Draft Order laid before Parliament under paragraph 2(a) of Schedule 2 to the Human Rights Act 1998 (c. 42) for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2022 No.

SOCIAL SECURITY

The Bereavement Benefits (Remedial) Order 2022

Made - - - - ***

Coming into force in accordance with article 1(2)

Provisions about two bereavement benefits in the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**a**) and the Pensions Act 2014(**b**) have been declared(**c**) under section 4 of the Human Rights Act 1998(**d**) to be incompatible with a Convention right(**e**).

The time for bringing an appeal in the case concerning provisions in the Pensions Act 2014 has expired and no appeal has been brought within that time(**f**).

The Secretary of State considers that there are compelling reasons for proceeding by way of remedial order(**g**) to make such amendments to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and the Pensions Act 2014 as she considers necessary to remove the incompatibility.

In accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998, a draft of this instrument was laid before Parliament and was approved by a resolution of each House of Parliament, a document containing a draft of this instrument having previously been laid before Parliament in accordance with paragraph 3(1) of that Schedule.

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by section 10(2) of, and paragraph 1(1), (2) and (3) of Schedule 2 to, the Human Rights Act 1998.

(**a**) 1992 c. 7.
(**b**) 2014 c. 19.
(**c**) By the Supreme Court in the case of *In the matter of an application by Siobhan McLaughlin for Judicial Review (Northern Ireland)* [2018] UKSC 48; by the High Court in the case of *Jackson and others v Secretary of State for Work and Pensions* [2020] EWHC 183 (Admin).
(**d**) 1998 c. 42. Section 4(5) was amended by paragraphs 66(1) and (2) of schedule 9 to the Constitutional Reform Act 2005 (c. 4).
(**e**) See section 1 of the Human Rights Act 1998 for the definition of "the Convention rights" and section 21(1) of that Act for the definition of "the Convention".
(**f**) No appeal lay in the case concerning provisions in the Social Security Contributions and Benefits (Northern Ireland) Act 1992 because the declaration was made by the Supreme Court.
(**g**) See section 21(1) of the Human Rights Act 1998 for the definition of "remedial order".

Citation, commencement, effect and interpretation

1.—(1) This Order may be cited as the Bereavement Benefits (Remedial) Order 2022.

(2) This Order comes into force on the day after the day on which it is made.

(3) The amendments made by articles 4 to 9 are to be treated as having had effect from 30th August 2018.

(4) In this Order—

"bereavement support payment" means a bereavement support payment under section 30 of the Pensions Act 2014 or section 29 of the Pensions Act (Northern Ireland) 2015(**a**) (bereavement support payment);

"widowed parent's allowance" means a widowed parent's allowance under section 39A of the Social Security Contributions and Benefits Act 1992(**b**) or section 39A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**c**) (widowed parent's allowance).

Transitional provisions

2.—(1) Nothing in this Order removes a person's entitlement to bereavement support payment or a widowed parent's allowance for any period before this Order comes into force.

(2) A person who is entitled to bereavement support payment or a widowed parent's allowance immediately before this Order comes into force continues to be entitled to that benefit if and for so long as the person would have been entitled to that benefit but for the making of this Order; and a person who is so entitled, apart from satisfying the condition of making a claim, may make a claim accordingly.

(3) A person's entitlement by virtue of paragraph (2) is not affected by the fact that another person is entitled to bereavement support payment or a widowed parent's allowance in respect of the same death by virtue of this Order.

3.—(1) Paragraphs (2) and (3) apply where, apart from satisfying the condition of making a claim, the claimant is entitled to a widowed parent's allowance as a result of this Order for any part of the period beginning on 30th August 2018 and ending on the day this Order comes into force.

(2) In regulation 19(2) of the Social Security (Claims and Payments) Regulations 1987 (time for claiming benefit)(**d**) "three months" is to be read in relation to that entitlement as "12 months".

(3) In regulation 19(2) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (time for claiming benefit)(**e**) "3 months" is to be read in relation to that entitlement as "12 months".

(4) Paragraphs (5) and (6) apply where, apart from satisfying the condition of making a claim, the claimant is entitled to bereavement support payment as a result of this Order in relation to a death which occurred before the day this Order comes into force.

(5) Regulation 19 of the Social Security (Claims and Payments) Regulations 1987 (time for claiming benefit) is to be read in relation to that entitlement as follows—

(**a**) 2015 c. 5 (N.I.).

(**b**) 1992 c. 4. Section 39A was inserted by section 55(2) of the Welfare Reform and Pensions Act 1999 (c. 30) and amended by sections 254(1) and 261(4) of, and paragraph 20 of Schedule 24 and Schedule 30 to, the Civil Partnership Act 2004 (c. 33), section 1(3) of and paragraph 3 of Schedule 1 to the Child Benefit Act 2005 (c. 6), section 51 of the Welfare Reform Act 2007 (c. 5), section 31(5) of and paragraph 12 of Schedule 16 to the Pensions Act 2014, S.I. 2014/560, S.I. 2014/3229 and S.I. 2019/1458.

(**c**) Section 39A was inserted by S. I. 1999/3147 (N. I. 11) and amended by paragraph 74 of Schedule 24 to the Civil Partnership Act 2004, paragraph 29 of schedule 1 to the Child Benefit Act 2005, section 47 of the Welfare Reform Act (Northern Ireland) 2007 (c. 2) (N.I.), paragraph 12 of Schedule 16 to the Pensions Act (Northern Ireland) 2015 and S.I. 2019/1514.

(**d**) S. I. 1987/1968. Regulation 19 was inserted by S. I. 1997/793. There are other amendments to Regulation 19 not relevant to this Order.

(**e**) S. R. 1987 No. 465. Regulation 19(2) was inserted by S.R. 1997 No. 156.

(a) in paragraph (2), the words from "three months" to the end of the paragraph are to be read as "21 months beginning with the day after the day the Bereavement Benefits (Remedial) Order 2022 comes into force"; and

(b) in paragraph (3BA)(**a**)—

(i) sub-paragraph (b) is to be read as though the following was substituted for it—

"(b) the date on which the claimant's cohabiting partner (within the meaning in section 30(6B) of the Pensions Act 2014) died,"; and

(ii) "that date of death" is to be read as "the day the Bereavement Benefits (Remedial) Order 2022 comes into force".

(6) Regulation 19 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (time for claiming benefit) is to be read in relation to that entitlement as follows—

(a) in paragraph (2), the words from "3 months" to the end of the paragraph are to be read as "21 months beginning with the day after the day the Bereavement Benefits (Remedial) Order 2022 comes into force"; and

(b) in paragraph (3BA)(**b**)—

(i) sub-paragraph (b) is to be read as though the following was substituted for it—

"(b) the date on which the claimant's cohabiting partner (within the meaning in section 29(6B) of the Pensions Act (Northern Ireland) 2015) died,"; and

(ii) "that date of death" is to be read as "the day the Bereavement Benefits (Remedial) Order 2022 comes into force".

