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Stamatia Devetzi,
Hans-Joachim Reinhard (Eds.)

**PROVISION FOR
SURVIVING DEPENDANTS IN
SOCIAL SECURITY**

**A NEW ARCHITECTURE FOR THE
21ST CENTURY?**

ibidem

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Fulda, March 2025

Stamatia Devetzi
Hans-Joachim Reinhard

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1 Introduction: Provision for Surviving Dependants in Social Security

Stamatia Devetzi and Hans-Joachim Reinhard

This book explores survivors' benefits, a key pillar of social security systems in many countries around the globe. Traditionally based on the breadwinner model, these benefits aim to protect dependents from financial hardship following the death of a primary income earner. While their design and implementation varies significantly across nations, this book focuses on recent developments in selected countries, analysing the legal, social and policy dimensions of survivors' benefits. It also sheds light on how international and European legal instruments address survivors' benefits and assesses reforms of these benefits in the 21st century, highlighting their evolving role in social security systems.

Pensions for surviving dependents are a distinctive feature of a social security system. Pension payments are typically personal benefits granted to those who have paid contributions. This principle has applied since the introduction of the first social insurance scheme under Bismarck in 1889 and has been adopted by all subsequent social security systems with old-age or disability insurance. In most cases, however, social security pension payments not only support the individual contributor but also provide financial assistance to their family.

As long as the principal beneficiary is alive, the family, and particularly his or her spouse, continues to be insured. However, the personal relationship between the contributor and the dependant may lead to a security gap if the (primary) earner dies. Without an alternative source of income, the surviving partner faces a heightened risk of poverty, especially in old age. This is also the case if the surviving partner is no longer able to work.

This situation has historically affected women disproportionately and continues to do so for two reasons: first, women generally have a significantly higher life expectancy than men. Secondly, many women either do not participate in the labour force or only work for a limited period due to caregiving responsibilities for children or other relatives. As a result, they often contribute less or not at all to social security systems.

However, it was not until 1911, 25 years after the introduction of the first social insurance system, that the first regulations for the protection of surviving dependants were introduced. In line with the male breadwinner model, these early provisions initially covered women only. Many social security systems in different countries adopted this model, gradually introducing benefits for survivors in the event of the primary breadwinner's death. Yet not all women qualified for these benefits, as eligibility was often limited to those deemed in need due to disability, old age or low income.

Survivors' pensions continue to be viewed as compensation for the loss of financial support from the primary income earner. They are not considered an independent pension entitlement but are derived from the deceased's old-age pension. In some cases, eligibility requires a minimum duration of marriage and, as a rule, entitlement to the benefit ceases in the event of remarriage. If the deceased's old-age pension was low, the survivor's benefit will also remain low. In other words, although the provision of a survivors' pension is a positive first step, the surviving spouse may still face financial insecurity.

This applies not only to entirely contribution-based social security systems but also – albeit to a lesser extent – to tax-financed systems where (old-age) benefits are not directly tied to previous earnings. These tax-financed systems typically provide a basic amount designed to ensure a minimum level of financial security. While this amount exceeds the minimum subsistence level, it may still fall short of providing adequate financial stability in old age. To address these gaps, all tax-financed systems have since been supplemented with contribution-based supplementary and/or occupational pension schemes, which may also introduce similar disparities.

Initially, survivors' benefits were restricted to legally registered marriages, a limitation that remains in place in many countries today. However, societal

norms have changed. Long-term partnerships without formal marriage are increasingly common. In response, some countries have adapted to this trend and have extended survivors' benefits to unmarried partners, provided they can demonstrate the stability and permanence of their relationship.

A more recent trend is the recognition of same-sex marriages and partnerships. Several countries have taken steps to recognise such relationships as equivalent for the provision of survivors' benefits.

When survivors' benefits were first introduced, eligibility was conditional on the partner's death in view of the low life expectancy and high rate of (work-related) accidents at the time. With advances in medical care and improved safety standards, many marriages today do not end with the death of a partner: a large number of partnerships end in separation or divorce. Initially, most countries, excluded divorced spouses from receiving survivors' benefits. This changed in the 1970s, when many social security systems introduced eligibility for survivors' benefits after divorce.

