



House of Lords
House of Commons
Joint Committee on Human
Rights

**Draft Bereavement
Benefits (Remedial)
Order 2022:
Second Report**

Eighth Report of Session 2022–23

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 30 November 2022*

*Ordered by the House of Lords
to be printed 30 November 2022*

**HC 834
HL Paper 108**

Published on 6 December 2022
by authority of the House of Commons and the House of Lords

Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Publication

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Committee staff

The current staff of the Committee are Zereena Arshad (Commons Second Clerk), Andrea Dowsett (Lords Clerk), Liam Evans (Committee Specialist), Alexander Gask (Deputy Counsel), Samantha Granger (Legal Counsel), Natalia Janiec-Janicki (Committee Operations Manager), Lucinda Maer (Commons Clerk), Aimal Nadeem (Committee Operations Officer), George Perry (Media Officer), and Thiago Simoes Froio (Committee Specialist)

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 4710; the Committee's email address is jchr@parliament.uk.

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Contents

Summary	3
1 Introduction	5
The Declarations of Incompatibility	5
Role of the Joint Committee on Human Rights	6
2 Bereavement benefits and the need for a Remedial Order	8
Legislative History	8
Widowed Parent’s Allowance	8
Bereavement Support Payment	8
Litigation history	9
Widowed Person’s Allowance	9
Bereavement Support Payment	10
3 Procedural requirements	12
Accompanying statement	12
“Compelling reasons” and delay	12
Non-urgent procedure	13
4 Remediating the incompatibility	15
Effect of the Remedial Order	15
Key amendments to legislation	15
JCHR representations and Government responses	15
WPA and pregnant cohabiting partners	15
Identifying the sole recipient	16
Retrospective effect - appropriate date	16
Retrospective effect in respect of BSP	17
Those who have already had claims refused	18
Implications of changes for benefits and taxation	19
5 Other matters	21
Meaning of “cohabiting partner” and payments to children	21
Effective publicity campaign	22
Drafting points	22

Conclusions and recommendations	23
Formal minutes	26
Published written evidence	27
List of Reports from the Committee during the current Parliament	28

Summary

The draft Bereavement Benefits (Remedial) Order 2022 (“the Remedial Order”) concerns entitlement to two bereavement benefits payable to bereaved partners with dependent children: Widowed Parent’s Allowance (WPA) and higher rate Bereavement Support Payment (BSP). The legislation governing these benefits in England, Wales and Scotland and in Northern Ireland currently provides that they are payable only to the spouse or civil partner of the deceased.

In the case of *In the matter of an application by Siobhan McLaughlin for Judicial Review (Northern Ireland)* (“*McLaughlin*”) the Supreme Court made a declaration of incompatibility in respect of WPA; and later in *Jackson and others v Secretary of State for Work and Pensions* (“*Jackson*”) the High Court made a declaration of incompatibility in respect of higher rate BSP. In both cases the declaration was based on the finding that, by denying the bereavement benefits to cohabiting partners (i.e. those who are not married or in a civil partnership) with dependent children, the legislation unjustifiably discriminated against them in breach of Article 14 of the European Convention on Human Rights (ECHR) (the prohibition on discrimination) in conjunction with Article 8 ECHR (the right to respect for private and family life) and Article 1 of the First Protocol to the ECHR (the right to peaceful enjoyment of possessions). The courts concluded that the purpose of the benefits was to provide financial support to families with children who have lost a parent, the need for which was the same whether or not the parents were married to, or in a civil partnership with, one another. There was therefore no justification for treating cohabiting partners differently.

To remedy the incompatibility, in accordance with section 10 of the Human Rights Act 1998, the Government has laid the draft Remedial Order that would amend the legislation governing these bereavement benefits by providing for them to be extended to cohabiting partners - defined as “two persons... living together as if they were married or civil partners”. Only one person would be entitled to claim either benefit in respect of a death. The change would have limited retrospective effect, applying from 30 August 2018 (the date of the Supreme Court’s judgment in *McLaughlin*).

Part of the remit of the Joint Committee on Human Rights is to recommend whether draft remedial orders should be approved.

We are satisfied that the procedural requirements for the making of a remedial order have been met, including the Government providing a detailed response to our prior report on the proposal for the draft Remedial Order. However, having previously expressed concern at the length of time taken to lay the proposal for this Remedial Order, we are extremely disappointed that it has taken the Government a further 11 months to respond to the JCHR’s report on its proposals and to lay the draft Remedial Order before Parliament. Delays in remedying incompatibilities in legislation have a real-world impact, resulting in more victims of human rights violations.

We are, nevertheless, satisfied that the changes proposed in the draft Remedial Order would address the incompatibilities with Article 14 ECHR identified in *McLaughlin*

and *Jackson*, as they would essentially result in cohabiting partners who are pregnant or have children being treated in the same way as married couples and civil partners in the same position.

We welcome the retrospective effect of the draft Remedial Order, although we are disappointed that the Government has rejected our recommendation that the Remedial Order be given effect from the date of the High Court's original declaration of incompatibility in *McLaughlin*, which would have benefited more victims of discrimination in breach of Article 14 ECHR. We recommend that the Government considers again the possibility of an ex-gratia scheme to cover some of the claimants who will not receive bereavement benefits as a result of the cut-off date imposed.

We are reassured by the Government's confirmation that individuals who have already been refused bereavement benefits, including those that have appealed against a refusal, will not be prevented from benefitting in full as intended. However, we recommend that the Government publishes the reasoning behind this confirmation.

We recommend that the draft Remedial Order is approved.

1 Introduction

The Declarations of Incompatibility

1. The draft Bereavement Benefits (Remedial) Order 2022 (“the Remedial Order”) seeks to address discrimination in the provision of both widowed parent’s allowance (WPA) and higher rate bereavement support payment (BSP), which has been identified as incompatible with Article 14 of the European Convention on Human Rights (ECHR). The Remedial Order arises in response to two declarations of incompatibility made under section 4 of the Human Rights Act 1998 (HRA), first in the Supreme Court *In the matter of an application by Siobhan McLaughlin for Judicial Review (Northern Ireland)*¹ (“*McLaughlin*”) and later in the High Court in *Jackson and others v Secretary of State for Work and Pensions* (“*Jackson*”)²

2. The case of *McLaughlin* concerned WPA, a contributory bereavement benefit available for any person of working age whose “spouse or civil partner” died before 6 April 2017 and who was eligible for child benefit (or pregnant). The claimant was refused WPA when her partner, with whom she had lived for 23 years and with whom she had 4 children, died, because they had not been married or in a civil partnership. The Supreme Court concluded that this amounted to unjustified discrimination, based on the marital status of the claimant and the consequential status of her children, in breach of Article 14 ECHR,³ taken together with Article 8 (the right to respect for private and family life) and Article 1 of Protocol 1 (the right to peaceful enjoyment of property). The Supreme Court made a declaration of incompatibility in respect of the relevant statutory provisions.

3. The case of *Jackson* concerned BSP, a contributory benefit that was brought into force on 6 April 2017 and replaced a suite of bereavement benefits including WPA. BSP is payable to people of working age whose “spouse or civil partner” dies. A higher rate BSP is payable if the recipient has children. The High Court concluded, in light of the Supreme Court judgment in *McLoughlin*, that the refusal to pay the higher rate BSP to the claimants because they had not been married or in a civil partnership violated Article 14 ECHR, taken together with Article 8 and Article 1 of Protocol 1. A declaration of incompatibility was made in respect of the relevant statutory provisions.

