

Police Federation
Of England and Wales



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Lloegr a Chymru

Established by Act of Parliament

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FROM THE GENERAL SECRETARY'S OFFICE

AF/klg

10 July 2017

To: All Joint Branch Board Secretaries
Cc: Interim National Council, Interim National Board

JBB CIRCULAR 015/2017

Dear Colleagues,

Police Pension Schemes: Adult Survivor Benefit Joint Declaration Forms

As you may be aware, under both the New Police Pension Scheme (NPPS) 2006 and the 2015 CARE Scheme, in order for a partner who is not a spouse or civil partner to benefit from a survivor's pension, both the member and his/her partner must have completed a joint declaration form to confirm that certain underlying criteria apply.

However, in February 2017 the Supreme Court made a ruling in the judicial review case of Denise Brewster. Ms Brewster's circumstances were that her partner was a member of the Local Government Pension Scheme (LGPS) in Northern Ireland. The couple were cohabiting when Ms Brewster's partner died but as a partner pension nomination form had not been submitted the scheme administrator refused to pay a survivor's pension. The Supreme Court held that the partner pension nomination requirement should not apply - as it constituted unlawful discrimination contrary to the European Convention on Human Rights - and that Ms Brewster should be entitled to a survivor's pension under the Northern Ireland LGPS.

PFEW wrote to the Home Office seeking clarity on the impact of the Brewster judgment on the NPPS 2006 and 2015 CARE Schemes and asked for the issue to

be an agenda item at the recent UK Police Pensions Consultative Forum meeting. The Home Office subsequently said that it would provide information to administrators on the current position.

Please find attached advice which was recently sent from the Home Office to pension administrators on this issue. It states that *“scheme managers can at this time seek to rely on section 3 of the Human Rights Act 1998...as the legal basis for their not requiring that a surviving adult partner be nominated in order to receive payment of survivor benefits under the 2006 and 2015 police pension schemes in the light of the judgment in Brewster.”* However, the other underlying criteria in these schemes will still need to be met in order for a partner to be entitled to receive a survivor pension.

NB. Please note that there is no partner pension provision in the Police Pension Scheme 1987; an adult survivor pension can only be paid to a spouse or civil partner under this scheme.

I will keep you informed of any further developments on this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Fittes', written over a light grey rectangular background.

ANDY FITTES
General Secretary

The following advice regarding the Brewster judgment was shared with pensions' administrators on 23 June 2017:

"Dear Administrator,

On the 8 February 2017, in the Matter of an application by Denise Brewster for Judicial Review [2017] UKSC 8 in relation to the Local Government Pension Scheme (Northern Ireland), the Supreme Court held that the requirement that a surviving adult partner be nominated in order to be entitled to payment of survivor benefits, where they satisfied the other underlying scheme conditions, was unlawful and should be disapplied. The Supreme Court found that the nomination requirement constituted unjustified discrimination against Ms Brewster and was therefore a breach of her rights under the European Convention on Human Rights.

We consider that scheme managers can at this time seek to rely on section 3 of the Human Rights Act 1998 (the "HRA 1998") as the legal basis for their not requiring that a surviving adult partner be nominated in order to receive payment of survivor benefits under the 2006 and 2015 police pension schemes in the light of the judgment in Brewster. This section of the HRA 1998 provides that, as far as possible, regulations must be read and given effect in a way which is compatible with the European Convention on Human Rights. We consider that the risk of a successful legal challenge to such an approach is low. However, scheme managers should seek their own legal advice on the legal effects on the schemes of the Brewster judgment.

If a member expressly wishes to make their intentions relating to survivor benefits known, the scheme manager can continue to accept a nomination form to enable them to do this. The other underlying conditions in the schemes will still have to be satisfied for a surviving partner to be entitled to receive payment of survivor benefits and the Brewster judgment does not affect the 1987 police pension scheme.

We will inform you when there are any further developments arising from the judgment."