

**General Scheme of Social Welfare (Bereaved Partner's  
Pension) Bill 2024**

## **Overview of Legislative Changes to the Widow's, Widower's and Surviving Civil Partner's (Contributory) Pension Scheme**

### **Background**

On 22 January, the Supreme Court delivered its judgment in the case of John O'Meara & Ors v the Minister for Social Protection & Ors [IESC] 2024 1. This case related to the entitlement of an unmarried co-habitant to a Widows, Widowers or Surviving Civil Partner's Contributory Pension (WCP).

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 excluded the appellant as the parent of dependent children from the category of persons entitled to benefit from the payment. The Court reached that conclusion on the basis of the equality guarantee contained in Article 40.1 of the Constitution.

While the Supreme Court order quashed the decision to refuse the appellant's application for WCP, the judgment notes that in order to resolve the issue raised, a legislative amendment is required. These Heads set out the measures to be taken to implement the judgment by extending eligibility for WCP to certain surviving cohabitants, and for the necessary changes to that scheme in light of this entitlement and to associated payments including payments under the Widow's, Widower's or Surviving Civil Partner's (Non-Contributory) Pension, Widowed or Surviving Civil Partner Grant and the Death Benefit Scheme under the Occupational Injury Benefit Scheme.

## **Proposed Legislative Changes and Notes**

### **HEAD 1 - Amendment to section 2**

The Principal Act is amended in section 2, along the lines of the following: by the insertion of the following definitions :

“ ‘qualified cohabitant’ has the meaning given to it in section 123A,

‘bereaved partner’s (contributory) pension’ has the meaning given to it in section 123;

‘bereaved partner’s (non-contributory) pension’ has the meaning given to it in section 162;”

### **NOTE**

#### **Purpose of Head**

The purpose of the amendments to section 2 is to facilitate the legislative changes required to the newly named bereaved partner’s (contributory) pension and bereaved partner’s (non-contributory) pension which will be extended to qualified cohabitants from 22 January 2024.

For this purpose, three new definitions are inserted into section 2 of the Act.

#### **Background**

Section 2 of the Act contains a definition of “cohabitant” and a number of other definitions relevant to the bereaved partner’s (contributory) pension. It is therefore necessary to insert the definition of “qualified cohabitant” into the section and to reference the new scheme names, bereaved partner’s (contributory) pension and bereaved partner’s (non-contributory) pension.

#### **Head**

The Head provides for the insertion into section 2(1) of the following definitions –

“qualified cohabitant”, “bereaved partner’s (contributory) pension” and “bereaved partner’s (non-contributory) pension”.

The insertion of these definitions in section 2(1) serves as a “signpost” to the actual definitions which are set out fully in sections 123, 123A and 162, respectively.

“qualified cohabitant” defines a new category of person who will now qualify for the bereaved partner’s (contributory) pension, or bereaved partner’s (non-contributory) pension. Currently, these pensions are open only to a widow, widower or surviving civil partner. A

“qualified cohabitant” will now qualify for the bereaved partner’s (contributory) pension if they meet the criteria that is set out in section 123A.

“bereaved partner’s (contributory) pension” is also defined, as is “bereaved partner’s (non-contributory) pension”. The insertion of these definitions is to signal the move away from the current titles of the schemes “widow’s (contributory) pension or widower’s (contributory) pension and surviving civil partner’s contributory pension” and its non-contributory counterpart.

## **Commencement**

All amendments provided for under this Head and every other Head will come into operation on enactment.

## **HEAD 2 - Amendment to section 39**

The Principal Act is amended in section 39(1) along the lines of the following: –

(a) by the substitution of the following paragraph for paragraph (k):

“(k) bereaved partner’s contributory pension,”

and

(b) by the substitution of the following paragraph for paragraph (n):

“(n) bereaved parent grant (paid by virtue of receipt of a benefit under Part 2)”

## **NOTE**

### **Purpose**

The purpose of this Head is to substitute the new scheme title “bereaved partner’s (contributory) pension” and the new scheme title “bereaved parent grant” for the current scheme titles contained in section 39(1) of the Act.

### **Background**

Part 2 of the Act provides for those benefits which are dependent on the payment of contributions. Section 39(1) of the Act lists these benefits, with current paragraph (k) and (n) of that subsection providing for “widow’s (contributory) pension, widower’s (contributory) pension” and “surviving civil partner’s (contributory) pension and “widowed or surviving civil partner grant”. These titles should be updated to reflect the new scheme names.

## Head

The head provides for the substitution of “bereaved partner’s (contributory) pension” for “widow’s (contributory) pension, widower’s (contributory) pension and surviving civil partner’s (contributory) pension” in paragraph (k) and the substitution of “bereaved parent grant (paid by virtue of receipt of a benefit under Part 2)” for “widowed or surviving civil partner grant (paid by virtue of receipt of a benefit under Part 2)” in paragraph (n) of section 39(1).

### HEAD 3 – Amendment to section 81

The Principal Act is amended, along the lines of the following: by the substitution of the following section for section 81:

81. Death benefit for bereaved partners and increases for qualified children, etc.

- 1) Death benefit shall be payable to the bereaved partner of the deceased partner.
- 2) Death benefit shall be a pension at the weekly rate set out in column (2) of Part 1 of Schedule 2, and where the beneficiary has attained pensionable age and is living alone, that rate shall be increased by the amount set out in column (6) of that Part.
- 3) A pension under subsection (2) shall not be payable for any period after the marriage or remarriage of the beneficiary or the entry by the beneficiary into a civil partnership or a new civil partnership or becoming a qualified cohabitant or again becoming a qualified cohabitant.
- 4) A beneficiary shall be disqualified for receiving a pension under this section -
  - a) if and so long as he or she is a cohabitant and
  - b) if the period of cohabitation meets the conditions set out in Section 123A (1), the beneficiary shall be deemed a qualified cohabitant, and Section 81(3) applies.
- 5) The weekly rate of pension under subsection (2) shall be increased by the amount set out -
  - (a) in column (4) of Part 1 of Schedule 2 in respect of each qualified child who has not attained the age of 12 years who normally resides with the beneficiary, and
  - (b) in column (5) of Part 1 of Schedule 2 in respect of each qualified child who has attained the age of 12 years who normally resides with the beneficiary.
- 6) The weekly rate of pension under subsection (2) shall be increased by the amount set out in column (7) of Part 1 of Schedule 2 where the beneficiary has attained the age of 80 years.

