



Policy & Resources  
Committee

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16 August 2019

Dear Sir

**Letter of Comment on Requête P.2019/56 – Pension rules and regulations relating to women who were married as at 31 December 2003 and have subsequently been widowed and remarried a person with no Guernsey pension entitlement.**

I refer to the above Requête which is scheduled for debate by the States of Deliberation on 4th September 2019.

The Committee acknowledges that this is a complex subject. The matter of policy at its heart stems from

- the transition from one set of rules for entitlement to Social Insurance benefits based on the Beveridge concept of a nuclear family, to a new set of rules based on individualised contribution records that applies from 2004 onwards;
- the Transitional Rules that were introduced to deal with the move from one system to another and the transitional protections afforded in certain circumstances, such as widowhood.

The Committee is exercising its right under Rule 28 (2)(b) of the Rules of Procedures of the States of Deliberation and their Committees to “set out its opinion in a letter of comment, appending thereto the views of all Committees so consulted”. The Committee consulted the Committee *for* Employment & Social Security and the Social Insurance Appeals Tribunal on the contents of the Requête and thank the consultees for their responses which are appended to this letter of comment.

The Committee's opinion on the scope and timing of the Requête in light of the issues brought forward by respondents to the consultation brings it to the following conclusions –

1. the Committee notes that the Committee *for* Employment & Social Security, as the lead Committee with a mandate most relevant to the policy issues raised by the Requête, will oppose the Requête on grounds of both principle and policy as set out in Deputy Le Clerc's letter of 23<sup>rd</sup> July 2019 to Deputy Trott. The Assembly is encouraged to read the attached briefing paper prepared by the Committee *for* Employment & Social Security;
2. the Committee supports the Committee *for* Employment & Social Security in opposing the Requête, by majority. The Committee notes that the Requête, as drafted, is currently limited in its scope and is therefore unlikely to have significant expenditure consequences for the Social Insurance Fund. However, if the scope of the Requête was to be broadened, or similar changes were to be applied to other bereavement benefits, such as Widowed Parent's Allowance, then the expenditure implications could become more significant and would be a cause for concern.

In recognition that this is a complex subject the Committee *for* Employment & Social Security will be offering **two drop-in briefing sessions for States' Members at 14.00 on Tuesday 27<sup>th</sup> August 2019** and at **10.00 on Wednesday 28<sup>th</sup> August 2019** at Edward T Wheadon House.

I would be grateful if you could arrange for this letter of comment to be published in the usual way.

Yours faithfully



**Deputy G A St Pier**  
President  
Policy & Resources Committee

Cc: Deputy Ferbrache  
Deputy Le Clerc, President, Committee *for* Employment & Social Security  
Advocate Julia White, Chairman, Social Insurance Appeals Tribunal

Enc: Consultation responses from –

- Committee *for* Employment & Social Security
- Social Insurance Appeals Tribunal



Deputy L S Trott  
Vice-President  
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Date: 23 July 2019

**By email**

Dear Deputy Trott

**Requête – P.2019/56**  
**Proposal – Widows' Pensions Entitlement**

Thank you for your letter dated 4 July 2019, seeking the views of the Committee *for* Employment & Social Security on the Requête lodged by Deputy Peter Ferbrache and other signatories.

The Committee will oppose the Requête, on grounds of principles and policy. It concerns the loss, through remarriage before reaching pension age, of a widow's pension entitlement over and above those of a married woman. The significance of remarriage is a legacy of the pre-2004 social insurance system that was reformed with effect from 2004, in order, among other things to individualise pension entitlements. The Committee believes that it is consistent that the protections that were given to women who were married as at 31 December 2003, through transitional provisions set in Regulations, should be subject to the rules of the historic context that is being protected, which includes the loss of certain entitlements on remarriage.

There is not an objection on grounds of cost because the Requête is so worded as to be limited to a very small number of people, particularly as it would only apply where a widow remarried a person with no Guernsey pension entitlement. The Committee believes that there may be a misunderstanding in the construction of the Requête, because the amount of Guernsey pension that the second spouse is entitled to has no relevance. It is only the fact of remarriage that has relevance.

Costs might become more significant if the restrictive wording of the Requête were to be loosened or similarly applied to other bereavement benefits, in particular widowed parent's allowance.

