



HM Government

# Review of Survivor Benefits in Occupational Pension Schemes

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June 2014

# Contents

- Executive summary ..... 3
- 1. Introduction..... 6
- 2. Background – occupational pension schemes..... 8
- 3. Current differences in survivor benefits ..... 14
  - Public service pension schemes..... 14
  - Private sector pension schemes..... 16
- 4. Costs and other effects of equalising survivor benefits..... 22
- 5. Consultation..... 28
- 6. Conclusion..... 31

# Executive summary

1. The Marriage (Same Sex Couples) Act 2013 requires the Government to conduct a review of survivor benefits in occupational pension schemes. The review must consider the differences in survivor benefits between different groups and the costs and other effects of eliminating those differences.
2. This review has been carried out jointly by the Department for Work and Pensions (DWP), which has responsibility for the legislation on private sector occupational pension schemes, and HM Treasury (HMT), which has overall policy responsibility for public service pension schemes.
3. In order to inform the review, the Government has commissioned research which gathered information on the provision of survivors' benefits in defined benefit occupational pension schemes. HMT worked with those government departments responsible for the public service schemes to identify differences in survivor benefits provided to different categories of survivor in those schemes.
4. Both DWP and HMT commissioned the Government Actuary's Department (GAD) to estimate the costs of removing these differences in survivor benefits in private sector and public service schemes respectively.
5. The review has also involved a consultation with interested parties. A summary of the views obtained through this consultation form part of this report.
6. The review investigates differences in occupational pension schemes between:
  - same sex survivor benefits and opposite sex survivor benefits provided to widows;
  - same sex survivor benefits and opposite sex survivor benefits provided to widowers; and
  - opposite sex survivor benefits provided to widows and opposite sex survivor benefits provided to widowers.
7. For the purpose of the review "same sex survivor benefits" means survivor benefits provided to surviving civil partners, and surviving same sex spouses.
8. The review also considers the extent to which same sex survivor benefits are provided in reliance on paragraph 18 of Schedule 9 to the Equality Act 2010.

## Review of Survivor Benefits in Occupational Pension Schemes

9. The review was required to consider separately survivor benefits provided to civil partners and those provided to same sex married couples. The law treats civil partners equally to same sex married couples for the purposes of survivor benefits in pension schemes because they both provide comparable rights and responsibilities. There is no significant difference between them. As such, any differences in the benefits provided to survivors of civil partners and same sex spouses would be difficult to justify, and could give rise to further legal discrimination challenges. The review therefore gives no further consideration to the differences between these two groups.
10. Key findings of the review include:
- The capitalised cost<sup>1</sup> of removing differences in survivor benefits between opposite sex surviving spouses, same sex surviving spouses and surviving civil partners in the public service pension schemes is estimated at around £2.9 billion.
  - Of this around £1 billion would be payable immediately in respect of benefits due before 1 April 2015. It is estimated there would then be ongoing costs across public service schemes of around £0.1 billion per annum into the 2020s, reducing thereafter.
  - The estimated cost to the private sector schemes of removing these differences is around £0.4 billion.
  - Removing differences in the survivor benefits provided to surviving same sex spouses and civil partners on the one hand and those provided to opposite sex widows on the other is estimated to have a capitalised cost of around £0.08 billion to the public service schemes.
  - The estimated cost to private sector schemes of removing these differences is around £0.1 billion.
  - If private sector schemes were to provide benefits to same sex couples on the same basis as opposite sex widowers, as most public service schemes do, this is estimated to cost £0.1 billion.
  - Public service schemes exceed the statutory minimum requirement which permits occupational pensions schemes to provide survivor benefits for same sex couples only taking account of service since 2005. However, the majority of public service schemes only take into account service from 1988 when calculating same sex survivor benefits, and so rely on paragraph 18 of Schedule 9 of the Equality Act.

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<sup>1</sup> Capitalised costs mean that the amount of money needed now to pay a series of cashflows in the future. A more detailed explanation is provided in the letter from the Government Actuary's Department to HM Treasury. That letter is attached as Annex B to this document.

## **Review of Survivor Benefits in Occupational Pension Schemes**

- Of the 27 per cent of private pension schemes that were found to have a difference in the way survivor benefits between surviving opposite sex spouses and surviving civil partners were calculated, around two-thirds only took into account accruals after 2005 in those calculations.

# 1. Introduction

1.1 There are currently differences in the benefits paid by occupational pension schemes to survivors of the members of those schemes. There are a number of differences in the benefits payable to men and women who survive an opposite sex spouse, and those who survive a same sex spouse or civil partner. During the passage of the Marriage (Same Sex Couples) Act 2013 the Government proposed an amendment requiring a statutory review of differences in survivor benefits in occupational schemes. The Act also includes an order-making power which enables the Government to change the law of England and Wales, and Scotland, if, having considered the outcome of the review, the Government considers that the law should be changed to reduce or eliminate differences in survivor benefits.<sup>2</sup>

1.2 The terms of reference of the review are set out in box 1.1:

## **Box 1.1 – Terms of reference**

The review will investigate differences in occupational pension schemes between: same sex survivor benefits and opposite sex survivor benefits provided to widows; same sex survivor benefits and opposite sex survivor benefits provided to widowers; and opposite sex survivor benefits provided to widows and opposite sex survivor benefits provided to widowers. The review will include separate consideration of survivor benefits provided to both surviving same sex married couples and to surviving civil partners.

The review will investigate what the costs and other effects would be of the elimination of these differences by the equalisation of survivor benefits. The review will consider the extent to which same sex survivor benefits are provided in reliance on paragraph 18 of Schedule 9 to the Equality Act 2010, and the extent to which same sex and opposite sex survivor benefits are calculated by reference to different periods of pensionable service.

The review will involve consultation with the parties which the Secretary of State considers it appropriate to consult. This is likely to include pension trustees, industry bodies including CBI and NAPF, trades unions and groups representing the lesbian and gay community.

The review will inform the Secretary of State's decision as to whether he should exercise his powers to change the law to eliminate or reduce differences in survivor benefits in occupational schemes.

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<sup>2</sup> See section 16 of the Marriage (Same Sex Couples) Act 2013.

## **Review of Survivor Benefits in Occupational Pension Schemes**

- 1.3 The review has explored differences that exist in both private sector occupational pension schemes and public service pension schemes.

## 2. Background – occupational pension schemes

2.1 The first UK pension schemes were for public servants. They were a reward for loyal service and were paid by government from its revenues. These schemes have developed into the range of public service pension schemes seen today. Outside the public services, however, occupational pension schemes based in the UK have historically been established under trust and that is now a legal requirement for the majority of schemes outside of the public sector. Such occupational pension schemes usually involve both employers and employees making contributions to the scheme which are then invested to provide benefits to employees upon their retirement (although they can be “non-contributory”, in which case the employer makes payments but the member is not required to do so).