(7) Where paragraph (2) or (5) applies to a person's claim for benefit, section 1(2) of the Social Security Administration Act 1992 (entitlement to benefit dependent on claim)(**c**) does not apply to their entitlement.

(8) Where paragraph (3) or (6) applies to a person's claim for benefit, section 1(2) of the Social Security Administration (Northern Ireland) Act 1992 (entitlement to benefit dependent on claim)(**d**) does not apply to their entitlement.

Amendment of the Pensions Act 2014

4.—(1) Section 30 of the Pensions Act 2014 (bereavement support payment) is amended in accordance with the following provisions.

(2) In subsection (1)—

(a) in paragraph (a), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner";

(b) after paragraph (a), insert—

"(aa) in the case of a person whose cohabiting partner dies, the person is pregnant or entitled to child benefit in circumstances specified under subsection (4) or, where no such circumstances are specified, in such circumstances as the Secretary of State may specify by regulations,"; and

(c) in paragraphs (b) and (c), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner".

(3) After subsection (1), insert—

"(1A) Only one person is entitled to bereavement support payment in respect of one death.

(**a**) Paragraph (3BA) was inserted into Regulation 19 by S. I. 2017/422.

(**b**) Paragraph (3BA) was inserted into Regulation 19 by S.I. 2017/66.

(**c**) 1992 c. 5. Section 1(2) was amended by paragraph 16 of Schedule 8 to the Welfare Reform and Pensions Act 1999 and substituted by paragraph 21(2) of Schedule 16 to the Pensions Act 2014.

(**d**) 1992 c. 8. Section 1(2) was amended by S.I. 1999/3147 (N.I. 11) and substituted by paragraph 21(2) of Schedule 16 to the Pensions Act (Northern Ireland) 2015.

(1B) Where, apart from subsection (1A), more than one person would be so entitled, entitlement is to be determined in accordance with subsections (1C) and (1D).

(1C) Where only one of those persons is a member of the same household as the deceased, that person is entitled.

(1D) Where there is more than one person who is a member of the same household as the deceased and would (apart from subsection (1A)) be entitled—

(a) if one of those persons is the deceased's spouse or civil partner and is pregnant or entitled to child benefit in circumstances specified under subsection (1)(aa) or (4), that person is entitled;

(b) if there is no spouse or civil partner entitled under paragraph (a), the deceased's cohabiting partner who is pregnant or entitled to child benefit in circumstances specified under subsection (1)(aa) or (4) is entitled (but this is subject to paragraphs (c) and (d));

(c) if there is more than one cohabiting partner within paragraph (b), the cohabiting partner who has been a member of the same household as the deceased for longest is entitled;

(d) if there is more than one cohabiting partner within paragraph (b) and each partner has been a member of the same household as the deceased for the same length of time, the Secretary of State must determine who is entitled.".

(4) After subsection (6), insert—

"(6A) For the purposes of this section, the Secretary of State may by regulations specify—

(a) circumstances in which the fact that two persons are married to each other, or are civil partners or cohabiting partners of each other, is to be disregarded;

(b) circumstances in which two persons are to be treated as if they were married to each other or were civil partners or cohabiting partners of each other;

(c) circumstances in which people are to be treated as being, or as not being, members of the same household.

(6B) For the purposes of this section, two persons are cohabiting partners if they are not married to, or civil partners of, each other but are living together as if they were married or civil partners.

(6C) The Secretary of State must issue a statement of the Secretary of State's policy with respect to making determinations under subsection (1D)(d).".

Amendment of the Social Security Contributions and Benefits Act 1992

5.—(1) The Social Security Contributions and Benefits Act 1992 is amended in accordance with the following provisions.

(2) In section 39A (widowed parent's allowance)—

(a) for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner" in each place it appears;

(b) in subsection (1)(b), after "formed a civil partnership" insert "or a cohabiting partnership";

(c) in subsection (2)(b)—

(i) after "surviving spouse" insert "or cohabiting partner";

(ii) in sub-paragraph (i), after "late husband" insert "or the deceased cohabiting partner"; and

(iii) in sub-paragraph (ii), after "section 37(1)(c) above" insert "(which is to be read as if the references to her late husband included a reference to the deceased cohabiting partner)";

(d) in subsection (2)(c), after "civil partner" insert "or cohabiting partner" in both places it appears;

(e) after subsection (3), insert—

"(3A) Only one person is entitled to a widowed parent's allowance in respect of one death.

(3B) Where, apart from subsection (3A), more than one person would be so entitled, entitlement is to be determined in accordance with subsections (3C) and (3D).

(3C) Where only one of those persons is a member of the same household as the deceased, that person is entitled.

(3D) Where there is more than one person who is a member of the same household as the deceased and would (apart from subsection (3A)) be entitled—

(a) if one of those persons is the deceased's spouse or civil partner and is pregnant or entitled to child benefit as described in subsection (2), that person is entitled;

(b) if there is no spouse or civil partner entitled under paragraph (a), the deceased's cohabiting partner who is pregnant or entitled to child benefit as described in subsection (2) is entitled (but this is subject to paragraphs (c) and (d));

(c) if there is more than one cohabiting partner within paragraph (b), the cohabiting partner who has been a member of the same household as the deceased for longest is entitled;

(d) if there is more than one cohabiting partner within paragraph (b) and each partner has been a member of the same household as the deceased for the same length of time, the Secretary of State must determine who is entitled.";

(f) in subsection (4), after "forms a civil partnership" insert "or a cohabiting partnership";

(g) in subsection (4A), after "subsequent civil partnership" insert "or a cohabiting partnership";

(h) after subsection (4A), insert—

"(4B) The surviving cohabiting partner shall not be entitled to the allowance for any period after she or he forms a subsequent cohabiting partnership or a civil partnership or marries, but, subject to that, the surviving cohabiting partner shall continue to be entitled to it for any period throughout which she or he—

(a) satisfies the requirements of subsection (2)(a), (b) or (c) above; and

(b) is under pensionable age.";

(i) in subsection (5)(a), for "spouse's or civil partner's" substitute "spouse's, civil partner's or cohabiting partner's"; and

(j) after subsection (5), insert—

"(6) For the purposes of this section, the Secretary of State may by regulations prescribe—

(a) circumstances in which the fact that two persons are married to each other, or are civil partners or cohabiting partners of each other, is to be disregarded;

(b) circumstances in which two persons are to be treated as if they were married to each other or were civil partners or cohabiting partners of each other (or as marrying or forming a civil partnership or a cohabiting partnership);

(c) circumstances in which people are to be treated as being, or as not being, members of the same household.

