



## **An Comhchoiste um Choimirce Shóisialach, Forbairt Pobail agus Tuaithe agus na hOileáin**

An Tuarascáil maidir leis an nGrinnscrúdú Réamhrechtach ar Scéim  
Ghinearálta an Bhille Leasa Shóisialaigh (Pinsean Páirtnéara faoi  
Mhéala) 2024

Iúil 2024

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## **Joint Committee on Social Protection, Rural and Community Development, and the Islands**

Report on the Pre-Legislative Scrutiny of the General Scheme of the  
Social Welfare (Bereaved Partner's Pension) Bill 2024

July 2024



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## Related information

### Publications

All publications for this committee are available on the [Oireachtas website](#).

### Committee videos

Footage of Committee proceedings can be found on the [Committee videos page](#).

### Contact details

The contact details for the Committee can be found on the [Committee page](#).

### Terms of reference

Read the [terms of reference](#) for the Committee.

## Committee Membership

### Cathaoirleach

[Denis Naughten TD](#), Independent

### Leas-Cathaoirleach

[Marc Ó Cathasaigh TD](#), Green Party

### Members

[Jackie Cahill TD](#), Fianna Fáil

[Joe Carey TD](#), Fine Gael

[Joan Collins TD](#), Independents 4 Change

[Paul Donnelly TD](#), Sinn Féin

[John Paul Phelan TD](#), Fine Gael

[Éamon Ó Cuív TD](#), Fianna Fáil

[Donnchadh Ó Laoghaire TD](#), Sinn Féin

[Senator Paddy Burke](#), Fine Gael

[Senator Róisín Garvey](#), Green Party

[Senator Paul Gavan](#), Sinn Féin

[Senator Eugene Murphy](#), Fianna Fáil

[Senator Mark Wall](#), Labour Party

## Foreword

The Social Welfare (Bereaved Partner's Pension) Bill 2024 is an important piece of legislation which is intended to give effect to the O'Meara judgement by expanding entitlement to social welfare schemes aimed at bereaved partners and families to qualified cohabitants and their children.

In January 2024, the Supreme Court delivered its judgement in the O'Meara case which related to the entitlement of an unmarried co-habitant to a Widows, Widowers or Surviving Civil Partner's Contributory Pension. This judgement overruled a High Court decision and found in favour of Mr O'Meara and his children and found that section 124 of the Social Welfare Consolidation Act 2005 (as amended) is inconsistent with the Constitution as it excluded Mr O'Meara from the category of persons entitled to benefit from it. This ruling meant that a legislative amendment was needed to resolve the issues raised.

In this context, the general scheme of the Bill was referred to the Committee in June 2024. In its pre-legislative scrutiny of this Bill, the Committee held one meeting in two sessions with representatives from Free Legal Advice Centres (FLAC) and officials from the Department of Social Protection and received submissions from interested groups. I would like to thank the witnesses for their valuable engagement with the Committee, the organisations who made written submissions, and the Members for their hard work. I would also like to acknowledge the assistance of the Committee Secretariat in preparing this report.

**Marc Ó Cathasaigh TD**

Leas-Cathaoirleach to the Committee

July 2024

## Introduction and Witnesses

This is the report on the pre-legislative scrutiny of the General Scheme of the Social Welfare (Bereaved Partner's Pension) Bill 2024. This report summarises the engagements, submissions and the key points considered by the Committee when drafting the recommendations set out in this report.

### Purpose of the Bill

The key features of the general scheme of the Social Welfare (Bereaved Partner's Pension) Bill 2024 include:

- The current Widow, Widowers Widow's, Widower's and Surviving Civil Partner's (Contributory) Pension scheme will be amended to allow qualifying cohabitants have access to the scheme. As a result, the scheme name will be amended to the "Bereaved Partner's (Contributory) Pension".
- The definition of qualified cohabitants for the scheme will be broadly based on the existing definition of qualifying cohabitants contained in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.
- A person who becomes eligible for this scheme will be able to claim irrespective of the date of death of their partner providing they meet the conditions. It is proposed that payment of claims in respect of a bereavement before the date of judgement will be backdated to 22 January 2024, when the existing law was found to be inconsistent with the Constitution.
- Amending the rules on when entitlement to the payment will cease.
- Amending the rules for other schemes to provide for access to cohabitants on similar terms as the Bereaved Partner's (Contributory) Pension including:
  - The Widow, Widowers Widow's, Widower's and Surviving Civil Partner's (Non-Contributory) Pension.
  - The Widowed of Surviving Civil Partner Grant.
  - The Death Benefit Scheme under the Occupational Injuries Scheme.

