

Benefits Bulletin

Bereavement Benefits...

4th September 2023 **REVISED**

Issue **2** [2023]

1. Introduction...

New rules now mean that access to the Bereavement Support Payment (and Widowed Parent's Allowance historic bereavement cases) has been extended to non-married cohabiting couples and not just spouses (husbands or wives) and civil partners.

This means that:

- from **9th February 2023** working age surviving unmarried cohabiting parents with a dependent child(ren) may apply for a Bereavement Support Payment in the same way as if they had been married or in a civil partnership; and
- since **9th February 2023** working age surviving unmarried cohabiting parents with a dependent child(ren) whose partner died, before this date can apply retrospectively for Bereavement Support Payment or Widowed Parent's Allowance depending on when their partner died.

The Department for Work and Pensions (DWP) has opened a special application window for people whose partner died before 9th February 2023 to apply. Please see 4. Claiming BSP and WPA for further details.

If a person's partner died on or after 6th April 2017 then they will be eligible to apply for an award of **Bereavement Support Payment** providing they met the conditions for payment on or after 30th August 2018.

If a person's partner died before 6th April 2017, then they will be eligible to apply for an award of **Widowed Parent's Allowance** providing that they met the conditions of payment on or after 30th August 2018.



The rule change has taken place because it has been held that the rules surrounding an award of the Widowed Parent's Allowance (before 6th April 2017) and Bereavement Support Allowance (since 6th April 2017) were unlawful because, in restricting entitlement to people in a legal union only, it discriminated between children on the grounds of the legal status of their parent's relationship.

Hence, whilst both presently and historically a bereavement benefit payment has been available to married and civil partner couples both with and without dependent children, the new rules only apply to cohabiting couples who had a dependent child (unless the surviving partner was pregnant) at the time when one member of the couple died.



Note 1: When referring to a person being of 'working age' we simply mean someone who had not reached State Pension Age (which is currently 66) at the time when their partner died.

Note 2: The Bereavement Support Payment replaced Widowed Parent's Allowance on 6th April 2017. For more information about these benefits please see 3. BSP and WPA (on page 3) for more information.

Note 3: When referring to 'unmarried cohabiting parents' we mean a parent who was / has been living with a partner as though they were a husband, wife or a civil partner.

Note 4: When referring to 'dependent child(ren)' we mean a child(ren) for whom the surviving partner was getting (or would otherwise have been eligible to) Child Benefit. Indeed, it is sufficient for the surviving partner to have been pregnant with their late spouse (husband or wife) or civil partner's child.



2. The Legal Backdrop...

The new rules have been introduced following judgements in:

- [Siobhan McLaughlin for Judicial Review \(Northern Ireland\)](#) in the Supreme Court (dated 30th August 2018); and
- [James Jackson \(and Others\) v SSWP](#) in the High Court (dated 28th January 2020)

in which it was held that the rules regarding Widowed Parent's Allowance (before 6th April 2017) and Bereavement Support Allowance (since 6th April 2017) were unlawful because, in restricting entitlement only to people in a legal union, it discriminated between children on the grounds of the legal status of their parent's relationship.

The new rules are set out in The Bereavement Benefits (Remedial) Order 2022. See this [LINK](#) for further details.

Please see this [LINK](#) (dated 8th February 2023) for summary details of the DWP's announcement on this matter. See also this [LINK](#) (dated 15th December 2022) for details of the Explanatory Memorandum which provides a more comprehensive explanation of the operation of the change in the rules.



HM v SSWP (BB) and MK v SSWP (BB) - [2023] UKUT 15 (AAC): Please be aware that the Upper Tribunal (Judge Ward - dated 25.1.2023) held that it was not unlawful to exclude a surviving partner of a cohabiting couple without children from the Bereavement Payment and Bereaved Parent's Allowance. Please see this [LINK](#) for details of the full judgement.

3. BSP and WPA

People of 'working age' whose spouse (husband or wife) or civil partner died on or after the **6th April 2017** have been able to apply for the **Bereavement Support Payment (BSP)** which may be paid at two rates - the 'standard rate' and the 'higher rate'.

The '**standard rate**' consists of:

- a £2,500 lump sum payment; plus
- 18 payments of £100 per month

is payable in couple situations where the 'higher rate' may not be paid.

