

# Teachers' Pension Scheme

## 2020/08

- Who should read:**
- **Members**
  - **Chief Executives**
  - **Directors of Education**
  - **Directors of Finance**
  - **HR Managers**
  - **Payroll Managers**
  - **Teachers' Unions**
  - **Representatives**

**Action:** For Information and Action

**Subject:** Male survivor benefits – opposite sex marriage and civil partnerships

**Date:** 4 August 2020

**The purpose of this circular is to** advise of a recent legal case and changes to the entitlement of male survivors in opposite sex marriages and civil partnerships; to remove the service restriction under the Teachers' Superannuation (Scotland) Regulations 2005 on this survivor pension to take into account the female member's service from 1 April 1972 or 6 April 1978 if the marriage or civil partnership took place after the last day of pensionable service. This will apply from 5 December 2005, the date that same sex civil partnerships were introduced.

### Introduction

1. The Chief Secretary to the Treasury made a [Written Ministerial Statement](#) on 20 July 2020 in respect of survivor benefits payable from the Teachers' Pension Scheme in England. Following an employment tribunal, survivor benefits payable to male survivors of females in opposite sex marriages should be equal to those payable to other categories of survivor. This has implications for other public service pensions schemes and Scottish Ministers have acknowledged that changes will also be required to devolved schemes, including the Scottish Teachers Superannuation Scheme.

### Background

#### Changes to Male Survivor Benefits

2. Changes to survivor pensions introduced by the Social Security Act 1986 resulted in most public service pension schemes providing survivor benefits to widowers (that is, male survivors in opposite-sex marriages) based on the female spouse's service 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 in respect of 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.

3. 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 Teachers' schemes have been required to amend their regulations to provide equal survivor benefits for same-sex couples (whether married or in civil partnerships) to that provided for widows, based on a member's full length of service. Whilst some schemes have yet to introduce this change into regulations, it is being applied administratively and is backdated to 5 December 2005.

4. As confirmed by the UK Government's Written Ministerial Statement, a recent employment tribunal case [*Mrs Goodwin v Department for Education*] has concluded that a female member in an opposite sex marriage is treated less favourably than a female in a same sex marriage or civil partnership, and that treatment amounts to direct discrimination on grounds of sexual orientation. Where schemes contain provisions deemed discriminatory, those provisions must be disapplied as being contrary to the non-discrimination rule set out in section 61 of the Equality Act 2010.

### Changes required

5. Same-sex survivors were originally entitled to survivor benefits taking into account the member's service from April 1988, however retrospective amendments remain to be made post *Walker* with effect from 5 December 2005 (the date when civil partnerships became possible), such that those survivor benefits now take into account the member's service from 6 April 1978. Following the *Goodwin* Tribunal, regulatory amendments will now need to be made with effect from the same date to extend that entitlement to male survivors of female members

6. Where a male spouse survivor of a female scheme member whose entitlement to the survivor pension arose on or after 5 December 2005 is in receipt of a survivor pension, that pension will be increased in line with changes planned.

7. The entitlement of a male spouse survivor of a female member whose right to a pension arose before 5 December 2005 (ie where the female member deceased before 5 December 2005) will not be affected. This is because the rights under the relevant scheme crystallised at a date before the effective date of the planned amendment.

### Action Required

**There is no need for scheme members to contact the SPPA at this time.** SPPA will consider the necessary changes and write to individuals affected at the earliest opportunity. We will consider the circumstances of any other claims brought to our attention. This is a complex exercise requiring full consideration to ensure benefit entitlement is paid in full.

## Any questions?

Please contact [SPPAPolicy@gov.scot](mailto:SPPAPolicy@gov.scot) if have any enquiries about this circular.

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Policy Manager  
4 August 2020