### Defined benefit pension schemes

- 2.2 Pension benefits paid under funded or unfunded arrangements are a form of “deferred pay” with current income being forgone in the expectation of payments in the future. In a defined benefit (DB) scheme, the member will be entitled to a defined level of pension benefit on retirement, calculated according to a formula set out in the rules of the scheme. DB schemes may also provide a range of other retirement benefits, such as an early retirement pension, an ill-health early retirement pension, survivor benefits, a lump sum on retirement and death in service benefits. Legislation governing occupational pension schemes provides a minimum statutory base in certain areas but over and above that schemes/employers choose the benefits and can provide more generous benefits should they wish to.
- 2.3 In a defined contribution scheme (DC), contributions are made to a fund which can then be converted into an income on retirement. If the member chooses to convert their pension into an income on retirement, they can choose whether they wish to provide for a pension for their survivor. For that reason this review has focused on DB schemes, as provision of survivor benefits in DB schemes are prescribed by the rules of these schemes, rather than solely a matter of individual choice.
- 2.4 In recent decades, most DB schemes have been final salary schemes. A final salary scheme provides a member with a pension for life upon retirement based upon a fraction of their final pensionable salary. An alternative type of defined benefit pension is one which is based on members' average earnings over the period of their scheme membership. Once accrued, rights to defined benefits are protected by legislation which prevents detrimental alteration to the value of accrued rights without members' consent.



## Review of Survivor Benefits in Occupational Pension Schemes

- 2.5 As the pension benefits provided by a DB scheme are determined at the point at which they are earned, the funding of the scheme has to be designed to fund those accrued benefits. This means that for each DB scheme there has to be someone responsible for dealing with the effects of funding shortfalls. Therefore, under UK rules, a DB pension scheme can only be an occupational pension scheme. The funding responsibility in respect of a trust based scheme falls to the employer in the first instance, or in respect of a public service scheme, to the authority responsible for paying the scheme benefits.

### Differences in DB schemes – contracting out

- 2.6 The majority of defined benefit schemes have been “contracted-out” of the additional state pension. In broad terms, if a pension scheme is “contracted-out”, its members and the employer of those members pay reduced National Insurance Contributions and receive benefits from that scheme which are specified in legislation, which broadly replace those that would have been provided by the additional state pension system (currently the State Second Pension which in April 2002 replaced the State Earnings Related Pension Scheme). DB schemes that were contracted-out between 6 April 1978 and 5 April 1997 have to provide members with a guaranteed minimum pension (GMP) including a survivor’s GMP, which is half the member’s GMP for the relevant period of accrual.
- 2.7 Contracting out for defined contribution schemes was abolished from 6 April 2012 and there are provisions in the Pensions Act 2014 to abolish contracting-out in DB schemes from 6 April 2016, in order to establish a single tier state pension. However, members who have accrued entitlements under contracting out will retain their entitlement to these benefits.

### Public service pension schemes

- 2.8 Public service pension schemes are almost all DB pension schemes. They are run by Government for workers engaged in public service work. In the public service schemes, scheme rules regarding benefit entitlement are determined by Ministers and generally set out in legislation. There are currently around 12 million members in public service pension schemes<sup>3</sup>.
- 2.9 The majority of the public service pension schemes are unfunded “pay as you go” schemes. The main exception is the Local Government Pension Scheme which is a funded scheme. In the unfunded schemes there is no “pot” of assets which is used to fund the payment of pension benefits. Instead, Exchequer funds are used to meet the costs of paying pensions, although in practice current contributions from employers and employees offset much of the cost of the current pensions in payment. (If current contributions are lower than pensions in payment the balance is provided by the Exchequer - conversely, if contributions exceed pensions in payment, the surplus is returned to the Exchequer.)

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<sup>3</sup>The main public service pension schemes are those which make provision for civil servants, teachers, NHS workers, firefighters, the police, local government workers, the armed forces and the judiciary.

### Survivor benefits in DB schemes

2.10 Survivor benefits are the benefits paid to the dependant of a scheme member who has died either before or after the member has started to draw the pension income. Dependants can include opposite sex and same sex spouses, and surviving civil partners. Many occupational schemes also include options for scheme members who are co-habiting to nominate their partner to receive survivor benefits in the event the scheme member dies before their partner<sup>4</sup>. Survivor benefits commonly include a continuing survivor pension. The detailed arrangements for these pensions vary considerably between schemes and between categories of survivor. The formulae for calculating the amount of pension can also vary considerably depending on the scheme rules and the circumstances of the deceased member at the time of death. As such, these pensions are also a form of defined benefit, as how a survivor pension is to be calculated is fixed in advance by the scheme rules.

### Survivor benefits for opposite sex spouses

- 2.11 Eligibility for survivor pensions has changed over time. Provision of survivor pensions for females who survive their male spouse developed much earlier than provision for males who survive their female spouse. In the post war period many schemes began to provide survivor benefits for women who survived their male spouse. However, survivor pensions for men who survived their female spouse were not routinely provided until much later. In some circumstances, women (and unmarried men) often received a larger pension than married men to reflect these differences. In some schemes married men paid a contribution towards a survivor's pension that most female members of that scheme did not. Member benefits therefore also potentially differed between men and women in addition to the differences in benefits for their survivors.
- 2.12 There are a number of historical reasons for the later provision of survivor benefits for surviving male spouses. These reflect the societal expectations of previous decades and the difference in life expectancies between men and women at that time. When survivor pensions were first introduced, men were generally expected to be the breadwinner and most women who outlived their husbands were expected to have no income or pension of their own. On average women also lived longer than men, and so it was more likely that they would require this form of income protection.
- 2.13 The Social Security Pensions Act 1975 created the first overarching legal framework for the provision of survivor pensions for women who survive their male spouse. This Act imposed on all schemes which are "contracted out" of the additional state pension a requirement to provide a surviving woman with a survivor's GMP based on any of her deceased husband's service since 6 April 1978.