(7) For the purposes of this section and section 39C(**a**), two persons are cohabiting partners if they are not married to, or civil partners of, each other but are living together as

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(**a**) Section 39C was inserted by section 55(2) of the Welfare Reform and Pensions Act 1999 and amended by section 39(1)(a) and (2)(a) of the Child Support, Pensions and Social Security Act 2000 (c. 19), paragraph 22 of Schedule 24 to the Civil

if they were married or in a civil partnership (and "cohabiting partnership" is to be read accordingly).

(8) The Secretary of State must issue a statement of the Secretary of State's policy with respect to making determinations under subsection (3D)(d).".

(3) In section 39C (rate of widowed parent's allowance)—

(a) in subsection (3), for "spouse or civil partner" in each place it appears substitute "spouse, civil partner or cohabiting partner"; and

(b) in subsection (4), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner".

(4) In section 46 (modifications of section 45 for calculating the additional pension in certain benefits)(**a**)—

(a) in subsection (2)—

(i) after "the deceased civil partner died under pensionable age" insert "or by virtue of section 39C(1) above in a case where the deceased cohabiting partner died under pensionable age";

(ii) in the definition of "N", in paragraph (b)(i), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner"; and

(b) in subsection (4), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner".

(5) In Schedule 4A (additional pension: accrual rates for purposes of section 45(2)(c))(**b**)—

(a) in paragraph 1(2), after "the deceased civil partner died under pensionable age," insert "or by virtue of section 39C(1) above, in a case where the deceased cohabiting partner died under pensionable age,"; and

(b) in paragraph 1(4), for "spouse or civil partner" in both places it appears substitute "spouse, civil partner or cohabiting partner".

Amendment of the Bereavement Support Payment Regulations 2017

6.—(1) The Bereavement Support Payment Regulations 2017(**c**) are amended in accordance with the following provisions.

(2) In regulation 2 (period for which bereavement support payment is payable)—

(a) in paragraph (1), for "is as follows" substitute—

"is determined—

(a) in the case mentioned in paragraph (4), in accordance with paragraphs (5) and (6);

(b) in the case mentioned in paragraph (7), in accordance with paragraphs (8) and (9); and

(c) in any other case, in accordance with paragraphs (2) and (3)";

Partnership Act 2004, section 6(6) of and paragraph 4 of Schedule 2 to the Pensions Act 2007 (c. 22), paragraph 4 of Schedule 4 to the Pensions Act 2008 (c. 30) and sections 23 and 31(5) of, and paragraph 93 of Schedule 12 and paragraph 14 of Schedule 16 to, the Pensions Act 2014.

(**a**) Section 46 was amended by section 11 of, and paragraph 12 of Schedule 1 and Schedule 2 to, the Social Security (Incapacity for Work) Act 1994 (c. 18), section 70 of and paragraph 5 of Schedule 8 to the Welfare Reform and Pensions Act 1999. section 32(1) of the Child Support, Pensions and Social Security Act 2000, section 126(b) and (c) of and paragraphs 5 and 21(5) of Schedule 4 to the Pensions Act 1995 (c. 26), section 254(1) of and paragraph 23 of Schedule 24 to the Civil Partnership Act 2004, section 11(5)(c) of and paragraph 6 of Schedule 2 to the Pensions Act 2007, section 104 of and paragraph 6 of Schedule 4 to the Pensions Act 2008 and section 23 of and paragraph 59 of Schedule 12 to the Pensions Act 2014.

(**b**) Schedule 4A was inserted by section 31(3) of and Schedule 4 to the Child Support, Pensions and Social Security Act 2000 and amended by section 254(1) of and paragraph 51 of Schedule 24 to the Civil Partnership Act 2004, sections 11(5)(c) and 27(2) of, and paragraph 11 of Schedule 2 and Schedule 7 to, the Pensions Act 2007 and section 23 of and paragraph 69 of Schedule 12 to the Pensions Act 2014.

(**c**) S.I. 2017/410.

(b) in paragraphs (2) and (3), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner" in each place it appears; and

(c) after paragraph (3), insert—

"(4) Paragraphs (5) and (6) apply where the person is entitled to bereavement support payment—

(a) as a result of the amendments made by the 2022 Remedial Order, and

(b) as a result of the death of their cohabiting partner occurring on or after 30th August 2018 and before the RO commencement day.

(5) The period starts—

(a) with the RO commencement day, where the person claims the payment 12 months or less after that date; or

(b) at the beginning of the period of three months preceding the date the person claims the payment, where the person claims the payment—

(i) more than 12 months after the RO commencement day; and

(ii) no more than three months after the date the period finishes under paragraph (6).

(6) The period finishes at the end of the period of 18 months beginning with the RO commencement day.

(7) Paragraphs (8) and (9) apply where the person is entitled to bereavement support payment—

(a) as a result of the amendments made by the 2022 Remedial Order, and

(b) as a result of the death of their cohabiting partner occurring on or after 6th April 2017 and before 30th August 2018.

(8) The period starts with the RO commencement day.

(9) The period finishes—

(a) at the end of the period of W months beginning with the RO commencement day, where the person claims the payment 12 months or less after the RO commencement day; and

(b) at the end of—

(i) the period described in sub-paragraph (a); or

(ii) if shorter, the period of X months beginning with the RO commencement day,

where the person claims the payment more than 12 months after but no more than 21 months after the RO commencement day.

(10) For the purposes of paragraph (9)—

"W months" means the number of months which is 18 less Y;

"X months" means the number of months which is 21 less Z.

(11) For the purposes of paragraph (10)—

"Y" is the number of monthly recurrences of the day of the month on which the person's cohabiting partner died which occur during the period beginning with the day after the date of the cohabiting partner's death and ending with 29th August 2018;

"Z" is the number of monthly recurrences of the day of the month on which the RO commencement day occurs during the period beginning with the day after the RO commencement day and ending with the date on which the person claims the payment.

(12) In paragraph (11)—

(a) for the purposes of the definition of "Y"—

(i) paragraph (7) of regulation 3 applies as if the words "for the purposes of paragraphs (1) and (4)" were omitted, and

(ii) paragraph (8) of regulation 3 applies as if the words "for those purposes" were omitted;

(b) for the purposes of the definition of "Z"—

(i) where the 2022 Remedial Order comes into force on the 31st day of a month, the monthly recurrence of the RO commencement day is to be treated as falling on the last day of the month;

(ii) where the 2022 Remedial Order comes into force on the 29th or 30th day of a month, the monthly recurrence of the RO commencement day in February is to be treated as falling on the last day of February.