I attach a briefing note which may be of assistance in understanding this complex matter.

The Committee is offering two drop-in sessions for States Members, one at 14:00 on Tuesday 27 August and the other at 10:00 on Wednesday 28 August 2019. These sessions, at Edward T Wheadon House, will include a presentation of the issue followed by questions and answers. We are hopeful that this will inform States Members ahead of debate on the Requête.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Me' followed by a stylized flourish.

Deputy Michelle Le Clerc  
President

Enc.

## **BRIEFING NOTES ON REQUÊTE P.2019/56**

### **PENSION RULES AND REGULATIONS RELATING TO WOMEN WHO WERE MARRIED AS AT 31 DECEMBER 2003 AND HAVE SUBSEQUENTLY BEEN WIDOWED AND REMARRIED TO A PERSON WITH NO GUERNSEY PENSION ENTITLEMENT**

These notes:

1. summarise the pre-2004 rules
2. summarise the post-2004 rules
3. explain the transitional provisions
4. comment on the content of the Requête

The summaries are not a full record of the changes approved by the States in 2003 (Billet d'Etat V of 2003) but contain all of the matters relevant to the Requête.

#### **1. Pre-2004 rules**

The social insurance system, prior to 2004 was built upon the Beveridge model of a nuclear family comprising a male earner, a non-employed wife and dependent children. It was expected that pre-marriage, the wife would pay some contributions as a single person, but following marriage and motherhood, would not return to regular paid employment. The system therefore presumed that she would be financially dependent on her husband throughout.

This presumption of dependence lay behind the rules allowing married women to pay a much reduced rate of contribution if they did happen to work. The reduced rate of contribution was priced to cover just industrial injury benefit. These contributions did not count towards old age pension.

The scheme gave a strong level of protection to widows under pension age. Similar, equally strong levels of protection were given to divorcees, as the presumption was that the financial consequence would be just as dire. The protections for widows and divorcees were lost in the event of remarriage before reaching pension age. The presumption was that a new marriage restored financial security.

#### Under the pre-2004 rules:

- married women could pay reduced rate contributions (0.5%) if in employment
- married men could claim an addition to their old age pension of approximately 62% in respect of a wife under pension age
- on the wife reaching pension age, the addition to the husband's pension stopped
- on the wife reaching pension age, the wife could receive pension equal to approximately 62% of what her husband was receiving
- If the wife had a pension entitlement from her own record (she might have paid full rate contributions) she would receive the better rate

- A widow over 40 but under pension age could receive a widow's pension until pension age at a rate based on her late husband's contribution record, unless she remarried or lived with a man as his wife. She would also receive weekly contribution credits towards her old age pension.
- On reaching pension age, a widow who had remarried would be able to claim a pension of approximately 62% of her second husband's contribution record. There was no longer any connection to the deceased husband's contribution record. This could be to the advantage or disadvantage of the woman.
- Again, if the women had a better pension entitlement from her own record, she would receive the better rate.

## **2. Post 2004 rules**

The reforms dismantled the Beveridge model of intra-family dependency and made the social insurance system individually based, gender neutral and human rights compliant.

(It should be noted that it is still necessary to consider family make-up and to aggregate collective needs and resources under the income support system. This will remain the case with means-tested benefits.)

The 2003 reforms, in addition to meeting the above aims, were expected over time generally to improve women's pension entitlements. By making all women pay full-rate contributions when working, more women would build a contribution record which would exceed the 62% entitlement available under the old system.

Recognising that many women took time out of the workforce to bring up children, a generous system of childcare credits was introduced. This allows a person receiving family allowance in respect of a child under 16 to receive contribution credits if that person is not otherwise obliged to make a contribution through working or having sufficient personal income to be required to pay an income-related non-employed contribution. There is also the option for women and men under pension age who are not otherwise liable to pay a social insurance contribution, on earnings or income, to pay a voluntary non-employed contribution at a minimum rate. The voluntary contribution in 2019 is £20.09 per week.

While individualising benefits under the social insurance scheme, there was an obvious need to recognise the reasonable expectations of married women regarding their future pension entitlements based on their husband's contribution records. A set of transitional provisions was therefore prescribed by Regulations. The Regulations are, of necessity, quite complex.