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<sup>4</sup> Survivor benefits provided to cohabiting couples are not explored by this review

## Review of Survivor Benefits in Occupational Pension Schemes

- 2.14 Over time, changes in society meant that the reasons for these differences in provision began to be eroded. Women's greater participation in the labour market, and their greater participation in occupational pension schemes, meant these differences in survivor benefits began to be perceived as increasingly unfair.
- 2.15 Accordingly, action was taken to correct this inequality. The Social Security Act 1986 provided that a GMP accrued after 6 April 1988 should provide for a survivor pension to be paid to a surviving male whose female spouse was a member of the scheme<sup>5</sup>. At the same time, in most public service schemes survivor benefits taking into account all of the female member's service since 6 April 1988 onwards (not just that part necessary to meet the minimum requirements for "contracted out" schemes) were introduced for men who survive their female spouse. The difference in treatment between male and female scheme members for the purpose of survivor benefits in public service pension schemes for service prior to 1988 was held in 2011 to be lawful<sup>6</sup>.
- 2.16 After the European Court of Justice judgment in *Barber*<sup>7</sup> occupational pension schemes were required to provide equal pensions to men and women (including equal pension ages), and to provide equal survivor benefits for males who survive their female spouse, in relation to accruals from 17 May 1990 (the date of the judgment).

### Survivor benefits for civil partners

- 2.17 The introduction of civil partnerships in 2005 represented a further change in social attitudes, as it allowed for the legal recognition of same sex partnerships for the first time.
- 2.18 Private sector schemes that are not contracted out are not obliged to pay survivor benefits at all. However, following the introduction of civil partnerships those that do provide survivor benefits to surviving opposite sex spouses have been required to provide them to surviving civil partners. However, non-contracted out schemes are permitted to provide survivor benefits to surviving civil partners taking into account only service since 5 December 2005, the date that civil partnerships were introduced. This is provided for in paragraph 18 of Schedule 9 of the Equality Act 2010, which provides that it is not unlawful sexual orientation discrimination to restrict access to survivor pensions payable to civil partners in relation to rights accrued or employment service before that date.
- 2.19 In 2005, the then government also decided that contracted out schemes would be required to pay surviving civil partners of either gender a survivor's GMP based on accruals since 6 April 1988. This meant that civil partners were placed in a comparable position to widowers. However, it remained an option for contracted out schemes to not provide survivor benefits for civil partners in

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<sup>5</sup> GMPs only accrued until 1997 when the Reference Scheme Test was introduced. From then schemes must provide equal survivor benefits to all survivors on all accruals from 1997.

<sup>6</sup> *Cockburn v Secretary of State for Health* [2011] EWHC 2095 (Admin).

<sup>7</sup> Case C-262/88, [1990] ECR I-1889.

## Review of Survivor Benefits in Occupational Pension Schemes

relation to the scheme excess (scheme benefits provided over and above the GMP) (because those benefits were accrued prior to 2005), or to provide more limited survivor benefits on the scheme excess because of the effect of paragraph 18 of Schedule 9 of the Equality Act 2010.

- 2.20 Most public service pension schemes went further than this legal minimum, and the scheme rules were changed so that survivor benefits for civil partners would be payable on the basis of all service accrued by the scheme member since 6 April 1988, and not just that part necessary to meet the minimum requirements on all “contracted out” schemes (i.e. the GMP).

### The Marriage (Same Sex Couples) Act 2013

- 2.21 Following the passing into law of the Marriage (Same Sex Couples) Act 2013 it became lawful for same sex couples to enter into a marriage. Married same sex couples are treated in the same way as civil partners for the purposes of determining survivor benefits. For the purposes of GMPs, as well as wider benefits in most public service pension schemes, this means that surviving same sex spouses have their survivor pension calculated on service accrued after 6 April 1988, in line with surviving civil partners and most men who survive their female spouse.

### Scheme Funding

- 2.22 In funded pension schemes, operating both in the private sector and the public sector, regular actuarial valuations are required. These compare the assets held by the scheme to the value of the liabilities of the scheme, to determine if the scheme has sufficient assets to meet these liabilities. Valuations also calculate the contributions that will be made to pay for the value of the liabilities that will be accrued in the future.
- 2.23 The unfunded public service pension schemes are those which are not backed by a fund of assets which can be used to meet the cost of paying pension benefits when they fall due. However, the unfunded public service pension schemes also conduct valuations and use a similar approach to valuing the costs of pension benefits, including the use of a “notional fund” to determine if sufficient contributions have been made to the scheme to meet the scheme’s liabilities<sup>8</sup>.
- 2.24 In conducting a valuation of a funded or unfunded pension scheme, the scheme actuary must make many assumptions in order to put a value on the benefits that will be earned in the future – for example the longevity of members, and the rate of return that will be earned on the scheme’s assets. However, the actuaries must also consider the scheme’s rules and any relevant legislation which is in place at the time of the valuation. Actuaries would not make any allowance for any future change in the scheme rules, or

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<sup>8</sup> Details of the Government’s approach to actuarial valuations in the public service pension schemes can be found at: [www.gov.uk/government/publications/public-service-pensions-actuarial-valuations-and-the-employer-cost-cap-mechanism](http://www.gov.uk/government/publications/public-service-pensions-actuarial-valuations-and-the-employer-cost-cap-mechanism).

## Review of Survivor Benefits in Occupational Pension Schemes

in the relevant legislation, unless they were certain that this change would occur.

- 2.25 It follows, therefore, that any improvements to benefit entitlements which take place after the period in which they have been earned and paid for will increase the size the scheme's liabilities in a way which was not expected when contributions to the scheme were paid. Without any corresponding increase in the scheme's assets, retrospective improvements such as these would, all else being equal, create a deficit in the scheme's funding. In a funded trust based scheme, the additional costs of funding this kind of shortfall would initially fall on employers (and so in the case of public service schemes, on the Exchequer), and in some cases on scheme members. Given the potential for retrospective changes to create scheme deficits, successive Governments have maintained a policy presumption against making or mandating retrospective changes to pension schemes. This particularly applies when a pension has already been awarded, as there is then no scope for offsetting reductions in the benefits that have been awarded or for the member to make additional contributions.
- 2.26 When making changes to scheme rules, or to legislation which will affect the value of the members' pension, the general position has therefore been to make these changes prospectively. This means that these changes will apply to benefits which were earned after the change has been made – but not necessarily those which are only paid in the period following any change. This avoids the risks to scheme funding that would be created if schemes were required to meet legal obligations to pay benefits which did not exist at the time that those benefits were accrued.

## Conclusion

- 2.27 As this summary demonstrates, there has been a gradual evolution in the provision of survivor benefits in occupational pension schemes. Successive governments have taken steps to provide for greater equality in entitlements to these benefits, reflecting the gradual changes in social attitudes that have taken place over the last 60 years. With the exception of the changes that were made at the time of the introduction of civil partnerships to contracted out schemes, and in respect of all service in public service schemes, these changes have generally been applied to benefits to be earned in the future, to avoid creating risks to scheme funding.
- 2.28 For some scheme members with service in relevant periods survivor benefits continue to be calculated on a different basis depending on the gender of their spouse or whether they are in a civil partnership. These differences will work their way out of the system as the number of scheme members with earlier periods of service declines.

