

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT BEREAVEMENT BENEFITS
(REMEDIAL) ORDER 2022

Tuesday 24 January 2023

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The Committee consisted of the following Members:

Chair: †PETER DOWD

- | | |
|----------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| † Ali, Tahir (<i>Birmingham, Hall Green</i>) (Lab) | Hillier, Dame Meg (<i>Hackney South and Shoreditch</i>)
(Lab/Co-op) |
| † Blunt, Crispin (<i>Reigate</i>) (Con) | Johnson, Kim (<i>Liverpool, Riverside</i>) (Lab) |
| † Buck, Ms Karen (<i>Westminster North</i>) (Lab) | † Logan, Mark (<i>Bolton North East</i>) (Con) |
| † Burgon, Richard (<i>Leeds East</i>) (Lab) | † McCartney, Jason (<i>Colne Valley</i>) (Con) |
| † Churchill, Jo (<i>Vice-Chamberlain of His Majesty's Household</i>) | † Mishra, Navendu (<i>Stockport</i>) (Lab) |
| † Davies, Mims (<i>Parliamentary Under-Secretary of State for Work and Pensions</i>) | † Rimmer, Ms Marie (<i>St Helens South and Whiston</i>)
(Lab) |
| † Djanogly, Mr Jonathan (<i>Huntingdon</i>) (Con) | † Stewart, Bob (<i>Beckenham</i>) (Con) |
| † Elphicke, Mrs Natalie (<i>Dover</i>) (Con) | Natalia Janiec-Janicki, <i>Committee Clerk</i> |
| † Fabricant, Michael (<i>Lichfield</i>) (Con) | |
| † Hammond, Stephen (<i>Wimbledon</i>) (Con) | † attended the Committee |

Fourth Delegated Legislation Committee

Tuesday 24 January 2023

[PETER DOWD *in the Chair*]

Draft Bereavement Benefits (Remedial) Order 2022

9.25 am

The Parliamentary Under-Secretary of State for Work and Pensions (Mims Davies): I beg to move,

That the Committee has considered the draft Bereavement Benefits (Remedial) Order 2022.

Good morning, Mr Dowd; it is a pleasure to serve under your chairmanship. I am pleased to introduce this order, which was laid before the House on 13 October.

The order will extend the higher rate of bereavement support payment and its predecessor, widowed parent's allowance, to bereaved cohabitants with dependent children.

Michael Fabricant (Lichfield) (Con): I am grateful to my hon. Friend for giving way at this early stage. I notice that the order applies, as she has just said, to cohabiting couples with children who were not at the time married or in any legal relationship. How would that apply to same-sex couples with dependent children, who are not married and not civil partners?

Mims Davies: My hon. Friend has kindly reminded us of all surviving partners, dependent children and the access to support that is available irrespective of that partnership and sexuality. I hope that the Committee find that welcome. That provision is absolutely right, and it is helpful to put that on the record early in our proceedings.

The benefits can only be paid to survivors who were in a legal union—married or in a civil partnership—with the deceased on the day that they died. However, the *McLaughlin* judgment in the Supreme Court, handed down on 30 August 2018, and the *Jackson* case in the High Court, handed down on 7 February 2020, identified that legislation on widowed parent's allowance and the higher rate of bereavement support payment respectively was incompatible with article 14 of the European convention on human rights. That article requires all rights and freedoms set out in legislation to be protected and applied without discrimination. In both cases, the courts found that by restricting eligibility to those in a legal union, current legislation discriminates between children on the grounds of the legal status of their parents' relationship.

The order provides a remedy for Great Britain and Northern Ireland by amending the Social Security Contributions and Benefits Act 1992, the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and the Pensions Act 2014. I am satisfied that the provisions of the draft Bereavement Benefits (Remedial) Order 2022 are compatible with the ECHR. The Joint Committee on Human Rights has reported on the draft order and recommended its approval.

