

Local Government Pension Scheme 2020/04

- Who should read:**
- Secretary General, Convention of Scottish Local Authorities
 - Chief Executive, Scottish Local Authorities
 - Chief Executive, Water Authorities
 - Principal Reporter, Scottish Children's Reporter
 - Administration Chief Executive,
 - Scottish Environment Protection
 - Agency Director General, Strathclyde Passenger Transport
 - Executive Clerk, Strathclyde Passenger Transport Authority Chief
 - Executive/Director, VisitScotland

Action: This circular should be brought to the attention of Pension Managers, Superannuation Sections and LGPS Employer Payroll Departments. You may also wish to draw it to the attention of the Directors of Finance and Administration

Subject: Male survivor benefits – opposite sex marriage

Date: 27 July 2020

The purpose of this circular is to advise of a recent legal case and changes to the entitlement of male survivors in opposite sex marriages; to remove the service restriction on this survivor pension to take into account the female member's service from 6 April 1978 under The Local Government Pensions etc (Civil Partnership) (Scotland) Amendment Regulations 2005.

In all future cases and under Section 61 of the Equalities Act, Administering Authorities should pay equal survivor benefits between same and opposite sex widowers.

Introduction

1. The Chief Secretary to the Treasury has made a 'Written Ministerial Statement' (WMS) in respect of survivor benefits payable from the Teachers' Pension Scheme in England. Following an employment tribunal, survivor benefits payable to male survivors of females in opposite sex marriages will be equal to those payable to other categories of survivor.

This has implications for other public service pensions schemes. Scottish Ministers have acknowledged that changes will also be required to devolved schemes, including the Local Government Pension Scheme.

Background

Changes to Male Survivor Benefits

1. Changes to survivor pensions introduced by the Social Security Act 1986 resulted in most public service pension schemes providing survivor benefits to widowers (that is, male survivors in opposite-sex marriages) based on the female spouse's service from 6 April 1988 onwards. Since the introduction of both civil partnerships and later same sex marriages, public service pension schemes have provided survivor benefits in respect of both which have been in line with those paid to widowers i.e. entitlement based on service accrued from 6 April 1988; although some schemes did provide opportunities for members to buy back pre 1988 service for survivor benefits.

2. On 12 July 2017, the Supreme Court ruled in the Walker v Innospec case that Mr Walker's male spouse was entitled to a pension calculated on all the years of his service with Innospec, provided that at the time of Mr Walker's death they remained married. As a result, public service schemes, including the Local Government Pension Scheme, have been required to amend their regulations to provide equal survivor benefits for same-sex couples (whether married or in civil partnerships) to that provided for widows, based on a member's full length of service. Whilst some schemes have yet to introduce this change into regulations, it is being applied administratively and is backdated to 5 December 2005.

3. As confirmed by [the UK Government's WMS](#), a recent employment tribunal case [Mrs Goodwin v Department for Education] has concluded that a female member in an opposite sex marriage is treated less favourably than a female in a same sex marriage or civil partnership, and that treatment amounts to direct discrimination on grounds of sexual orientation. Where schemes contain provisions deemed discriminatory, those provisions must be dis-applied as being contrary to the non-discrimination rule set out in section 61 of the Equality Act 2010.

Changes required

4. Same-sex survivors were originally entitled to survivor benefits taking into account the member's service from April 1988, however retrospective amendments remain to be made post Walker with effect from 5 December 2005 (the date when civil partnerships became possible), such that those survivor benefits now take into account the member's service from 6 April 1978. Following the Goodwin Tribunal, regulatory amendments will now need to be made with effect from the same date to extend that entitlement to male survivors of female members

5. Where a male spouse survivor of a female scheme member, whose entitlement to the survivor pension arose on or after 5 December 2005, is in receipt of a survivor pension, that pension will be increased in line with changes planned.

6. The entitlement of a male spouse survivor of a female member whose right to a pension arose before 5 December 2005 (i.e. where the female member deceased before 5 December 2005) will not be affected. This is because the rights under the relevant scheme crystallised at a date before the effective date of the planned amendment.

Any questions?

Should you have any enquiries about this circular, or require further information, please contact Kimberly.linge@gov.scot or Roddy.MacLeod@gov.scot

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27 July 2020