs of £460 million for the armed forces scheme, and of some £3 billion if applied to the rest of the public sector.

On post-retirement marriages, the Social Security Act 1975 required occupational pension schemes to introduce pensions for widows who married their husbands after they had retired from the service. Provision was made in AFPS 75 to comply with the Act, but only widows whose husbands gave service after April 1978 benefited, and only service after that date was used when calculating the level of pension. For widowers, the change was not introduced until April 1989, and then only for service from that date. The one-off cost of extending the entitlement to all current and deferred AFPS pensioners is estimated at £50 million; the cost across all public service schemes would of course be much greater.

On the one-third rate and half-rate changes, until 1973 the widow of a retired serviceman was entitled to a pension equal to one third of that of her late husband. As a result of the Social Security Act 1973, this was increased to one half from April 1973, but only for service from that date. An opportunity was given to serving personnel to make direct contributions in order to buy in former service at the half rate. It would cost up to £30 million a year to change all pre-1973 armed forces widows' pensions to half rate, and the cost across all public service schemes would of course be much greater. I should add that, having given the option for members of the armed forces serving on or after 31 March 1973 to buy in their previous service if they wished, it would be unfair to extend the half-rate pension to widows whose husbands had not contributed financially towards the improvement.

³³ [HC Deb, 1 February 2008, c627-8](#)

³⁴ *Ibid*, c628

³⁵ *Ibid*, c629

Naturally, many issues associated with widows' pensions and forces pensions in general revolve around the retrospection policy that Governments have continuously stuck to over the years. The Government are of course very aware of the strength of the feeling among ex-service personnel and dependants who have not benefited from improvements to pension provision. However, legal principles dictate that members' entitlements are generally calculated according to pension rules in force at the date of their retirement. It is a policy principle of public service pensions, upheld by successive Governments, that improvements to pension schemes are not made retrospective.³⁶

The debate was adjourned and rescheduled for 17 October 2008.³⁷

In the current session, Mr Mates has introduced the [Forces Widows Pensions \(Equality of Treatment\) Bill 2008-09](#). The purpose of the Bill is the same as for the 2007-08 Bill, i.e:

To provide for the equal treatment of forces widows' pensions in respect of retirement from military service for the periods before 1973 and between 1973 and 2005; and for connected purposes.³⁸

The second reading debate for the Bill started on 19 June 2009. Michael Mates said he was introducing the Bill to "correct one particularly odious anomaly in the pension system for service widows."³⁹ He said that while Ministers always argued that changes to public service pensions are not made retrospectively, the principle had in fact already been broken. Furthermore, widows of service personnel were a special case:

Whenever a legacy issue relating to the armed forces pension scheme is raised, Ministers say that Governments have always made improvements to public service pension schemes on the basis that they are not retrospective. They say that to single out the pre-1973 widows would be to break that fundamental rule. The difficulty with that argument is that the so-called "no retrospection" rule has been broken before. As I have said, in 1989, the Government made an index-linked payment to pre-1973 war widows as a result of a cross-party campaign that culminated in my introducing a Bill on the subject.

There have been more recent changes, too. Indeed, in a debate on my previous Bill, the hon. Member for Halton made the argument for no retrospection, but promptly discussed what he called the "change of policy" in 2000, which was retrospective in its effect. The changes made in 2000 meant that the widows and widowers of spouses who died in connection with service life could still receive a pension for life after remarriage or when cohabitating with someone else.

The Minister might well say that that was not retrospective because it applied only from that date onwards, but that is not the whole of the Government's retrospection argument. They also say that pre-1973 widows should not benefit from an improvement to the AFPS because their spouses did not contribute towards the improved pension. But the Government chose to ignore that point when they decided that what the Minister last year—rightly in my view—called

"a very special group of war widows"—[Official Report, 1 February 2008; Vol. 471, c. 629.]

³⁶ Ibid, c629-30

³⁷ Parliament website - [Forces Widows' Pensions \(Equality of Treatment\) Bill 2007-08](#)

³⁸ Parliament website - [Forces Widows Pensions \(Equality of Treatment\) Bill 2008-09](#).

³⁹ [HC Deb 19 June 2009 c584](#)

should benefit from a retrospective change in the pension scheme in respect of remarriage.