For the Committee's wider understanding, I will provide an overview of bereavement benefits as I take Members through the proposed changes. Widowed parent's allowance

was introduced in 2001 alongside the bereavement allowance and the bereavement payment. The WPA was intended to provide ongoing financial support following the death of a spouse to those with dependent children, and from 2005 that support was extended to cover the death of a civil partner. With the introduction of universal credit, a benefit designed to help with ongoing living costs, it was necessary to look again at the whole package of bereavement benefits. That applied particularly to WPA, which could be paid for the same purpose as universal credit, and which was complicated to claim and to administer.

We modernised financial support for the bereaved by introducing a new benefit from 6 April 2017. Bereavement support payment was intended to help with the more immediate costs of bereavement and to allow for a period of adjustment following the death of a partner. It consists of an initial lump sum, followed by 18 monthly instalments. A higher rate is paid to those with dependent children. Unlike its predecessors, it is tax-free and disregarded for the purposes of income-related benefits, helping those on the lowest incomes the most.

Bereavement benefits have only ever been payable to those who were in a legal union with their deceased partner. They are contributory benefits, with eligibility linked to the national insurance contributions of the deceased partner. Such inheritable benefits, derived from another person's national insurance contributions, have historically been based on the concept of a legal union.

I will now outline what this draft order covers. Eligibility for widowed parent's allowance and the higher rate of bereavement support payment will be extended to surviving partners who have dependent children and who were living with their deceased partner as if they were married or in a civil partnership at the date of their death. That includes partners who are or were pregnant on the date of their partner's death, and there will be no qualifying period of cohabitation. This change will benefit thousands of families with dependent children.

Tahir Ali (Birmingham, Hall Green) (Lab): Can the Minister tell us what the current level of take-up of this benefit is and what the take-up is expected to be after the change comes into force?

Mims Davies: I believe that we are doing that work at this point, so I am happy to give the hon. Gentleman further details as we go through the impacts and—
[*Interruption.*]

The Chair: Order. Mr Blunt, I appreciate that you were just getting the documents for the order, but that was in danger of being rude, I am afraid.

Mims Davies: Thank you, Mr Dowd. I think that, as I go on to talk about the qualifying numbers and the way this measure will be applied, it will be helpful if I look at those details and give the hon. Member for Birmingham, Hall Green a confirmed answer in writing, because this is quite complicated and we of course need to be clarifying the numbers.

To go back for the benefit of my hon. Friend the Member for Reigate, who has just joined us, this draft order applies to those who would have been entitled to either of these benefits on or from 30 August 2018. I recognise that that is a particular point of interest for

hon. Members. I understand that, so I want to reiterate to Members why we have chosen that date. It was on 30 August 2018 that the Supreme Court, in the McLaughlin case, ruled that widowed parent's allowance legislation was incompatible with the European convention on human rights. That was in effect the date on which the incompatibility was accepted as final. It is exceptional to make social security changes retrospectively, and we consider that a logical and fair start date. For bereavement support payment, where the death occurred before this draft order becomes law and the claim is received within 12 months of that date, claimants will get the full amount due to them. If the claim is received later, the claimant will get up to three backdated monthly payments, plus any remaining monthly payments due.

Mrs Natalie Elphicke (Dover) (Con): My hon. Friend is helpfully setting out the time limits. If I have understood correctly, within 12 months is for the higher claim, but it has been more than four years—four and a half years—since the relevant case. Can the Minister confirm whether, in the unfortunate situation in which the surviving parent has died—is deceased—a claim is possible in relation to payments that would otherwise have been made?

Mims Davies: I fully appreciate that there has been a long gap between laying the proposed draft and the draft order. During the period, there has been a small cross-departmental team of officials looking at exactly the point that my hon. Friend makes, in terms of the complexity and ensuring that the policy is drafted properly and the implementation issues are covered. It is important that we get this right, and that throughout the process, the remedial order is made the priority for the Department to look into. My hon. Friend is absolutely right that we are looking at the issue. That goes to the point about who will be captured. I will be happy to confirm that more fully later in my comments, if that helps.