- 7) The weekly rate of pension under subsection (2) shall be increased by the amount set out in column (8) of Part 1 of Schedule 2 where the beneficiary has attained pensionable age and is ordinarily resident on an island.
- 8) For the purposes of this section-
  - “bereaved partner” has the meaning given to it in section 123;
  - “deceased partner” has the meaning given to it in section 123;
  - “qualified cohabitant” has the meaning given to it in section 123A.
- 9) Death benefit, in the case of a person whose claim is based on being a surviving qualified cohabitant within the meaning of section 123A, shall be payable from 22 January 2024.
- 10) For the purpose of this section, where the death occurred after the date of enactment, a person shall not be considered a bereaved partner if they had been separated from the deceased partner on whom the claim is based for at least 2 years immediately prior to the date of death of the deceased partner.

This section comes into operation on enactment.

#### **NOTE**

#### **Purpose of Head**

The purpose of this Head is to substitute the draft Section for the current Section 81.

#### **Background**

Section 81 is currently titled “Death Benefit for widow, widowers and increases for qualified children” which payment currently only extends eligibility to widows, widower’s and surviving civil partners. As a result of the Supreme Court decision on 22 January 2024, eligibility for the scheme needs to be extended to surviving qualified cohabitants. With the substitution of the current Section 81, the scheme will now be called “Death benefit for bereaved partners and increases for qualified children”. The substitution will allow for a surviving “qualified cohabitant” to be eligible for the scheme and allow for consequential amendments in wording used in some of the current sections.

#### **Head**

Subsection (1) includes that the payment can be paid to a surviving qualified cohabitant.

Subsection (2) sets out the nature of the payment.

Subsection (3) now includes a provision that in addition to loss of entitlement on marriage, remarriage or entering a new civil partnership, that the pension shall not be payable for any period after the entry into relationship of qualified cohabitation or new relationship of

qualified cohabitation. This is to provide that the payment stops for any period after this new relationship.

Subsection (4) now extends the disqualification of the payment on cohabitation. It retains that a person will be disqualified for the period of cohabitation but a new part (b) provides for a permanent loss of the pension if the period of cohabitation meets the conditions of qualified cohabitant. This means if a person cohabits for a period of 2 years where there is a child of the relationship or 5 years in any other case and meets the other conditions of Section 123A, they will then lose entitlement to the pension based on the previous qualified cohabiting relationship on a permanent basis.

Subsections (5) to (7) inclusive restate the existing provisions with no change.

A new subsection (8) is inserted, and this includes the definitions of “bereaved partner” “deceased partner” and “qualified cohabitant” and links the definition to Section 123A in Head 4.

A new subsection (9) is inserted. This reflects the fact that payments in respect of a qualified cohabitant shall commence on 22<sup>nd</sup> January 2024. This aligns with the bereaved partners (contributory) pension (Chapter 18).

A new subsection (10) is inserted to disqualify a person if they are separated from the deceased for two years prior to the date of death. This is in line with the policy position adopted in the bereaved partners (contributory) pension (Chapter 18).

### **Commencement**

This section comes into operation on enactment.

### **HEAD 4 – Amendment to Chapter 18 of Part 2**

Chapter 18 of Part 2 of the Principal Act is amended along the lines of the following: —

(a) by the substitution of the following title for the existing title:

*“Bereaved Partner’s (Contributory) Pension”*

(b) by the substitution of the following subsection for subsection (1) of section 123:

“(1)— In this Chapter

“civil partner”, in relation to a surviving civil partner who has been party to a civil partnership more than once, refers only to the surviving civil partner’s last civil partner;

“qualified cohabitant” in relation to a surviving qualified cohabitant who has been a qualified cohabitant more than once, refers only to the surviving qualified cohabitant’s last qualified cohabitant;

“pension” means bereaved partner’s (contributory) pension payable in respect of a deceased partner;

“bereaved partner” means a widow, a widower, a surviving civil partner or a surviving qualified cohabitant;

“deceased partner” means in respect of a bereaved partner, the last deceased spouse, or the last deceased civil partner, or the last deceased qualified cohabitant, whichever is the last, of that bereaved partner;

“relevant time” means—

(a) where the contribution conditions are being satisfied on the bereaved partner’s insurance record—

(i) the date of death of the deceased partner, or

(ii) where the bereaved partner attained pensionable age or deferred pensionable age as the case maybe before the date of death of the deceased partner, the date on which he or she attained that age,

or

(b) where the contribution conditions are being satisfied on the deceased partner’s insurance record—

(i) the date on which the deceased partner attained pensionable age or deferred pensionable age as the case maybe,

or

(ii) where the deceased partner died before attaining pensionable age or deferred pensionable age as the case maybe, the date of his or her death;

“spouse”, subject to section 124A in relation to a widow or widower who has been married more than once, refers only to the widow’s or widower’s last spouse;

“widow” subject to section 124A shall not include:

- i. a woman who would otherwise be a widow but for the fact that her marriage has been dissolved, being a dissolution that is recognised as valid in the State;
- ii. a widow who has been living apart from their spouse for at least 2 years.

“widower” subject to section 124A shall not include

- i. a man who would otherwise be a widower but for the fact that his marriage has been dissolved, being a dissolution that is recognised as valid in the State;
- ii. a widower who has been living apart from their spouse for at least 2 years.

“civil partner”, subject to section 124A shall not include



- i. a person who would otherwise be a civil partner but for the fact that his or her civil partnership has been dissolved, being a dissolution that is recognised as valid in the State;
- ii. a civil partner who has been living apart from their civil partner for at least 2 years.