## 3. Current differences in survivor benefits

### Public service pension schemes

- 3.1 In most public service schemes, the calculation of survivor benefits for women who survive their male spouse takes into account a greater amount of service than the calculation of survivor benefits for men who survive their female spouse, or surviving same sex spouses or civil partners.
- 3.2 In respect of marriages that existed at the date of leaving the scheme, public service schemes generally calculate survivor benefits for women who survive their male spouse taking into account all of the service of the scheme member prior to and since 6 April 1988<sup>9</sup>. The survivor benefits provided to males who survive their female spouse only take into account the female member's service since 6 April 1988 in most of these schemes.
- 3.3 With the introduction of civil partnerships in 2005 and the extension of marriage to same sex couples in 2014, most public service schemes calculate survivor benefits for surviving civil partners and surviving same sex spouses on the same basis as they do for men who survive their female spouse, only taking into account service since 6 April 1988<sup>10</sup>. In each case these benefits are in addition to the minimum requirement on all contracted out schemes to pay same sex spouses, opposite sex spouses and surviving civil partners a minimum survivor pension
- 3.4 There are some exceptions to the general approach described above. For instance, following reforms in 2008, in the funded Local Government Pension Scheme, where a marriage or civil partnership exists at the point of leaving, for active members of the scheme, there are no differences in the survivor benefits for both surviving same sex and opposite sex spouses and surviving civil partners. In each case, benefits take into account all of a member's service<sup>11</sup>.

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<sup>9</sup> In many schemes restrictions apply where the marriage took place after the member left the scheme and only service since 1978 is taken into account.

<sup>10</sup> Under the Marriage (Same Sex Couples) Act 2013 a marriage will be able to continue in the event that one member of the marriage changes legal gender. Where a scheme member changes legal gender and the marriage continues and where the spouse of the scheme member would otherwise lose their expectation of more advantageous survivor benefits, the spouse will retain their expectation of survivor benefits as if the scheme member had not changed gender.

<sup>11</sup> Allowance has also been made in the cost estimates which follow, to reflect the fact that differences in survivor benefits between males who survive their female spouse and females who survive their male spouse in the LGPS 1997, were removed for members in active service post April 1998

## Review of Survivor Benefits in Occupational Pension Schemes

- 3.5 Also, in the FireFighters Pension Scheme 1992, survivor benefits for both a woman who survives her male spouse and for a man who survives his female spouse are calculated on the same basis.
- 3.6 In 1988, reforms were introduced to the Armed Forces Pension Scheme 1975 (AFPS) to provide survivor benefits for male spouses of female members. Similarly, the AFPS introduced survivor pensions for civil partners when they were introduced in 2005. For those who were active members of the scheme at the points at which these changes were made, where the marriage or civil partnership exists at the point of leaving the scheme, benefits are calculated on the same basis as benefits for a female who survives her male spouse. These changes were not applied to female members or members in a civil partnership-with a deferred pension, or who were already receiving their pension before the change was made.
- 3.7 Notably the schemes for firefighters and members of the Armed Forces have historically had a low proportion of female members. The proportion of opposite sex widowers' and same sex survivor benefits expected to be paid out by these schemes has remained low.
- 3.8 Public service schemes set up or significantly revised since 2000 also provide equal survivor benefits to all survivors of a marriage, whether between an opposite sex or same sex couple, and to surviving civil partners, where the member was in service from the date the revisions took effect. By definition, all new benefits accrued in these schemes will have been earned after 1988. Some scheme members with pensionable service in earlier sections, including service prior to 1988, have had the option to transfer this service into the newer scheme sections on the basis that full survivor cover is provided. Where they have opted to do this there is no restriction on the qualifying service taken into account when calculating survivor pensions<sup>12</sup>. Such transfers have, however, been allowed for on the basis that the members transferring should meet the potential cost of any increases in benefits that they might gain through transferring to the new terms, e.g. through the factors used to convert service in the former scheme to the new one.
- 3.9 Some schemes have also provided options to purchase additional survivor benefits, taking account of service before 1988, at the member's own expense. These options have been offered to female scheme members married to men, as well as members in civil partnerships or with a same sex spouse
- 3.10 A table setting out the main differences in the provision of survivor benefits for different categories of survivor within each of the main public service schemes is provided at Annex A.

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<sup>12</sup> These additional survivor benefits in the newer sections are provided as part of an overall package of scheme benefits which in some respect will be less generous than the package provided in the earlier sections. For example, in the NHS Pension Scheme, someone transferring their benefit from the 1995 section to the 2008 section would also be transferring from a scheme with a normal pension age (NPA) of 60 to one with an NPA of 65.

### Reliance on paragraph 18 of schedule 9 to the Equality Act 2010

- 3.11 Public service schemes exceed the statutory minimum requirement in respect of survivor benefits for same sex couples, by providing benefits that take into account service since 1988 and not only service since 2005. However, the majority of public service schemes only take into account service from 1988 when calculating same sex survivor benefits, and so rely on paragraph 18 of schedule 9 of the Equality Act.

### Private sector pension schemes

- 3.12 Defined benefit provision in the private sector has been in long-term decline, with many schemes being replaced by defined contribution arrangements. This trend has been the result of significantly increased financial pressures on sponsoring employers. Total active membership of defined benefit schemes peaked in the 1960s at 8.1 million, and has fallen to 1.7 million by 2012 – with active membership of open DB schemes dropping by 300,000 in that year alone (from 900,000 to 600,000)<sup>13</sup>.
- 3.13 This decline in workplace defined benefit provision has been accompanied by a growth in workplace defined contribution provision, particularly in the contract-based sector of the market, in which employers facilitate the provision of a pension and pay in contributions, but the contract exists between the individual scheme member and the pension provider. This change in the structure of the UK pensions market is shown in chart 1.