When deaths occur after the order comes into force, the bereavement support payment will be paid, subject to the usual claim time limits, which are 12 months for the initial lump sum, and three months for each instalment. It will help the Committee to learn that claimants will be eligible for widowed parent's allowance if their partner died before 6 April 2017 and they continued to meet the entitlement conditions on 30 August 2018. They, too, must claim within 12 months of the date on which the order comes into force. They may also be entitled to ongoing payments if they continue to meet the widowed parent's allowance eligibility criteria at the point of claim. I hope that gives my hon. Friend clarity.

The extension of the benefits to cohabiting partners means that there may be cases in which more than one person claims for the same death. That could apply in cases of polygamy, or of people dividing their time between two households, or where a separated spouse no longer lives with the deceased. As hon. Members can appreciate, this is a complex area, and my officials have been working hard to develop an approach that not only balances the need to protect taxpayers' money with the contributory principle, but reflects people's real-life circumstances. In such cases, the order proposes that we pay just once per death, prioritising the person who was living with the claimant on the date of death. If there are claims from different addresses, entitlement would be established as part of the normal decision-making and appeals processes.

In very rare cases, more than one potential claimant may have been living with the deceased on the date of death. Here, entitlement will be decided according to a hierarchy that is intended to reflect which claimant had the most established relationship with the deceased, as that person would usually bear the majority of the bereavement costs. Should that leave more than one potential claimant, the Secretary of State would determine who was entitled to the benefit.

Michael Fabricant: I am curious: it sounds as though my hon. Friend is saying that where there is a counter-claim, an absolute decision is made in favour of one person over another, or indeed all the rest. Why cannot time in the relationship be taken into account, and the benefit be apportioned among more than one person?

Mims Davies: I thank the hon. Gentleman for his point.

Michael Fabricant: Friend!

Mims Davies: Sorry, my hon. Friend. He is absolutely right, which is why we need to look into individual cases and treat them sensitively. Some people may find retrospectively that someone else is making a claim for a relationship of which they were simply not aware. That is, however, extremely rare. In all our engagement on the order, we have been looking in the round at all the circumstances that could come to pass, so that we can ensure that the decision made is fair, and so that situations in which families later find out things that are new to them can be managed. I hope that is helpful to my hon. Friend, and I thank him for that point.

Transitional protection will ensure that those who are in receipt of widowed parent's allowance or the bereavement support payment before the date on which the order comes into force do not lose their entitlement for the duration of their award. The Joint Committee on Human Rights asked whether splitting the benefit might be more appropriate in cases of the kind that we are discussing. I am mindful that this is an incredibly sensitive area. If we split bereavement benefits, it would prove complex to administer, and it would be challenging for claimants to understand their potential entitlement before applying. That would be particularly true where claimants were, for example, eligible for different rates under bereavement support payment. We are determined to treat the issue appropriately and get this as right as we can.

Widowed parent's allowance is treated as income for the purpose of income-related benefits, such as universal credit, and is assessed at the point of award. The order provides for all retrospective widowed parent's allowance payments, up to the date of the claim, to be treated as capital and disregarded for 12 months or 52 weeks for the purposes of income-related benefits. That ensures that claimants will not lose any existing entitlement to income-related benefit as a result of receiving a retrospective award.

The order also ensures that there is a disregard for the same period for retrospective bereavement support payment awards. The usual rules will apply to future bereavement support payment and widowed parent's allowance entitlements. We do not propose any changes for the treatment of income tax. Bereavement support payment is already tax-free, and widowed parent's allowance will be taxed according to the period of entitlement, as per the existing rules.

[Mims Davies]

We will communicate to widowed parent's allowance claimants to make sure that they are fully aware of any payment under the draft order that may incur an income tax liability. We know that Members are particularly interested in how the Department will work with His Majesty's Revenue and Customs to ensure that people can deal quickly with any potential income tax liability following the receipt of a payment under the draft order.