The '**higher rate**' consists of:

- a £3,500 lump sum payment; plus
- 18 payments of £350 per month

is payable where the applicant was pregnant when their spouse or civil partner died, or they were entitled to Child Benefit when their spouse or civil partner died. It is also payable where since the applicant's spouse or civil partner died, the applicant has become entitled to Child Benefit for a child who was living with them and their late spouse or civil partner at the time when they died.

To qualify for either the 'standard rate' or the 'higher rate' the late spouse or civil partner must have paid sufficient National Insurance contributions or have died whilst being an 'employed earner' as a result of an industrial accident or disease.



Now as a result of the new rules, the 'higher rate' may be paid in cohabitation situations - where a couple were living together and Child Benefit was in payment or the surviving partner was pregnant at the time their partner died.

To get the full 18 months payments the applicant would need to apply within three months of the date on which their spouse or civil partner died. To get the lump sum payment the claim must be made within 12 months of the date on which their spouse or civil partner died.



An award of the BSP may continue even if the surviving spouse or civil partner should go on to live with another partner or remarry or enter into a new civil partnership.

Please see here for more information about the [Bereavement Support Payment \(BSP\)](#) and do seek further advice and information as necessary.

People of 'working age' whose spouse (husband or wife) or civil partner died before **6th April 2017** (but on or after 9th April 2001) were able to apply for **Widowed Parent's Allowance (WPA)**.

To be eligible, the surviving spouse or civil partner must have been entitled to Child Benefit for an 'eligible child' - which includes a child that is theirs and that of their late spouse or civil partner / a child for whom Child Benefit was received by the surviving spouse or civil partner or the deceased spouse or civil partner whilst they were living together.

Moreover, the late spouse or civil partner must have paid sufficient National Insurance contributions or have died whilst being an 'employed earner' as a result of an industrial accident or disease.

The basic amount of WPA is £126.35 per week but a lower amount or higher amount could be paid depending on the level and nature of the late spouse's or civil partner's National Insurance contributions record.

There is no time limit for claiming WPA. A person may make an application for WPA now providing they meet the qualifying conditions as laid out.

Entitlement to an award of WPA will be suspended if the surviving partner should begin cohabiting with another partner. Entitlement would stop altogether should they remarry or enter into a new civil partnership.

Please see here for more information about the [Bereavement Support Payment](#) (BSP) and here for more information on [Widowed Parent's Allowance](#) (WPA).

Now as a result of the new rules, BPA may be paid in cohabitation situations - where a couple were living together and Child Benefit was in payment or the surviving partner was pregnant at the time their partner died.

4. Claiming BSP and WPA Under New Rules...

For the **Bereavement Support Allowance** (BSP), which is payable for a death on or after 6th April 2017, the time limit under the new rules for surviving cohabiting partners to claim and the amounts paid in consequence of that claim will depend on when the person died and how soon the claim is made.

If the person died before 9th February 2023 then the time limits are as follows:

- if the claim is made within 12 months of the 9.2.2023 then the claimant will receive the full amount of any BSP that is due to them irrespective of whether the claim is made within 12 months of the person's death; or
- if the claim is received after 12 months but within 21 months of the 9.2.2023, then the claimant will receive up to 3 backdated monthly payments of the BSP only. They will not be entitled to the £3,500 lump sum payment.

There will be no entitlement afforded to people claiming outside of the absolute time limit of 21 months of the 9.2.2023.

If the person died on or after 9.2.2023 then the time limit is the same as in other cases. Please see 3. BSP and WPA on page 3.

A claim for the Bereavement Support Payment can be made online through this [LINK](#) or over the phone on 0800 151 2012. Alternatively, a person can download a Bereavement Support Payment claim form by going to this [LINK](#).



For **Widowed Parent's Allowance** (WPA) which is payable for a death which occurred before 6th April 2017, (but on or after 9th April 2001 - the date when WPA was introduced) the time limit for claiming is within 12 months of 9.2.2023 so people must act relatively quickly.



People seeking to apply for Widowed Parent's Allowance should seek to contact the Bereavement Service Helpline on 0800 151 2012.

The new rules make clear that although given the nature of things, a person whose partner may have died many years ago may now be able to establish an entitlement to either the Bereavement Support Payment (dating from 6th April 2017) or Widowed Parent's Allowance (dating after 9th April 2001), no arrears payment will actually be made for any entitlement or arrears owing prior to **30th August 2018**. This is because it was from 30th August 2018 that the rules as they stood, were held to be unlawful.