“yearly average” means the average per contribution year of contribution weeks in respect of which the bereaved partner or deceased partner (as the case may be) has qualifying contributions, voluntary contributions or credited contributions in the appropriate period specified in section 125(1)(b) and where the average so calculated is a fraction of a whole number consisting of one-half or more it shall be rounded up to the nearest whole number and where it is a fraction of less than one-half it shall be rounded down to the nearest whole number.”,

(c) by the insertion of the following section after section 123:

**“Qualified Cohabitant**

123A. (1) For the purpose of Section 81, this Chapter and Chapter 21 of Part 2 and Chapter 6 of Part 3, and subject to subparagraphs (2), (3) and (4) a person shall be a "qualified cohabitant" if that person is—

(a) one of 2 adults (whether of the same or the opposite sex) who lived together as an exclusive couple in an intimate and committed relationship within the State and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other and who, immediately before the time that that relationship ended, whether through death or otherwise, was living with the other adult as a couple for a period—

(i) of 2 years or more, in the case where they are the parents of one or more dependent children within the meaning of subsection (7), and

(ii) of 5 years or more, in any other case,

and

(b) For the avoidance of doubt, a relationship does not cease to be an intimate relationship for the purpose of this section merely because it is no longer sexual in nature.

(2) Notwithstanding subsection (1)(a), where the relationship concerned ends before the coming into operation of section 4(2) of the Family Law Act 2019, an adult who would otherwise be a qualified cohabitant shall not be a qualified cohabitant if -

(a) one or both of the adults is or was, at any time during the relationship concerned, an adult who was married to someone else, and

(b) at the time the relationship concerned ends, each adult who is or was married has not lived apart (which term shall, in this section, be construed in

accordance with section 5(1A) of the Family Law (Divorce) Act 1996) from his or her spouse for a period or periods of at least 4 years during the previous 5 years.

(3) For the purpose of this Chapter, a person shall not be a qualified cohabitant if they ceased being a qualified cohabitant more than two years prior to the date of death of the deceased qualified cohabitant on whom the claim is based.

(4) For the purposes of this section, 2 adults are within a prohibited degree of relationship if they would be prohibited from marrying each other in the State, or they are in a relationship referred to in the Third Schedule to the Civil Registration Act 2004 inserted by section 26 of Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

(5) In determining whether or not a person is a qualified cohabitant, the Minister shall take into account all the circumstances of the relationship in question and in particular shall have regard to the following:

- (a) the duration of the relationship;
- (b) the basis on which the couple lived together;
- (c) the degree of financial dependence of either adult on the other and any agreements in respect of their finances including whether in relation to that relationship;
- (d) the degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property;
- (e) whether there are one or more dependent children;
- (f) any payment under this Act and the conditions in relation to the payment;
- (g) the degree to which the adults present themselves to others as a couple;
- (h) whether one of the adults cares for and supports the children of the other.

(6) The Minister may, by regulations, make provision in relation to the documentary proof, including information or specific documentation to be provided by a person in support of an application, where any the matters specified in subsection (5) are relied on for a claim of qualified cohabitation and, notwithstanding the generality of the foregoing, any such regulations may provide for—

- (a) any additional evidence that may be offered by a person to demonstrate the nature, extent and duration of the relationship of qualified cohabitation,
- (b) such other matters as the Minister considers appropriate for the purposes of this section.

(7) The question as to whether a person is a qualified cohabitant, there being no legal impediment, in accordance with subsection (2), (3), or (4) to such a determination, having taken into account the matters specified in subsection (5), including the information or documentation required in accordance with any regulations made under subsection (6), is a question that may be decided by a deciding officer.

(8) In this section- "dependent child", in relation to a qualified cohabitant, means any child of whom both the qualified cohabitants are the parents and who is –

(a) under the age of 18 years, or

(b) 18 years of age or over and is -

(i) receiving full-time education or instruction at any university, college, school or other educational establishment and is under the age of 23 years, or

(ii) incapable of taking care of his or her own needs because of a mental or physical disability.”

(d) by the substitution of the following section for section 124:

**“Entitlement to pension.**

124. (1) Subject to subsection (5) and this Act, a bereaved partner shall be entitled to a pension—

(a) where the contribution conditions set out in section 125 are satisfied on either the insurance record of the bereaved partner or that of his or her deceased partner,

(b) where the deceased partner was entitled to a State pension (contributory) which included an increase in respect of the bereaved partner by virtue of section 112(1) in respect of a period ending on the deceased partner’s death, or

(c) where the deceased partner would have been entitled to a State pension (contributory) at an increased weekly rate by virtue of section 112(1), in the deceased partner’s own right, in respect of a period ending on his or her death, but for the receipt by the bereaved partner of a State pension (non-contributory), a blind pension or a carer’s allowance.

(2) A pension shall not be payable to a bereaved partner for any period after his or her marriage or remarriage, or his or her entry into a civil partnership or a new civil partnership or entry into relationship of qualified cohabitation or new relationship of qualified cohabitation.

(3) A bereaved partner shall be disqualified for receiving a pension

(a) if and so long as he or she is a cohabitant and

- (b) if the period of cohabitation meets the conditions set out in Section 123A (1)(a), the bereaved partner shall be regarded as a qualified cohabitant, and Section 124(2) applies.

(4) A person who, having ceased to be entitled to a pension by virtue of that person's marriage or remarriage, or his or her entry into a civil partnership or a new civil partnership, on again becoming a bereaved partner in respect of his or her deceased partner be entitled to a pension at the rate which would have been payable had the person not married, remarried, entered into a civil partnership or a new civil partnership where the person—

(a) fails to satisfy the conditions set out in subsection (1), or

(b) on satisfying the conditions set out in subsection (1), is entitled to a pension at a rate below that which would have been payable had the person not married, or remarried or not entered into a civil partnership or a new civil partnership.

(5) Subject to section 124A (2), subsection (4) shall cease to apply from the date of enactment of this provision.