Where claimants pay tax as they earn, they will tell HMRC about any widowed parent's allowance payment, including backdated payments. Claimants will not need to contact HMRC about income tax implications. Claimants who use the self-assessment process will need to declare payments on their tax returns for each tax year or write to HMRC to include back payments on previous tax returns.

The payment of bereavement support payment does not affect a person's tax credit entitlement. Widowed parent's allowance will be treated as income for tax credit purposes, as is commonplace for social security benefits. It will be assessed in the year of the payment rather than entitlement, so no adjustment to past years will be needed for these claimants.

In accordance with paragraph 3(1) of schedule 2 to the Human Rights Act 1998, a proposed draft of the order was laid for a period of 60 sitting days, on 15 July 2021, to allow for Members of both Houses and other stakeholders, including the JCHR to make suitable representations. I assure the Committee that Ministers fully considered all the representations made on the proposed draft order before preparing this draft for affirmative resolution. In doing so, Ministers agreed with the JCHR's recommendation to amend the order to ensure that pregnant widowed parent's allowance claimants were covered in the same way as those in a legal union. Ministers also agreed with its recommendation to ensure that the implications of the retrospective effect of the order on entitlement to income-related benefits were fully taken into account. Ministers have also included a number of technical amendments in response to comments from the JCHR.

Finally, before I let other Members contribute, I emphasise how easy the payment will be to claim. We know from our evaluation that claimants have had a very positive experience of claiming bereavement support payment, with 97% reporting satisfaction with the process.

Ms Marie Rimmer (St Helens South and Whiston) (Lab): It is a pleasure to serve under your chairmanship again, Mr Dowd. I find this piece of work very rewarding. Certainly in my constituency, we have a lot of queries and upset about this issue. As we are going through certain things retrospectively, would it be possible to ask the Minister for a briefing note for the Committee? However, I sincerely thank her for the clarity that she has provided this morning.

Mims Davies: I thank the hon. Lady. This is a complicated but extremely sensitive area. Many of us have had constituents or heard stories about people who have found this to be a particularly painful challenge. We have spent much time liaising with the other place and, as I have laid out today, with people who are very keen

to see their views and concerns reflected in the draft order. In the round, the regulations have been welcomed, but I appreciate that the issue is complex and everybody's situation is also complicated.

I will liaise with the Government Whips administration office and work to issue a "Dear colleague" letter that will spell out the information to all colleagues, so that caseworkers and local teams working with the DWP are clear on entitlement. I thank the hon. Lady for suggesting that.

In terms of the support and satisfaction for the process of claiming bereavement support payments, we are in a good place. As spelled out by the hon. Member for St Helens South and Whiston and as pointed out by other hon. Members, we need to ensure that the next stage is easy for people who have waited, who are concerned and who have individual circumstances.

We have provided a paper claim form especially for cohabitants, an accessible online gov.uk form and the opportunity to call the DWP's bereavement service. There will also be an option to claim the bereavement support payment online. I commend the order to the Committee and I look forward to colleagues' comments.

9.46 am

Ms Karen Buck (Westminster North) (Lab): It is a pleasure to respond to this important order under your chairmanship, Mr Dowd. I thank the Minister for her comprehensive opening remarks.

We are all conscious of the fact that bereavement is not only a personal tragedy for the families concerned, but all too frequently a trigger for major financial risk and sometimes even poverty. It can result in people losing their homes or being at risk of that, so ensuring that at the very least families, and above all families with children, are protected at that difficult time is incredibly important. It is irrelevant to such children, and for the purpose of the order, whether they are in a cohabiting family or one that is legally married. Equal treatment is long overdue and fair, and the Opposition welcome it.

If it is all right with the Minister, I have a fair few questions for her. I am grateful to the Low Incomes Tax Reform Group and the Childhood Bereavement Network, which have produced some helpful notes to guide the Committee on the issue.

