

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

Opening Statement of Sinéad Lucey (FLAC Managing Solicitor) to the Committee on Social Protection, Community and Rural Development and the Islands

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Introduction

FLAC (Free Legal Advice Centres) is grateful for this opportunity to appear before the Committee on Social Protection, Community and Rural Development and the Islands to inform pre-legislative scrutiny of the General Scheme of the Social Welfare (Bereaved Partner's Pension) Bill 2024. Our evidence, and our written submission (which has been circulated to members of the Committee) is informed by FLAC's experience providing legal assistance.

As an Independent Law Centre, FLAC frequently acts on behalf of clients in social welfare matters, including cases heard by the Social Welfare Appeals Office and the courts. The purpose of the legislation outlined in the General Scheme is to give effect to the Supreme Court's decision in *O'Meara* earlier this year. FLAC represented the *O'Meara* family in that case. We welcome the progression of legislation to provide clarity in this area. Throughout 2024, FLAC has regularly been contacted by families and representative organisations seeking information and advice on the implications of the *O'Meara* judgment on welfare rights.

Analysis of the General Scheme

The legislation outlined in the General Scheme gives effect to the *O'Meara* judgment by expanding entitlement to social welfare schemes aimed at bereaved partners and families to qualified cohabitants and their children. We very much welcome the decision to include bereaved cohabitants who do not have children and the use of the pre-existing legal definition of "qualified cohabitant". However, we have a number of concerns with the provisions outlined in the General Scheme:

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

At present, people who are separated or divorced from a spouse or civil partner may access a survivor's pension if that spouse or civil partner dies, provided that they (the

surviving partner) have not remarried and are not cohabiting with someone else. The General Scheme would remove this entitlement and people currently claiming on this basis would lose their payment after the enactment of the amending legislation. There is no clear rationale for this change and it may run contrary to the principles underpinning the *O'Meara* decision.

In *O'Meara*, the Chief Justice placed an emphasis on “*the rights of all children, and obligations of their parents, irrespective of the status of their parents*”. Legislation which treated the children of cohabiting parents less favourably than the children of married parents or civil partners was declared unconstitutional. We do not see any objective justification for the introduction of legislation which distinguishes between the children of separated or divorced parents and children whose parents are married, in a civil partnership or cohabiting.

Changes to the Entitlements of People who suffer a Second Bereavement

The rules around access to the contributory version of the survivor's pensions currently provide for favourable treatment of people and families who have suffered multiple bereavements. This means that people who suffer the loss of a second partner are able to claim the pension (or rate of pension) which they previously received after the loss of their first partner. This is reasonable and compassionate.

Under the provisions set out in the General Scheme, those who suffer the loss of a second partner before the enactment date will still to be able to claim the pension (or rate of pension) that they were entitled to after the loss of their first partner. However, rather arbitrarily, those who suffer a second bereavement after the enactment date will not be able to avail of this exception to the general rule whereby remarriage extinguishes entitlement to the pension. Again, there is no clear rationale for the levelling-down of social welfare entitlements in this area.

Arrears & Retrospectivity

The General Scheme provides for the payment of Death Benefit and pensions for surviving qualified cohabitants with effect from 22 January 2024 i.e. the date the Supreme Court made its declaration of unconstitutionality in *O'Meara*. However, the extent to which this will give rise to any entitlement to arrears starting from 22 January 2024 is unclear in light of the strict rules around back-dating claims.

There may be many people whose entitlement to payments pursuant to the provisions set out in the General Scheme arises from the loss of a cohabiting partner long before 22 January 2024. The General Scheme makes no provision for payments to surviving qualified cohabitants in respect of the period prior to 22 January 2024.

Recommendations

In light of our analysis, FLAC makes the following recommendations:

The Committee should recommend that the Social Welfare (Bereaved Partner's Pension) Bill 2024:

- ▶ Retain the current entitlement of divorced and separated partners to a survivor's pension and also expand it to surviving qualified cohabitants who were separated (rather than taking the 'levelling-down' approach suggested in the General Scheme).
- ▶ Retain the favourable treatment afforded to those who have lost two partners and expand it to include situations where the bereaved and the deceased were qualifying cohabitants in either or both instances.

The Committee should seek clarity from the Department of Social Protection on:

- ▶ The approach which will be taken to arrears and, in particular, whether it is intended to pay arrears beginning from 22 January 2024 to surviving qualified cohabitants whose entitlement to a pension arises from a bereavement prior to that date.
- ▶ The number of people who have previously been refused access to a survivor's pension on the basis that they were not married or in a civil partnership with their partner.
- ▶ Whether the Department intends to re-examine those decisions or provide compensation for the periods of time prior to 22 January 2024 during which survivor's pensions were unavailable to surviving qualified cohabitants.

The legislation outlined in the General Scheme would amend the social welfare code in a manner which could give rise to changes to the entitlements of thousands of individuals and families. The right of access to justice requires measures to ensure that people are aware of their legal rights and how changes in the law may impact them. The Committee should recommend that the Department:

- ▶ Carries out a targeted ‘take-up’ campaign and ensures that information and advice is available to those whose entitlements will be impacted by the General Scheme including, for example, through a ‘help line’.
- ▶ Provides detailed guidance (and training) to decision-makers which specifically deals with decisions on whether an individual was a “qualified cohabitant” and with back-dating claims for survivor’s pensions made by people who were previously excluded because they were a cohabitant.
- ▶ Collaborates with the Citizens Information Board and relevant representative organisations such as Treoir and One Family in promoting take-up and providing information and advice. These groups should also be provided with relevant training and guidance.

The General Scheme is proof that rights and equality for diverse families (such as families based on cohabitation) can be effectively enhanced through ordinary legislation. We hope that this progress will be built upon in the future through the provision of practical supports for diverse families (including, for example, single parent families) in social welfare and other areas of law. The Committee should engage with relevant representative organisations such as Treoir, One Family and the National Women’s Council of Ireland about the General Scheme, as well as in relation to the treatment of diverse families (such as families based on cohabitation and single parent families) in the area of social welfare more broadly.

Conclusion

My colleague, Christopher Bowes (FLAC’s Legal Officer) and I are happy to address any questions which members of the Committee may have.

Thank you for your attention.

ENDS.