(13) In paragraphs (4) to (12)—

"the 2022 Remedial Order" means the Bereavement Benefits (Remedial) Order 2022; and

"the RO commencement day" means the day on which the 2022 Remedial Order comes into force.".

(3) In regulation 3 (rate of bereavement support payment)—

(a) in paragraphs (1) and (8), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner";

(b) for paragraph (2), substitute—

"(2) Where the person claims bereavement support payment 12 months or less after—

(a) the date their spouse or civil partner died;

(b) in the case of a claim in respect of their cohabiting partner who died on or after 30th August 2018 and before the RO commencement day, the RO commencement day;

(c) in the case of a claim in respect of their cohabiting partner who died on or after the RO commencement day, the date their cohabiting partner died,

the higher rate of bereavement support payment is £3,500 for the first month of the period for which bereavement support payment is payable.";

(c) in paragraph (7), insert at the end "(the same applies where a cohabiting partner dies for the purposes of paragraph (1))"; and

(d) after paragraph (8), insert—

"(9) In this regulation, "the RO commencement day" has the meaning given in regulation 2(13).".

(4) In regulation 4 (persons entitled to the higher rate of bereavement support payment), for "spouse or civil partner" in each place it appears substitute "spouse, civil partner or cohabiting partner".

Amendment of the Pensions Act (Northern Ireland) 2015

7.—(1) Section 29 of the Pensions Act (Northern Ireland) 2015 (bereavement support payment) is amended in accordance with the following provisions.

(2) In subsection (1)—

(a) in paragraph (a), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner";

(b) after paragraph (a), insert—

"(aa) in the case of a person whose cohabiting partner dies, the person is pregnant or entitled to child benefit in circumstances specified under subsection (4) or, where no such circumstances are specified, in such circumstances as the Department may specify by regulations,"; and

(c) in paragraphs (b) and (c), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner".

(3) After subsection (1), insert—

"(1A) Only one person is entitled to bereavement support payment in respect of one death.

(1B) Where, apart from subsection (1A), more than one person would be so entitled, entitlement is to be determined in accordance with subsections (1C) and (1D).

(1C) Where only one of those persons is a member of the same household as the deceased, that person is entitled.

(1D) Where there is more than one person who is a member of the same household as the deceased and would (apart from subsection (1A)) be entitled—

(a) if one of those persons is the deceased's spouse or civil partner and is pregnant or entitled to child benefit in circumstances specified under subsection (1)(aa) or (4), that person is entitled;

(b) if there is no spouse or civil partner entitled under paragraph (a), the deceased's cohabiting partner who is pregnant or entitled to child benefit in circumstances specified under subsection (1)(aa) or (4) is entitled (but this is subject to paragraphs (c) and (d));

(c) if there is more than one cohabiting partner within paragraph (b), the cohabiting partner who has been a member of the same household as the deceased for longest is entitled;

(d) if there is more than one cohabiting partner within paragraph (b) and each partner has been a member of the same household as the deceased for the same length of time, the Department must determine who is entitled.".

(4) After subsection (6), insert—

"(6A) For the purposes of this section, the Department may by regulations specify—

(a) circumstances in which the fact that two persons are married to each other, or are civil partners or cohabiting partners of each other, is to be disregarded;

(b) circumstances in which two persons are to be treated as if they were married to each other or were civil partners or cohabiting partners of each other;

(c) circumstances in which people are to be treated as being, or as not being, members of the same household.

(6B) For the purposes of this section, two persons are cohabiting partners if they are not married to, or civil partners of, each other but are living together as if they were married or in a civil partnership.

(6C) The Department must issue a statement of its policy with respect to making determinations under subsection (1D)(d).".

Amendment of the Social Security Contributions and Benefits (Northern Ireland) Act 1992

8.—(1) The Social Security Contributions and Benefits (Northern Ireland) Act 1992 is amended in accordance with the following provisions.

(2) In section 39A (widowed parent's allowance)—

(a) for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner" in each place it appears;

(b) in subsection (1)(b), after "formed a civil partnership" insert "or a cohabiting partnership";

(c) in subsection (2)(b)—

(i) after "surviving spouse" insert "or cohabiting partner";

(ii) in sub-paragraph (i), after "late husband" insert "or the deceased cohabiting partner"; and

(iii) in sub-paragraph (ii), after "section 37(1)(c) above" insert "(which is to be read as if the references to her late husband included a reference to the deceased cohabiting partner)";

(d) in subsection (2)(c), after "civil partner" insert "or cohabiting partner" in both places it appears;

(e) after subsection (3), insert—

"(3A) Only one person is entitled to a widowed parent's allowance in respect of one death.

(3B) Where, apart from subsection (3A), more than one person would be so entitled, entitlement is to be determined in accordance with subsections (3C) and (3D).

(3C) Where only one of those persons is a member of the same household as the deceased, that person is entitled.

(3D) Where there is more than one person who is a member of the same household as the deceased and would (apart from subsection (3A)) be entitled—

(a) if one of those persons is the deceased's spouse or civil partner and is pregnant or entitled to child benefit in accordance with subsection (2), that person is entitled;

(b) if there is no spouse or civil partner entitled under paragraph (a), the deceased's cohabiting partner who is pregnant or entitled to child benefit in accordance with subsection (2) is entitled (but this is subject to paragraphs (c) and (d));

(c) if there is more than one cohabiting partner within paragraph (b), the cohabiting partner who has been a member of the same household as the deceased for longest is entitled;

(d) if there is more than one cohabiting partner within paragraph (b) and each partner has been a member of the same household as the deceased for the same length of time, the Department must determine who is entitled.";

(f) in subsection (4), after "forms a civil partnership" insert "or a cohabiting partnership";

(g) in subsection (4A), after "subsequent civil partnership" insert "or a cohabiting partnership";

(h) after subsection (4A), insert—

"(4B) The surviving cohabiting partner shall not be entitled to the allowance for any period after she or he forms a subsequent cohabiting partnership or a civil partnership or marries, but, subject to that, the surviving cohabiting partner shall continue to be entitled to it for any period throughout which she or he—

(a) satisfies the requirements of subsection (2)(a), (b) or (c) above; and

(b) is under pensionable age.";

(i) in subsection (5)(a), for "spouse's or civil partner's" substitute "spouse's, civil partner's or cohabiting partner's"; and

(j) after subsection (5), insert—

"(6) For the purposes of this section, the Department may by regulations prescribe—

(a) circumstances in which the fact that two persons are married to each other, or are civil partners or cohabiting partners of each other, is to be disregarded;

(b) circumstances in which two persons are to be treated as if they were married to each other or were civil partners or cohabiting partners of each other (or as marrying or forming a civil partnership or a cohabiting partnership);

(c) circumstances in which people are to be treated as being, or as not being, members of the same household.

