Frozen overseas pensions

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UK pensioners living abroad in certain countries, including Australia, Canada, New Zealand and South Africa, have their state retirement pension "frozen". In other words, their pension is paid at the same rate as it was when they first became entitled, or the date they left the UK if they were already pensioners then. This note outlines the background to the policy, the numbers affected and the costs of changing the policy. It also provides details of the legal challenge to the rules. In 2002, the High Court ruled against this, saying that the decision to pay uprated pensions was one for Parliament. This decision was upheld by the Court of Appeal in June 2003. Leave was subsequently granted for an appeal to the House of Lords. The appeal was rejected in May 2005. An application was subsequently made to the European Court of Human Rights (ECHR). In a judgment of 4 November 2008, the Court held, by six votes to one, that there had been no violation of Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (protection of property) to the Convention. On 6 April 2009 the case was referred to the Grand Chamber at the applicants' request. The Grand Chamber is to hear the case on 2 September 2009.

The policy has been debated in Parliament on numerous occasions. In successive years, Early Day Motions have been tabled praying against the *Social Security Benefits Uprating Regulations,* providing an opportunity to debate the issue, although the regulations have not been annulled. In addition, amendments to a number of pensions Bills over the years have provided an opportunity to debate the issue.

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1 Background

The general position is that where a person is not 'ordinarily resident' in the UK there is no entitlement to an annual increase in Retirement Pension. The pension is frozen at the rate current on the date the person left the UK or when they became entitled if they were living abroad at the time. However, increases are payable to UK pensioners living in European Economic Area (EEA) countries[1] (i.e. European Union members together with Norway, Iceland and Liechtenstein) or in countries where there is a reciprocal agreement which provides for an increase to be paid.

A memorandum from the Department for Social Security to the Social Security Committee in 1996 provides a historical background and an overview of Parliamentary activity to that date:

> HISTORICAL BACKGROUND
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> 3. When pensions were first introduced in 1925, they were only payable in Great Britain. Northern Ireland and the Isle of Man. Subsequently, a provision was included in the Contributory Pension Act 1929 enabling pensions to be paid in His Majesty's dominions (broadly the countries which now form the Commonwealth). When the rate of pension was increased in 1946, the increase was not paid to pensioners abroad. The reasons for this decision appear to have been related mainly to the then forthcoming new scheme of National Insurance. It was considered that the substantial increase in pension, from 10 to 26 shillings, was a first instalment of the new scheme and that pensioners abroad had made only a small contribution to their pensions and could not reasonably expect a share in the new scheme.
>
> 4. The position remained the same after the National Insurance Act 1946 came into force. The Act contained a general disqualification for payment of benefits absent from Great Britain, together with power for regulations to remove the disqualification. During the passage of the National Insurance Bill through Parliament, there was no debate on this provision. The relevant Clause also contained disqualification for payment during a period of imprisonment and was debated, in Committee, only in that context. Regulations provided that retirement pension and widows benefits were payable to people absent from Great Britain only if they were in another part of HM dominions or if the absence did not exceed 12 months. Upratings, of which there were three between July 1948 and July 1955, were not payable to persons not resident in Great Britain. Subsequent regulations providing for pension increases have continued to have the same effect.
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> 5. Between 1948 and 1955, the UK entered into reciprocal agreements with France, Italy, Switzerland, the Netherlands and Luxembourg, which provided for payment of retirement pension in the countries concerned. Upratings were paid. Pensions were also payable, by a special arrangement, in the Republic of Ireland but were not uprated until 1966.
>
> 6. There was some pressure for pensions to be made more widely payable abroad. An adjournment debate in 1995 raised the issue in relation to members of HM Forces in Germany and elsewhere who might wish to go and live with their children. At that time a reciprocal agreement with the Federal Republic of Germany was under negotiation but before it came into force, the National Insurance (Residence and Persons Abroad) Regulations were amended so that, in effect, retirement pension and widows benefit became payable without uprating anywhere in the world. The regulations were

[1] Article 11 of Council Regulation (EEC) no 1408/71

announced by a written Parliament Answer in July 1955. Upratings have been less frequent than now and the fact that they were not generally payable abroad seems not to have been controversial.

7. The agreements between the UK and Australia, New Zealand and Canada came into force in 1953, 1956 and 1959 respectively (there had been an earlier, 1948, agreement with New Zealand which covered Family Allowance). There is no indication that the question of unfreezing pensions in those countries arose during negotiation of the agreements.