## Procedural basis for Scrutiny

Pre-legislative consideration was conducted in accordance with Standing Order 174A which provides that the General Scheme of all Bills shall be given to the Committee empowered to consider Bills published by the members of Government.

## Background

On Monday 22 January, the Supreme Court delivered its judgement in the O’Meara case which related to the entitlement of an unmarried co-habitant to a Widows, Widowers or Surviving Civil Partner’s Contributory pension. The Supreme Court judgement overruled a previous High Court decision and found in favour of Mr O’Meara and his children. The Supreme Court found that section 124 of the Social Welfare Consolidation Act 2005 (as amended) is inconsistent with the Constitution insofar as it excluded Mr O’Meara from the category of persons entitled to benefit from it. The Court reached that conclusion on the basis of the equality guarantee contained in Article 40.1 of the Constitution.

In this context, the Supreme Court judgement noted that a legislative amendment is required to resolve the issue raised by the judgement, and the general scheme referred to the Joint Committee represents these legislative changes required to implement the Supreme Court decision.

## Referral

The general scheme of the Social Welfare (Bereaved Partner’s Pension) Bill 2024 was referred to the Joint Committee on Social Protection, Community and Rural Development and the Islands on 25 June 2024.

## Meeting

The Committee held one meeting on the general scheme:

Meeting date	Witnesses
02 July 2024	<b>Free Legal Advice Centres (FLAC)</b> <ul style="list-style-type: none"><li>• Sinéad Lucey – Managing Solicitor</li><li>• Christopher Bowes BL – Legal Officer</li></ul>



**Department of Social Protection**

- Tim Duggan – Assistant Secretary General, Pensions
  - Colum Walsh – Principal Officer, Pensions
  - Karen Kennedy – Assistant Principal Officer, Pensions
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## Recommendations

1. The Committee supports FLAC's recommendation of retaining the current entitlement of divorced and separated partners to a survivor's pension and expand it to surviving qualified cohabitants who were separated as opposed to taking the 'levelling-down' approach outlined in the General Scheme.
  2. The Committee recommends retaining the favourable treatment afforded to those who have lost two partners and expand it to include situations where the bereaved and the deceased were qualifying cohabitants in either or both instances.
  3. The Committee recommends that the Department provides detailed guidance and training to decision-makers which specifically deals with decisions on whether an individual was a "qualified cohabitant" and with back-dating claims for survivor's pensions made by people who were previously excluded because they were a cohabitant
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## Consideration of the General Scheme

### Summary of Evidence

#### **Removal of Entitlement to Survivor's Pensions from Separated and Divorced People**

As it currently stands, people who are separated or divorced from a spouse or civil partner may access a survivor's pension if that spouse or civil partner dies. This access is only provided if the surviving partner has not remarried and are not cohabiting with someone else. As it is currently drafted, this general scheme would remove that entitlement and any individuals currently claiming on this basis would lose their payment upon the enactment of this legislation. In a briefing provided to the Committee by Free Legal Advice Centre (FLAC)<sup>1</sup>, they raised their concerns regarding this change and feel that there is no clear rationale for this change and it may contradict the principles underpinning the *O'Meara* decision.

The Department of Social Protection (The Department) informed the Committee through their briefing that, in the case of a qualified cohabitation relationship, eligibility for the Bereaved Partners Contributory Pension (BPCP) will end two years after the breakdown of the relationship. In the case of a married couple who separate, a similar rule applies and eligibility for the BPCP will also end two years after separation.