(7) For the purposes of this section and section 39C(**a**), two persons are cohabiting partners if they are not married to, or civil partners of, each other but are living together as if they were married or in a civil partnership (and "cohabiting partnership" is to be read accordingly).

(8) The Department must issue a statement of its policy with respect to making determinations under subsection (3D)(d).".

(3) In section 39C (rate of widowed parent's allowance)—

(a) in subsection (3), for "spouse or civil partner" in each place it appears substitute "spouse, civil partner or cohabiting partner"; and

(b) in subsection (4), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner".

(4) In section 46 (modifications of s. 45 for calculating the additional pension in certain benefits)(**b**)—

(a) in subsection (2)—

(i) after "the deceased civil partner died under pensionable age" insert "or by virtue of section 39C(1) above in a case where the deceased cohabiting partner died under pensionable age";

(ii) in the definition of "N", in paragraph (b)(i), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner"; and

(b) in subsection (4), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner".

(5) In Schedule 4A (additional pension: accrual rates for purposes of section 45(2)(c))(**c**)—

(a) in paragraph 1(2), after "the deceased civil partner died under pensionable age," insert "or by virtue of section 39C(1) above, in a case where the deceased cohabiting partner died under pensionable age,"; and

(b) in paragraph 1(4), for "spouse or civil partner" in both places it appears substitute "spouse, civil partner or cohabiting partner".

Amendment of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019

9.—(1) The Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019(**d**) are amended in accordance with the following provisions.

(2) In regulation 2 (period for which bereavement support payment is payable)—

(a) in paragraph (1), for "is as follows" substitute—

"is determined—

(a) in the case mentioned in paragraph (4), in accordance with paragraphs (5) and (6);

(**a**) Section 39C was inserted by S.I. 1999/3147 (N.I. 11) and amended by sections 35(1)(a) and (2)(a) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4) (N.I.), paragraph 76 of schedule 24 to the Civil Partnership Act 2004, section 6(2) of the Pensions Act (Northern Ireland) 2008 (c. 1) (N.I.), paragraph 4(2) of schedule 3 to the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13) (N.I.) and paragraph 77 of schedule 12 to and paragraph 14 of schedule 16 to the Pensions Act (Northern Ireland) 2015.

(**b**) Section 46 was amended by section 31(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, section 254(1) of and paragraph 77 of Schedule 24 to the Civil Partnership Act 2004, section 9(5)(c) of and paragraph 6 of Schedule 2 to the Pensions Act (Northern Ireland) 2008, paragraph 6 of Schedule 3 to the Pensions (No. 2) Act (Northern Ireland) 2008 and section 23 of and paragraph 51 of Schedule 12 to the Pensions Act (Northern Ireland) 2015, S.I. 1994/1898 (N.I. 12), S.I. 1995/3213 (N.I. 22) and S.I. 1999/3147 (N.I. 11).

(**c**) Schedule 4A was inserted by section 30(3) of and Schedule 4 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and was amended by section 254(1) of and paragraph 104 of Schedule 24 to the Civil Partnership Act 2004, sections 9(5)(c) and 19(2) of, and paragraph 11 of Schedule 2 and Schedule 6 to, the Pensions Act (Northern Ireland) 2008 and section 23 of the Pensions Act (Northern Ireland) 2015. There are other amendments to Schedule 4A but none of them is relevant.

(**d**) S.R. 2019 No. 181.

(b) in the case mentioned in paragraph (7), in accordance with paragraphs (8) and (9); and

(c) in any other case, in accordance with paragraphs (2) and (3)";

(b) in paragraphs (2) and (3), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner" in each place it appears; and

(c) after paragraph (3), insert—

"(4) Paragraphs (5) and (6) apply where the person is entitled to bereavement support payment—

(a) as a result of the amendments made by the 2022 Remedial Order, and

(b) as a result of the death of their cohabiting partner occurring on or after 30th August 2018 and before the RO commencement day.

(5) The period starts—

(a) with the RO commencement day, where the person claims the payment 12 months or less after that date; or

(b) at the beginning of the period of three months preceding the date the person claims the payment, where the person claims the payment—

(i) more than 12 months after the RO commencement day; and

(ii) no more than three months after the date the period finishes under paragraph (6).

(6) The period finishes at the end of the period of 18 months beginning with the RO commencement day.

(7) Paragraphs (8) and (9) apply where the person is entitled to bereavement support payment—

(a) as a result of the amendments made by the 2022 Remedial Order, and

(b) as a result of the death of their cohabiting partner occurring on or after 6th April 2017 and before 30th August 2018.

(8) The period starts with the RO commencement day.

(9) The period finishes—

(a) at the end of the period of W months beginning with the RO commencement day, where the person claims the payment 12 months or less after the RO commencement day; and

(b) at the end of—

(i) the period described in sub-paragraph (a); or

(ii) if shorter, the period of X months beginning with the RO commencement day,

where the person claims the payment more than 12 months after but no more than 21 months after the RO commencement day.

(10) For the purposes of paragraph (9)—

"W months" means the number of months which is 18 less Y;

"X months" means the number of months which is 21 less Z.

(11) For the purposes of paragraph (10)—

"Y" is the number of monthly recurrences of the day of the month on which the person's cohabiting partner died which occur during the period beginning with the day after the date of the cohabiting partner's death and ending with 29th August 2018;

"Z" is the number of monthly recurrences of the day of the month on which the RO commencement day occurs during the period beginning with the day after the RO commencement day and ending with the date on which the person claims the payment.

(12) In paragraph (11)—

(a) for the purposes of the definition of "Y"—

(i) paragraph (7) of regulation 3 applies as if the words "for the purposes of paragraphs (1) and (4)" were omitted, and

(ii) paragraph (8) of regulation 3 applies as if the words "for those purposes" were omitted;

(b) for the purposes of the definition of "Z"—

(i) where the 2022 Remedial Order comes into force on the 31st day of a month, the monthly recurrence of the RO commencement day is to be treated as falling on the last day of the month;

(ii) where the 2022 Remedial Order comes into force on the 29th or 30th day of a month, the monthly recurrence of the RO commencement day in February is to be treated as falling on the last day of February.

(13) In paragraphs (4) to (12)—

"the 2022 Remedial Order" means the Bereavement Benefits (Remedial) Order 2022; and

"the RO commencement day" means the day on which the 2022 Remedial Order comes into force.".