Widow's benefits were changed, so that instead of a widow's pension being paid from widowhood right through to pension age, the benefit was limited to 52 weeks only. The new benefit became available at 45 (not 40) and applied to both widows and widowers. If the widow or widower had a dependent child or children, benefit would continue, as it would have for widows with children under the old system.

Under the post-2004 rules:

- Everyone, regardless of marital status, must pay full-rate contributions related to earnings (or income if non-employed).
- On reaching pension age, all people are assessed for pension based on their own individual contribution records.
- With a 10 year period of notice, from 2014 there would be no new add-ons to a man's pension in respect of a wife under pension age. Those in payment would continue until the wife reached pension age.
- Widows and widowers over 45 but under pension age could receive a bereavement allowance for up to 52 weeks, provided that they did not remarry or live with a partner. (The age threshold of 45 was subsequently removed from 2012).

### 3. Transitional Provisions

The differences between the old and new systems obviously needed a set of transitional provisions to recognise the reasonable expectations of married women who were relying on the contribution record of their husbands for a (part) pension. A set of transitional provisions were prescribed by Regulations and summarised below. The sub-paragraph in bold type is the scenario at the heart of the Requête.

- Widow's benefit already in payment as at 31 December 2003 would continue until the widow reached pension age, unless she remarried or lived with a man as her husband, in which case the widow's benefit would be stopped.
- A woman who was married as of 31 December 2003 would, on reaching pension age, be entitled to a contribution record of 62% of that of her husband as of 31 December 2003, either:
  - From her entry into insurance until 31 December 2003; or
  - From the year of her marriage until 31 December 2003, whichever being most to her advantage
- A woman who was divorced as at 31 December 2003 (later extended to 31 December 2004) would on reaching pension age, and provided that she had not remarried, be entitled to a contribution record of 100% of that of her husband either:
  - From her entry into insurance until the year of divorce; or
  - From the year of her marriage until the year of divorce, whichever being most to her advantage
- **A woman who was married as at 31 December 2003 and was widowed after that date but before reaching pension age would, on reaching pension age, and provided that she had not remarried, be entitled to a contribution record of 100% of that of her late husband either:**

- From her entry into insurance until the year of her husband's death; or
  - From the year of her marriage until the year of her husband's death,
- whichever being most to her advantage.

#### **4. Comments on the content of the Requête**

**Paragraph 1 of Requête:** The first sentence generally supports the 2003/2004 reforms. The second sentence says that the Petitioners believe that for women who were married at the time of the policy changes and subsequently widowed then remarried, the effect of the arrangements is, in some instances, unfair and an unnecessary cause of hardship.

The States should not accept that contention. Under the new system, 62% of the husband's contribution average as at 31 December 2003 is banked for the woman and cannot be lost in any circumstances, thereby preventing hardship. Under the pre-2004 system, the married woman's entitlement depended on the insurance record of the man to whom she was married on reaching pension age. If there had been a divorce or widowhood and remarriage, it was possible that there would have been no entitlement to a pension at all, if the second husband had not paid contributions to Guernsey. That is the extreme example, but it happens to be the circumstances in the case which has given rise to the Requête.

**Paragraph 2 of Requête:** Correct.

**Paragraph 3 of Requête:** The first sentence is correct. The second sentence is partly incorrect. The substitution of the late husband's contribution/pension average could be used up to the year of his death, not right through until the widow reaching pension age. Between widowhood and pension age, the widow is required to maintain her own contribution record, either through bereavement allowance credits (52 weeks max), paid contributions through work, or voluntary non-employed contributions.

**Paragraph 4 of Requête:** This paragraph contains a fundamental misconception. In the post-2004 arrangements, the contribution record of the person to whom a widow has remarried has no relevance. It doesn't matter whether the second husband has a full record or an empty record. None of it is available for use to the woman. The only relevance is the fact of marriage. Marriage removes the opportunity to use 100% of the late husband's contribution record up to the year of his death, with the fall-back position being the 62% banked up to 31 December 2003.