FLAC feel that the legislation as it stands treated the children of cohabiting parents less favourably than the children of married parents or civil partners, which was declared unconstitutional by the Chief Justice. FLAC do not see any justification for the introduction of legislation which distinguishes between the children of separated or divorced parents and children whose parents are married, in a civil partnership or cohabiting. Treoir<sup>2</sup>, in their submission to the Committee, state that they do not wish to see anyone who is currently in receipt of a payment, lose their payment because of the enactment of this new legislation, so separated or divorced currently in receipt of a payment they were entitled to, should be allowed to keep this payment.

In an additional submission received by the Committee from FLAC<sup>3</sup> following the public meeting with officials from the Department of Social Protection, FLAC believes that the

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<sup>1</sup> FLAC Submission, page 5, available [here](#)

<sup>2</sup> Treoir submission, page 2, available [here](#)

<sup>3</sup> FLAC Supplementary submission, page 1, available [here](#)

current wording of the saver clause in the General Scheme would not have the effect as outlined by the Department. Section 124A(1) of the general scheme sets out a saver clause that is effective only “*until the date of enactment* (emphasis added)”. After enactment the new provisions set out section 123(1) will take effect and preclude partners who are separated or divorced from their spouse or civil partner from entitlement to the survivor’s pension. The Department clarified that for divorced and separated individuals who are currently in receipt of the Widow, Widower, or Surviving Civil Partner (Contributory) Pension (WCP) the proposed legislation would not result in a loss of entitlement. The Department stated that the general scheme includes a saver clause to this effect which will be reviewed by the OPC to ensure that it achieves the desired policy objective.

The Department of Social Protection provided the Committee with supplementary information<sup>4</sup> following their appearance before the Committee which states that removing the entitlement two years after the breakdown of the relationship, irrespective of whether that former relationship was based on marriage, civil partnership or cohabitation, provides for more equal treatment of each group and addresses the anomaly that was highlighted by the Supreme Court.

## Recommendation

1. The Committee supports FLAC’s recommendation of retaining the current entitlement of divorced and separated partners to a survivor’s pension and also expand it to surviving qualified cohabitants who were separated as opposed to taking the ‘levelling-down’ approach outlined in the General Scheme.

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## Changes to the Entitlement of People who suffer a Second Bereavement

In current legislation, access to the survivor’s (contributory) pension provides for favourable treatment of people and families who have suffered multiple bereavements. In their submission to the Committee<sup>5</sup> FLAC note that as the current legislation stands, if an individual suffers a second bereavement, they can opt for a rate of pension on the basis of

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<sup>4</sup> Department of Social Protection supplementary submission, page 2, available [here](#)

<sup>5</sup> FLAC submission, page 5, available [here](#)

either of their deceased partners. However, as laid out in the proposed legislation, those who suffer a second bereavement after the enactment date, will not be able to avail of this exception to the general rule where being remarried extinguishes entitlement to the pension. In FLAC's submission to the Committee, they feel that there is no clear rationale for the levelling-down of social welfare entitlements in this area.

The Department clarify in their supplementary submission<sup>6</sup> that they have adopted a policy whereby, in so far as possible, an individual has an entitlement to BPCP on the basis of one person only. This is to prevent the situation whereby the death of an individual results in multiple claims for BPCP. The general scheme provides for entitlement to BPCP, where a person has been bereaved multiple times, their rate of BPCP is based on the death of their last deceased partner only.

### Recommendation

2. The Committee recommends retaining the favourable treatment afforded to those who have lost two partners and expand it to include situations where the bereaved and the deceased were qualifying cohabitants in either or both instances.

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### Arrears and Retrospectivity

The provision of a payment of Death Benefit and pensions for surviving cohabitants would have effect from 22 January 2024 as is set out in the general scheme. FLAC, in their briefing to the Committee feel that the extent to which this will give rise to any entitlement to arrears starting from 22 January 2024 is unclear in light of the strict rules around back-dating claims.

The general scheme makes no provisions for payments to surviving qualified cohabitants in respect of the period prior to 22 January 2024. However, there may be a number of people whose entitlement payments in accordance with the provisions set out in the general scheme arise from the loss of a cohabiting partner long before the 22 January 2024.

