

NHS Pension Scheme 2020/10

Who should read:	Members, NHS HR and Payroll Managers, GP Practice Managers, Direction Bodies, Practitioner Service Division (PSD), Dental Payments, Trade Unions
Action:	For information and action
Subject:	Male survivor benefits – opposite sex marriage and civil partnerships
Date:	26 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 NHS Superannuation Scheme (Scotland) Regulations 2011 on this survivor pension to take into account all female member's service (or service from 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 be required to devolved schemes, including the NHS Superannuation Scheme (Scotland).

Background

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 case of *Walker v Innospec* 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 Superannuation Scheme 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 and contrary to the non-discrimination rule set out in section 61 of the Equality Act 2010, those provisions must be disapplied.

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 all member's service. Following the *Goodwin* Tribunal, regulatory amendments will now need to be made with effect from the same date to extend 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 planned changes.

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

8. **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. This is a complex exercise requiring full consideration to ensure benefit entitlement is paid in full.

Any questions?

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

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