This publication focuses on survivors' pensions for spouses. Surviving dependants also include the deceased's children. However, orphans' pensions as benefits for surviving dependants are only dealt with in passing, as their provision is generally straightforward and uncontested.

Subject matter experts from different European countries have contributed to this book, sharing their national experiences, highlighting key issues, examining international and European frameworks on survivors' benefits and analysing recent reforms.

Ulrich Becker explores the purpose, structure and reforms of survivors' benefits across various countries, focusing on their role in providing financial support to surviving dependants following the death of a breadwinner. He highlights the disparities in survivors' benefits schemes across European countries, questioning whether such benefits are at risk of becoming obsolete. Drawing on international legal frameworks such as ILO Conventions and the European Code of Social Security, Becker examines the objectives of these benefits, which are designed to address the loss of subsistence caused by death, focusing on maintenance guarantees rather than on direct legal obligations. The

chapter analyses regulatory instruments, categorising them by conditions related to surviving dependants (e.g. remarriage, income or age thresholds) and the relationship between the insured person and the survivors. Reform trends in Scandinavia, the UK, and France have pursued differing approaches, often reflecting shifts in social policies, gender roles and labour market objectives. Scandinavian countries have transitioned from traditional widows pensions to short-term transitional benefits, the UK has introduced lump-sum payments and capped monthly allowances to encourage workforce re-entry, while France, by contrast, maintains a hybrid, complex model based on marriage entitlements.

Becker's analysis highlights the tension between supporting dependants and promoting self-reliance, emphasising the need to adapt survivors' benefits to modern and evolving family structures and societal change. He concludes that while survivors' benefits are not universally diminishing, their evolution is influenced by national priorities and broader socio-political contexts.

The next chapter by *Eberhard Eichenhofer* explores survivors' benefits within social security frameworks, focusing on their historical foundations, current challenges and potential future reforms. Traditionally based on the male breadwinner model, these benefits were designed to alleviate financial hardship for widows and children following the primary wage earner's death. However, in light of changing family structures, gender roles and economic conditions, survivors' benefits are increasingly subject to scrutiny.

Eichenhofer identifies five key dimensions of survivors' benefits: their derivative nature, that they arise from the death of the principal beneficiary, their foundation in family obligations, the evolving principles of gender equality, and the potential for alternatives such as pension splitting. He argues that while survivors' benefits are framed as rights that reflect familial interdependence, they also place a significant financial burden on social security systems. Rooted in traditional family structures, these benefits are facing growing scrutiny in terms of their relevance in contemporary contexts, where dual-income households and gender equality are becoming the norm. The question is whether these benefits, initially designed as long-term entitlements, should instead serve as transitional financial support.

Legal debates increasingly focus on expanding eligibility to domestic partners and divorced spouses, reflecting the growing recognition of diverse family structures. The chapter also raises questions about the fairness of universal survivors' benefits, noting that while orphans benefits are considered essential for alleviating economic hardship following the loss of a parent, spousal benefits may inadvertently reinforce outdated dependency models. The discussion calls for reforms that would align survivors' benefits with contemporary socio-economic realities, emphasizing the need for transitional support and greater equity. Alternatives such as pension splitting and strengthened individual rights within family law are proposed as a path forward.

Guido Van Limberghen examines how international and European legal instruments address survivors' benefits amidst evolving socioeconomic realities, such as increased female labour force participation, diverse partnership models, and rising divorce rates. His analysis explores the implications of these trends for survivors' benefit schemes and evaluates the adequacy of existing standards established by the International Labour Organization (ILO), the Council of Europe (CoE), and the European Union (EU). These instruments, spanning three generational frameworks, set minimum standards for survivors' benefits. While earlier frameworks (e.g. ILO C039) reflect traditional male breadwinner models, more recent instruments advocate for gender-neutral provisions and expand eligibility to encompass atypical workers and self-employed persons. Beneficiaries typically include spouses and children, with eligibility criteria based on dependency, marriage or residency. These benefits are designed to replace income, offering flexibility for national legislation to adjust schemes, though inconsistencies and outdated definitions remain a challenge.