The new rules make clear that only one Bereavement Support Payment or Widowed Parent's Allowance is allowed per death.

Therefore, where there is room for two prospective claimants (i.e. there were two cohabiting parents when the deceased died) then the person who was in a legal union with the deceased would be entitled (if they had entitlement to Child Benefit or were pregnant).

If neither prospective claimant was in a legal union with the deceased (or the person in a legal union did not have dependent children), the person with entitlement to Child Benefit, or the person who is pregnant, would be entitled.

If neither prospective claimant was in a legal union with the deceased and more than one prospective claimant had entitlement to Child Benefit, or was pregnant, the person who had cohabited with the deceased for the longest on the date of death would be entitled.



If this all still leaves more than one potential claimant, the DWP will determine who is entitled.

The new rules also make clear that transitional protection rules now apply to those already in receipt of the Bereavement Support Payment or Widowed Parent's Allowance from a claim from the deceased cohabiting partner becoming entitled to an award for the same period.

The transitional provisions will enable both claimants to receive this benefit without the existing claimant having to repay any Bereavement Support Payment or Widowed Parent's Allowance already paid.

5. BSP and WPA the Impact on Benefits and Tax Credits...

If a person receives either an award of **Bereavement Support Payment** at the 'standard rate' (worth £100 each month for 18 months) or the 'higher rate' (worth £350 each month for 18 months), then for:

- Universal Credit, Income-based JSA, Income-related ESA, Income Support and Pension Credit - the amount is fully disregarded as an income
- Housing Benefit - the amount is fully disregarded as an income
- Council Tax Support - the amount is fully disregarded as an income
- Child Tax Credit / Working Tax Credit - the amount is fully disregarded as an income.

If a person receives a **Bereavement Support Payment** lump sum payment (£2,500 'standard rate' or £3,500 'higher rate'), then this should be treated as capital (not income) and may be disregarded for a period of 52 weeks for the purposes of Income-based JSA, Income-related ESA, Income Support, Pension Credit, Housing Benefit and Council Tax Support (Wolverhampton) or 12 months in the case of Universal Credit.

Any award of the **Bereavement Support Payment** (both the lump sum award and the monthly payment award) should be fully disregarded for Child Tax Credit / Working Tax Credit purposes. See This [LINK](#).

The new rules make clear that a lump sum arrears payment of the Bereavement Support Payment made as a result of these new rules, will be treated as capital (not income) and will be disregarded for a period of 52 weeks for the purposes of Income-based JSA, Income-related ESA, Income Support, Pension Credit, Housing Benefit or 12 months in the case of Universal Credit.



However, the new rules make no provision as to how a lump sum arrears payment of the Bereavement Support Allowance made as a result of the new rules should be treated for Council Tax Support or Child Tax Credit / Working Tax Credit purposes. In the case of Council Tax Support, the City of Wolverhampton Council's Council Tax Support scheme allows for the payment to be treated as capital (not income) and to be disregarded for a period of 52 weeks from the date it is awarded.



As for Child Tax Credit / Working Tax Credit purposes, it is our understanding that as things stand any lump sum arrears payment of the Bereavement Support Payment would be treated as capital (not income).

This is because, as explained above, the Bereavement Support Payment is disregarded as an income for tax credit purposes.

If a person receives an award of the **Widowed Parent's Allowance (WPA)**, then for:

- Universal Credit, Income-based JSA, Income-related ESA, Income Support and Pension Credit purposes - treated in full as an income with a £10.00 per week disregard
- Child Tax Credit / Working Tax Credit - treated in full as taxable income
- Housing Benefit purposes - treated in full as income with a £15.00 per week disregard
- Council Tax Support - treated in full as income with a £15.00 per week disregard.

Any ongoing award of Widowed Parent's Allowance should be treated as income (not capital) for Child Tax Credit / Working Tax Credit purposes. See This [LINK](#).

The new rules provide that a lump sum arrears payment of Widowed Parent's Allowance made as a result of these new rules, will be treated as capital (not income) and will be disregarded for a period of 52 weeks for the purposes of Income-based JSA, Income-related ESA, Income Support, Pension Credit, Housing Benefit or 12 months in the case of Universal Credit.



However, before any arrears payment is made, the DWP should off-set any historical overpayment which arises due to the person having been in receipt of Income-based JSA, Income-related ESA, Income Support and Pension Credit during the same period.