To return to the intervention from my hon. Friend the Member for Birmingham, Hall Green, my first question is about the number of people who will be affected by the order, which has consequential implications for take-up. The Childhood Bereavement Network estimates that around 1,800 parents may be able to claim bereavement support payments in the future compared to now, which is welcome. It estimates that around 10,200 parents bereaved before April 2017 and 10,500 parents bereaved after April 2017 may be able to make retrospective claims for widowed parent's allowance, which makes 20,700 parents in total. Does the Minister recognise that number? Those figures are important in terms of take-up, and in a year or two it will be important to get a sense of whether 5%, 10% or 90% of those eligible are making a claim.

That question also relates to the Minister's point about how the payments will be publicised. The Minister said that there will be a communications strategy, information will be put on the DWP website, gov.uk

and elsewhere, which is all fine, but, critically, parents who were bereaved more than four years ago will have no reason to look at whether they now qualify for the benefit. They will not be aware of it at all. This is not an easy question to answer because there is no obvious way to find such parents, other than going back through DWP records. In some cases, even that option will not be available. That calls for a more imaginative approach that uses and supports the expert community and voluntary organisations, faith communities and others who may have been interacting with those bereaved parents at the time of bereavement. It is absolutely critical that in a year's time we do not find that this welcome initiative to bring fairness to the social security system has simply failed to hit the mark and payments are not being taken up by parents in desperate need and vulnerable children in need. I ask the Minister to think harder about how the Government can make sure that they reach parents to encourage them to make claims.

There is some concern about the way in which applications will be made. There is a window for applications, so we want to make it as easy for people as possible. I think the Minister was confirming that the widowed parent's allowance applications would need to be made physically, in the old-fashioned way, whereas bereavement support payments can also be made online. We are in 2023, and it worries me that we are relying on that system, especially at the moment when the postal service is not what we would like it to be. The risk is that asking people to make a physical application could lead to some of them falling through the net. I do not quite understand why we cannot make the application process as easy as possible and put everything online—with a back-up, of course, because not everything should be online. We also need flexibility in the system when people make physical applications through the post in good faith but then find that they have not arrived, as has happened with passports, driving licences and all kinds of other applications in the last year or two. Such situations need to be treated sensitively.

Another issue is proving cohabitation, and the Minister confirmed that there is no time qualification for cohabitation to qualify. Will the Minister confirm her understanding of how cohabitation can be proved and what evidence needs to be provided? We know that the DWP is fairly rigorous in proving cohabitation the other way—when it is seeking to take action against parents who are cohabitating while claiming benefits that it does not believe they should receive. How easy will the Department make it for parents to provide that evidence? The critical question is about retrospectivity. If a widowed parent makes a claim for a period of cohabitation—it may not have been a very long period—for several years ago, they may no longer have all the necessary evidence. I am sure all Members of Parliament have had to deal with instances where people are trying to prove that they are in a single household, for a housing application for example, but they do not have the evidence any more and it is sometimes difficult to obtain.

On the important but technical question of qualification periods, the Minister talked about the cut-off dates that related to the McLaughlin judgment. The Childhood Bereavement Network has raised some important questions about the treatment of some groups of bereaved parents who may be disadvantaged compared to other parents in terms of what they qualify for. Its briefing suggests

that the current proposals disadvantage cohabiting parents bereaved in the 12 months before August 2018 relative to their married counterparts, as well as parents bereaved more than 12 months before that date. It estimates that a cohabitee parent bereaved on 6 April 2017 would receive £700 in retrospective payments, compared with up to £28,000 for someone bereaved just a day later, and £9,800 for someone bereaved on 30 August 2018. That is quite a difference in benefits over a very short period. I know some form of cut-off date is inevitable, but there is a risk of inequitable treatment in this case.

The JCHR recommended that a fund be established to make *ex gratia* payments in cases of inequitable treatment depending on the date of qualification. The Government have said that they do not want to do this, but I urge them to think again. It is very possible that, as the claims start coming in, the differences will be really stark, and the Government and MPs will be dealing with some distraught parents who have not received what they thought they would be entitled to.