4. Since a declaration of incompatibility does not affect the validity or continuing operation of the legislation in question,⁴ following *McLaughlin* and *Jackson* it was then for Government to decide whether, and how, to remedy the incompatibilities identified.

5. We welcome the Government’s action in laying this draft Remedial Order to amend the Social Security Contributions and Benefits Act 1992, the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Pensions Act 2014 and the Pensions Act (Northern Ireland) 2015 to remedy their incompatibility with the prohibition on discrimination in the enjoyment of other Convention rights as guaranteed by Article 14 of the European Convention on Human Rights.

1 [\[2018\] UKSC 48](#)

2 [\[2020\] EWHC 183 \(Admin\)](#)

3 Article 14 ECHR guarantees that: “*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*”

4 [Section 4\(6\) HRA 1998](#)

Role of the Joint Committee on Human Rights

6. The HRA provides that, where a court has made a declaration that legislation is incompatible with a Convention right, Ministers may correct that incompatibility through a remedial order where there are compelling reasons to do so.⁵ Given that a remedial order permits the amendment of primary legislation, Schedule 2 of the HRA provides parameters and safeguards designed to ensure that this power is not used inappropriately.

7. Schedule 2 provides for both an urgent and a non-urgent procedure. Under the non-urgent procedure, which has been used on this occasion, a two-stage process applies. Firstly, a proposal for a draft remedial order must be laid before Parliament for 60 days,⁶ during which time representations may be made to the Government. The Government took this step in respect of the bereavement benefits Remedial Order on 15 July 2021. Secondly, the Government must then lay before Parliament for a further 60 days the draft remedial order itself, accompanied by a summary of the representations it has received and details of any changes made to the order as a result of those representations. After this second 60-day period has elapsed, the Government can ask both Houses of Parliament to approve the draft remedial order. If they do so, the remedial order becomes law.

8. Under the Standing Orders of the Joint Committee on Human Rights (JCHR), we are required to report to each House both on the proposal for a draft remedial order and on the draft remedial order itself. On 3 November 2021, we published our report on the Government's initial proposals. We concluded that the procedural requirements for the making of a remedial order had been met, and that the proposals would remedy the incompatibilities in WPA and BSP subject to one exception relating to pregnant claimants. The Committee also recommended further changes which we considered would improve the fairness of the proposals and their retrospective effect.

9. The Government laid the draft Order, together with the Government's response to the JCHR's report, before both houses on 13 October 2022.⁷ The Government confirmed that a number of changes had been made to the initial proposals as a result of the representations it had received.

10. In respect of any draft remedial order made under section 10 HRA and laid before Parliament, the Committee:

5 [Section 10 HRA 1998](#)

6 For how the period of sixty days is calculated, see [Schedule 2, para 6 HRA 1998](#)

7 The draft order was initially laid on 11 October 2022 without the accompanying response. Schedule 2 of the Human Rights Act 1998 requires the draft laid to be accompanied by a summary of and response to the representations received. To ensure compliance with this requirement, the draft order was withdrawn and re-laid with the accompanying response on 13 October 2022.

- a) Must consider whether the special attention of the House should be drawn to the draft Remedial Order on any of the grounds specified in Standing Order No. 151 (Joint Committee on Statutory Instruments);⁸
- b) Must report to the House its recommendation whether the draft Remedial Order should be approved;⁹
- c) May also report on any other matters arising from its consideration.

11. We issued a call for evidence on the Government's draft Remedial Order on 21 October 2022 and are grateful for the helpful responses we received.¹⁰

8 House of Commons, [Standing Orders, Public Business 2021](#), HC 804, S.O. No. 152B, para 2(c). See also House of Commons, [Standing Orders, Public Business 2021](#), HC 804, S.O. No. 151 and House of Lords, [Standing Order, Public Business 2021](#), HL Paper 232, S.O. No. 74.

The relevant grounds on which the JCSI can draw a statutory instrument to the special attention of each House are:

- that it imposes a charge on the public revenues or requires payments to be made to a public authority;
- that there appears to have been unjustifiable delay in the publication or in the laying of the Order before Parliament;
- that there appears to be a doubt whether it is *intra vires* or that it appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made;
- that for any special reason its form or purport calls for elucidation;
- that its drafting appears to be defective; or
- any other ground which does not impinge on its merits or on the policy behind it

9 House of Commons, [Standing Orders, Public Business 2021](#), HC 804, S.O. No. 152B, para 3(b)

10 Joint Committee on Human Rights, [Call for evidence, Draft Bereavement Benefits \(Remedial\) Order 2022, Written evidence: Draft Bereavement Benefits \(Remedial\) Order 2022](#)

2 Bereavement benefits and the need for a Remedial Order

Legislative History

12. Bereavement benefits provide additional support to people of working age when their spouse or civil partner dies. From the introduction of widows' pensions in 1925¹¹ until 2001 only women received bereavement benefits.¹² In 2001 a new set of bereavement benefits were introduced that were payable to both men and women whose spouse had died, with the intention of eliminating gender-based discrimination.¹³ The Civil Partnership Act 2004 extended the reach of these benefits to civil partners as well as spouses, intending to eliminate discrimination on the basis of sexuality.

Widowed Parent's Allowance

13. The new benefits introduced in 2001 were:

- a) Bereavement Payment—a one-off tax-free lump sum of £2,000;
- b) Bereavement Allowance—a taxable weekly benefit payable for 52 weeks to persons aged 45 or over; and
- c) Widowed Parent's Allowance (WPA)—a taxable weekly benefit payable to “a person whose spouse or civil partner dies” if that person was responsible for a child for whom they were eligible to receive child benefit.

14. WPA was a contributory benefit, meaning it was only available if the deceased spouse or civil partner had made the necessary National Insurance contributions. The payments continue until the bereaved spouse or civil partner is no longer eligible for child benefit, or they reach State Pension age, or they remarry, enter into a civil partnership or start living with another person as if they were husband and wife or civil partners.

Bereavement Support Payment

15. The bereavement benefits scheme was substantially changed once again under the Pensions Act 2014 (and the Pensions Act (Northern Ireland) 2015). In respect of deaths occurring on or after 6 April 2017, all of the existing bereavement benefits were discontinued and a new Bereavement Support Payment (BSP) was introduced in their place. Nevertheless, WPA continues to be payable to bereaved persons whose spouse or civil partner died before 6 April 2017 and who are still entitled to child benefit (which may be available for up to 20 years).

11 Widows', Orphans' and Old Age Contributory Pensions Act 1925

12 A state of affairs that was the subject of a number of applications to the European Court of Human Rights arguing that the benefits discriminated against men.

13 Inserted into the Social Security Contributions and Benefits Act 1992 by the [Welfare Reform and Pensions Act 1999](#) and by statutory instrument [\(1999/3147 \(NI 11\)\)](#) into the [Social Security Contributions and Benefits \(Northern Ireland\) Act 1992](#).