(3) In regulation 3 (rate of bereavement support payment)—

(a) in paragraphs (1) and (8), for "spouse or civil partner" substitute "spouse, civil partner or cohabiting partner";

(b) for paragraph (2), substitute—

"(2) Where the person claims bereavement support payment 12 months or less after—

(a) the date their spouse or civil partner died;

(b) in the case of a claim in respect of their cohabiting partner who died on or after 30th August 2018 and before the RO commencement day, the RO commencement day;

(c) in the case of a claim in respect of their cohabiting partner who died on or after the RO commencement day, the date their cohabiting partner died,

the higher rate of bereavement support payment is £3,500 for the first month of the period for which bereavement support payment is payable.";

(c) in paragraph (7), insert at the end "(the same applies where a cohabiting partner dies for the purposes of paragraph (1))"; and

(d) after paragraph (8), insert—

"(9) In this regulation, "the RO commencement day" has the meaning given in regulation 2(13).".

(4) In regulation 4 (persons entitled to the higher rate of bereavement support payment), for "spouse or civil partner" in each place it appears substitute "spouse, civil partner or cohabiting partner".

Capital disregards for certain lump sum payments of bereavement benefits

10. The Schedule contains amendments to subordinate legislation to provide for certain lump sum payments of widowed parent's allowance and bereavement support payment to be disregarded from capital for the purpose of calculating certain means-tested benefits.

Signed by authority of the Secretary of State for Work and Pensions

Name
Parliamentary Under Secretary of State
Department for Work and Pensions

Date

SCHEDULE

Article 10

Capital disregards for lump sum payments of bereavement benefits

Amendment of the Income Support (General) Regulations 1987

1. In Schedule 10 to the Income Support (General) Regulations 1987 (capital to be disregarded)(**a**)—

(a) after paragraph 7 insert—

"**7A.** Any payment of a widowed parent's allowance made pursuant to section 39A of the Contributions and Benefits Act (widowed parent's allowance)—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the Contributions and Benefits Act) who is entitled to a widowed parent's allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the survivor makes the claim for a widowed parent's allowance,

but only for a period of 52 weeks from the date of receipt of the payment.";

(b) in paragraph 72—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 30 of the Pensions Act 2014 is paid to the survivor of a cohabiting partnership (within the meaning in section 30(6B) of the Pensions Act 2014) in respect of a death occurring before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(a) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment Regulations 2017, and

(b) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died,

but only for a period of 52 weeks from the date of receipt of the payment.".

Amendment of the Income Support (General) Regulations (Northern Ireland) 1987

2. In Schedule 10 to the Income Support (General) Regulations (Northern Ireland) 1987 (capital to be disregarded)(**b**)—

(a) after paragraph 7 insert—

"**7A.** Any payment of a widowed parent's allowance made pursuant to section 39A of the Contributions and Benefits Act 1992 (widowed parent's allowance)—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the Contributions and Benefits Act 1992) who is entitled to a widowed parent's allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the survivor makes the claim for a widowed parent's allowance,

but only for a period of 52 weeks from the date of receipt of the payment.";

(**a**) S.I. 1987/1967, to which there are amendments not relevant to this Order.
(**b**) S.R. 1987 No. 459, amended by S.R. 2017 No. 66; there are other amending instruments but none is relevant to this Order.

(b) in paragraph 65—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 29 of the Pensions Act (Northern Ireland) 2015 is paid to the survivor of a cohabiting partnership (within the meaning in section 29(6B) of the Pensions Act (Northern Ireland) 2015) in respect of a death occurring before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(a) (i) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019 (rate of bereavement support payment), and

(ii) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died;

(b) in respect of the rate set out in regulation 3(2) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019,

but only for a period of 52 weeks from the date of receipt of the payment.".

Amendment of the Jobseeker's Allowance Regulations 1996

3. In Schedule 8 to the Jobseeker's Allowance Regulations 1996 (capital to be disregarded)(**a**)—

(a) after paragraph 12 insert—

"**12A.** Any payment of a widowed parent's allowance made pursuant to section 39A of the Benefits Act (widowed parent's allowance)—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the Benefits Act) who is entitled to a widowed parent's allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the survivor makes the claim for a widowed parent's allowance,

but only for a period of 52 weeks from the date of receipt of the payment.";

(b) in paragraph 65—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 30 of the Pensions Act 2014 is paid to the survivor of a cohabiting partnership (within the meaning in section 30(6B) of the Pensions Act 2014) in respect of a death occurring before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(a) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment Regulations 2017, and

(b) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died,

but only for a period of 52 weeks from the date of receipt of the payment.".

Amendment of the Jobseeker's Allowance Regulations (Northern Ireland) 1996

4. In Schedule 7 to the Jobseeker's Allowance Regulations (Northern Ireland) 1996 (capital to be disregarded)(**b**)—

(a) after paragraph 12 insert—

(**a**) S.I. 1996/207, to which there are amendments not relevant to this Order.
(**b**) S.R. 1996 No. 198, to which there are amendments not relevant to this Order.

"**12A.** Any payment of a widowed parent's allowance made pursuant to section 39A of the Benefits Act (widowed parent's allowance)—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the Benefits Act) who is entitled to a widowed parent's allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the survivor makes the claim for a widowed parent's allowance,

but only for a period of 52 weeks from the date of receipt of the payment.";

(b) in paragraph 57B—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 29 of the Pensions Act (Northern Ireland) 2015 is paid to the survivor of a cohabiting partnership (within the meaning in section 29(6B) of the Pensions Act (Northern Ireland) 2015) in respect of a death occurring before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(a) (i) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019 (rate of bereavement support payment), and

(ii) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died;

(b) in respect of the rate set out in regulation 3(2) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019,

but only for a period of 52 weeks from the date of receipt of the payment.".

Amendment of the State Pension Credit Regulations 2002

5. In Part 1 of Schedule 5 to the State Pension Credit Regulations 2002 (capital disregarded for the purpose of calculating income)(**a**)—

(a) after paragraph 20A insert—

"**20AA.** Any payment of a widowed parent's allowance made pursuant to section 39A of the 1992 Act (widowed parent's allowance)—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the 1992 Act) who is entitled to a widowed parent's allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the survivor makes the claim for a widowed parent's allowance,

but only for a period of 52 weeks from the date of receipt of the payment.";

(b) in paragraph 23E—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 30 of the Pensions Act 2014 is paid to the survivor of a cohabiting partnership (within the meaning in section 30(6B) of the Pensions Act 2014) in respect of a death occurring before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(a) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment Regulations 2017, and

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(**a**) S.I. 2002/1792; relevant amending instruments are S.I. 2017/422 and S.I. 2020/618.

(b) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died,

but only for a period of 52 weeks from the date of receipt of the payment.".