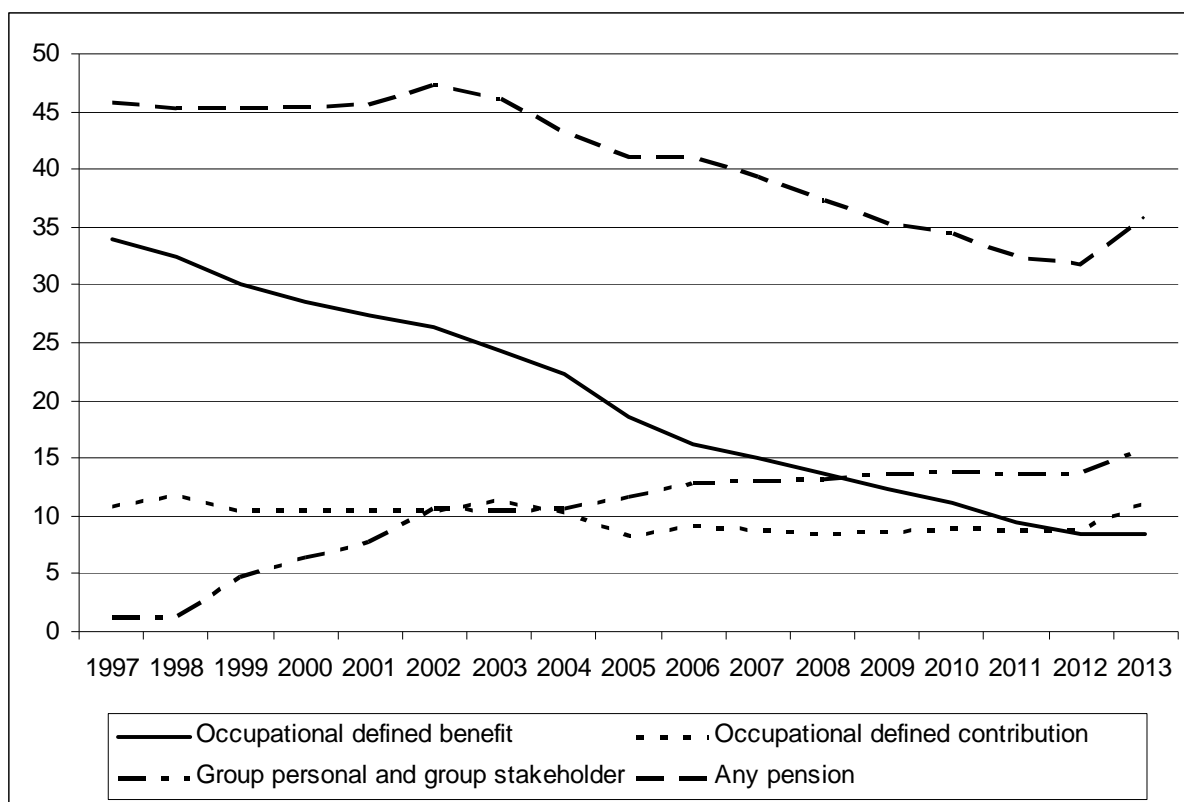
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<sup>13</sup> Source: Occupational Pension Scheme Survey



## Review of Survivor Benefits in Occupational Pension Schemes

**Chart 1: Proportion of private sector employees with workplace pensions by type of arrangement**



Source: ONS, 2013 Annual Survey of Hours and Earnings (UK)

3.14 Given the long-standing nature of the defined benefit - defined contribution shift, it is expected that the vast majority of people automatically enrolled into workplace pensions under the Government's pension reforms will be saving into defined contribution pension plans.

### Existing evidence

3.15 There is limited information available on the provision of survivor benefits in occupational pension schemes. The available information focuses primarily on the proportion of schemes that offer survivor benefits. There is no detailed information on what benefits schemes provide for all different groups of members for all different past periods of service. This is the key reason the Government commissioned additional new research as part of this review.

3.16 The existing evidence is summarised below:

- The Occupational Pension Scheme Survey (OPSS)<sup>14</sup> shows that for private sector defined benefit schemes in 2011, 94 per cent of pensions in payment were accompanied by a pension to a surviving spouse or civil partner on death of the retired scheme member, under the scheme rules.

<sup>14</sup> Available at: <http://www.ons.gov.uk/ons/rel/pensions/occupational-pension-scheme-survey-annual-report/2011-annual-report/index.html>

## Review of Survivor Benefits in Occupational Pension Schemes

Less than three-quarters (71 per cent) provided such a pension to surviving children, and only 9 per cent provided such a pension to another nominated person. For nearly all pensions in payment, the benefits provided to the surviving spouse or other nominated person were based on a percentage of the member's pension; 72 per cent would receive benefits of up to and including 50 per cent of the member's pension before commutation.

- In the 2009 Employer Pension Provision Survey (EPP)<sup>15</sup> respondents were asked whether contracted-out or part-contracted-out occupational schemes provided survivors benefits for parties other than legal spouses. In 20 per cent of cases the respondent did not know. In a further 4 per cent of cases, the scheme did not provide survivors' benefits for other parties, leaving 76 per cent of cases in which the scheme did provide such benefits. 59 per cent of schemes did so for children, 53 per cent did so for unmarried partners of the opposite sex and 44 per cent did so for unmarried partners of the same sex. In 11 per cent of schemes there were no fixed provisions but decisions were made on an individual basis.
- Respondents in the 2009 Employer Pension Provision Survey (EPP) were also asked whether non contracted-out schemes provided survivors' benefits. In 13 per cent of cases the respondent did not know. In a further four per cent of cases, no benefits were provided, leaving 83 per cent of schemes which did provide such benefits. These were most commonly provided for legal married spouses (77 per cent), unmarried partners of the opposite sex (39 per cent) and unmarried partners of the same sex (35 per cent). In 6 per cent of schemes there were no fixed provisions but decisions were made on an individual basis.

3.17 In addition, an estimate of the increase in pension scheme liabilities of equalising survivor benefits for civil partners and same-sex married couples in defined benefit pension schemes that were not contracted out was published by DWP in July 2013<sup>16</sup>. The Department used data from the ONS and the Occupational Pension Scheme Survey to estimate the proportion of not contracted-out defined benefit members that may have a civil partner. This proportion was then applied to total contracted-in defined benefit pension liabilities to estimate the liabilities accrued in respect of these members. An adjustment, based on the Employer Pension Provision Survey, was made to take account that some already do provide full survivor benefits for those members in a civil partnership.

3.18 As part of the review DWP analysts contacted a number of key stakeholders to ask if they had information which may be useful for estimating the costs of equalising certain pension scheme survivor benefits. This included the Association of British Insurers, EEF - The Manufacturers Association, National

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<sup>15</sup> Available at: <https://www.gov.uk/government/publications/employers-pension-provision-survey-2009-rr687>

<sup>16</sup> Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/210859/Ad\\_hoc\\_analysis\\_civil\\_partners\\_survivors\\_benefit\\_010713.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210859/Ad_hoc_analysis_civil_partners_survivors_benefit_010713.pdf)

## Review of Survivor Benefits in Occupational Pension Schemes

Association of Pension Funds, The Pension Regulator and The Pension Protection Fund. Each organisation was informed of the review parameters and asked if they were aware of or held any data which could provide insight into the provision of survivor benefits. In each case no organisation held data which could be used to inform the estimates of costs associated with equalising certain pension scheme survivor benefits.