16. BSP is payable to a person under pensionable age whose “spouse or civil partner dies”.¹⁴ The payment consists of an initial lump sum, followed by monthly instalments for up to 18 months. Like WPA it is dependent on the deceased having made the necessary national insurance contributions, but unlike WPA it is payable even where the couple did not have children. The legislation provides, however, that if the bereaved spouse or civil partner was pregnant or entitled to child benefit, regulations may provide for a higher rate of BSP to be payable. The higher rate for those with responsibility for dependent children is set out in the Bereavement Support Payment Regulations 2017 and acts to increase both the initial lump sum and the monthly payments.¹⁵

Litigation history

Widowed Person’s Allowance

17. On 9 February 2016 the High Court in Northern Ireland handed down judgment in *McLaughlin’s (Siobhan) Application* [2016] NIQB 11. Ms McLaughlin challenged decisions of the Department for Social Development to refuse her both Bereavement Payment and WPA after the death of her partner, John Adams. She had lived with her partner for 23 years and they had four children together. She was refused Bereavement Payment and WPA on the sole ground that she had not been married.

18. The High Court concluded that the refusal to pay Bereavement Payment¹⁶ was not discriminatory, but found that the refusal to pay WPA was a breach of Article 14 ECHR in conjunction with Article 8 ECHR.¹⁷ The High Court therefore made a declaration of incompatibility under section 4(2) HRA.

19. The Court of Appeal in Northern Ireland disagreed and overturned the High Court’s decision.¹⁸ Ms McLaughlin therefore appealed to the Supreme Court.

20. On 30 August 2018, by a majority of 4 to 1, the Supreme Court upheld the decision of the High Court.¹⁹ The Supreme Court concluded that the requirement for a recipient of WPA to have been in a marriage or civil partnership with the deceased unjustifiably discriminates against the survivor and the children on the basis of their marital or birth status. They found this was contrary to Article 14 ECHR when read with either Article 8 ECHR or Article 1 of the First Protocol, on the following basis:

- a) Article 14 is not a free-standing prohibition on discrimination. For any measure to violate the guarantee in Article 14 it must first come “within the ambit” of one of the other Convention rights. For the Supreme Court in *McLaughlin* there was no question that WPA came within the ambit of Article 1 of the First Protocol, as it has long been uncontroversial that the denial of a contributory social security benefit falls within the protection of the right to peaceful enjoyment of

14 [Section 30\(1\)\(a\) Pensions Act 2014](#)

15 [SI 410/2017](#)

16 Not to be confused with Bereavement Support Payment, which was not introduced until 2017.

17 The High Court judgment, in fact, states that “the impugned restriction is a violation of Art 8 when read with Art 14 of the Convention” (see para 73) but the finding was one of discrimination and thus a breach of Article 14.

18 [\[2016\] NICA 53](#)

19 [\[2018\] UKSC 48](#). Lord Hodge gave a dissenting judgment.

property.²⁰ But the Court also found that WPA came within the ambit of Article 8, because WPA “is a positive measure which, though not required by Article 8, is a modality of the exercise of the rights guaranteed by Article 8.”²¹

- b) Unlike the Court of Appeal, the Supreme Court also accepted that, for the purposes of WPA, which is paid because the survivor is responsible for the care of children, unmarried cohabiting partners with children and married/civil partners with children were in an analogous position. Crucially, whether the parents were in a legal union or not “makes no difference to the children”.²²
- c) It was already well established that being unmarried amounts to “other status”, i.e., one of the grounds upon which it is unlawful to discriminate without justification, under Article 14 ECHR.
- d) The Government argued that the difference in treatment pursued the legitimate aim of promoting the institutions of marriage and civil partnership, which the Supreme Court readily accepted. The Supreme Court did not accept, however, that there was a rational connection between the aim pursued and the means employed:

The purpose of the allowance is to diminish the financial loss caused to families with children by the death of a parent. That loss is the same whether or not the parents are married to or in a civil partnership with one another.²³

21. The Supreme Court therefore made a declaration that “section 39A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 is incompatible with Article 14 of the ECHR, read with Article 8, insofar as it precludes any entitlement to WPA by a surviving unmarried partner of the deceased”.²⁴ Since the legislation governing WPA in the rest of the UK is identical in all material respects, the declaration had the effect of establishing that the Social Security Contributions and Benefits Act 1992 was also incompatible with the ECHR.

Bereavement Support Payment

22. In January 2020, the case of *Jackson and others v Secretary of State for Work and Pensions* was heard by the High Court of England and Wales. The adult claimants had both lived with their partners for many years and had children together with them. However, they had not been married or in a civil partnership with their partners and had been refused BSP upon the death of their partners on this basis alone. They claimed that there

20 See [Willis v United Kingdom \(Application no. 36042/97\), 11 June 2002](#). Indeed, the ECtHR has for some time recognised that non-contributory social security benefits also fall within the protection of A1P1 - see [Stec and Others v. the United Kingdom \(dec.\) \[GC\], \(Applications nos. 65 731/01 and 65900/01\)](#) ECHR 12 April 2006, § 51

21 See the lead judgment of Baroness Hale at [22]

22 See the lead judgment of Baroness Hale at [27]

23 See the leading judgment of Baroness Hale at [39]. It should be noted that Baroness Hale considered the conclusion to be “reinforced by the international obligations to which the United Kingdom is party and which inform the guarantees contained in the ECHR even though they have not been directly incorporated into United Kingdom law”, citing, in particular, Articles 2, 3 and 26 of the UN Convention on the Rights of the Child and Article 10 of the International Covenant on Economic, Social and Cultural Rights 1966.

24 As noted in the [Jackson judgment](#) at [4], this ‘shorthand’ declaration is not entirely accurate as WPA can be paid to someone who is unmarried but in a civil partnership. The Supreme Court must be understood to have meant “...insofar as it precludes any entitlement to widowed parent’s allowance by a surviving...partner of the deceased [who was neither married nor in a civil partnership].”

was no material distinction between the payment of higher rate BSP and the payment of WPA and therefore the High Court should follow the Supreme Court in *McLaughlin* and make a declaration of incompatibility in respect of Section 30(1)(a) of the Pensions Act 2014 (read together with the regulations that provide for the higher rate of BSP).

23. The High Court found that WPA and higher rate BSP were different, the former was designed to replace the earnings of the deceased parent while the latter is a short-term payment covering the additional costs involved in adjusting to a partner's death. Nevertheless, the Court rejected the Government's submission that higher rate BSP, payable only to those with children, is not intended to benefit the relevant child or children. On this basis the High Court concluded that there was no greater justification for the discrimination in relation to higher rate BSP than there was in relation to WPA. The difference in treatment was "manifestly without reasonable foundation".

24. Since it was agreed between all parties that it was not possible to read the words "spouse or civil partner" in the relevant legislation in a way that was compatible with the Convention (i.e., as including cohabitants who were neither married nor in a civil partnership), the court made the following declaration of incompatibility:²⁵

Section 30(4)(a) of the Pensions Act 2014, read with section 30(1), is incompatible with Article 14 of the European Convention on Human Rights read with Article 8 in so far as it empowers the Secretary of State to order by regulations that Bereavement Support Payment be paid at a higher rate in the case of a person who is pregnant or entitled to child benefit, only if they are a spouse or civil partner of the deceased.

25. The declaration of incompatibility did not apply to section 30(1)(a) generally, because the intention was to cover only those who receive *higher rate* BSP. As the Court noted: "Whether or not section 30(1)(a), standing alone, is discriminatory and incompatible even in the case of a surviving cohabitee who does not have any child, is not raised or in point in the present case, and is not the subject of this judgment."