Amendment of the State Pension Credit Regulations (Northern Ireland) 2003

6. In Part 1 of Schedule 5 to the State Pension Credit Regulations (Northern Ireland) 2003 (capital disregarded for the purpose of calculating income)(**a**)—

(a) after paragraph 20A insert—

"**20AA.** Any payment of a widowed parent's allowance made pursuant to section 39A of the Contributions and Benefits Act (widowed parent's allowance)—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the Contributions and Benefits Act) who is entitled to a widowed parent's allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the survivor makes the claim for a widowed parent's allowance,

but only for a period of 52 weeks from the date of receipt of the payment.";

(b) in section 23D—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 29 of the Pensions Act (Northern Ireland) 2015 is paid to the survivor of a cohabiting partnership (within the meaning in section 29(6B) of the Pensions Act (Northern Ireland) 2015) in respect of a death occurring before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(a) (i) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019 (rate of bereavement support payment), and

(ii) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died;

(b) in respect of the rate set out in regulation 3(2) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019,

but only for a period of 52 weeks from the date of receipt of the payment.".

Amendment of the Housing Benefit Regulations 2006

7. In Schedule 6 to the Housing Benefit Regulations 2006 (capital to be disregarded)(**b**)—

(a) after paragraph 9A insert—

"**9B.** Any payment of a widowed parent's allowance made pursuant to section 39A of the Act (widowed parent's allowance)—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the Act) who is entitled to a widowed parent's allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the survivor makes the claim for a widowed parent's allowance,

but only for a period of 52 weeks from the date of receipt of the payment.";

(**a**) S.R. 2003 No. 28, to which there are amendments not relevant to this Order.
(**b**) S.I. 2006/213; relevant amending instruments are S.I. 2017/422 and S.I. 2020/618.

(b) in paragraph 62—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 30 of the Pensions Act 2014 is paid to the survivor of a cohabiting partnership (within the meaning in section 30(6B) of the Pensions Act 2014) in respect of a death occurring before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(a) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment Regulations 2017, and

(b) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died,

but only for a period of 52 weeks from the date of receipt of the payment.".

Amendment of the Housing Benefit Regulations (Northern Ireland) 2006

8. In Schedule 7 to the Housing Benefit Regulations (Northern Ireland) 2006 (capital to be disregarded)(**a**)—

(a) after paragraph 9A insert—

"**9B.** Any payment of a widowed parent's allowance made pursuant to section 39A of the Act (widowed parent's allowance)—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the Act) who is entitled to a widowed parent's allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the survivor makes the claim for a widowed parent's allowance,

but only for a period of 52 weeks from the date of receipt of the payment.";

(b) in paragraph 59—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 29 of the Pensions Act (Northern Ireland) 2015 is paid to the survivor of a cohabiting partnership (within the meaning in section 29(6B) of the Pensions Act (Northern Ireland) 2015) in respect of a death occurring before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(a) (i) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019 (rate of bereavement support payment), and

(ii) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died;

(b) in respect of the rate set out in regulation 3(2) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019,

but only for a period of 52 weeks from the date of receipt of the payment.".

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

9. In Part 1 of Schedule 6 to the Housing Benefit (Persons who have attained the qualifying age

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(**a**) S.R. 2006 No. 405, to which there are amendments not relevant to this Order.

for state pension credit) Regulations 2006 (capital to be disregarded generally)(**a**)—

(a) after paragraph 22 insert—

"**22A.** Any payment of a widowed parent's allowance made pursuant to section 39A of the Act (widowed parent's allowance)—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the Act) who is entitled to a widowed parent's allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the survivor makes the claim for a widowed parent's allowance,

but only for a period of 52 weeks from the date of receipt of the payment.";

(b) in paragraph 26H—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 30 of the Pensions Act 2014 is paid to the survivor of a cohabiting partnership (within the meaning in section 30(6B) of the Pensions Act 2014) in respect of a death occurring before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(a) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment Regulations 2017, and

(b) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died,

but only for a period of 52 weeks from the date of receipt of the payment.".

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006

10. In Part 1 of Schedule 7 to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (capital to be disregarded generally)(**b**)—

(a) after paragraph 22 insert—

"**22A.** Any payment of a widowed parent's allowance made pursuant to section 39A of the Act (widowed parent's allowance)—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the Act) who is entitled to a widowed parent's allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the survivor makes the claim for a widowed parent's allowance,

but only for a period of 52 weeks from the date of receipt of the payment.";

(b) in paragraph 28D—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 29 of the Pensions Act (Northern Ireland) 2015 is paid to the survivor of a cohabiting partnership (within the meaning in section 29(6B) of the Pensions Act (Northern Ireland) 2015) in respect of a death which occurs before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(**a**) S.I. 2006/214, which is amended by S.I. 2017/422.
(**b**) S.R. 2006 No. 406, to which there are amendments not relevant to this Order.

(a) (i) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019 (rate of bereavement support payment), and

(ii) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died;

(b) in respect of the rate set out in regulation 3(2) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019,

but only for a period of 52 weeks from the date of receipt of the payment.".

Amendment of the Employment and Support Allowance Regulations 2008

11. In Schedule 9 to the Employment and Support Allowance Regulations 2008 (capital to be disregarded)(**a**)—

(a) after paragraph 11 insert—

"**11A.** Any payment of a widowed parent's allowance made pursuant to section 39A of the Contributions and Benefits Act (widowed parent's allowance)—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the Contributions and Benefits Act) who is entitled to a widowed parent's allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the survivor makes the claim for a widowed parent's allowance,

but only for a period of 52 weeks from the date of receipt of the payment.";

(b) in paragraph 60—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 30 of the Pensions Act 2014 is paid to the survivor of a cohabiting partnership (within the meaning in section 30(6B) of the Pensions Act 2014) in respect of a death occurring before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(a) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment Regulations 2017, and

(b) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died,

but only for a period of 52 weeks from the date of receipt of the payment.".

Amendment of the Employment and Support Allowance Regulations (Northern Ireland) 2008

12. In Schedule 9 to the Employment and Support Allowance Regulations (Northern Ireland) 2008 (capital to be disregarded)(**b**)—

(a) after paragraph 11 insert—

"**11A.** Any payment of a widowed parent's allowance made pursuant to section 39A of the Contributions and Benefits Act (widowed parent's allowance)—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the Contributions and Benefits Act) who is entitled to a widowed parent's

(**a**) S.I. 2008/794, which is amended by S.I. 2017/422.
(**b**) S.R. 2008 No. 280, to which there are amendments not relevant to this Order.

allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the survivor makes the claim for a widowed parent's allowance,

but only for a period of 52 weeks from the date of receipt of the payment.";

(b) in paragraph 56—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 29 of the Pensions Act (Northern Ireland) 2015 is paid to the survivor of a cohabiting partnership (within the meaning in section 29(6B) of the Pensions Act (Northern Ireland) 2015) in respect of a death occurring before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(a) (i) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019 (rate of bereavement support payment), and

(ii) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died;

(b) in respect of the rate set out in regulation 3(2) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019,

but only for a period of 52 weeks from the date of receipt of the payment.".