This is because in the case of these benefits, Widowed Parent's Allowance has always been treated as an income (albeit with a £10.00 disregard) and to fully disregard any retrospective arrears payment now would mean that cohabiting couples would be treated differently to married couple counterparts who may have received Widowed Parent's Allowance during the same period.

It is advisable that anyone who receives a lump sum arrears payment of Widowed Parent's Allowance, notify their local authority about it, if any part of the payment overlaps with a period during which they also received an award of Housing Benefit and/or Council Tax Benefit/Council Tax Support without, at the same time getting Universal Credit, Income-based JSA, Income-related ESA, Income Support and Pension Credit. This is because their local authority may have to undertake a review of their benefit entitlement for that period which may then in itself lead to a potential overpayment recovery. The premise being that had the person received Widowed Parent's Allowance timeously when it was due then less Housing Benefit and/or Council Tax Benefits/Council Tax Support may have been paid.



In the case of Child Tax Credit / Working Tax Credit, it is our understanding that, as things stand, any lump sum arrears payment of Widowed Parent's Allowance made due to the new rules, would be treated as income (not capital) for Child Tax Credit / Working Tax Credit (which were introduced in tax year 2003/2004) purposes and attributable to the tax year(s) for which the payment was actually intended. See this [LINK](#).

Therefore, people who receive means-tested benefits and/or tax credits may need to think carefully before making a claim for Widowed Parent's Allowance because of the knock-on effect.

Why this Revised Version? We have had to revise the information provided in the original version of this Benefit Bulletin because it was originally our understanding that any lump sum payment of Widowed Parent's Allowance was to be treated as capital. We did not fully appreciate that any arrears award needed to be off-set against any means-tested benefits paid during the same period and that it was, in effect, only after this process that any balance would be treated as capital fully disregarded for 52 weeks / 12 months. In our view the wording in both the Bereavement Benefits (Remedial) Order 2022 (see this [LINK](#)) and the Explanatory Memorandum (see this [LINK](#)) in relation to this point is ambiguous / misleading. We have since raised the issue with the DWP and it has been accepted that things could have been explained more clearly. We apologise for any confusion or inconvenience caused.

They should also be aware that receiving an award of Widowed Parent's Allowance now could result in their means-tested benefit entitlement being withdrawn due to the level of their assessed income.



Furthermore, those who might be eligible for Widowed Parent's Allowance should also explore how the overlapping benefits rule might impact on them should their claim prove successful, and they qualify for an on-going award of Widowed Parent's Allowance. This would apply in the case of those who are (or have been), for example, getting Carer's Allowance or Contributory Employment and Support Allowance or New Style JSA.

Another thing to consider is that whilst the Bereavement Support Payment is not taxable, Widowed Parent's Allowance (albeit except for any child dependent addition paid in cases dating back to before 5.4.2003) is.

Given all this, it is apparent that in the case of Widowed Parent's Allowance there may be much to consider.



6. Establishing Entitlement...

The burden of proof in these cases rests with the claimant. It will be for them to prove that they were cohabiting with the deceased at the time they died and that they were, in effect, parents together.

It is understood that the DWP will, as part of determining a claim, use existing DWP systems to verify information provided by the claimant.

If this fails to verify a shared address at the relevant point in time, then the DWP may accept other evidence that the claimant and their partner were living together.

This could be in the form of one or more than one of the following documents:

- council tax statement
- United Kingdom (UK) full or provisional photo-card driving licence (or old-style paper licence)
- mortgage statement
- rent book or tenancy agreement
- details from the electoral register

- letter from employer confirming home address at the relevant time
- personal loan account statement
- vehicle registration documents
- correspondence from HMRC
- letter from solicitor or accountant confirming living together at the time
- letter from an educational institution confirming living together at the time
- student loan documentation
- life assurance or insurance policies
- buildings, contents, vehicle insurance policies
- financial statement - bank, building society, credit card or credit union statement
- mobile telephone contract account statement
- gas, water, electricity or land-line telephone bills.

Do not forget that the standards of evidence in these cases is the 'balance of probabilities' (i.e. more likely that not) - see [CDLA/2288/2007](#) - paragraphs 12 and 14 (Social Security Commissioner Edward Jacobs). Also, do not forget that a claimant does not need to corroborate their own evidence - see [R\(SB\)33/85](#) - see paragraph 14 (Social Security Commissioner Edwards-Jones).

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