(6) A pension, in the case of a bereaved partner whose claim for pension is based on being a surviving qualified cohabitant, shall be payable from 22 January 2024.”,

(e) by the insertion of the following section after section 124:

**“Saver**

124A. (1) Notwithstanding the definitions of ‘spouse’ in section 123(1), these definitions shall, until the date of enactment of this provision, be read as follows:

(a) “spouse” in relation to a widow or widower’s last spouse shall include a party to a marriage that has been dissolved, being a dissolution that is recognised as valid in the State;

(b) “widow” shall include a widow or a woman who would otherwise be a widow but for the fact that her marriage has been dissolved, being a dissolution that is recognised as valid in the State;

(c) “widower” shall include a widower or a man who would otherwise be a widower but for the fact that his marriage has been dissolved, being a dissolution that is recognised as valid in the State;

(d) “civil partner” in relation to a surviving civil partner’s last civil partner, shall include a party to a civil partnership has been dissolved, being a dissolution that is recognised as valid in the State;

(2) In the case of a person to whom section 124(4) would have applied before the date of enactment of section 124(5), then notwithstanding its enactment, subsection (5)

shall not operate so as to prevent the application of section 124(4) in respect of a claim made after said date of enactment.”,

(f) by the substitution of the following subsection for subsection (1) of section 125:

“(1) The contribution conditions for pension are—

(a) that the bereaved partner has qualifying contributions in respect of not less than 260 contribution weeks in the period beginning with his or her entry into insurance and ending immediately before the relevant time, and

(b) that, where at the relevant time, 4 years or longer has elapsed since the bereaved partner’s entry into insurance—

(i) the yearly average for the 3 contribution years, or (where warranted by his or her insurance record) 5 contribution years, ending with the end of the last complete contribution year before the relevant time is not less than 39, or

(ii) the yearly average in respect of the period commencing at the beginning of the contribution year in which his or her entry into insurance occurred and ending at the end of the last complete contribution year before the relevant time is not less than 48,

but, where those conditions are not satisfied on the bereaved partner’s insurance record, they may be satisfied on his or her deceased partner’s insurance record, (the bereaved partner’s insurance record being disregarded).”,

#### **NOTE re section 123(1)**

#### **Purpose of the Head**

The purpose of this Head is to amend Chapter 18 of Part 2 of the Act to amend the title of the pension, to extend eligibility to the pension to bereaved “qualified cohabitants” and to cease eligibility to the pension where formal dissolution of a marriage or civil partnership has occurred.

The title of the Chapter is to change from “Widow’s (Contributory) Pension, or Widower’s (Contributory) Pension” to “Bereaved Partner’s (Contributory) Pension”.

In relation to section 123 which provides for relevant definitions for the purposes of the Chapter, a number of amendments are being made. The purpose of the amendments to the existing definitions in section 123 is to reflect the changes required to where a relationship ends. A formal dissolution or separation for more than two years will now preclude the surviving partner to that union from being eligible to claim the pension in respect of the deceased partner to that union. The new definitions of “bereaved partner” and “deceased partner” reinforce this.

The same rule will apply in respect of qualified cohabitants, whose status as such, is a matter to be determined by a Deciding Officer (see section 123A). A qualified cohabitation that ceases will render the surviving qualified cohabitant ineligible for bereaved partner's (contributory) pension, after 2 years.

## **Background**

Although section 39(1)(k) refers to widow's (contributory) pension, widower's (contributory) pension and surviving civil partner's (contributory) pension", Chapter 18 is currently entitled "Widow's (Contributory) Pension or Widower's (Contributory) Pension". This minor anomaly aside, the pension is now being extended to "qualified cohabitants".

Section 123 includes the existing definitions of "civil partner", "spouse", "widow", "widower" and "pension".

Under current legislation a person may retain their entitlement to WCP after divorce. Hence, a person can be in receipt of WCP in respect of a person who they were not married to at the time of the latter's death. As currently defined in section 123, the terms "widow", "widower" "civil partner" and "spouse" include persons whose marriages or civil partnerships have been dissolved, and accordingly they are currently eligible to claim widow's (contributory) pension, widower's (contributory) pension, or surviving civil partner's (contributory) pension, as the case may be, in respect of their last former spouse or civil partner. Further, such a person whose last marriage or civil partnership was dissolved, would be eligible to claim in respect of the death of a prior spouse /civil partner.

Where formal dissolution of a marriage or civil partnership has occurred or the relationship has ceased for more than two years, these definitions require amendment to limit the scope of application of these definitions to persons whose marriage or civil partnership have not been formally dissolved or separated for more than two years.

With the change of title of the pension scheme to "bereaved partner's (contributory) pension" and the extension of eligibility to the pension to "qualified cohabitants", it is necessary to define both these terms.

## **Head**

The Head substitutes the current section 123 for the existing subsection.

The Head amends the definitions of "widow", "widower" "civil partner" and "spouse" to restrict the scope of the definitions to persons whose marriages or civil partnerships have not been dissolved and to remove eligibility two years after separation or the breakdown of the relationship.

The Head also substitutes a new definition of "pension", which substitutes "bereaved partner's (contributory) pension" for the existing title.

"qualified cohabitant" is defined fully in section 123A.

A “qualified cohabitant” comes within the definition of “bereaved partner” and is thus included within those to whom the new title of the pension “bereaved partner’s (contributory) pension” will apply.

“deceased partner” is also defined and when read together with “bereaved partner” reinforces the restriction of the application of those terms in any claim to the surviving partner’s last partner. Former partners prior to the last (deceased) partner are excluded.

### **Commencement**

As with the other provisions providing for amendments to this pension, this Head will come into effect on enactment.

## **NOTE re 123A**

### **Purpose**

The purpose of paragraph (c) of the head is to insert a new section 123A into the Chapter to define “qualified cohabitant”. The purpose is to provide for a framework whereby eligibility for bereaved partner’s (contributory) pension is extended to qualified cohabitants who meet the contribution requirements in section 124.

### **Background**

The current widow’s, widower’s and surviving civil partner’s pension is not open to a claim from a surviving cohabitant in respect of his or her deceased cohabitant.

As set out in the introductory notes, in January the Supreme Court delivered its judgment in relation to the entitlement of an unmarried co-habitant to a widow’s, widower’s or surviving civil partner’s contributory pension (WCP) (see introductory notes).