On the issue of backdated payments and capital, the Minister recognised that the situation is complicated. It is complicated, and it is possible that people will fall foul of it without some clear guidance from the Government. Will the Minister tell us how many people who now qualify are estimated to have been in receipt of another contributory benefit during that time because they were deemed not to be eligible for widowed parent's allowance? Will those who received backdated widow's parent allowance now have their previous benefit entitlement offset against the WPA? If so, how will that be done?

We have heard about how lump sum payments will be treated under the capital rules and that recipients should be advised on the various risks. There is a particular risk of potential allegations of capital divestment. We know that there are rules about how people are deemed to have reduced their capital in order to be able to qualify for future means-testing. Given the circumstances and the fact that in some cases people will get a capital sum years later, their position will be different from the one they are in now and there is a risk that they will seek to use their capital in a different and less planned way than someone in the immediate aftermath of bereavement, so I urge the Minister to advise how guidance will be given for that to be treated as flexibly as possible so that people do not find themselves in receipt now of a very welcome lump sum payment that they have not had before, only to find themselves falling foul of capital divestment rules in future. Capital divestment is a thing that people do not anticipate and plan for and do not have a great deal of knowledge of, and people should not find themselves falling foul of that.

We only need to look at the news to know that people can very easily find themselves on the wrong side of a tax repayment issue. The Minister is aware of that, but I would like to know a little more about how the Government are seeking to make sure people are very clear about how they will be treated for taxation purposes. We know from the history of tax credits how easy it is for people to get themselves on the wrong side of this and trapped with bills that they had not anticipated and do not have the ability to manage. People need to be advised about that and which tax year the payments refer to.

The Low Incomes Tax Reform Group suggested that payments could have been made either net of tax or with an amount reserved back for tax to reduce the risk

[Ms Karen Buck]

for the recipient. Did the Government consider that, and have they considered the suggestion from the same organisation that DWP could have shared at least some data with HMRC to help the process be automated in some way?

The order is, of course, extremely welcome. We need to make sure that, of those deemed to be eligible, take-up is there and that people benefit from that. I am slightly unconvinced given the Government do not seem to know how many people will qualify and are on the right page for this, so I hope that there will be some stepping up on that. It is important to recognise the complexity of the tax and benefits arrangements in order to avoid unforeseen negative consequences for people navigating the system. I hope the Minister will be able to respond to those questions.

9.58 am

Mims Davies: I thank all members of the Committee for their important contributions, challenging insights and constructive points, particularly from the hon. Member for Westminster North.

Despite the complex nature of the topics discussed today, at its core the draft order aims to achieve something quite simple and very important—parity and fairness—to ensure that surviving partners with dependent children can access the same financial support as those who were in a legal union with their deceased partner. I am content that this order achieves that purpose, and I am glad to see that it has been welcomed and agreed by the JCHR.

Under the draft order we propose—I hope I have made this clear this morning—a sympathetic approach that recognises the challenging circumstances, as outlined by the hon. Member for Westminster North, that follow a bereavement. In fact, in this case, several years later, we are tackling all of those challenges.

As Members will recognise, losing someone close is incredibly difficult. That is especially so when a child or children lose a caring parent. We appreciate that bereaved people will feel that such additional support is long overdue. From my work at DWP, I know that the loss of a parent and a close loved one is an extremely adverse childhood experience. I and my colleague in the other place, Lord Younger, vow to do what we can to mitigate that effect.

The hon. Member for Westminster North kindly indicated that she intended to raise lots of complicated points this morning, and I will do my best to address them. I know that we are dealing with a complicated matter when *Hansard* sends a message saying, “Please can we have your notes”. I will try to address all the detailed points raised by the hon. Lady.

By giving individuals who have already lost a partner a full 12 months to claim from when the order becomes law, introducing a disregard to protect existing entitlement to an income-related benefit where a retrospective lump sum is due, and introducing an approach to evidencing that reflects the reality of people’s lives, I hope that claimants will find the process of benefiting from the proposed change straightforward and sympathetic. As I mentioned in my opening speech, this draft order also ensures those individuals with dependent children who

are sadly bereaved after the order becomes law can access the higher rate of bereavement support payment. We have built on some of the recent improvements that we have made to the core bereavement support payment offer to ensure a streamlined service for claimants. That includes providing an option to submit a claim online.

