



Department
for Work &
Pensions

Minister for Work and
Pensions (Lords)
4th Floor
Caxton House
Tothill Street
LONDON
SW1H 9DA

0207 340 4000

www.gov.uk/dwp

Rt Hon Joanna Cherry KC MP
Chair: Joint Committee on Human Rights
(JCHR)

22nd December 2022

Dear Joanna,

Draft Bereavement Benefits (Remedial) Order 2022: Second Report

I am writing to thank you, and all those involved in the Joint Committee on Human Rights, for your work to date on the Draft Bereavement Benefits (Remedial) Order 2022, and in particular your most recent report. By extending Widowed Parent's Allowance and Bereavement Support Payment (Higher Rate) to bereaved cohabitants with dependent children, this draft Order will help to ensure that families can access vital financial support to help them through the incredibly challenging time following the bereavement of a partner. I am, therefore, very pleased that the Committee is satisfied that the draft Order meets procedural requirements; that it addresses the incompatibilities identified with Article 14 of the European Convention on Human Rights, and that you recommend that the draft Order be approved by Parliament.

The draft Order concluded its second laying period on 11 December. It will now be debated and approved by both Houses of Parliament before it can become law. We do not at this stage know when the debates will be.

You raised a number of important points in your report, and I will address the main ones in turn.

The length of time taken to remedy this incompatibility

Whilst you accept there were compelling reasons to make a Remedial Order, you have expressed concern over the length of time it has taken to remedy this incompatibility, and in particular on the time taken to respond to your first report.

I recognise your disappointment at the time it has taken to resolve this.

However, as you are aware, my officials have had to work through a number of complex policy, drafting and implementation issues (including those raised by JCHR), which have required careful consideration. It is rare for social security legislation to be retrospective in nature, and both this and the additional challenge brought by Widowed Parent's Allowance – a complex legacy benefit closed to new claims since April 2017 – increased the complexity of policy and process. It was vital we got this important legislation right, as it is not possible to

amend a draft Order once it is put to Parliament for approval. It was equally important that we developed a claims process that is sympathetic and fair to bereaved families.

Retrospective effect

You were disappointed that the Order did not have retrospective effect from 9 February 2016 and that we did not propose an ex-gratia scheme. You did, however accept that our approach of using a 30 August 2018 start date is consistent with our stated intention.

I appreciate your concerns, and that you would have liked to see an ex-gratia scheme to ensure that those who lost a partner before 30th August 2018 get a payment.

We are already allowing a generous period for retrospective payments via the Remedial Order. As I have already mentioned, it is not routine for Social Security changes to be made retrospectively and I consider the 30 August 2018 to be a logical and fair start date. This was the date that the incompatibility for Widowed Parent's Allowance was accepted as final in the Supreme Court. To use an earlier start date would bring administrative complexity and additional costs to the taxpayer.

Further, we have listened to the representations made during the first laying period and have introduced a 12-month capital disregard for retrospective payments of Widowed Parent's Allowance and Bereavement Support Payment in Universal Credit. This also applies to the legacy means-tested benefits such as Employment and Support Allowance, Jobseekers Allowance, Income Support, Pension Credit and Housing Benefit.

Those who have already had claims refused

You asked for an explanation of why we did not consider that the finality of Tribunal decisions and decisions made by the Secretary of State would affect claims made under the Order.

As you are aware the draft Remedial Order will extend eligibility for Widowed Parent's Allowance and the higher rate of Bereavement Support Payment to bereaved cohabiting partners with dependent children who were not in a legal union with the deceased on the date of death. For those that were previously refused entitlement to the benefit (either by the Secretary of State or by the Tribunal) it will be open to them to make a new claim for benefit. The change in the eligibility rules created by the draft Remedial Order creates a different set of circumstances to that considered by either the original decision maker or the Tribunal.

We do not consider that allowing new claims in such a scenario would be incompatible with, or prevented by, Section 17 of the Social Security Act 1998 which provides for the finality of social security decisions. The new claims in this situation would be made under a different set of eligibility rules in the context of the draft Remedial Order which is legislation expressly intended to confer eligibility on those claimants. Similarly, those who never made a claim on the

basis that they were not previously entitled could now make a first claim. The Remedial Order deliberately extends the time period for making such claims.

Communicating about the draft Remedial Order

Whilst you welcomed our acceptance of your recommendation in the first report that we should carry out an effective publicity campaign, you also wanted recipients reminded of their tax liabilities where appropriate. You also wanted steps taken to ensure that there is adequate take up.

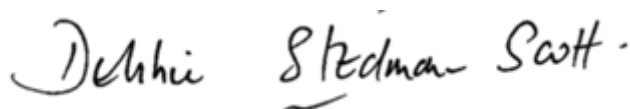
I can assure you that my officials will continue to work closely with external organisations and others within the Department to develop an effective communications strategy and reach as wide an audience as possible. The Department does not routinely keep details of people who had originally claimed and been refused benefit on the basis of being in a cohabiting relationship, and we do not intend to contact previous claimants directly. However, any claimant whose previous application was rejected will have the opportunity to make a new claim and we will ensure that information on GOV.UK is updated to support people to make their claim.

My officials are also working closely with those from HMRC to ensure that people are made aware that awards made under the draft Remedial Order may incur a tax liability.

If someone's partner dies before the Order comes into force, they will have up to 12 months from the date the Order comes into force to claim the full amount. This will give families a fair chance to claim their backdated payments.

I am placing a copy of this letter in the House Library and I have copied this letter to the Leader of the House.

With best wishes,

A handwritten signature in black ink, reading "Debbie Stedman Scott". The signature is written in a cursive, flowing style.

**BARONESS STEDMAN-SCOTT
MINISTER FOR WORK AND PENSIONS (LORDS)**