### New commissioned research

- 3.19 In the absence of detailed information on differences in the provision of survivor benefits in occupational pension schemes, the DWP commissioned an independent research report<sup>17</sup> to collect this information.
- 3.20 The 2013 survivor's benefit survey gathered information on the provision of survivors' pension benefits in defined benefit and hybrid<sup>18</sup> occupational pension schemes across the UK. A 20-minute telephone survey was conducted with 219 DB and hybrid schemes between 31 October and 29 November 2013 by IFF Research Ltd using Computer Assisted Telephone Interviewing (CATI). The survey was designed to achieve useable sample sizes in each of the pension scheme size bands, from which data could then be weighted to reflect the UK DB and hybrid pension scheme universe. Schemes were selected from the Pensions Regulator's (tPR) database of schemes using a stratified random sampling approach. In addition the top 42 schemes<sup>19</sup> were also specifically targeted to ensure the schemes with the largest liabilities were included.
- 3.21 The key findings from the survey were:
- 95 per cent of all schemes questioned provided some survivor benefit
  - One per cent of schemes that provided survivors' benefits and had benefits accrued prior to 1990 had a difference in the way survivor benefits were typically calculated for opposite sex widows and opposite sex widowers before 1990 (equating to 28 schemes on a grossed up weighted basis):
  - 27 per cent of schemes that provided survivor benefits to civil partners and had benefits accrued prior to 2005 had a difference in the way benefits were typically calculated between those in a civil partnership and those in a marriage of an opposite sex couple (equating to 1,334 schemes on a grossed up weighted basis): and
  - Of those 27 per cent of schemes, two-thirds (65 per cent) did not take account of any accruals before 2005 when calculating surviving benefits for those in a civil partnership.

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<sup>17</sup> See Annex D. Also published at [www.gov.uk/government/publications/provision-of-survivors-benefits-in-occupational-pension-schemes](http://www.gov.uk/government/publications/provision-of-survivors-benefits-in-occupational-pension-schemes)

<sup>18</sup> A hybrid pension schemes is a workplace pension schemes that can provide both defined benefits and defined contributions benefits.

<sup>19</sup> The Pension Regulator provided further information on the top 42 schemes with the largest total liabilities.

### Differences in entitlement between men and women in marriages of an opposite sex couple

- 3.22 In order to identify schemes that would be affected by the equalisation of survivors' benefits between genders prior to 1990, schemes were asked if the way benefits were typically accrued prior to 2005 were the same or different for married men (widowers) and married women (widows). Although schemes were asked about accruals prior to 2005, for the purposes of analysis the research only looked at schemes that had accruals prior to 1990, given these would be the only schemes in scope for any potential changes from equalisation.
- 3.23 The analysis showed that one in a hundred schemes (one per cent) who provide survivors' benefits and have benefits accrued prior to 1990, said benefits accrued for married men and married women were different before this period. There was no difference in the likelihood of having differential benefits by whether schemes were contracted out or not contracted out<sup>20</sup>.

### Differences in entitlement between couples in marriages of an opposite sex couple and civil partnerships

- 3.24 To gauge other differences in entitlement, schemes were asked if the way benefits were typically accrued in periods prior to 2005 (when it became a legal requirement to provide benefits at the same level for a marriage of an opposite sex couple and a civil partnership) was the same or different for men and women in a civil partnership compared to men and women in a marriage.
- 3.25 Just over a quarter of schemes (27 per cent) that provided civil partnership survivors' benefits and had benefits accrued prior to 2005 cited that there were differences in the way benefits were accrued in periods prior to 2005 for those in a marriage of an opposite sex couple and for those in a civil partnership. This equates to 1,334 schemes that have a difference in this entitlement. Small schemes were more likely to have a difference in how these benefits were accrued (35 per cent) compared to large/extra large schemes (15 per cent).
- 3.26 In terms of differences in accrual between marriages of opposite sex couples and civil partnerships before 2005, there was no significant difference between those schemes that were contracted out and those schemes that were not contracted out.
- 3.27 Of those 27 per cent of schemes that did have a difference in the way benefits for men and women in a marriage of an opposite sex couple compared to couples in a civil partnership were accrued before 2005, two-thirds (65 per cent) said this difference was that when calculating survivor benefits for those in a civil partnership accruals before 2005 were not taken into account.

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<sup>20</sup> It is possible that while respondents to the survey have answered correctly in respect of current employees they might not have taken in to account any previous differences in treatment and therefore the provision of unequal benefits is wider than we are assuming.

### **Reliance on paragraph 18 of schedule 9 to the Equality Act 2010**

3.28 In private sector occupational pension schemes, the findings from the research which looked at the differences between opposite sex and same sex survivor benefits also shows the extent to which schemes rely on paragraph 18. 27 per cent of schemes that provide survivor benefits to those scheme members in a civil partnership relied on paragraph 18 by having a difference in treatment to those in a marriage of an opposite sex couple. Of those, two-thirds provided the legal minimum and only calculated benefits based on accruals from 2005 onwards.

## 4. Costs and other effects of equalising survivor benefits

- 4.1 This review also investigates what the costs and other effects would be of the elimination of differences in survivor benefits.
- 4.2 In this section we look at the costs and other effects of reducing or eliminating the differences in survivor benefits discussed in other sections.
- 4.3 If all these differences in the way survivor benefits are calculated were to be completely eliminated for all those in a legal relationship, regardless of the basis on which rights were accrued in the past, and the funding assumptions that were made at the time, the costs would be as described below.

### Eliminating all differences in treatment

This means:

- Providing survivor benefits for opposite sex widowers which are identical to those provided to opposite sex widows; and
- Providing survivor benefits for surviving same sex spouses and civil partners which are identical to those provided for survivors of marriages of opposite sex couples.

- 4.4 The capitalised cost of removing all these differences in the public service schemes is estimated to be around £2.9 billion. Of this around £1 billion would be payable immediately in respect of benefits payable due 1 April 2015.
- 4.5 The costs are estimated to be around £0.4 billion for private sector schemes.
- 4.6 These costs to both public service and private occupational schemes and the methodology GAD employed to calculate them are set out in more detail in Annexes B and C.

## Review of Survivor Benefits in Occupational Pension Schemes

### Eliminating differences between same sex survivor benefits and opposite sex survivor benefits provided to widows

The review is required to assess the costs and other effects of removing differences between same sex survivor benefits and opposite sex survivor benefits provided to widows.

This means:

- To align benefits for all surviving same sex spouses and civil partners (of either gender) with those for widows of a marriage of an opposite sex couple - that is, benefits within each scheme are to be based on the same periods of accrual as surviving opposite sex widows' benefits.