### **Head**

The new section defines who may be a qualified cohabitant, and those who are not qualified cohabitants.

The definition for “qualified cohabitant” relies on the existing definition of ‘qualifying cohabitant’ as set out in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (the 2010 Act).

Subsection (1)(a) of the Head defines the scope “qualified cohabitant”, and this is subject to subsections (2), (3) and (4). The basis for a person to be “qualified cohabitant” will require the person to be 1 of 2 adults who lived together in Ireland as an exclusive couple (and not related to each other) for a period of:

2 years or more where there is a dependant child of that relationship

or

5 years or more in other cases.

It should be noted that a widow, widower or a surviving civil partner will become a “qualified cohabitant” if and when they meet the relevant cohabitation time periods (assuming the other conditions are met). In doing this, they can only then make a claim for pension in respect of their “qualified cohabitant” (assuming their qualified cohabitant becomes deceased) and their potential to claim is further qualified by 124(3)(b) if that relationship of qualified cohabitation ceased more than two years before the date of death of their qualified cohabitant. (see section 124(3)(b) below).

Paragraph (b) of subsection (1) confirms (as per the 2010 Act) that a relationship does not cease to be intimate merely because it is no longer sexual in nature.

Subsections (2), (3) and (4) preclude the categories of persons covered by those subsections from being qualified cohabitants.

In relation to subsection (3), this provides that in the case of a relationship of qualified cohabitation that ceases, a qualified cohabitant loses their status of qualified cohabitant after 2 years. This has consequences for a surviving qualified cohabitant as they will cease to have a claim for bereaved partner’s (contributory) pension should their former qualified cohabitant die more than two years after the cessation of the relationship.

Subsection (5) describes the matters to be taken into account when determining if the claimant is a qualified cohabitant.

Subsection (6) is a regulation making power to allow the Minister for Social Protection to make Regulations concerning the types of documentary proof connected to the matters listed in subsection 5 that are relied on by a claimant.

Subsection (7) sets out the process of determination of whether a person is a qualified cohabitant and designates the function to a Deciding Officer.

Subsection (8) confirms the scope of “dependent child” for the purposes of subsection (1).”,

## **NOTE re section 124**

### **Purpose**

The purpose of the amendments to section 124 is to reflect the changes in relation to the payment of the pension in respect of the death of an ex-spouse or civil partner and to provide that a qualified cohabitant will become entitled to payment of the pension. Its purpose is also to update the title of the pension and the change of title of the claimant survivor to “bereaved partner” and the change of title of the person upon whose death the claim is based to “deceased partner”.

### **Background**

Currently, section 124 provides that a widow, widower or surviving civil partner is entitled to a widow’s, widower’s or surviving civil partner’s (contributory) pension either on their own insurance record or the insurance record of his or her deceased spouse or civil partner.



Given that-

“spouse”, “widow”, “widower” and “civil partner” are currently defined in section 123 as not being limited to extant relationships but can also include relationships that have been dissolved, and

section 124(4) provides that a person can revert to the higher rate of pension payable in respect of a former spouse or civil partner, if more advantageous to that beneficiary, than would be payable on the death of their last spouse,

it is therefore necessary that the section is amended to reflect that it is only in respect of the death of the last deceased partner that a surviving partner may have a claim.

## **Head**

In relation to subsection (1) of the Head, and as noted in relation to section 123, two new terms “bereaved partner” and “deceased partner” have been defined in that section. In the case of the latter definition, this refers solely to the last partner (widow, widower or civil partner) of the surviving claimant.

The terms bereaved partner and deceased partner are substituted respectively in section 124, as appropriate, to replace “widow, widower or surviving civil partner” and “deceased widow, widower or deceased civil partner” and the use of these terms limit the claim to the bereaved partner’s deceased partner.

As “bereaved partner” is defined as including surviving qualified cohabitant, access to the pension is now open to such claimants.

Subsection (2) and (3) replicate the previous intent of these subsections. Subsection (2) confirms that the pension ceases on the remarriage of a bereaved partner, or their entry into a new civil partnership. It now also provides, in the light of the accessibility of the pension to qualified cohabitants, that the pension ceases if the qualified cohabitant enters into another qualified cohabitation.

Subsection (3) provides for the cessation of pension if the bereaved partner becomes a cohabitant.

Subsection (5) provides for the cessation of the operation of subsection (4) from the enactment of this legislation. This is necessary to reflect that it is only the bereaved partner’s deceased partner (their last partner) upon which a claim may be founded. A saver provision is provided in section 124A(2) for persons who may be able to avail of this provision.

Subsection (6) provides that a bereaved partner who is a surviving qualified cohabitant will be entitled to claim the pension prospectively from 22 January 2024. This reflects the date of the Supreme Court judgment.

## **NOTE re section 124A**

## **Purpose**

The purpose of new section 124A is to provide a saver provision in respect of the current definitions of the terms spouse, widow, widower and civil partner so as to preserve for the interim (until the enactment of this legislation) the scope of these definitions.

## **Background**

The current definitions of the terms spouse, widow, widower and civil partner allows for the dissolution of that person's marriage or civil partnership while formally retaining that status, and thus qualifying for widow's, widower's or surviving civil partner's contributory pension in respect of a death of that ex-spouse or ex-civil partner. It is now intended that a formal dissolution will disqualify a person from claiming in respect of a deceased former spouse, any outstanding claims will be based on the current meaning of these terms and will preserve entitlement.

This is also the case in respect of persons to whom subsection (4) would have applied.

## **Head**

Subsection (1) restores temporarily the current language of the terms spouse, widow, widower and civil partner so that their current meaning is preserved until enactment.

Subsection (2) provides that a person to whom subsection (4) would apply will not be disqualified from availing of the provision beyond the date of enactment, if prior to the date enactment, he or she was so qualified to avail of the better rate.

### **NOTE re section 125(1)**

## **Purpose**

The purpose of this head is to update section 125(1) so as to reflect the new terms "bereaved partner" and "deceased partner".