The retrospection rule was also broken, in the case of the armed forces, in 1963 when the then Prime Minister decided that the pensions of pre-1958 war widows should be calculated on a more favourable basis, following a recommendation from an independent committee. The Bill is simply part two of that attempt to catch up with past unfairness.⁴⁰

He did not accept the argument that increasing the one-third pensions to one half for pre-1973 widows is unaffordable:

The Government are unable to tell us how many widows there are whose husbands retired pre-1973, so suggesting that the cost would be up to £30 million a year has no credibility because no one can back it up.⁴¹

In response, the then Parliamentary Under Secretary of State for Defence Kevan Jones said that any retrospective change would have implications across Government:

The right hon. Member for East Hampshire raised the issue of the one-third and one-half rates, which I have already touched on a little. Until 1973, widows of retired servicemen were entitled to a pension equal to a third of the pension of their late husband. As a result of the major changes made under the Social Security Act 1973, which improved not just armed forces pensions but other public sector pensions, and pensions more generally, the rate increased to one half from April 1973, but only for the widows of those in service from that date. As I have said, service personnel were given an opportunity to make a direct contribution and to buy in former service at the half rate. It is predicted that it would cost up to £30 million a year to change all pre-1973 armed forces widows' pensions to the half rate. The implications of such a change across Government would be considerable, because other public service schemes would look into the change.

I sympathise with the right hon. Gentleman. I find it frustrating that what we do in one Department has an impact on another. We might wish to introduce changes independently for our special group of service men and women, but those who advise me and others must consider the implications across Government. [...]

Does not the right hon. Gentleman think it would be very unfair if, for example, we were to pay the increase now, but the estate of somebody who went to meet their maker a week before or a year before did not have a claim on it? It is not as simple as he suggests. Moreover, as I mentioned, members of the armed forces who served after 31 March 1973 were given the option to buy in their previous service. Would it not be unfair now to extend the enhanced benefits to widows of husbands who had not taken steps to acquire that financial improvement? Compensation would be difficult. Would we have to set up a scheme to pay back those who had chosen to pay the additional contribution?

Post-retirement marriage is another problematic example that dates back to the Social Security Act 1975, which had implications for the AFPS and many other schemes. The Act required occupational pension schemes to introduce a pension for widows who married their husbands after they had retired from service. Provision was made in the armed forces pension scheme in 1975 to comply with the Act, but only widows whose husbands served after April 1978 benefited, and only service after that date was used

⁴⁰ Ibid c585-6

⁴¹ Ibid, c586

to calculate the pension. For widows, the change was not introduced until April 1989, and then only for service from that date.

The one-off extension of entitlement to all current and deferred AFPS pensioners would, the right hon. Gentleman will be pleased to hear, cost about £50 million. Again, there would be a crossover effect on other public service schemes.

The other issue that affects pensions is commonly referred to as the pension for life. Following a change of policy in 2000, widows and widowers have been able to retain their pension on remarriage or cohabitation—a point that the right hon. Gentleman made. However, the change was extended only to those individuals who had not already remarried or cohabited. The changes that were made in 2000 were exceptional and for a special group of war widows, and they were not extended to the widows and widowers whose spouses had died for reasons unrelated to service life. That was a defined group of individuals to whom the right hon. Gentleman referred.

In 2008, the Government Actuary's Department conducted a detailed study of the costs of providing pensions for life for non-attributable widows, and found that the cost of providing pensions for future service would be about £14 million a year. That would gradually decrease, as the right hon. Gentleman suggested, as the number of AFPS pensioners fell—as they got older and the grim reaper took his toll. Using the rates in the 1975 AFPS, the retrospective costs would be about £70 million, but they might be as high as £350 million for the armed forces scheme. I asked for the figure throughout the public sector, and I shall be quite happy to share the information with the right hon. Gentleman afterwards. It would be about £3 billion, although I accept his point that, as years go by, it will decrease. Again, however, such a measure would be unfair.

No Government have retrospectively changed pension entitlements under the schemes.⁴²

The Bill was later dropped by its sponsor.⁴³

⁴² Ibid, c600

⁴³ See the [Forces Widows Pensions \(Equality of Treatment\) Bill 2008-09](#) section of the Parliament website