- 4.7 This would remove differences in treatment because of sexual orientation between women and maintain differences of treatment because of sex for men and women in marriages of opposite sex couples. As regards differences in treatment because of sexual orientation between men, this approach would introduce new differences between men in a marriage of an opposite sex couple and men in a same sex legal relationship. Whereas previously, men in a same sex legal relationship had lower or identical survivor benefits to men in an marriage of an opposite sex couple, men in a marriage of an opposite sex couple would now be entitled to lower value survivor benefits than both same sex survivors of either gender and women in a marriage of an opposite sex couple.
- 4.8 If these differences in survivor benefits were removed this is estimated to have a capitalised cost of around £0.08 billion to the public service schemes and around £0.1 billion to private sector schemes.

## Review of Survivor Benefits in Occupational Pension Schemes

### Eliminating differences between same sex survivor benefits and opposite sex survivor benefits provided to widowers

The review is required to assess the costs and other effect of removing differences between same sex survivor benefits and opposite sex survivor benefits provided to widowers.

This means:

- To align benefits for all surviving civil partners and same sex spouses (of either gender) with those for widowers of marriages of opposite sex couples - that is, benefits within each scheme are to be based on the same periods of accrual as widowers of marriages of opposite couples.
- Benefits provided to opposite sex widowers are subject to the legal minimum that only accruals post-17 May 1990 must be taken into account in equalising between men and women. But schemes can be more generous than that, so to ensure that the costs to schemes of providing exactly the same benefits to surviving same sex spouses and civil partners as to opposite sex widowers are assessed, costs must be calculated for all periods of accrual.

- 4.9 In most public service schemes benefits for surviving same sex spouses of either gender and for males who survive their female spouse exceed the minimum legal requirements and are already calculated on the same basis, taking into account service since 1988. Removing these differences in public service schemes would therefore have a negligible cost.
- 4.10 If all private sector schemes were to provide benefits to same sex couples on the same basis as they provide benefits to opposite sex widowers this would be estimated to cost around £0.1 billion.
- 4.11 Differences of treatment because of sexual orientation between men would be removed, but differences of treatment because of sexual orientation between women would be maintained. Differences because of sex between men and women in marriages of opposite sex couples would also remain.
- 4.12 In this and the previous scenario above some differences because of sexual orientation remain, and some differences because of sex remain. In the first, it is the opposite sex widower who is treated the least favourably. In that case, the widower of an marriage of an opposite sex couple would be entitled to a more generous survivor benefit had he been the survivor of a civil partnership or marriage of a same sex couple, whereas in the second, it is the widow of a marriage of an opposite sex couple who is treated more favourably (as now), and the widower of a marriage of an opposite sex couple and all survivors of same sex relationships, who are treated the same - and less favourably treated.



## Review of Survivor Benefits in Occupational Pension Schemes

### Eliminating all differences of treatment because of sexual orientation

This means:

- Providing survivor benefits to surviving female civil partners and female survivors of a marriage of a same sex couple which are identical to those provided to opposite sex widows, and of providing survivor benefits for surviving male civil partners and male survivors of a marriage of a same sex couple which are identical to those provided to opposite sex widowers.
- Eliminating all differences because of sexual orientation, leaving only the differences because of sex between men and women to operate in survivor benefits.

4.13 Another approach might be to eliminate all differences of treatment because of sexual orientation. This would involve aligning the benefits for all female survivors of civil partnerships or marriage of same sex couples with those provided to surviving opposite sex widows, and aligning benefits for all male survivors of civil partnerships and marriages of same sex couples with those provided to surviving opposite sex widowers.

4.14 If these differences in survivor benefits were removed this is estimated to have a capitalised cost of around £0.02 billion to the public service schemes and around £0.1 billion to private sector schemes.

4.15 But although this approach eliminates all differences because of sexual orientation in the provision of survivor benefits, it leaves differences because of sex, as all surviving men of legal relationships, whether survivors of civil partnerships, marriages of same sex couples, or marriages of opposite sex couples will be treated differently to all surviving women of legal relationships, whether survivors of civil partnerships, marriages of same sex couples, or marriages of opposite sex couples.

### Eliminating differences between opposite sex survivor benefits provided to widows and opposite sex survivor benefits provide to widowers

- The review is required to assess the costs and other effects of removing differences between opposite sex survivor benefits provided to widows and opposite sex survivor benefits provided to widowers.

This means:

- Providing survivor benefits for males who survive their female spouse on the same basis as they are provided to females who survive their male spouse.

## Review of Survivor Benefits in Occupational Pension Schemes

- 4.16 The differences were discussed in Chapter 3. If these differences in survivor benefits were removed this is estimated to have a capitalised cost of around £2.8 billion to the public service schemes and around £0.3 billion to private sector schemes.

### Other effects – introducing new differences in treatment

- 4.17 Short of eliminating all differences of treatment altogether, any approach for reducing differences leaves some differences in place. Aligning survivors of same sex legal relationships with survivor benefits received by opposite sex widows would introduce new differences between different groups.
- 4.18 Legal challenges to these differences might seek to rely on EU law and the European Convention on Human Rights. Article 157 of the Treaty of the Functioning of the European Union provides for equal pay for men and women in employment, and the EU “Framework Directive”<sup>21</sup> prohibits differences of treatment because of sexual orientation in employment and occupation, including occupational pensions. The European Convention on Human Rights requires that the rights and freedoms set out in the Convention shall be secured without discrimination, and rights to benefits for married couples and those in a civil partnership fall within the context of the right to respect for a private and family life, and the right to the peaceful enjoyment of possessions<sup>22</sup>. Public service pension schemes must comply with the Convention.

### Other factors to consider

- 4.19 In the event that differences in the benefits provided to different categories of survivor were removed there would be other potential considerations in addition to those discussed above.
- 4.20 For instance consideration would also need to be given to the fact that some scheme members may have voluntarily purchased additional survivor benefits at their own expense or may, as mentioned previously, have received a smaller member pension as a condition of providing a survivor pension for their spouse.
- 4.21 The existence of these features present additional complications. Careful consideration would be required if universal changes were made to remove differences in survivor benefits between specific categories of survivor, where some members had already paid more in the form of member contributions or reduced pension for the same benefits.
- 4.22 Consideration would have to be given to the implications of any changes on individual pension schemes, including the practical implications of the resources that would be needed to apply a change in how survivor benefits are calculated. Consideration would need to be given as to whether those schemes that have a small membership or are in a funding deficit, and which

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<sup>21</sup> (200/78/EC).

<sup>22</sup> Article 14, Article 8 and Article 1 of the First Protocol respectively.