Section 125 (1) relates to the contribution eligibility conditions which must be satisfied either on the claimant's (bereaved partner) insurance record, or the insurance record of the person whose death is the basis for the claim (deceased partner).

## **Background**

Section 125 currently provides that the claimant (the widow, widower or surviving civil partner) must meet certain contribution requirement in order to be eligible to claim a pension. If the claimant fails to satisfy the contribution requirements, the insurance record of the deceased person may qualify the claimant.

The only substantive change required to this provision, is to reference qualified cohabitants within the provision. To provide for qualified cohabitants being subject to section 125, it is necessary to update the provision by substituting the term "bereaved partner" for "widow, widower and surviving civil partner".

## **Head**

The Head substitutes a revised subsection (1) with the terms “bereaved partner” being employed instead of “widow, widower and surviving civil partner”. The term as defined in section 123, includes “qualified cohabitant” so in effect providing that the same insurance requirements apply to qualified cohabitants. Similarly, the term “deceased partner insurance record” is being substituted for “deceased spouse’s or deceased civil partner’s insurance record”.

### **Note in relation to section 129**

This is a restatement of the existing section 129 of the Act.

### **HEAD 5 – Amendment to Chapter 21 of PART 2**

The Principal Act is amended, along the lines of the following: by the substitution of the following Chapter for Chapter 21 of PART 2:

#### Chapter 21 Bereaved Parent Grant

137. Entitlement to bereaved parent grant.

(1) Subject to this Act, a grant (in this section referred to as a "bereaved parent grant") of €8,000 or any higher amount that may be prescribed, shall be paid to a widow, widower, surviving civil partner or surviving qualified cohabitant on the death of their spouse or civil partner or qualified cohabitant who -

is entitled to or in receipt of -

- (a) death benefit under section 81,
- (b) bereaved partner’s (contributory) pension under Chapter 18 of Part 2,
- (c) bereaved partners (contributory) pension under Chapter 18 of Part 2 by virtue of Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 or by virtue of a reciprocal agreement under section 287,
- (d) one-parent family payment, or
- (e) State pension (non-contributory),

which includes an increase in respect of a qualified child.

(2) In this Chapter -

"spouse" in relation to a widow or widower who has been married more than once, refers only to the widow's or widower's last spouse;

"surviving civil partner" means a surviving civil partner who has at least one qualified child who normally resides with him or her at the date of death of his or her civil partner or whose child is born within 10 months of the date of death of their civil partner and shall not include a person who has been living apart from their civil partner for at least 2 years;

"widow" means a person who has at least one qualified child who normally resides with her at the date of death of her spouse or whose child is born within 10 months of the date of death of her spouse and shall not include a woman who has been living apart from their spouse for at least 2 years.

"widower" means a person who has at least one qualified child who normally resides with him at the date of death of his spouse and shall not include a man who has been living apart from their spouse for at least 2 years.

"qualified cohabitant" means a person who meets the conditions set out in Section 123A and

- (i) who has at least one qualified child who normally resides with him or her at the date of death of their qualified cohabitant or whose child is born within 10 months of the date of death of their qualified cohabitant and
- (ii) the date of death of the deceased qualified cohabitant on whom the claim is based occurred on or after the date of enactment.

(3) Notwithstanding the definitions in subsection (2), these definitions shall, until the date of enactment of this provision, be read as follows:

"spouse" includes a party to a marriage that has been dissolved, being a dissolution that is recognised as valid in the State and in relation to a widow or widower who has been married more than once, refers only to the widow's or widower's last spouse;

"surviving civil partner" means a surviving civil partner who has at least one qualified child who normally resides with him or her at the date of death of his or her civil partner;

"widow" means a person who has at least one qualified child who normally resides with her at the date of death of her spouse or whose child is born within 10 months of the date of death of her spouse and includes a woman who would otherwise be a widow but for the fact that her marriage has been dissolved, being a dissolution that is recognised as valid in the State;

"widower" means a person who has at least one qualified child who normally resides with him at the date of death of his spouse and includes a man who would otherwise be a widower but for the fact that his marriage has been dissolved, being a dissolution that is recognised as valid in the State.

(4) This section comes into operation on enactment.

## NOTE

### **Purpose of Head**

The purpose of this Head is to substitute the draft Chapter for the current Chapter 21.

### **Background**

Chapter 21 is currently titled “Widowed or Surviving Civil Partner Parent Grant” which scheme only extends eligibility to Widows, Widower’s and surviving Civil Partners. As a result of the Supreme Court decision on 22 January 2024, it has been decided to extend eligibility for the scheme to surviving qualified cohabitants. With the substitution of the current Chapter 21, the scheme will now be called “Bereaved Parent Grant”. The substitution will allow for the inclusion of a “qualified cohabitant” as defined in Head 4 for eligibility for the Grant provided they meet the other criteria (including receipt of the bereaved partner’s pension and have at least one qualified child residing with them) and also allow for consequential amendments in wording used in some of the current sections.

### **Head**

Subparagraph 1 includes “bereaved parent grant” as the name of the scheme and also includes “qualified cohabitant” as a person who may be entitled to the payment.

Part (b) of subparagraph 1 includes the schemes a person must be in receipt of to be eligible for this payment. Widow's (contributory) pension, Widower's (contributory) pension and surviving civil partner (contributory) pension are now replaced with bereaved partner’s (contributory) pension (which now includes surviving cohabiting partners). The Bereavement Grant has been removed as this scheme ceased payment in 2014.

Subparagraph 2 includes the amended definitions required for this Chapter. The definitions of spouse, widow and widower are amended to remove those people who have been divorced or separated for more than two years from availing of the scheme. This is consistent with the definitions used in Head 4, the bereaved partner’s (contributory) pension. The definitions are modified to take into account that the bereaved person must have at least one qualified child or a child that is born within 10 months of date of death.

Qualified Cohabitant is defined for the purposes of the Chapter and is linked to the extensive definition in Head 4, Section 123A. The definition is qualified to provide eligibility only to qualified cohabitants where their deceased partners death occurred on or after the date of enactment.