26. The Government chose not to appeal against the High Court's ruling.

²⁵ Under [section 3 HRA 1998](#) the courts are required "so far as it is possible to do so" to read and give effect to legislation in a way that is compatible with the Convention rights.

3 Procedural requirements

Accompanying statement

27. The Human Rights Act 1998 sets out the correct procedure for making a Remedial Order. It specifies that when a draft Remedial Order is laid before Parliament for the second 60-day period it must be accompanied by a summary of the representations made during the first 60-day period and details of any changes made to the Remedial Order as a result of those representations.

28. The Government has provided a summary of the representations made by the JCHR in our previous report on the proposed draft Remedial Order, together with a detailed response to the representations.²⁶ This response explains how the draft Remedial Order has been amended in light of the JCHR's representations. The Government notes that representations were made by charities and individuals both to the JCHR and also directly to the Government. It states that these largely mirrored the concerns set out in the JCHR's report and thus does not summarise them; nor are they addressed directly in the detailed response but rather "used to inform the content of [the] response."

29. We are satisfied that the Government has complied with the procedural requirement to summarise the representations it has received and to detail any changes that have been made to the draft Remedial Order as a result of those representations. We would, however, remind the Government that the obligation is to summarise all representations received, not merely those from the Joint Committee on Human Rights.

"Compelling reasons" and delay

30. By using a remedial order, primary legislation can be amended by delegated legislation.²⁷ This is exceptional, and a Minister may only use the remedial order power under the HRA where there are "compelling reasons" to do so.

31. As set out in our prior report on the proposal for a draft Remedial Order, we accepted that there were compelling reasons to use the remedial power on the basis that (a) any legislation being incompatible with Convention rights is a serious matter that should be remedied quickly, and (b) pressure on the legislative timetable meant that waiting for an appropriate Bill would be likely to result in delay. Nevertheless, we indicated that we would have been interested to know more about the reasoning for the use of the remedial order process being "compelling" rather than convenient. This issue was not, unfortunately, addressed in the Government's response to our report.

32. We maintain our acceptance that there are compelling reasons to use the Remedial Order procedure, but we must raise our concerns that, despite this theoretically faster process being adopted, there have been substantial delays in remedying the incompatibilities identified in *McLaughlin* and *Jackson*. The same concern was raised in

26 [Government Response to representations made on proposals for a draft Bereavement Benefits \(Remedial\) Order 2021, including the eighth Report from the Joint Committee on Human Rights, Session 2021–22 \(HC 594, HL 91\).](#)

27 A Remedial Order may also amend subordinate legislation – see [Schedule 2, paragraph 1\(2\)\(b\) HRA 1998](#).

the written submissions we received from the Childhood Bereavement Network, which emphasised that “[t]he process of laying the Remedial Order has been protracted, which has caused prolonged uncertainty and frustration for parents”.²⁸

33. In our previous report, we noted that there had been a long delay in bringing forward the initial proposals to remedy the discrimination identified in these cases - those proposals being laid in Parliament almost three years after the Supreme Court judgment in *McLaughlin* was handed down and more than 15 months after the judgment in *Jackson*. Despite our expressions of concern in that report, a further 11 months was allowed to pass from the date of our report to the Remedial Order being laid before Parliament for a second time.

34. The Chairs of the Joint Committee on Human Rights and the Work and Pensions Committee wrote jointly on 7 July 2022 to Baroness Stedman-Scott, the Parliamentary Under-Secretary for Work and Pensions, to raise concerns at delays in the resolution of discrimination in the provision of bereavement benefits and to insist that the draft Remedial Order be laid before the Parliamentary summer recess.²⁹ In a reply dated 21 July 2022, Baroness Stedman-Scott explained that her “officials are working through a number of complex policy, drafting and implementation issues that require careful consideration”. This was said to include the comments made in the JCHR’s report. The issue was confirmed to be “an absolute priority for this department”, but no commitment could be given to laying the draft Remedial Order before the summer recess.³⁰

35. We accept that the Government was required to lay its proposals before both Houses for a period of 60 days, and we, of course, accept that the Government needed to consider and respond to the recommendations made in our report on those proposals. Nevertheless, the fact that the draft Remedial Order was not laid before Parliament until October 2022 is extremely disappointing. While these delays took place, the law continued to discriminate against surviving cohabiting partners and their dependent children, denying them access to important benefits, in violation of their rights under the European Convention on Human Rights.

36. We have previously expressed our concern over the delay in remedying the discrimination in the provision of bereavement benefits recognised in the cases of McLaughlin and Jackson. We are extremely disappointed that it took the Government a further 11 months to respond to our report on its proposals and to lay the draft Remedial Order before Parliament.

Non-urgent procedure

37. The Government chose to use the non-urgent procedure rather than the urgent procedure that is available under Schedule 2 of the HRA, but, as noted in our previous report, did not initially set out its reasons for doing so. The response to the JCHR’s previous

28 Childhood Bereavement Network ([BBO0002](#))

29 [Joint letter to the Minister for Work and Pensions relating to the Bereavement Benefits \(Remedial\) Order, dated 7 July](#)

30 Department for Work & Pensions, [Letter from the Minister for Work and Pensions relating to a Bereavement Benefits \(Remedial\) Order, dated 21 July](#)

report explains that this approach was taken because, given that the resolution of the incompatibilities identified was “not straightforward”, the Government was keen for there to be an opportunity for representations to be made.³¹

38. We remain satisfied that the non-urgent procedure was appropriate. We accept the need for the non-urgent procedure to ensure there was an opportunity for representations to be made on the Government’s proposals.

31 [Government Response to representations made on proposals for a draft Bereavement Benefits \(Remedial\) Order 2021, including the eighth report from the Joint Committee on Human Rights, Session 2021–22 \(HC 594, HL 91\)](#)

4 Remediating the incompatibility

Effect of the Remedial Order

39. In *McLaughlin* and *Jackson*, the courts found that the refusal to provide WPA or BSP to a bereaved person with a child on the basis that they had not been in a legal union with the deceased discriminated against the applicant in violation of Article 14, since the benefits fell within the ambit of Article 8 and Article 1 of Protocol 1 ECHR. Therefore, to remedy the incompatibility, the Remedial Order must eliminate the difference in treatment between those couples with children who are in legal unions and those who are not when it comes to the payment of WPA and higher rate BSP.

Key amendments to legislation

40. In respect of WPA, under the draft Remedial Order, section 39A of the Social Security Contributions and Benefits Act 1992³² would be amended so that all references to “spouse or civil partner” would become “spouse, civil partner or cohabiting partner”. Other consequential amendments are also proposed.

41. In respect of higher rate BSP, the Remedial Order would remedy the core incompatibility by amending section 30(1)(a) of the Pensions Act 2014.³³ The provision currently states that the first condition that must be satisfied for a person to be eligible for BSP is if that person’s “spouse or civil partner dies”. The Remedial Order would add “or cohabiting partner” to this condition, but only where the surviving partner is pregnant or entitled to child benefit (thereby limiting the effect of the amendment to *higher rate* BSP only). The proposed Remedial Order would also amend regulation 4 of the Bereavement Support Payment Regulations 2017 to add “or cohabiting partner” to the conditions for eligibility for higher rate BSP.