The chapter underscores the need for reforms to address gaps in coverage and outdated dependency models, advocating for a more inclusive and flexible approach. It calls for aligning survivors' benefits with evolving social realities while adhering to international and regional standards. Policymakers should leverage the flexibility of these frameworks to ensure comprehensive and equitable social protection systems.

Freudenberg and Zwinger examine the development, design and reform of survivors' benefits in the 21st century, addressing the challenges socio-economic

trends pose, including gender equality, evolving family structures, and increased labour force participation. Survivors' benefits, initially created to protect widows from falling into poverty under the traditional male breadwinner model, have since evolved to serve broader goals such as maintaining widows and widowers' standard of living. The chapter compares survivors' benefit schemes across 47 countries, focusing on eligibility, replacement rates and socio-economic impacts.

The chapter's findings reveal that although women continue to make up the majority of benefit recipients, the share of male beneficiaries is rising due to narrowing gender gaps in life expectancy and increased female labour force participation. Replacement rates vary widely, influencing the ability to maintain pre-death living standards. The analysis highlights that survivors' benefits can help reduce gender pension gaps but may also disincentivize labour market participation, particularly among younger recipients.

Reform trends include raising the eligibility age, introducing transitional benefits, implementing income testing, pension splitting and expanding coverage to include registered and same-sex partnerships. The analysis highlights the need for reforms that align survivors' benefits with modern socio-economic realities, such as dual-income households and increased female workforce participation, while ensuring compliance with international social security standards and human rights frameworks.

Focussing on the complex relationship between survivors' benefits and divorce within social security systems, *Hans-Joachim Reinhard* discusses the challenges divorced spouses, particularly women, face in acquiring financial security. While survivors' benefits have traditionally been designed to support the financial needs of widowed spouses, they often fail to accommodate the realities of divorce, leaving gaps in the protection for divorced partners with lower incomes due to caregiving roles or other disparities.

Historically, survivors' benefits were tied to traditional family models and legal marriages, excluding divorced spouses. Divorce laws used to incorporate the "fault principle", denying benefits to individuals deemed at fault for the divorce, which disproportionately disadvantaged women. While fault-based systems have largely been phased out, the rise in divorce rates and the growth of

non-traditional family structures necessitates a re-evaluation of survivors' benefits. Divorce often leaves lower-earning spouses reliant on maintenance payments, which cease upon the principal beneficiary's death, thus exacerbating financial vulnerability. Various approaches to survivors' benefits for divorced spouses are analysed in this chapter: the "inheritance law solution", the "maintenance solution", the "surviving spouse solution" and the "divorced spouse solution".

Pension-sharing mechanisms in countries such as Canada, Switzerland and Germany, where pension entitlements accrued during marriage are divided between the partners, are also discussed. While equitable, these systems face challenges such as legal complexities and gaps for migrant spouses due to limitations in cross-border contexts.

Reinhard argues that current frameworks often inadequately address the needs of divorced spouses, leaving many of them financially vulnerable. He advocates for reforms to integrate family and social security law, thereby ensuring fair and inclusive solutions that reflect contemporary family dynamics.

The following chapters examine developments and reforms of survivors' benefits in four European countries: Switzerland, Sweden, Finland and Spain.

Thomas Gaechter provides an in-depth analysis of Switzerland's survivors' benefits scheme, emphasising its distinctive characteristics and ongoing reforms. Switzerland's three-pillar social security system integrates universal, occupational and voluntary insurance, aiming to ensure that basic needs are fulfilled, living standards are maintained, and individual needs are addressed. Survivors' benefits replace family law obligations when a breadwinner dies, ensuring financial support for dependants. However, the system reflects the traditional family model, favouring widows over widowers and full-time over part-time employees, many of whom are women. The first pillar provides basic coverage but often falls short in meeting the needs of beneficiaries due to high living costs, necessitating supplementary benefits. The second pillar offers occupational insurance which ensures equal legal treatment for all genders, but exclusions for low-income earners create disparities.

Despite reforms, gender disparities persist. Widows continue to enjoy broader entitlements compared to widowers, who face stricter eligibility criteria.