Also, the definition of surviving civil partner is amended to now include “or whose child is born within 10 months of the date of death of their civil partner”. This is done to keep the definition consistent with the definition of widow and qualified cohabitant.

A new subparagraph (3) is inserted. This subparagraph includes the previous definitions which included people who have been divorced. The purpose of the inclusion of these definitions in a new subparagraph is to ensure that a person who is currently within any of these definitions will retain entitlement to this scheme up until the date of enactment of this legislation.

## **Commencement**

This section comes into operation on enactment.

## **HEAD 6 - Amendment to section 139**

The Principal Act is amended in section 139(1) along the lines of the following: –

(a) by the substitution of the following paragraph for paragraph (e):

“(e) bereaved partner’s (non-contributory) pension and guardian’s payment (non-contributory),”, and

(b) by the substitution of the following paragraph for paragraph (f):

“(f) bereaved parent grant (paid by virtue of one-parent family payment or State pension (non-contributory) under this Part)”.

### **NOTE**

## **Purpose**

The purpose of this Head is to substitute the new scheme titles “Bereaved Partner’s (Non-Contributory) Pension” and “Bereaved Parent Grant” for the current scheme titles contained in section 139(1) of the Act.

## **Background**

Part 3 of the Act provides for assistance payments which are subject to means testing. Section 139(1) of the Act lists these assistance benefits, with current paragraph (e) of that subsection providing for widow’s (non-contributory) pension, widower’s (non-contributory) pension, surviving civil partner’s (non-contributory) pension and guardian’s payment (non-contributory), and paragraph (f) providing for widowed or surviving civil partner grant. With the change of title of the non-contributory pension payable to a widow, widower or surviving civil partner being changed to bereaved partner’s (non-contributory) pension, and the title of the widowed or surviving civil partner grant changing to bereaved parent grant it is necessary to amend the titles of the scheme.

## **Head**

The head provides for the substitution of “bereaved partner’s (non-contributory) pension” for “widow’s (non-contributory) pension, widower’s (non-contributory) pension and surviving civil partner’s (non-contributory) pension” in paragraph (e) of section 139(1). It should be noted that part of the title which relates to the current “Guardian’s Payment (Non-Contributory) is being retained as that is not affected by these changes. The head also provides for the substitution of “bereaved parent grant” for “widowed or surviving civil partner grant” in paragraph (f) of section 139(1).

## Commencement

As with the amendments to Sections 2 and 39 and Chapter 18 of Part 2 of the Act, the amendments to Part 3 of the Act come into operation from enactment.

### HEAD 7 - Amendment to Chapter 6 of Part 3 of the Act

The Principal Act is amended in Chapter 6 of PART 3 along the lines of the following: —

(a) by the substitution of the following title for the existing title:

*“Bereaved Partner’s (Non-Contributory) Pension and Guardian’s Payment (Non-Contributory)”*

(b) in section 162, by the substitution of the following subsection for subsection (1):

“pension” means bereaved partner’s (non-contributory) pension payable in respect of a deceased partner;

"weekly means" shall, subject to Rule 1(1) of Part 5 of Schedule 3, be the yearly means divided by 52;

“bereaved partner” means a widow, a widower, a surviving civil partner or a surviving qualified cohabitant;

“deceased partner” means, in respect of a bereaved partner, the last deceased spouse, or the last deceased civil partner, or the last deceased qualified cohabitant, whichever is the last, of that bereaved partner ;

“qualified cohabitant” has the meaning given to it in section 123A;

“widow” subject to section 162A shall not include:

- (i) a woman who would otherwise be a widow but for the fact that her marriage has been dissolved, being a dissolution that is recognised as valid in the State;
- (ii) a widow who has been living apart from their spouse for at least 2 years.

“widower” subject to section 162A shall not include

- (i) a man who would otherwise be a widower but for the fact that his marriage has been dissolved, being a dissolution that is recognised as valid in the State;
- (ii) a widower who has been living apart from their spouse for at least 2 years.

“civil partner”, subject to section 124A shall not include

- (i) a person who would otherwise be a civil partner but for the fact that his or her civil partnership has been dissolved, being a dissolution that is recognised as valid in the State;
- (ii) a civil partner who has been living apart from their civil partner for at least 2 years.

(c) by the insertion of the following section after section 162:

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162A. (1) Notwithstanding the definitions in section 162, these definitions shall, until the date of enactment of this provision, be read as follows:

(a) “widow” shall include a widow or a woman who would otherwise be a widow but for the fact that her marriage has been dissolved, being a dissolution that is recognised as valid in the State;

(b) “widower” shall include a widower or a man who would otherwise be a widower but for the fact that his marriage has been dissolved, being a dissolution that is recognised as valid in the State;

(c) “civil partner” in relation to a surviving civil partner’s last civil partner, shall include a party to a civil partnership has been dissolved, being a dissolution that is recognised as valid in the State;

(d) in section 163—

(i) by the substitution, of “bereaved partner” for “widow, widower or surviving civil partner” in each place that it occurs,

(ii) by the substitution of the following for subsection 163(2):

“A pension shall not be payable to a bereaved partner for any period after his or her marriage or remarriage, or his or her entry into a civil partnership or a new civil partnership or entry into relationship of qualified cohabitation or new relationship of qualified cohabitation.”,

and

(iii) by the insertion of the following subsection after subsection (3):

“(4) A pension shall, in the case of a bereaved partner whose claim for pension is based on being a surviving qualified cohabitant shall be payable from 22 January 2024.”,

(e) by the substitution of the following section for section 166

“(1) A bereaved partner shall be disqualified for receiving a pension

(a) if and so long as he or she is a cohabitant and



(b) if the period of cohabitation meets the conditions set out in Section 123A (1)(a), the bereaved partner shall be regarded as a qualified cohabitant, and Section 163(2) applies.”

(f) by the substitution of the following section for sections 167 and 167A:

**“Avoidance of double pensions.**

167. Where a bereaved partner would, but for this section, be entitled to both a bereaved partner’s (contributory) pension and a pension under this Chapter, the latter pension shall not be payable except insofar as is provided by regulations under section 247.”.