JCHR representations and Government responses

WPA and pregnant cohabiting partners

42. In our previous report on the Government’s initial proposals, we concluded that the incompatibility identified in *McLaughlin* was not adequately remedied by the proposed draft Order because it did not appear to extend WPA fully to pregnant cohabiting partners.

43. In the Government’s response to our previous report, they accepted that under its proposals a woman who was pregnant when her cohabiting partner died would only be entitled to WPA if she was pregnant as a result of artificial insemination or IVF.³⁴ The Government also accepted our recommendation that the proposed draft order needed to be amended to ensure that women who are pregnant without using artificial insemination or

32 And the equivalent legislation for Northern Ireland: [section 39A of the Social Security Contributions and Benefits \(Northern Ireland\) Act 1992](#).

33 And the equivalent legislation for Northern Ireland: [section 29 of the Pensions Act \(Northern Ireland\) 2015](#).

34 [Government Response to representations made on proposals for a draft Bereavement Benefits \(Remedial\) Order 2021, including the eighth report from the Joint Committee on Human Rights, Session 2021–22 \(HC 594, HL 91\)](#)

IVF are also covered. The draft Remedial Order now includes, at clause 5(2)(c), provisions that will amend section 39A(2)(b) of the Social Security Contributions and Benefits Act 1992 to achieve this result.

44. We welcome the amendments that the draft Remedial Order would make to the legislation governing Widowed Parents Allowance and higher rate Bereavement Support Payment. These amendments would address the key issue preventing this legislation being compatible with Convention rights by extending eligibility for Widowed Parents Allowance and higher rate Bereavement Support Payment to surviving cohabiting partners who are pregnant or who have children.

Identifying the sole recipient

45. The draft Remedial Order would only permit one person to receive the WPA or higher rate BSP, and includes a number of provisions to determine who will be the recipient when more than one person has a prima facie entitlement (i.e. where they are both either a spouse, civil partner or cohabiting partner of the deceased and both have children or are pregnant). In our previous report we noted that these provisions would result in some deserving claimants being left empty-handed. They would also ultimately prioritise spouses and civil partners over cohabiting partners, in a way that could be seen to be perpetuating the discrimination the Remedial Order is intended to resolve. We recommended taking a different approach in such circumstances and splitting the award between the eligible claimants.

46. The Government's response rejected this recommendation, explaining that splitting awards is not an existing feature of the social security system, would be very complex to administer and would undermine the easy to understand and simple nature of BSP. It was accepted that those in a legal union would be treated more favourably than cohabittees, but only in very limited circumstances and in a manner that is likely to prioritise those with more established relationships. The Government also noted our concerns about the discretion given to the Secretary of State to decide between two very similar claimants and has amended the draft Remedial Order to require the publication of a policy statement on this discretion.

47. While we would prefer no prima facie eligible claimants to be left empty handed, we accept that splitting the benefit would not be consistent with usual practice and could produce unhelpful complexity into the system. We also recognise that the numbers of such claimants are likely to be very low. We do not consider that this approach prevents the draft Remedial Order being effective or us recommending its approval.

Retrospective effect - appropriate date

48. The draft Remedial Order states that the legislative changes made "are to be treated as having had effect from 30 August 2018". This is the date that the Supreme Court upheld the declaration of incompatibility made in the High Court in *McLaughlin*. While recognising that this was not necessary to ensure the draft Remedial Order was effective, in our previous report we recommended that the Government consider making the changes have retrospective effect from 9 February 2016, the date that the High Court of Northern Ireland handed down its declaration of incompatibility in *McLaughlin*. We proposed this date because (a) it would provide greater compensation to those who have suffered as a

result of the discriminatory effect of the WPA regime and (b) it would accord with when the legislation was first recognised as incompatible, not when the Government’s appeal was found to be unsuccessful.

49. The Government have rejected this proposal and maintain that the “logical and fair” date is 30 August 2018. It was stated that “to use an earlier start date would also bring considerable administrative complexity and cost to the Exchequer”.³⁵

50. We also recommended that, should the Government not be prepared to extend the retrospective effect of the proposed draft Remedial Order, it should consider establishing a scheme to provide ex-gratia payments. This proposal was also rejected. We note that, in their written submissions to us, the Childhood Bereavement Network have also argued that an ex-gratia scheme should be established to provide an adequate remedy for those who were bereaved prior to 30 August 2018. They note that there is a limited but substantial cohort who would benefit from such a scheme, including one of the claimants in the case of *Jackson*.³⁶ Child Poverty Action Group supported this proposal in their written evidence, noting that an ex-gratia scheme could also cover any “hard cases” where claimants are left out of pocket unfairly.³⁷

51. We are disappointed that the Government have rejected our suggestion that the Remedial Order should have retrospective effect from 9 February 2016 rather than 30 August 2018, because this means that many cohabiting partners who have suffered as a result of the discriminatory effect of the bereavement benefits system, including the claimant in *McLaughlin*, will not be provided with a remedy. We are also disappointed that our alternative suggestion of an ex-gratia scheme has not been taken up and would ask the Government to reconsider.

Retrospective effect in respect of BSP

52. We noted in our previous report that the apparent effect of the proposed draft Remedial Order would be to entitle a claimant who made a claim in respect of a death that occurred between the introduction of BSP on 6 April 2017 and 30 August 2018 to be paid for the full period. While we welcomed this effect, we observed that it did not appear to be consistent with the Government’s intention to compensate only in respect of the period after 30 August 2018. The Government has since amended the draft Remedial Order to ensure that it will only allow for BSP payments in respect of entitlement after 30 August 2018.

35 [Government Response to representations made on proposals for a draft Bereavement Benefits \(Remedial\) Order 2021, including the eighth report from the Joint Committee on Human Rights, Session 2021–22 \(HC 594, HL 91\)](#)

36 Childhood Bereavement Network ([BBO0002](#)): “[A] widowed parent making a claim on 30 August 2018 would have been entitled to receive the lump sum if their spouse or civil partner had died in the preceding 12 months. The RO does not extend this entitlement to cohabiting parents and we believe this affects around 1,300 parents. Indeed, Mr Kevin Simpson, one of the parents who successfully challenged the DWP’s refusal of his Higher Rate Bereavement Support Payment, falls into this category and will not receive the lump sum under the RO as drafted. Further, a widowed parent making a claim on 30 August 2018 would have been entitled to receive up to three months of backdated monthly payments if their partner had died more than three months earlier. The draft RO does not extend this entitlement to cohabiting parents and we believe this affects around 440 parents.”

37 Child Poverty Action Group ([BBO0003](#)). The example of such a ‘hard case’ in their evidence is a claimant who, as a result of the period for which BSP is payable falling after the Remedial Order is brought into force, reaches pensionable age before they receive their full eligibility and thus is receives substantially less than they would have received had they been in a legal union.

53. We are disappointed that the draft Remedial Order will only allow for Bereavement Support Payment in respect of entitlement after 30 August 2018, having made clear that we considered the more generous approach to be preferable. Nevertheless, we accept that this is consistent with the Government’s stated intention.

