

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

**Department of Social Protection: General Scheme and Heads of Social Welfare
(Bereaved Partner's Pension)**

Opening Statement by

Tim Duggan, Assistant Secretary General

Tuesday, 2 July 2024

Introduction

Good Evening everybody.

I would like to thank the members of the Committee for the invitation to appear before you this evening and to discuss the General Scheme for the Social Welfare (Bereaved Partner's Pension) Bill 2024.

I am joined today by my colleagues Colum Walsh, Principal with responsibility for Pensions Policy and Karen Kennedy, Assistant Principal, Pensions Policy.

Background

As the Committee is aware, on 22nd January 2024, the Supreme Court delivered its judgement in the O'Meara Case, which related to the refusal to award a Widower's (Contributory) Pension to a surviving cohabitant. This judgement overruled an earlier High Court decision and found in favour of Mr. John O'Meara and his children.

In simple terms the Court found that section 124 of the Social Welfare (Consolidation) Act 2005 (as amended) is inconsistent with the Constitution insofar as it excludes Mr O'Meara from the category of persons entitled to benefit from it. The Court also quashed the decision of the Minister for Social Protection to refuse Mr O'Meara a Widower's (Contributory) Pension.

The Court reached its conclusion on the basis of the equality guarantee contained in Article 40.1 of the Constitution. It is important to note that the majority of the Supreme Court did not

find that Mr. O'Meara, the late Ms. Batey and their children were a family within the meaning of Article 41 of the Constitution. Therefore, the proposals contained in the General Scheme are about implementing the changes in a manner that is consistent with the provisions of Article 40.1 of the Constitution.

The Court also highlighted a number of anomalies in the legislation including the availability of the payment to divorced persons whose former spouse had died, and that while cohabitation would disqualify a person from receipt of the payment, that same status could not qualify them to receive it.

In reaching its conclusions, the Supreme Court judgement recognises that it would require a legislative amendment to positively provide for the benefit in the case of the O'Mearas.

While on the face of it, the response to the judgement is to extend eligibility for the Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension to cohabitants ("WCP for short), this is not straight-forward task. Indeed, it should be borne in mind that the facts of the case before the Court related to a committed relationship of some 20 years duration with three children. The Supreme Court did not draw a line on where entitlement to the benefit should arise or what factors should determine entitlement. It is, therefore, a matter for the Oireachtas to determine these issues. In addition, the expansion of eligibility for the scheme to cohabitants also requires rules around when entitlement ceases under the scheme and in a manner that has regard to the equality guarantee in Article 40.1

Taking all of that into account, the General Scheme proposes a number of changes to WCP as follows:

- First, to extend eligibility to the payment to qualified cohabitants who are in an intimate, committed and exclusive relationship for a period of five years, or two years where there are children of that relationship.
- Second, to set out the effective date from when a qualified cohabitant becomes eligible for a pension.
- Third, to provide for rules on when entitlement to the payment will permanently cease.
- Fourth, to provide for similar amendments to other related Social Welfare Schemes.

So, I propose to sketch out the broad parameters of each of these elements as contained in the General Scheme.

Establishing eligibility

In broadening eligibility as proposed, the definition of a surviving cohabitant will be broadly analogous to qualifying cohabitants as defined in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (“the 2010 Act”). This 2010 Act provides an existing framework for establishing the existence of cohabiting relationships of a particular form that provide rights and obligations to those cohabitants. The Supreme Court noted that the State had already defined cohabitation within this 2010 Act.

Therefore, reliance on the existing legal framework is a reasonable approach for the Oireachtas to adopt in regulating access to WCP.

In recognition of the change in eligibility, the scheme name will be changed to the Bereaved Partner’s Contributory Pension.

Effective Date for Eligibility

It is proposed that deaths before the date of the Supreme Court judgment would be considered for eligibility for WCP. However, it is proposed that payment of WCP will commence only from the date of judgment at the earliest in the case of a death that occurred prior to that date, and from the date of death for claims after 22nd January 2024.

Loss of Entitlement

Under section 124(2) of the 2005 Act, as is, any person in receipt of WCP shall be disqualified for receipt of WCP “if and so long as he or she is a cohabitant”. The definition of cohabitant for these purposes (as set out in section 2 of the 2005 Act) is based on section 172(1) of the 2010 Act. This means that the time periods required for a qualifying cohabitant are not required. As a result, WCP eligibility ceases immediately when the recipient begins cohabiting with another person but recommences once the person stops cohabiting.

In contrast, if a person in receipt of WCP marries another person they lose their entitlement to WCP until they are again widowed (even if the relationship breaks down). Therefore, under the current rules a person loses their entitlement to WCP on a temporary basis while cohabiting, but remarriage leads to a more permanent loss of entitlement.

To address this anomaly, it is proposed that under WCP if the period of cohabitation meets the conditions of a “qualified cohabitant”, i.e., two years with children of that new relationship and five years if otherwise, then this results in a permanent loss of entitlement to the payment based on the death of the former/previous partner.

Eligibility after Relationship Breakdown, Separation or Divorce

Under current legislation, a person may retain eligibility for WCP after divorce. This anomaly was noted by the Supreme Court as a consideration in the ruling. It is proposed to address this anomaly by removing eligibility of divorcees to WCP. Therefore, it is proposed that eligibility to WCP would end upon divorce, similar to the loss of entitlement due to remarriage or on becoming a “qualified cohabitant” again. A saver is provided in this General Scheme for those divorcees already in receipt of a WCP.

In the case of a qualified cohabitant, eligibility for the BPCP will cease two years after the breakdown of the relationship, in line with similar provisions in the 2010 Act.

In the case of a married couple who separate, a similar rule will apply.

Amendments to Other Schemes

As a result of the Supreme Court decision the Department has reviewed its related schemes and decided that the following schemes will be amended along the same lines as WCP to now include Qualified Cohabitants. These are:

- The Widow, Widowers Widow’s, Widower’s and Surviving Civil Partner’s (Non-Contributory) Pension
- The Widowed or Surviving Civil Partner Grant
- The Death Benefit Scheme under the Occupational Injuries Scheme

I hope the combination of this short summary of the objectives of the measures and the Explanatory Notes in the General Scheme have given the Committee the information it needs to consider these provisions, but my colleagues and I are more than willing to address any queries, clarifications or concerns you may have.

Thank You.