A landmark European Court of Human Rights ruling highlighted these systemic inequalities. The case of Max Beeler, a widower who was denied pension payments, resulted in a decision against Switzerland, leading to reforms aimed at aligning widowers' entitlements with those of widows. Nonetheless, the Swiss government's approach largely focuses on limiting overall costs, which may result in reduced benefits rather than expanded eligibility. Proposed changes include limiting survivors' pensions to parents with dependent children and offering transitional support to widows and widowers under the age of 55 who do not have children.

While progress towards gender equality continues, adjustments often prioritise cost-saving measures over expanding benefits. The system's conservative design lags behind evolving family structures and labour market realities, highlighting the need for modernisation of survivors' benefits to meet contemporary needs.

Martina Axmin and Jenny Julén Votinius examine Sweden's survivors' benefits scheme, positioning it within the nation's welfare framework, which emphasizes individual self-reliance and gender equality. Sweden's welfare model is characterised by universal benefits, equitable income redistribution, and robust occupational insurance schemes negotiated through collective agreements.

Sweden's survivors' benefits scheme has undergone significant changes, reflecting societal shifts such as increased female workforce participation. The abolition of widows pensions in 1999 marked a shift towards gender-neutral adjustment allowances. These are temporary benefits intended to support surviving spouses transition to a single-income household, with eligibility extending beyond 12 months only for those with young children. Benefits include survivors' protection within the public pension scheme, and occupational pensions that offer additional safeguards, such as group life insurance, repayment coverage, and family protection plans.

Survivors' benefits play a limited role in Sweden, as the welfare system prioritises individual income over family-based entitlements. This approach aligns with Sweden's high rate of female employment and emphasis on gender equality. However, the relationship between public and occupational insurance schemes may perpetuate some inequalities, particularly along gender lines.

The authors highlight the importance of addressing inequities within the survivors' benefits framework, advocating for reforms that align with Sweden's broader goals of gender equality and comprehensive social security.

In the following chapter, *Suvi Ritola* explores the modernisation of Finland's survivors' pension scheme following the 2022 reform, which aimed to align the system with contemporary family structures and economic realities. Significant changes were made to address existing inequities and better reflect shifts in societal norms, including increased gender equality and the recognition of diverse family structures.

The Finnish pension system consists of earnings-related and residence-based pensions, providing both income maintenance and basic security. Traditionally, survivors' pensions were lifelong for spouses and included orphans pensions for children under 18. The 2022 reform introduced a fixed-term payment of ten years for surviving spouses, or until the youngest child turns 18, shifting from lifelong support to more targeted, short-term assistance. It also expanded eligibility to cohabiting partners with dependent children, recognizing the growing diversity of family structures. Additionally, the age limit for orphans pensions was raised from 18 to 20, improving financial support for young adults.

The reform aimed to address gender disparities, as women, who have historically been the primary recipients of survivors' pensions, now participate more equally in the workforce. Measures such as the fixed-term spouse benefit and extended orphan support promote inclusivity while ensuring financial sustainability. The reform, however, has limitations. It continues to exclude common-law partners without children and includes a lengthy transition period, meaning older generations still receive lifelong benefits.

The changes reduce long-term expenditure on survivors' pensions, aligning with broader goals of balancing costs and ensuring fairness. The chapter emphasises the need for continuous adaptation of social security systems to keep pace with evolving societal and demographic trends, while maintaining their protective role.

In the final chapter, *María Salas Porras* explores the development of survivors' benefits within Spain's social security system, highlighting the challenges arising from evolving family structures and societal dynamics. Spain's framework integrates elements of both the Bismarckian and Beveridge models, aiming to mitigate financial hardships for dependants following a breadwinner's death. However, the benefits have limitations, particularly in addressing contemporary family realities.

Its key components include the death grant, widowhood benefits, orphans benefits, family member pensions, and lump-sum compensation for work-related deaths. The death grant, at EUR 46.50, is insufficient to cover funeral costs which often range between EUR 3,000 and EUR 6,000. Widowhood benefits are granted to legally recognised spouses and de facto partners, with varying conditions based on relationship status, duration and past contributions. Divorced or separated spouses may also qualify if they were dependent on the deceased's pension income, reflecting a progressive legal approach.