Those who have already had claims refused

54. In our previous report we raised concerns that the finality of decisions made by the Secretary of State and by tribunals meant that individuals who had already had claims refused on the basis of their lack of a legal union with the deceased would be prevented from accessing bereavement benefits once the Remedial Order has come into effect.³⁸

55. The Government rejected our recommendation that amendments should have been made to its initial proposals to ensure that individuals are not prevented from benefitting as a result of them having previously had claims refused. The Government has nevertheless explained in its response that it is “satisfied that the Remedial Order as drafted will cover claimants who have previously been refused benefit” and that

... it intends to administer the legislation on the understanding that a previous refusal of bereavement benefit will not automatically prevent entitlement in accordance with the Remedial Order. Where there has been a previous refusal, the intention is to award in accordance with the Order if all the requirements in the Order are met.³⁹

56. In their written evidence to us, Child Poverty Action Group welcomed the confirmation of this intention but noted that it was:

[U]nhelpful that the Government has not set out the legal basis for its understanding that these issues no longer arise under the 2022 Remedial Order. Without any such explanation it is difficult to understand the extent to which our previous concerns have been addressed.⁴⁰

57. Child Poverty Action Group continue to have specific concerns about WPA claimants who have already had an initial decision on a claim “taken *after* the starting date for the period of entitlement under the legislation as amended by the [draft Remedial Order]” and those who have already had an initial decision taken after the starting date and have unsuccessfully appealed against that decision.

58. It would have been helpful if the Government had explained why it does not consider that the finality of tribunal decisions and decisions made by the Secretary of State will operate to prevent individuals who have already had claims refused from accessing bereavement benefits once the Remedial Order comes into effect. Such an explanation would have provided reassurance that the rejection of our recommendation will not leave otherwise eligible claimants without access to Widowed Parents Allowance

38 Paras 61-68

39 Para 13. It is presumed that references to awarding “in accordance with the Order” and the “requirements in the Order” being met are intended to refer not to the Order (which does not itself govern WPA or BSP or dictate the requirements that must be met to receive these benefits) but to the legislation being amended by the Order.

40 Child Poverty Action Group ([BBO0003](#))

or higher rate Bereavement Support Payments, perpetuating the discriminatory treatment the draft Remedial Order is designed to remedy. We recommend that the Government publishes its reasoning as soon as possible.

59. Nevertheless, we acknowledge the explicit confirmation in the Government's response to our Committee that the benefits will be administered so as not to exclude claimants who have previously been refused on the basis of being cohabittees rather than in a legal union with the deceased. We trust that the Secretary of State will ensure that this commitment is met.

Implications of changes for benefits and taxation

60. We have raised concerns with the Government that sudden eligibility for retrospective WPA and higher rate BSP as a result of the draft Remedial Order could cause problems for recipients in respect of their tax liability and/or other benefit entitlements. We recommended that the Government should consider these matters carefully and ensure that those who would receive retrospective payments as a result of the Remedial Order would not be disadvantaged.

61. The Government accepted this recommendation in its response to our previous report. It recognised that the size of retrospective payments of WPA, a taxable benefit, could result in the loss of "entitlement to income-related benefits and passported benefits such as free school meals", which would "disadvantage cohabittees over their married counterparts" - precisely the form of discrimination the draft Remedial Order is intended to remedy. To address this issue, the Government has confirmed that retrospective WPA payments will be treated as capital, and disregarded for 12 months, for the purposes of calculating certain means-tested benefits, and will not count towards the Benefit Cap.⁴¹

62. In written evidence to us, the Low Incomes Tax Reform Group and Childhood Bereavement Network both noted that claimants may wish to use the money received in ways that fall outside normal patterns of spending.⁴² It was suggested that the Government should offer assurances that exceptional payments will be looked at more sensitively in the context of deprivation of capital provisions.⁴³

63. WPA will be treated as income for income tax and Working Tax Credit purposes. Retrospective lump sum payments of WPA will be treated as income received in the year of entitlement not in the year of payment. The Government considers that this ensures cohabittees are treated the same as those in a legal union for tax purposes. We note that the Low Incomes Tax Reform Group agreed with this approach to income tax on WPA but queried why retrospective lump sum payments should not be treated as capital rather than income for tax credit purposes, as they will be for universal credit.⁴⁴

64. We are glad the Government accepted our recommendation to consider carefully the implications of the Remedial Order for taxation, tax credits and Universal Credit,

41 [Government Response to representations made on proposals for a draft Bereavement Benefits \(Remedial\) Order 2021, including the eighth report from the Joint Committee on Human Rights, Session 2021–22 \(HC 594, HL 91\)](#)

42 Low Incomes Tax Reform Group of the Chartered Institute of Taxation ([BBO0001](#)) and Childhood Bereavement Network ([BBO0002](#))

43 I.e. provisions governing the deliberate reduction or transfer of capital to get or increase an award of Universal Credit

44 Low Incomes Tax Reform Group of the Chartered Institute of Taxation ([BBO0001](#))

ensuring that those who receive retrospective payments as a result of the Remedial Order are not disadvantaged. We welcome the confirmation that retrospective Widowed Parent's Allowance payments will be treated as capital and disregarded for 12 months, and will not count towards the Benefit Cap. In the same spirit, we are confident the Government will reflect on the way in which deprivation of capital provisions are applied to recipients of retrospective lump sum payments, and the treatment of those payments for the purposes of tax credits.

65. Our overall conclusion is that the draft Remedial Order adequately addresses the incompatibilities with Article 14 ECHR (the prohibition on discrimination) identified in the cases of McLaughlin and Jackson. *We recommend that the draft Remedial Order is approved.*

5 Other matters

66. In our previous report, we made some further recommendations, in addition to those we considered necessary to ensure the draft Remedial Order effectively remedied the incompatibility identified in *McLaughlin* and *Jackson*. These recommendations were also considered by the Government in its response.

Meaning of “cohabiting partner” and payments to children

67. We are concerned about the way “cohabiting partner” is defined in the Remedial Order. It would insert into the legislation governing both WPA and BSP the definition: “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”.⁴⁵

68. As noted in previous reports from this Committee, this definition reflects an arguably outdated approach by implying that “cohabitation is an imitation of marriage or civil partnership, rather than an equal alternative”.⁴⁶ It also lacks precision, as there is no clear definition of what living together as if married or in a civil partnership means. Indeed, the only common factor in all marriages and civil partnerships is that they are based on a legally binding agreement, which is one factor individuals claiming as cohabitantes, by definition, do not share. This lack of precision could give rise to uncertainty and a risk of certain cohabiting couples falling outside the definition and being deprived of bereavement benefits without justification, in continuing breach of Article 14.

69. Nevertheless, the Government has not taken up our recommendation that it should move away from this definition of “cohabiting partner” and try “living in a couple as a joint household”. The Government noted that the definition used in the draft Remedial Order is that used in the wider social security system. It explained that it does not consider it “appropriate for the Remedial Order to depart from the wording used by the social security system in general. It is beyond the scope of the Remedial Order to introduce a wider change to the wording used in the social security system.”⁴⁷

70. The Government also rejected our recommendation to consider more substantial reform by making children directly eligible for the bereavement benefits designed to support them. We suggested that this “more radical solution” would render the precise nature of the relationship between the deceased and the other parent irrelevant. The Government stated it would not want to pay bereavement benefits directly to children, noting that “the immediate costs of bereavement are not necessarily incurred because of the presence of children ... nor do they fall on the children themselves”.