Amendment of the Universal Credit Regulations 2013

13. In Schedule 10 to the Universal Credit Regulations 2013 (capital to be disregarded)(**a**)—

(a) after paragraph 18 insert—

"**18ZA.** A payment made within the past 12 months of widowed parent's allowance—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the Contributions and Benefits Act) who is entitled to widowed parent's allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the survivor makes the claim for widowed parent's allowance.";

(b) in paragraph 20—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 30 of the Pensions Act 2014 (bereavement support payment) has been paid within the past 12 months to the survivor of a cohabiting partnership (within the meaning in section 30(6B) of the Pensions Act 2014) in respect of a death occurring before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(a) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment Regulations 2017, and

(b) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died.".

(**a**) S.I. 2013/376; relevant amending instruments are S.I. 2017/422 and S.I. 2019/1314.

Amendment of the Universal Credit Regulations (Northern Ireland) 2016

14. In Schedule 10 to the Universal Credit Regulations (Northern Ireland) 2016 (capital to be disregarded)(**a**)—

(a) after paragraph 18 insert—

"**18ZA.** A payment made within the past 12 months of widowed parent's allowance—

(a) to the survivor of a cohabiting partnership (within the meaning in section 39A(7) of the Contributions and Benefits Act) who is entitled to a widowed parent's allowance for a period before the Bereavement Benefits (Remedial) Order 2022 comes into force, and

(b) in respect of any period of time during the period ending with the day before the day the survivor makes the claim for widowed parent's allowance.";

(b) in paragraph 20—

(i) the existing text becomes sub-paragraph (1);

(ii) after that sub-paragraph insert—

"(2) Where bereavement support payment under section 29 of the Pensions Act (Northern Ireland) 2015 (bereavement support payment) has been paid within the past 12 months to the survivor of a cohabiting partnership (within the meaning in section 29(6B) of the Pensions Act (Northern Ireland) 2015) in respect of a death occurring before the day the Bereavement Benefits (Remedial) Order 2022 comes into force, any amount of that payment which is—

(a) (i) in respect of the rate set out in regulation 3(1) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019 (rate of bereavement support payment), and

(ii) paid as a lump sum for more than one monthly recurrence of the day of the month on which their cohabiting partner died;

(b) in respect of the rate set out in regulation 3(2) of the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019.".

EXPLANATORY NOTE

(This note is not part of the Order)

Section 39A of the Social Security Contributions and Benefits Act 1992 (c. 4) and section 39A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) make provision for widowed parent's allowance to be paid to surviving spouses and civil partners with dependent children. Section 30 of the Pensions Act 2014 (c. 19), the Bereavement Support Payment Regulations 2017 (S.I. 2017/410), section 29 of the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)) and the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019 (S.R. 2019 No. 181) make provision for higher rate bereavement support payment to be paid to surviving spouses and civil partners with dependent children. Bereavement support payment replaced widowed parent's allowance for deaths on and after 6th April 2017.

In the case of *In the matter of an application by Siobhan McLaughlin for Judicial Review (Northern Ireland)* [2018] UKSC 4, the Supreme Court made a declaration of incompatibility in relation to section 39A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 on the basis that, insofar as it precluded any entitlement to widowed parent's allowance by a surviving unmarried partner, it was incompatible with Article 14, in conjunction with Article 8, of the European Convention on Human Rights.

In the case of *Jackson and others v Secretary of State for Work and Pensions* [2020] EWHC 183 (Admin), the High Court made a declaration of incompatibility in relation to section 30(4)(a) read

(**a**) S.R. 2016 No. 216, amended by S.R. 2017 No. 66; there are other amending instruments but none is relevant to this Order.

with section 30(1) of the Pensions Act 2014 on the basis that, insofar as it empowered the Secretary of State to make regulations that bereavement support payment be paid at a higher rate in the case of a person with dependent children only if they are a spouse or civil partner of the deceased, it was incompatible with Article 14, in conjunction with Article 8, of the European Convention on Human Rights.

This Order amends the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and the Pensions Act 2014 in order to remove the incompatibilities. It also amends the Social Security Contributions and Benefits Act 1992 and the Pensions Act (Northern Ireland) 2015 to make the equivalent amendments to the legislation of Great Britain (in the case of widowed parent's allowance) and Northern Ireland (in the case of bereavement support payment) and, in relation to bereavement support payment, amends the Bereavement Support Payment Regulations 2017 and the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019.

The amendments made by articles 4 to 9 of this Order have retrospective effect - effect from a date earlier than that on which the Order is made – from 30th August 2018. Paragraph 1(1)(b) of Schedule 2 to the Human Rights Act 1998 (c.42) enables provisions of the Order to have retrospective effect.

Article 2 of the Order makes transitional provision so that amendments made by the Order do not affect either entitlement to widowed parent's allowance or bereavement support payment before the Order comes into force or entitlement which would otherwise continue when the Order comes into force, but for the amendments made by the Order.

Article 3 makes transitional provision so that the usual periods in which a claim may be made for a widowed parent's allowance or bereavement support payment are extended where a claim is made in respect of a death before the Order comes into force.

Article 4 amends the Pensions Act 2014 to extend entitlement to bereavement support payment to survivors of cohabiting partnerships who have dependent children. It includes amendments to that Act to provide that only one person can be entitled to bereavement support payment in respect of a death and to determine who is entitled where there is more than one potential claimant. Article 7 makes equivalent amendments to the Pensions Act (Northern Ireland) 2015.

Article 6 amends the Bereavement Support Payment Regulations 2017 (S.I. 2017/410) to extend the higher rate of bereavement support payment to survivors of cohabiting partnerships who have dependent children and to make provision for survivors of cohabiting partnerships in respect of deaths before the Order comes into force. Article 9 makes equivalent amendments to the Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019 (S.R. 2019 No. 181).

Article 5 amends the Social Security Contributions and Benefits Act 1992 to extend entitlement to widowed parent's allowance to survivors of cohabiting partnerships who have dependent children. It provides that only one person can be entitled to widowed parent's allowance in respect of a death and includes provisions to determine who is entitled where there is more than one potential claimant. Article 8 makes equivalent amendments to the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Article 10 and the Schedule amend the legislation governing means-tested benefits (Income Support, Jobseeker's Allowance, Employment and Support Allowance, Housing Benefit, Universal Credit and State Pension Credit) so that lump payments of widowed parent's allowance and bereavement support payment made to the survivors of cohabiting partnerships who are entitled in respect of a period before the Order comes into force are disregarded, for 52 weeks (or, in the case of Universal Credit, 12 months) from receipt, from capital in assessing entitlement to those means-tested benefits.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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