Orphans benefits are provided to children under the age of 21 or even up to 25 in specific circumstances, with extensions available for children with disabilities or in cases of gender-based violence. These benefits cover up to 70 per cent of the deceased's regulatory base, though they often fail to prevent beneficiaries from falling into poverty. Family pensions target economically dependent relatives such as grandparents or siblings, while lump-sum compensation supports survivors of work-related fatalities.

Spanish legislation has adapted to include diverse relationships, including same-sex and de facto unions, but does not sufficiently address gaps in financial adequacy. Survivors' benefits are designed to offset income loss rather than meet financial need, encouraging employment among beneficiaries. Despite progressive measures, *Salas Porras* argues that the system requires further reforms to better align with contemporary family structures and economic realities.

2 Survivors' Benefits: A Systematic Introduction¹

Ulrich Becker

1. Initial Considerations

1. When researching survivors' pensions across Europe, one might encounter a European Union website – marked with a warning sign – which reads: “Not all EU countries pay survivors' pensions”² This finding is quite surprising. After all, “survivors' benefits” are typically considered an integral part of a modern welfare state's “standard social security benefits”. These benefits, which from a conventional perspective also characterise the welfare state in an international context – at least when measured against ILO Convention No. 102 on minimum standards of social security³ – serve as a benchmark. The Convention, ratified by 63 countries,⁴ outlines the risks social security systems are expected to address,⁵ including not only illness, unemployment, old age, occupational accidents and disease, maternity, and disability, but also death.

Accordingly, the provision of survivors' pensions remains, or at least *should* remain, the norm in European states. In this context, the information on the European Union's website raises an important question: do current trends

¹ I would like to thank Dr. Christian Günther and Dr. Anika Seemann for providing information on the United Kingdom and Scandinavia.

² Available at: https://europa.eu/youreurope/citizens/work/unemployment-and-benefits/death-grants/index_de.htm.

³ Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312247:NO.

⁴ Overview available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312247:NO.

⁵ Even though the agreement itself allows for flexibility regarding the respective obligations of individual states, i.e. the applicability of its regulations in ratifying countries, in line with Art. 2.

(also) point towards a reduction in survivors' pensions across Europe, and potentially beyond? In other words, are survivors' benefits at risk of becoming obsolete?⁶

2. In this introduction, I will not provide a comprehensive overview of existing survivors' benefits schemes,⁷ but will instead focus on their functions and structure, and present some select examples. The aim of this chapter is twofold: first, to shed light on the purpose, or the social policy function, of survivors' benefits and their institutional foundation in the context of international law and, on that basis, to provide a brief, systematic overview of the main regulatory instruments being used to ensure the effectiveness and functionality of survivors' benefits schemes (see Section II). Second, three examples of recent reforms are discussed, which not only reflect emerging trends, but also demonstrate that the role and purpose of survivors' benefits are driven by national priorities and institutional contexts that extend beyond countries' pension schemes themselves (see Section III.).

2. Function and Regulatory Instruments

2.1. Objectives and Institutions

2.1.1. International Agreements and Social Policy

Article 64 of the European Code of Social Security⁸ (EOSS), as revised in 1990,⁹ describes the purpose of survivors' benefits as follows: "The contingency covered [meaning the risk being covered] is the loss of means of subsistence suffered by the surviving spouse and children as a result of the death of the breadwinner". The original version of 1964, which continues to apply in

⁶ For Germany, see Frey W, Scheiwe K and Wersig M (2015) 100 Jahre Witwen- und Witwerrenten - (k)ein Auslaufmodell? Baden-Baden: Nomos, p. 69.

⁷ For a comprehensive study in terms of both geography and content, see Freudenberg C, Kapuy K, Zwinger V and Technical Commission on Old-age, Invalidity and Survivors' Insurance International Social Security Association (2022) How to design survivor benefits in the 21st century? ISSA (available at: https://www.researchgate.net/publication/364915432_How_to_design_survivor_benefits_in_the_21st_century).

⁸ ETS No. 139 of 6.11.1990, text available at: <https://www.coe.int/de/web/conventions/full-list?module=treaty-detail&treatynum=139>.

⁹ ETS No. 48 of 16.4.1964, text available at: <https://www.coe.int/de/web/conventions/full-list?module=treaty-detail&treatynum=048>.