71. We remain unconvinced by the definition of “cohabiting partner” used in the draft Remedial Order. We recognise, nevertheless, that changing this definition is a wider issue that may not be appropriate to address in a statutory instrument designed

45 Or “in a civil partnership” for the purposes of WPA. It is not clear why this very minor difference in definition, which has no obvious effect, has been used for the two different benefits

46 Joint Committee on Human Rights, Twenty First Report of session 2017–19, [Proposal for a draft Fatal Accidents Act 1976 \(Remedial\) Order 2019](#), HC 2225; HL Paper 405 at para 39

47 [Government Response to representations made on proposals for a draft Bereavement Benefits \(Remedial\) Order 2021, including the eighth report from the Joint Committee on Human Rights, Session 2021–22 \(HC 594, HL 91\)](#)

to remedy a specific human rights incompatibility. We would, however, encourage the Government to reflect on whether the definition of “cohabiting partner” used across the social security system remains appropriate.

Effective publicity campaign

72. Plainly, the existing discrimination against cohabiting partners in the provision of bereavement benefits cannot be properly remedied unless those who become entitled to those benefits as a result of the Remedial Order are made aware of that entitlement. The Childhood Bereavement Network proposed in its written evidence that:

The Government must set out the number of people they expect to be eligible under the RO, and develop, implement and monitor a comprehensive communications plan to reach these people.⁴⁸

73. We note that it is not only eligibility for the bereavement payments that should be communicated. In written evidence to us, the Low Incomes Tax Reform Group emphasised that it “is crucial that claimants are made aware from initial communications (and ideally all subsequent communication on this matter) that WPA payments are taxable.”⁴⁹

74. We welcome the Government’s acceptance of our recommendation that it should carry out an effective publicity campaign, to ensure that those who become entitled to Widowed Parent’s Allowance or higher rate Bereavement Support Payment as a result of the Remedial Order are aware of this. We recommend that recipients are also carefully reminded that tax liabilities will arise. Furthermore, the Government should compare the numbers of potentially eligible individuals who make claims for Widowed Parent’s Allowance and higher rate Bereavement Support Payment against projected figures. Should it appear that the opportunity to claim is not being taken up in adequate numbers, the Government should take further active steps to reach those individuals and ensure that the discriminatory effect of the current scheme is effectively remedied.

Drafting points

75. A number of minor technical and drafting points identified in our previous report on the proposed draft Remedial Order have been corrected. We note that further reasonable minor changes to the proposed Order, identified in the Government response, have been made to ensure that the draft Remedial Order works as intended.

48 Childhood Bereavement Network ([BBO0002](#))

49 Low Incomes Tax Reform Group of the Chartered Institute of Taxation ([BBO0001](#))

Conclusions and recommendations

Introduction

1. We welcome the Government's action in laying this draft Remedial Order to amend the Social Security Contributions and Benefits Act 1992, the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Pensions Act 2014 and the Pensions Act (Northern Ireland) 2015 to remedy their incompatibility with the prohibition on discrimination in the enjoyment of other Convention rights as guaranteed by Article 14 of the European Convention on Human Rights. (Paragraph 5)

Procedural requirements

2. We are satisfied that the Government has complied with the procedural requirement to summarise the representations it has received and to detail any changes that have been made to the draft Remedial Order as a result of those representations. We would, however, remind the Government that the obligation is to summarise all representations received, not merely those from the Joint Committee on Human Rights. (Paragraph 29)
3. We have previously expressed our concern over the delay in remedying the discrimination in the provision of bereavement benefits recognised in the cases of McLaughlin and Jackson. We are extremely disappointed that it took the Government a further 11 months to respond to our report on its proposals and to lay the draft Remedial Order before Parliament. (Paragraph 36)
4. We remain satisfied that the non-urgent procedure was appropriate. We accept the need for the non-urgent procedure to ensure there was an opportunity for representations to be made on the Government's proposals. (Paragraph 38)

Remedying the incompatibility

5. We welcome the amendments that the draft Remedial Order would make to the legislation governing Widowed Parents Allowance and higher rate Bereavement Support Payment. These amendments would address the key issue preventing this legislation being compatible with Convention rights by extending eligibility for Widowed Parents Allowance and higher rate Bereavement Support Payment to surviving cohabiting partners who are pregnant or who have children. (Paragraph 44)
6. While we would prefer no prima facie eligible claimants to be left empty handed, we accept that splitting the benefit would not be consistent with usual practice and could produce unhelpful complexity into the system. We also recognise that the numbers of such claimants are likely to be very low. We do not consider that this approach prevents the draft Remedial Order being effective or us recommending its approval. (Paragraph 47)
7. We are disappointed that the Government have rejected our suggestion that the Remedial Order should have retrospective effect from 9 February 2016 rather

than 30 August 2018, because this means that many cohabiting partners who have suffered as a result of the discriminatory effect of the bereavement benefits system, including the claimant in McLaughlin, will not be provided with a remedy. We are also disappointed that our alternative suggestion of an ex-gratia scheme has not been taken up and would ask the Government to reconsider. (Paragraph 51)

8. We are disappointed that the draft Remedial Order will only allow for Bereavement Support Payment in respect of entitlement after 30 August 2018, having made clear that we considered the more generous approach to be preferable. Nevertheless, we accept that this is consistent with the Government's stated intention. (Paragraph 53)
9. It would have been helpful if the Government had explained why it does not consider that the finality of tribunal decisions and decisions made by the Secretary of State will operate to prevent individuals who have already had claims refused from accessing bereavement benefits once the Remedial Order comes into effect. Such an explanation would have provided reassurance that the rejection of our recommendation will not leave otherwise eligible claimants without access to Widowed Parents Allowance or higher rate Bereavement Support Payments, perpetuating the discriminatory treatment the draft Remedial Order is designed to remedy. *We recommend that the Government publishes its reasoning as soon as possible.* (Paragraph 58)
10. Nevertheless, we acknowledge the explicit confirmation in the Government's response to our Committee that the benefits will be administered so as not to exclude claimants who have previously been refused on the basis of being cohabittees rather than in a legal union with the deceased. We trust that the Secretary of State will ensure that this commitment is met. (Paragraph 59)
11. We are glad the Government accepted our recommendation to consider carefully the implications of the Remedial Order for taxation, tax credits and Universal Credit, ensuring that those who receive retrospective payments as a result of the Remedial Order are not disadvantaged. We welcome the confirmation that retrospective Widowed Parent's Allowance payments will be treated as capital and disregarded for 12 months, and will not count towards the Benefit Cap. In the same spirit, we are confident the Government will reflect on the way in which deprivation of capital provisions are applied to recipients of retrospective lump sum payments, and the treatment of those payments for the purposes of tax credits. (Paragraph 64)
12. Our overall conclusion is that the draft Remedial Order adequately addresses the incompatibilities with Article 14 ECHR (the prohibition on discrimination) identified in the cases of McLaughlin and Jackson. *We recommend that the draft Remedial Order is approved.* (Paragraph 65)

Other matters

13. We remain unconvinced by the definition of "cohabiting partner" used in the draft Remedial Order. We recognise, nevertheless, that changing this definition is a wider issue that may not be appropriate to address in a statutory instrument designed to remedy a specific human rights incompatibility. We would, however, encourage the Government to reflect on whether the definition of "cohabiting partner" used across the social security system remains appropriate. (Paragraph 71)

