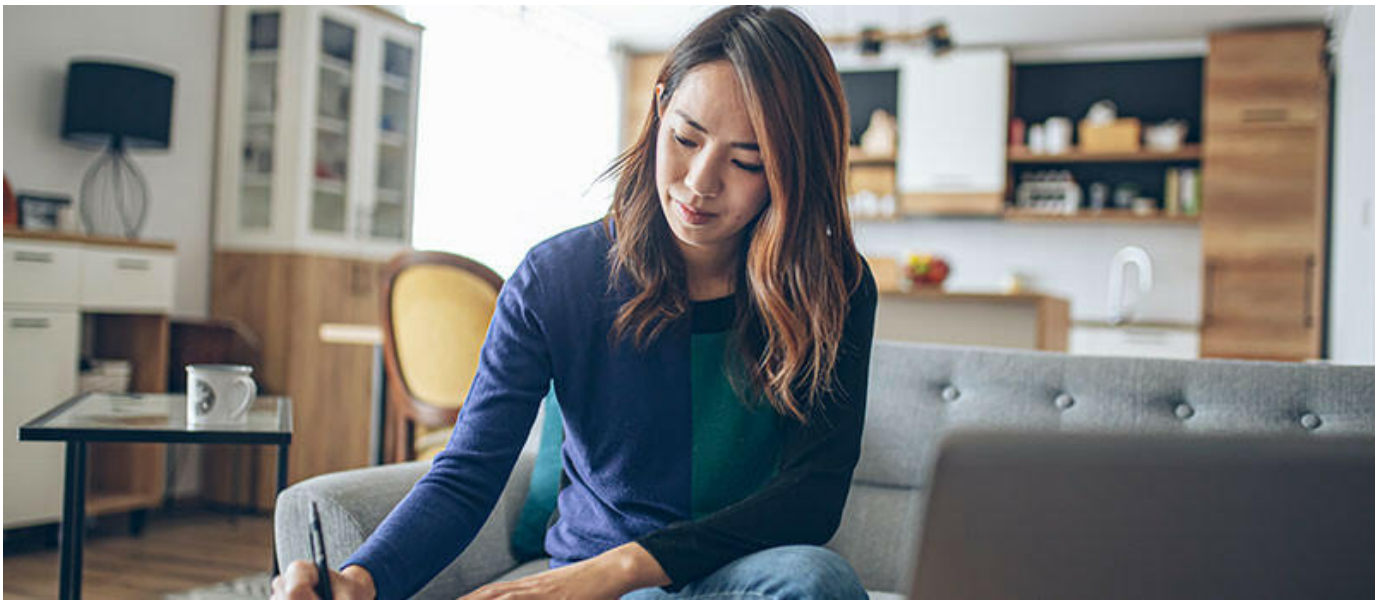
The Bereavement Benefits (Remedial) Order: an update

Technical Personal tax



27 January 2023

LITRG updates on proposals to extend entitlement to bereavement benefits.

© Getty images/iStockphoto

LITRG has previously reported on the government's proposals to extend bereavement benefits to surviving partners with children after the death of a partner to whom they were not married or in a civil partnership.

In the cases of *McLaughlin* [2018] UKSC 48 and *Jackson and Simpson v SSWP* [2020] EWHC 183 (Admin), the Supreme Court and High Court respectively ruled that denying widowed parent's allowance and higher rate bereavement support payment to unmarried (or non-civil partner) cohabiting parents breached their children's human rights. Consequently, the government confirmed that it would make a remedial order to extend eligibility for these two benefits to cohabitee partners with children.

After considerable delay, the remedial order (tinyurl.com/y2j3bezx) is now heading towards being brought into effect.

The initial draft remedial order was published in July 2021, proposing that eligibility would be extended back to 30 August 2018, being the date the Supreme Court judgment in *McLaughlin* was handed down. LITRG made submissions to both the Department for Work and Pensions (DWP) and the Joint Committee on Human Rights (JCHR) in response to that initial draft order.

Taking on board comments from respondents and from the JCHR, a final draft remedial order was laid in parliament on 13 October 2022. Under government procedure, the order lay in parliament for 60 days (which came to an end on 11 December 2022), during which time the JCHR was required to scrutinise the draft order before making a recommendation to parliament as to whether the order should be adopted or voted down. Under the parliamentary procedure for remedial orders, the detail contained in this most recent draft order could not be changed. Ultimately, the JCHR could only make a recommendation as to whether to adopt the order or to vote it down.

The JCHR issued a call for evidence in respect of the final draft order, and LITRG were one of only three organisations to respond. As with the previous draft order, LITRG's comments (www.litrg.org.uk/ref2708) were focused on the tax and benefits interactions of any back-payments of bereavement benefits being awarded to claimants if the remedial order is adopted. Though some issues have been clarified, other areas remain uncertain – for example, we remain concerned about how HMRC and DWP will work together in terms of administering the payments and dealing with any tax issues arising. There is also a lack of clarity over the tax credits treatment of backdated payments of widowed parent's allowance. LITRG have attended round-table meetings with DWP to gain clarity on these points and also hope to meet with HMRC.

Ultimately, the JCHR has issued its report (tinyurl.com/2p8288j6) recommending that the remedial order be approved. Assuming parliament votes in favour of the remedial order, a scheme should open for individuals to make retrospective claims back to 30 August 2018, provided they would have otherwise met the criteria for bereavement benefits at the time.

Antonia Stokes *astokes@litrg.org.uk*