**Paragraph 5 of Requête:** This paragraph is correct in terms of describing the low frequency of the circumstances which the Requête is seeking to address. Widowhood under 65 is thankfully not the norm; remarriage of a widow under 65 is obviously a subset,



so less frequent still; and remarriage in those circumstances to a person with no Guernsey pension entitlement whatsoever is a further subset, so even more rare. This combination of probabilities does make the circumstances which the Requête is seeking to address rare indeed.

If a reciprocal social security agreement is involved, for example the agreement with the UK, aggregating Guernsey and UK insurance periods, a very small Guernsey pension of approximately £5 per week could be paid on as few as 50 contributions paid to Guernsey. If this was the pension position of the man whom the widow had remarried, the protection sought by the Requête would not apply.

**Paragraph 6 of Requête:** The States should question the petitioners' belief that the application of the social insurance pension rules and regulations in the case described in the preceding paragraph is unfair. The banking of 62% of the late husband's contribution record as it stood at 31 December 2003 gives a substantial platform for the widow's eventual pension, even if she remarries. It is not at risk of removal, as it was under the pre-2004 system, when her pension rights would transfer to dependency on a second husband's contribution record in the event of remarriage before pension age. Furthermore, the obligation to pay full rate contributions from 1 January 2004 if in work, and the option to pay voluntary contributions if not, allows the banked 62% record to be further improved before reaching pension age. The widow who remarries before reaching pension age may indeed not receive a 100% Guernsey pension, but there is every likelihood of her receiving substantially more than 62%. The transitional provisions, as they stand, ensure an outcome that is fair.

**The prayer of the Requête:** In the very narrow set of circumstances that the Requête is seeking to address, the widow who has remarried a man with no Guernsey pension entitlement Requête would appear to allow the widow to substitute the late husband's contribution record for the widow's own record, either for the period of marriage only, or for the whole of the widow's pension average period. This would be a more generous substitution of a record than appears anywhere else in the social insurance scheme.

## **Summary**

The Social Insurance Transitional Provisions, which were given effect 15 years ago to smooth the changeover from the pre-2004 dependency based model to the post-2004 individualised system, have been proven to be fair and reasonable. On reaching pension age, women have generally been better off under the new system than the old. The Requête is, belatedly, seeking to modify the transitional provisions in a very narrow set of circumstances. The existing provisions already work fairly in those circumstances without causing significant disadvantage or hardship.



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The President  
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25<sup>th</sup> July 2019

Dear Sir

**P.2019/56 – Requête on pension rules and regulations relating to women who were married as at 31<sup>st</sup> December 2003 and have subsequently been widowed and remarried a person with no Guernsey pension entitlement**

The Social Insurance Tribunal is grateful for the opportunity to comment on the Requête P.2019/56 on pension rules and regulations relating to women who were married at 31<sup>st</sup> December 2003 and have subsequently been widowed and remarried a person with no Guernsey pension entitlement.

The Tribunal was established under section 80 of the Social Insurance (Guernsey) Law, 1978. Section 81 provides that where the Administrator has decided a claim or question adversely to the claimant, the claimant may appeal to the Tribunal. In considering an appeal, the Tribunal may only make decisions the Administrator could have made. Therefore, where the Administrator is unable to take certain matters into account or vice versa, the Tribunal is similarly bound.

The Tribunal notes that the Requête states that, in some cases, the 2004 changes around the entitlement to a state pension for married women may have had unforeseen consequences. It notes that the principal focus of the Requête is for women who were married when the pension arrangements changed and have since been widowed and remarried.

The Tribunal has received an appeal where the issues were not dissimilar to the circumstances described in the Requête. The 2004 amendments to the Social Insurance (Guernsey) Law, 1978 prescribing how a person's old age pension entitlement is calculated do not provide the Administrator with any discretion or grounds to deviate from the Law. Therefore the Tribunal would also be similarly constrained.

The Tribunal, having considered the appellant's submission and the response of the Administrator concluded that, as the pension entitlements were set out in the Law, as amended, there were no grounds for the Tribunal to be able to reach a different decision from that of the Administrator. The Tribunal therefore advised the party that, whilst they understood their grievances, the matter fell outside its powers to override the clear provisions in the Law. The appeal were therefore refused.

The Tribunal is unable to comment on the specific Propositions set out in the Requête.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Julia White', with a stylized flourish at the end.

Julia White

Chairman

Social Insurance Appeals Tribunal