14. We welcome the Government's acceptance of our recommendation that it should carry out an effective publicity campaign, to ensure that those who become entitled to Widowed Parent's Allowance or higher rate Bereavement Support Payment as a result of the Remedial Order are aware of this. We recommend that recipients are also carefully reminded that tax liabilities will arise. *We recommend that recipients are also carefully reminded that tax liabilities will arise. Furthermore, the Government should compare the numbers of potentially eligible individuals who make claims for Widowed Parent's Allowance and higher rate Bereavement Support Payment against projected figures. Should it appear that the opportunity to claim is not being taken up in adequate numbers, the Government should take further active steps to reach those individuals and ensure that the discriminatory effect of the current scheme is effectively remedied.* (Paragraph 74)

Formal minutes

Wednesday 20 December 2022

Hybrid Meeting

Members present:

Joanna Cherry KC MP, in the Chair

Lord Dubs

Lord Henley

Baroness Ludford

Baroness Massey of Darwen

Bell Ribeiro-Addy MP

David Simmons MP

Lord Singh of Wimbledon

Draft Report (*Draft Bereavement Benefits (Remedial) Order 2022: Second Report*), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 75 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Eighth Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Adjournment

[Adjourned until 14th December at 2.45pm]

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

BBO numbers are generated by the evidence processing system and so may not be complete

- 1 Low Incomes Tax Reform Group (LITRG) ([BBO0001](#))
- 2 Childhood Bereavement Network ([BBO0002](#))
- 3 Child Poverty Action Group ([BBO0003](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2022–23

Number	Title	Reference
1st	Legislative Scrutiny: Public Order Bill	HC 351 HL 16
2nd	Proposal for a draft State Immunity Act 1978 (Remedial) Order	HC 280 HL 42
3rd	The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976	HC 270 HL 43
4th	Protecting human rights in care settings	HC 216 HL 51
5th	Legislative Scrutiny: National Security Bill	HC 297 HL 73
6th	Legislative Scrutiny: Northern Ireland Troubles (Legacy and Reconciliation) Bill	HC 311 HC 79
7th	Draft State Immunity Act 1978 (Remedial) Order 2022	HC 895 HL 103
1st Special Report	Human Rights Act Reform: Government Response to the Committee's Thirteenth Report of Session 2021–22	HC 608
2nd Special Report	Legislative Scrutiny: Public Order Bill: Government Response to the Committee's First Report	HC 649

Session 2021–22

Number	Title	Reference
1st	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill	HC 90 HL 5
2nd	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)	HC 331 HL 23
3rd	The Government's Independent Review of the Human Rights Act	HC 89 HL 31
4th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Part 4): The criminalisation of unauthorised encampments	HC 478 HL 37
5th	Legislative Scrutiny: Elections Bill	HC 233 HL 58

Number	Title	Reference
6th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Parts 7 and 8): Sentencing and Remand of Children and Young People	HC 451 HL 73
7th	Legislative Scrutiny: Nationality and Borders Bill (Part 1) – Nationality	HC 764 HL 90
8th	Proposal for a draft Bereavement Benefits (Remedial) Order 2021: discrimination against cohabiting partners	HC 594 HL 91
9th	Legislative Scrutiny: Nationality and Borders Bill (Part 3) – Immigration offences and enforcement	HC 885 HL 112
10th	Legislative Scrutiny: Judicial Review and Courts Bill	HC 884 HL 120
11th	Legislative Scrutiny: Nationality and Borders Bill (Part 5)— Modern slavery	HC 964 HL 135
12th	Legislative Scrutiny: Nationality and Borders Bill (Parts 1, 2 and 4) – Asylum, Home Office Decision Making, Age Assessments, and Deprivation of Citizenship Orders	HC 1007 HL 143
13th	Human Rights Act Reform	HC 1033 HL 191
1st Special Report	The Government response to covid-19: fixed penalty notices: Government Response to the Committee’s Fourteenth Report of Session 2019–21	HC 545
2nd Special Report	Care homes: Visiting restrictions during the covid-19 pandemic: Government Response to the Committee’s Fifteenth Report of Session 2019–21	HC 553
3rd Special Report	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill: Government Response to the Committee’s First Report	HC 585
4th Special Report	The Government response to covid-19: freedom of assembly and the right to protest: Government Response to the Committee’s Thirteenth Report of Session 2019–21	HC 586
5th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order): Government Response to the Committee’s Second Report	HC 724
6th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee’s Fourth Report	HC 765
7th Special Report	Legislative Scrutiny: Elections Bill: Government Response to the Committee’s Fifth Report	HC 911
8th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Parts 7 and 8): Sentencing and Remand of Children and Young People: Government Response to the Committee’s Sixth Report	HC 983
9th Special Report	Human Rights and the Government’s Response to Covid-19: Digital Contact Tracing: Government Response to the Committee’s Third Report of Session 2019–21	HC 1198

Number	Title	Reference
10th Special Report	Legislative Scrutiny: Nationality and Borders Bill: Government Responses to the Committee's Seventh, Ninth, Eleventh and Twelfth Reports	HC 1208

Session 2019–21

Number	Title	Reference
1st	Draft Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019: Second Report	HC 146 HL 37
2nd	Draft Human Rights Act 1998 (Remedial) Order: Judicial Immunity: Second Report	HC 148 HL 41
3rd	Human Rights and the Government's Response to Covid-19: Digital Contact Tracing	HC 343 HL 59
4th	Draft Fatal Accidents Act 1976 (Remedial) Order 2020: Second Report	HC 256 HL 62
5th	Human Rights and the Government's response to COVID-19: the detention of young people who are autistic and/or have learning disabilities	HC 395 (CP 309) HL 72
6th	Human Rights and the Government's response to COVID-19: children whose mothers are in prison	HC 518 HL 90
7th	The Government's response to COVID-19: human rights implications	HC 265 (CP 335) HL 125
8th	Legislative Scrutiny: The United Kingdom Internal Market Bill	HC 901 HL 154
9th	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill	HC 665 (HC 1120) HL 155
10th	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill	HC 847 (HC 1127) HL 164
11th	Black people, racism and human rights	HC 559 (HC 1210) HL 165
12th	Appointment of the Chair of the Equality and Human Rights Commission	HC 1022 HL 180
13th	The Government response to covid-19: freedom of assembly and the right to protest	HC 1328 HL 252
14th	The Government response to covid-19: fixed penalty notices	HC 1364 HL 272
15th	Care homes: Visiting restrictions during the covid-19 pandemic	HC 1375 HL 278
1st Special Report	The Right to Privacy (Article 8) and the Digital Revolution: Government Response to the Committee's Third Report of Session 2019	HC 313

Number	Title	Reference
2nd Special Report	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill: Government Response to the Committee's Tenth Report of Session 2019–21	HC 1127
3rd Special Report	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill: Government Response to the Committee's Ninth Report of Session 2019–21	HC 1120
4th Special Report	Black people, racism and human rights: Government Response to the Committee's Eleventh Report of Session 2019–21	HC 1210
5th Special Report	Democracy, freedom of expression and freedom of association: Threats to MPs: Government Response to the Committee's Third Report of Session 2019	HC 1317
6th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee's Fourth Report	HC 765
7th Special Report	Legislative Scrutiny: Elections Bill: Government Response to the Committee's Fifth Report	HC 911