**NOTE**

**Purpose**

The purpose of this Head is to make amendments to Chapter 6 of Part 3 of the Act, to update the relevant provisions in a similar manner as to those made to Chapter 18 of Part 2. These amendments update Widow’s (Non-Contributory) pension, Widower’s (Non-Contributory) pension and Surviving Civil Partner’s (Non-Contributory) Pension in a like manner to the changes made to the corresponding contributory pension provisions. Amendments are being made to sections 162, 163, 166 and 167.

**Background**

Chapter 6 of Part 3 of the Act contains the provisions of the Act relevant to Widow’s (Non-Contributory) pension, Widower’s (Non-Contributory) pension and Surviving Civil Partner’s (Non-Contributory) Pension. With the change of title of this pension, and an extension of eligibility to claimants who are qualified cohabitants, and a changes to the eligibility rules in respect of persons whose relationships have ended, it is necessary to update these provisions.

**Head**

Paragraph (a) of the Head substitutes a new title for this pension.

Paragraph (b) of the Head relates to Section 162 of the Act, which contains definitions relevant to the non-contributory pension scheme. In relation to the amendments to this section, the same new definitions of “bereaved partner”, deceased partner”, and “qualified cohabitant” are inserted in respect of the non-contributory scheme, as were inserted into section 123 for the equivalent contributory pension. These terms have the same meaning for both.

Similarly, the definition of pension is substituted in section 162. In this case the pension is the “bereaved partner’s (non-contributory) pension”.

Finally, the definitions of “widow”, widower” and “surviving civil partner” are amended so as to exclude from the meaning of these terms a person whose marriage or civil partnership has been formally dissolved, or a person who is separated. This is the same change as was made to these definitions in the equivalent contributory pension.

In Paragraph (c), along the lines of proposed new section 124A in paragraph (e) to that head 4, a similar saver clause is inserted here.

Paragraph (d)(i) of the Head relates to Section 163 – Entitlement to pension - is updated to substitute “bereaved partner” for in both subsections (1) and (2). This substitution has the effect of now including qualified cohabitants as persons covered by the provision.

Note that in respect of the amendment to subsection (2), the current text provides that payment of the pension ceases if the beneficiary remarries, or enters into a new civil partnership. This is amended to also cease payment upon entry into qualified cohabitation, in a manner similar to section 124.

Subparagraph (ii) of paragraph (c) of the Head provides that payment of the non-contributory pension is prospectively payable to qualified cohabitants from 22 January 2024, in line with the similar provision for the contributory pension.

Paragraph (e) of the Head amends section 166 which relates to disqualification for pension on becoming a cohabitant. Currently, a widow, widower, or surviving civil partner “shall not, if and so long as he or she is a cohabitant, be entitled to and shall be disqualified for receiving payment of pension”. The effect of the amendment is to provide, in the light of the accessibility of the pension to qualified cohabitants, that the pension ceases if the qualified cohabitant enters into another qualified cohabitation. This is in line with the approach taken in section 124.

Paragraph (f) of the head substitutes a revised section 167 for the current sections 167 and 167A both of which provide for the avoidance of payment of double payment of pensions. The current section 167 provides for the avoidance of a double payment of pension – in circumstances where a person would qualify for both the contributory and non-contributory pension – in respect of widows and widowers while section 167A provides for the same avoidance in the case of surviving cohabitants.

The revised amalgamated section 167 used the term “bereaved partner” and thus captures the original three categories of persons together with qualified cohabitants within the provision.

## **HEAD 8 – Amendment to Part 1 of Schedule 2 to the Act**

The Principal Act is amended, in Column 1 of Part 1 of Schedule 2 along the lines of the following: –

(a) by the substitution of the following reference for reference No. 2(a)

“(a) pension payable to a bereaved partner (section 81), additional increase for a bereaved partner (under section 81) who has attained pensionable age”, and

(b) by the substitution of the following reference for reference No. 5:

“Bereaved Partner’s (Contributory) Pension and a payment referred to in paragraph (a) of the definition of ‘relevant person’ in section 178(1): additional increase for beneficiary who has reached pensionable age”

## **NOTE**

### **Purpose**

The purpose of this head is to update Part 1 of Schedule 2 to the Act to reflect the new title of this pension scheme in the relevant reference.

### **Background**

Part 1 of Schedule 2 to the Act lists the various contributory schemes (arising from payment of contributions) and the rates of payment in respect of those schemes that are payable to a beneficiary. Reference 5 of Column 1 is the relevant reference in respect of the payment of the contributory pension payable to a widow, widower or surviving civil partner.

### **Head**

Reference 5 is updated by the substitution of “Bereaved Partner’s (Contributory) Pension” for those current terms. Qualified cohabitants are now covered by the reference.

### **Commencement**

As with the other heads relating to the update of this scheme the amendment will come into operation on enactment.

## **HEAD 9 – Amendment to Part 1 of Schedule 4 to the Act**

The Principal Act is amended, in Column 1 of Part 1 of Schedule 4, along the lines of the following: by the substitution of the following reference for reference No. 6:

“Bereaved Partner’s (Non-Contributory) Pension and a payment referred to in paragraph (b) or (c) of the definition of ‘relevant person in section 178(1)”

## **NOTE**

### **Purpose**

The purpose of this head is to update Part 1 of Schedule 4 to the Act to reflect the new title of this pension scheme in the relevant reference.

### **Background**

Part 1 of Schedule 4 to the Act lists the various non-contributory schemes (arising only after assessment of means) and the rates of payment in respect of those schemes that may be payable to a beneficiary. Reference 6 of Column 1 is the relevant reference in respect of the payment of the non-contributory pension payable to widow, widower or surviving civil partner.

## **Head**

Reference 6 is updated by the substitution of “Bereaved Partner’s (Contributory) Pension” for those current terms. Qualified cohabitants are now covered by the reference.

## **Commencement**

As with the other heads relating to the update of this scheme the amendment will come into operation on enactment.