## **Review of Survivor Benefits in Occupational Pension Schemes**

have not fully equalised survivor benefits, would be disproportionately impacted by any changes.

- 4.23 The costs presented in this review do not include any associated administrative costs to schemes that would be involved in changing scheme rules to altering survivor benefits.

## 5. Consultation

- 5.1 DWP and HMT consulted with a number of organisations/individuals as part of the review.
- 5.2 Consultation events were held with trades unions, LGBT organisations, equality groups, the Police Negotiating Board, and stakeholders representing the private pension industry.
- 5.3 As part of a separate consultation on changes to the Teachers' Pension Scheme (TPS), which included information on changes to implement the Government's policy on survivor benefits for same sex married couples in the TPS, the Government received written representations on differences in survivor benefits from a number of individual teachers and education unions.
- 5.4 A list of organisations that were either invited to provide views to the review or that submitted views is provided at Annex E. The Government is grateful to all those organisations and individuals that submitted views.
- 5.5 The following is a summary of the views and themes that have emerged in consultation.
  - Many of those consulted expressed the view that prospective equality is not full equality and that the costs involved with equalising survivor benefits between different groups of survivors should not be used as an argument against the progression towards full equality in survivor benefits for both past and future service.
  - Organisations responding said that the Government had the opportunity to change a historic injustice and that removing differences in survivor benefits should be done retrospectively and not just prospectively. A number of individuals also expressed to the Department of Education (DfE) their support for full equalisation of survivor benefits.
  - Some groups acknowledged that there were complex issues to consider in terms of removing differences in survivor benefits. There was an acknowledgement of the historic rationale leading to more generous survivor benefits for females who survive their male spouse. However some groups viewed the exception in the Equality Act, which enables schemes to restrict survivor benefits for same sex couples to service after 2005, fundamentally wrong.
  - Trades unions noted that there are some members of public service pension schemes who have opted to pay extra for additional survivor benefits. There was concern that any decision to remove differences in benefits would need to carefully consider the implications for scheme members who had chosen these options in the past.

## Review of Survivor Benefits in Occupational Pension Schemes

- Some of those consulted suggested that because of the historic differences between men and women e.g. the fact that in some schemes men paid higher contributions for survivor benefits than women, it would be reasonable for the same sex spouse of a man to get higher survivor benefits than the same sex survivor of a woman. One suggested approach was that the Government should consider directly linking the survivor benefit received to the amount of contributions paid by the member, regardless of the sex of their spouse.
- Some of those consulted suggested that the historic justification for providing a female who survives her male spouse with more generous benefits, might logically also apply to a female who survives her female spouse.
- It was suggested that the cost of equalisation should be viewed as reimbursement of rights withheld until now because those in same sex relationships have only recently been able to build up a survivor benefit.
- It was felt by some that retrospective changes in pension schemes have already been made, for example - providing benefits for same sex survivors in many public service schemes on the same basis as they are provided for males who survive their female spouse. Therefore it was considered that the Government should not use the principle of not retrospectively imposing costs on pension schemes as an argument not to equalise survivor benefits.
- Some of those consulted questioned the extent of wider risks involved in making changes for same sex survivors. It was suggested that the question of whether to remove differences in survivor benefits between males who survive their female spouse and females who survive their male spouse should be a separate question to the question of whether to remove differences in survivor benefits between same sex and opposite sex survivors.
- It was also suggested that the Government should take the opportunity through the review to look at the provision of survivor benefits for unmarried couples (e.g. the financial dependency test) and that the review could also explore removing restrictions in schemes that limit survivor pensions when the survivor remarries.
- Many organisations with whom the Government engaged suggested that the Government should conduct a full public consultation to provide an opportunity for those affected by arrangements to make their views on the issues known directly to the Government. Some individuals also expressed the view to DfE that the department should conduct a full public consultation on the policy in respect of the TPS.

## Review of Survivor Benefits in Occupational Pension Schemes

### Costs

- It was suggested there are different factors to consider in each case and that the costs involved with equalising survivor benefits for same sex survivors would be relatively modest compared with the cost of equalising between male and female opposite sex surviving spouses.
- Many trades unions questioned the methodology used for assessing costs to the public service schemes. They questioned the extent to which specific workforce characteristics were reflected in the cost analysis, including characteristics which might be specific to workforces in different regions. In particular respondents suggested that the cost estimates for equalisation in the LGPS might not fully reflect the position in that scheme.
- It was also suggested that in some schemes valuations have revealed a fall in the overall proportion of members leaving behind a qualifying survivor. It was suggested this potentially makes equalisation affordable.
- Trades unions also suggested that costs of equalisation in different public service schemes would vary and could be relatively modest in some schemes. They said any costs associated with equalisation in public service schemes should be borne by the employer and not included within scope of the cost cap mechanism for public service schemes.
- It was noted by some respondents that many private sector schemes, including those covering the privatised railway industry are already providing full equality in survivor benefits for same sex survivors. It was suggested that these schemes had deemed equalisation of benefits affordable and it was argued that public service schemes should follow the example.
- Some of those consulted said that the costs involved with equalisation are not significant when compared to overall scheme liabilities. It was also noted that these costs would not all be due at once but would be spread into the future.
- However others noted that the costs to smaller private schemes may be more significant, where the increased costs of additional liabilities to pay survivor benefits would be spread over a smaller number of members.
- It was noted that the cost estimates for removing differences in survivor benefits in private occupational schemes were highly sensitive to certain inputs which they thought might not be particularly robust. It was felt these needed to be treated with considerable caution, and the true costs could be greater by an order of magnitude. There was concern that any decision to impose retrospective costs on private schemes could have significant implications for scheme funding. The Government was urged against making any decision affecting private schemes without further work to ascertain the true costs to the private sector.

## 6. Conclusion

- 6.1 The Government has made it clear that it believes that it is right that married same sex couples and civil partners should be treated equally to married opposite sex couples. That is why it has brought forward legislation to ensure that survivor benefits are now built up equally for all legal relationships.
- 6.2 However, pensions are unique in that the consequences of actions that were taken in the past are crystallised today, and therefore reflect the inequalities of the past in today's pension outcomes. We know now that many schemes in the private sector have already equalised survivor benefits despite the cost. The review finds that reducing or eliminating the remaining differences in survivor benefits in the private sector would cost £0.4 billion, but that this cost would be concentrated in a relatively small group of schemes. Furthermore, the cost to the public service schemes would be £2.9 billion.
- 6.3 In considering its response to this review, the Government will need to consider these costs and the potential impact on pension schemes, along with the wider consequences of making retrospective changes to scheme rules. As this review demonstrates, these are complex issues and the Government will have to consider these very carefully before making a decision on whether the law should be changed.