I echo the hon. Lady in thanking all interested organisations, including the Childhood Bereavement Network, Widowed and Young and the Low Incomes Tax Reform Group, for their fantastic work in support of this change, which they have welcomed and assisted.

On the expected numbers of claimants, I do not want to be held down to exact figures because this is a moving situation, but we expect the proposed changes to increase the BSP and WPA caseloads by between 4,000 and 5,000 a year. That is the projection running through to 2025-26. Obviously, we at DWP need to manage that correctly, so that people’s expectations and experience of engaging with us is likewise managed.

On how the retrospective elements of the remedial order will work, we proposed an extension of the WPA and a higher rate of BSP to cohabitantes with dependent children, and that will apply from 30 August 2018.

Mrs Elphicke: On the retrospective nature of the order, if a married spouse had made a claim and, as result of the retrospective proposals, a second person was subsequently also entitled to make a claim, what would be the position of the person who had already been paid by reason of being the spouse?

Mims Davies: I understand my hon. Friend’s point. She has described a secondary, competing claim, and I think it is important that I set out my response to her and fellow members of the Committee in writing, because it is an issue that we are closely studying in terms of its management. We are looking at cases sympathetically, but I think I need to set out in writing the detail of how they will be managed. I think that would be helpful.

Mrs Elphicke: Can my hon. Friend clarify whether someone who was entitled as the married spouse would have to repay any sums by reason of the retrospective application?

Mims Davies: I can see some slightly puzzled looks, which is why I am keen to give my hon. Friend a proper response, rather than one in Committee. She makes an important point. I cannot see that in my notes, so there we go. I am sure that the officials present will send something over to me if they can give further clarity now. This morning’s conversation has absolutely shone a light on the fact that we are dealing with a mixture of retrospective, family and changed situations—as the hon. Member for Westminster North mentioned—and that is why we are trying to come up with something that is fair and right, based on what we have learned from engagement with stakeholders and what occurred in the court cases. I hope that will help.

The hon. Member for Westminster North made a point about proving cohabitation. The onus will be on the claimant to prove cohabitation, but we intend to use the existing DWP IT systems to verify information provided by the claimant as part of their claim. If the information provided cannot be confirmed, the claimant will be required to provide two forms of documentary

evidence. We will accept evidence in line with that currently accepted by the DWP for proof of address, for example. That approach follows the existing evidence strategy for married couples and those in civil partnerships. Where claimants are unable to provide documents and the claim is retrospective, we will take the customer declaration on the telephone. That is a pragmatic and compassionate approach, which minimises the impact on the claimant, is deliverable and balances the risk of fraud. I hope that is helpful to the Committee.

On the implementation of the order and DWP staffing, the changes will be delivered by the DWP bereavement services team. Officials have been developing guidance and training on other products to ensure operational readiness on the go-live date. Even this morning, however, we have discussed more points we need to ensure are covered. Forgive me if I have missed anything. I am happy to pick things back up with the operational team.

We have spoken about the time taken to lay the remedial order. I hope that the Committee and those in the other place understand why it has taken some time. It is important to recognise not only the time taken, but the amount of challenges that we need to balance against that in getting it right. On the long gap, some cross-departmental work will ensure that the policy of the drafting works and that, ultimately, the implementation issues are battled through, taking full consideration of all the points. It is vital to get this right, and that remains the absolute focus.

On making a claim, we do not routinely keep details of people who have claimed before and been refused benefits on the basis of being in a cohabiting relationship. We therefore do not intend to contact previous claimants directly. Any claimant whose previous application was rejected, however, will have the opportunity to make a new claim. That is where the communication point—engagement with partners and stakeholders—will be important. We will ensure that the information on gov.uk is fully updated to help support people in making that new claim.