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<sup>6</sup> Department of Social Protection supplementary submission, page 2, available [here](#).

The Department of Social Protection, in their briefing to the Committee<sup>7</sup> clarified that deaths before the date of the Supreme Court judgement (22 January 2024) would be considered for eligibility for the Bereaved Partner's Contributory Pension (BPCP). It is not proposed for there to be a restriction on when the death occurred. However, the Department of Social Protection have stated that payment of BPCP will only commence from the date of judgement in cases where a death occurred before that date, and from the date of death for claims after 22 January 2024.

Following the engagement with the Department of Social Protection, FLAC<sup>8</sup> welcome the fact that the Department confirmed that in the six months after the enactment date, arrears with effect from 22 January 2024 would be paid to those whose entitlement to a pension arises from a bereavement which occurred before then. However, FLAC note that the implementation of this policy may require amendments to the backdating rules in the social welfare legislation. Any such amendments which are necessary should be provided for in the Social Welfare (Bereaved Partner's Pension) Bill 2024.

In their supplementary submission to the Committee, the Department acknowledge FLAC's concerns regarding the current legislation limits with regarding to backdating and have stated that the Department will introduce legislative amendments as needed to the General Scheme to provide for backdating above existing limits for qualified cohabitants eligible for BPCP to 22 January 2024.

With respect to applicants who have previously been refused access to WCP on the basis that they were not married, the Department have informed the Committee through their supplementary submission<sup>9</sup> that since 2010, 375 applications for WCP were refused on the basis that the applicant was not married to the deceased. The Department have confirmed that it does not intend to re-examine these decisions or backdate compensation prior to 22 January 2024 as these decisions were made on the basis of the legislation at that time. The general scheme now provides an entitlement to BPCP for those applications which were previously refused providing that they continue to meet the eligibility criteria.

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<sup>7</sup> Department of Social Protection Submission, page 4, available [here](#)

<sup>8</sup> FLAC supplementary submission, page 3, available [here](#)

<sup>9</sup> Department of Social Protection supplementary submission, page 2, available [here](#).

## Access to Justice and Awareness of Rights

The general scheme sets out to amend the social welfare code in a way that could give rise to changes to the entitlements of thousands of individuals and families. In FLAC's submission, it was asserted that the right of access to justice requires measures to ensure that people are aware of their legal rights and how changes in the law could affect them.

FLAC emphasise the need for a take-up campaign to ensure that families who benefit from the amending legislation are aware of their new entitlements, including any entitlement arrears. In FLAC's view, the amending legislation should mandate a take-up campaign.

The Department have confirmed to the Committee that it is committee to ensuring that people have an awareness of their entitlements. The Department of Social Protection have confirmed that they will carry out an extensive communications campaign regarding changes to the scheme. They have also confirmed to the Committee that affected individuals will be able to contact the Department through a number of channels for support with understanding and accessing their entitlements.

### Recommendation

3. The Committee recommends that the Minister ensures that there is detailed guidance and training provided to Department of Social Protection front line staff, in particular to 'decision-makers' which specifically deals with decisions on whether an individual was a "qualified cohabitant" and with back-dating claims for survivor's pensions made by people who were previously excluded because they were a cohabitant

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## Conclusion

The Joint Committee welcomes the proposed legislation and requests that the Minister report to the Committee on the implementation of the recommendations made in this report. The Committee thanks all those who made submissions on this General Scheme and all those who appeared before the Committee in public session.

## Appendix 1 Opening Statements and Submissions

### Opening Statements

Date	Witness	Opening statements
2 July 2024	Sinéad Lucey, Managing Solicitor, FLAC	Available <a href="#">here</a>
2 July 2024	Tim Duggan, Assistant Secretary General, Department of Social Protection	Available <a href="#">here</a>

### List of written submissions

Stakeholder		
Free Legal Advice Centre	Submission 1	Available <a href="#">here</a>
	Supplementary Submission	Available <a href="#">here</a>
Department of Social Protection	Submission 1	Available <a href="#">here</a>
	Supplementary Submission	Available <a href="#">here</a>
Treoir		Available <a href="#">here</a>