

NHS PENSION SCHEMES 2019/06

WHO SHOULD READ: NHS HR and Payroll Managers
 GP Practice Managers
 Direction Bodies
 Practitioner Service Division (PSD)
 Dental Payments
 Trade Unions

ACTION: For information

SUBJECT: Civil Partners and Same Sex Marriage – Surviving Partner’s Pension

The purpose of this circular is to:

- To remove the restriction on using membership from April 1988 only in the calculation of a survivors pension for surviving civil partners and same-sex marriage in the National Health Service Superannuation Scheme (Scotland) Regulations 2011.

Changes to Survivor Benefits

Changes to survivor pensions introduced by the Social Security Act 1986 resulted in most public service pension schemes providing widowers (male survivors of opposite-sex marriages) survivor benefits based on the female member’s service only from 6 April 1988 onwards. Since the introduction of both civil partnerships and later same sex marriages public service pension schemes have provided survivor benefits for both which have been in line with those paid to widowers i.e. entitlement based on service accrued from 6 April 1988; although some schemes did provide opportunities for members to buy back pre 1988 service for survivor benefits.

On 12 July 2017, the Supreme Court ruled in the *Walker v Innospec* case that Mr Walker’s male spouse was entitled to a pension calculated on all the years of his service with Innospec, provided that at the time of Mr Walker’s death they remained married. As a result, public service schemes, including the NHS, must amend their regulations to provide the same survivors’ benefits for same-sex couples (whether married or in civil partnerships) as is provided for widows, based on a member’s full length of service. **Regulations are currently being prepared to reflect these changes and will shortly be issued for consultation.**

In common with other public sector schemes being reformed, the amendments are being backdated to the dates that civil partnerships and same-sex marriages were introduced, respectively 5 December 2005 and 16 December 2014. However, this does not mean that

only scheme membership from those dates will be taken into account. The intention of the amendments is that there should no longer be any limit on service.

This change does not extend the same treatment to widowers. The European Court of Justice judgment in *Barber v Guardian Royal Exchange* required schemes to provide survivor benefits for males who survive their female spouse that are equal with those provided to females who survive their male spouses in relation to service from 17 May 1990. The NHS Pension Scheme provides such equal benefits in relation to service from 6 April 1988. Occupational pensions policy is reserved and the UK Government consulted widely on this issue in the joint HM Treasury and Department for Work and Pensions review of survivor benefits in Occupational Pension Schemes. No final decisions have been made on these issues and the UK Government is expected to respond in due course.

Action Required

Action on the basis of this information is required to:

- Identify and recalculate any survivors pension in payment under these rules
- Identify and make additional payment to the estate of deceased survivor members who would have had a survivor pension in payment under these regulations.

Greg Walker
Policy Manager
2 July 2019

Contact information

Please contact sppacontactus@gov.scot if you have any enquiries about this circular.

Scottish Public Pensions Agency
7 Tweedside Park
Tweedbank
GALASHIELS
TD1 3TE

www.pensions.gov.scot
Telephone: 01896 893000
Fax: 01896 893214



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