On the ease of claiming, we already know that the process of claiming bereavement support payment is quick, easy and well explained. We published a recent evaluation of that on gov.uk in December 2021. Overwhelmingly, claimants have reported a positive experience when claiming bereavement support—as I said, 97% satisfaction with the current claiming process. I do not want that to change because of the complexity of what we are discussing this morning. We are very mindful of that.

On the size of the award, the differences and the inequity—if I have that word right, early on a Tuesday—I will write to the hon. Member for Westminster North. On deaths occurring before the order comes into force, the claimant has 12 months to apply to get their full entitlement. If a claim is made after that period, the usual rules will apply. Under those, a claimant can normally receive three backdated monthly payments—as I said earlier—of BSP, provided that the claim is made within 21 months of the order coming into force. The 12-month window provides a generous timescale for a prospective claimant to apply for either a WPA payment or the bereavement support payment but, for deaths occurring after the date of the order, normal rules will apply.

With regard to extending payments for the ex gratia scheme, it is our intention that the families should receive the same amount of the higher rate of BSP or WPA as their married counterparts, and only in respect of the entitlement after the August date, which goes back to the point of the hon. Member for Westminster North. It is not routine for social security changes to be made retrospectively and, as I say, we consider the date of 30 August 2018 to be logical and fair.

The hon. Member for Westminster North also mentioned the focus on online claims. The widowed parent's allowance is a complex legacy benefit that has been closed to claims since 6 April 2017. Under the order, claims for WPA will be eligible only for a 12-month period, after which it will then close again. On that basis, it would prove disproportionate to introduce a brand-new online claim route that would have to be set up from scratch. Instead, we found that ensuring we have an online claim form that is as simple as possible, with clear guidance, is probably the best and most straightforward way forward. However, I take the points raised by the hon. Lady.

With regard to the claimants' use of their retrospective payments being viewed as deprivation of capital, as spoken about by the hon. Member for Westminster North, we have a duty to ensure that means-tested benefits are paid to those who need them when they need them most and also to ensure fairness to the taxpayer. The deprivation of capital rules are intended to apply to those who act with the intention to access benefit or to get more benefit. Therefore, provided that any capital is spent reasonably and not with the purpose of accessing or getting more benefit, claimants should not be treated as having notional capital, which is taken into account in the same way as normal capital when they get a retrospective lump sum. I hope that that helps the hon. Lady.

With regard to how payments under the order will be treated for income tax purposes, we do not propose any changes on how either benefit is treated for income tax purposes, as I said earlier. BSP is already tax-free, and WPA will be taxed according to the period of entitlement as per those existing rules. To once again address the point raised by the hon. Member for Westminster North, this is a matter that needs to be spelled out to the Committee and both Houses to help those in that particular scenario.

I hope that I have covered all the points raised. Anyone who gets a benefit will be protected if in receipt on the day that the order goes live. It will be paid until the end of the award for married claimants, which goes back to the point of the hon. Member for Westminster North. If and when the order goes live and someone is paid, and a second, rightful claimant comes forward, we will stop payments but we will not claw back any benefit, which was the point made by my hon. Friend the Member for Dover. Again, clarity on such particularly complex scenarios will be very important.

I thank Committee members for their important, constructive and helpful engagement. I emphasise to any of those who feel that they may be affected, those who represent stakeholders and those concerned regarding the order that the claim will be easy to make. It will absolutely focus on getting it right for all those who should be entitled. We have provided a paper form especially for cohabitants and an accessible, online gov.uk form as well. I reiterate DWP's engagement with Citizens

[Mims Davies]

Advice on help to claim. Anybody who is struggling should look at the benefits calculator on gov.uk and the support for households with the cost of living as well. Remember that the DWP bereavement support service is there for people to call, and there will be an option to talk to somebody and claim online. I commend the order to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Bereavement Benefits (Remedial) Order 2022.

10.15 am

Committee rose.