8. In the early 1960s, criticism of the policy began to build up. By 1963, the Ministry of Pensions and National Insurance was regularly receiving correspondence from MPs and from pensioners living abroad protesting at the unfairness of not paying increases to those living abroad. In retaining the general disqualification for payment of upratings, successive Governments took the view that the level of increases related to conditions in the UK and that it would not be right to impose an additional burden on contributors and taxpayers in the UK in order to pay pension increases to people who had become resident anywhere else in the world. Over the years, however, starting in 1948, the UK entered into reciprocal agreements with some 30 countries which allowed for payment of pension increases (Annex A). The reasons for concluding agreements are explained in paragraph 17. In those specific circumstances it was considered consistent with the principles laid down by the International Labour Organisation and the Council of Europe, to provide for nationals, or insured persons, of one country to maintain, by agreement between the two countries concerned, social security rights acquired in one country when the moved to another.

9. From 1973, however, the increasing cost of unfreezing meant that few commitments were made to negotiate social security agreements which allowed for pension increases to be paid.

PRESENT POLICY

10. Continuing constraints on public expenditure have meant that, since 1981, the government has given no new commitments to uprate pensions abroad…

11. Agreeing to additional expenditure on pensions paid overseas would be incompatible with the government's policy of containing the long term cost of the social security system to ensure that it remains affordable.

12. In June and July 1995, during the passage of the Pensions Bill, amendments were tabled in both Houses calling for upratings to be paid. All were defeated by large majorities. [2]

1.1 Countries in which pensions are frozen or uprated

A Parliamentary Written Answer from 16 October 2008 specifies the countries in which pensions are uprated:

John Mason: To ask the Secretary of State for Work and Pensions (1) what states are designated as non-qualifying destinations for the annual state pension uprating payable to UK pensioners overseas; [227161] (2) what reason the annual pension uprating is withheld from state pensioners who have relocated to certain overseas countries on retirement; and if he will make a statement. [227162]

[2] Social Security Committee, *Uprating of State Retirement Pensions Payable to People Resident Abroad,* Third Report of 1996-7, HC 143, Ev, p39-40

Ms Rosie Winterton *[holding answer 15 October 2008]:* The UK state pension is payable world-wide but is only uprated abroad where there is a legal requirement to do so.

Annual upratings of the UK state pension are paid abroad under the EC's Social Security Regulations to pensioners who have a UK state pension and are living in the European economic area and Switzerland.

Upratings are also payable in countries and territories with which the UK has a reciprocal social security agreement that requires increases to be paid. The UK has such agreements covering: Barbados; Bermuda; Bosnia-Herzegovina; Croatia; Guernsey; Isle of Man; Israel; Jamaica; Jersey; Mauritius; Montenegro; the Philippines; Serbia; Turkey; the United States of America; and, the former Yugoslav Republic of Macedonia.

The UK state pension is not annually uprated in any other country.

Notes:
1. The agreement with Guernsey covers also Alderney, Herm and Jethou.
2. UK state pension recipients on other Channel Islands receive upratings under Regulation 12 of the Social Security (Persons Abroad) Regulations 1975 (SI 1975/563).
3. The agreement with United States of America covers also American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the US Virgin Islands).[3]

1.2 The role of reciprocal agreements

The 1996 DSS Memorandum to the Social Security Committee explained the role of reciprocal social security agreements:

16. Reciprocal social security agreements are not entered into solely with a view to paying annual uprating increases to UK pensioners living abroad. They are not strictly necessary for that purpose as uprating can be achieved through UK domestic legislation…

17. The main purpose of reciprocal agreements so far has been to provide a measure of social protection for workers and the immediate members of their families, when moving from one country to another during their working lives. In effect, they generally prevent such workers from having to contribute to both countries' social security schemes at the same time whilst ensuring they retain benefit cover from either one country or the other. On reaching pensionable age, such workers who have been insured in two or more countries' schemes can receive a pension from each which reflects the amount of their insurance in each.

18. Whether a reciprocal Social Security agreement is entered into depends on various factors, among them the numbers of people moving from one country to the other, the benefits available under the other country's scheme, how far reciprocity is possible and the extent of the advantages to be gained by an agreement are outweighed by the additional expenditure likely to be incurred by the UK in negotiating and implementing it. Where an agreement is in place, the flow of funds may differ depending on the level of each country's benefits and the number of people going in each direction.

19. Since June 1996, the Government's policy has been that reciprocal agreements should normally be limited to resolving questions of liability for social security contributions. These "Double Contribution Conventions" (DCCs) will regulate contributions liability for workers sent to work in one country from the other, so that those working in the other country for a limited period will be liable to pay contributions

[3] HC Deb, 16 Oct 2008, c1374; See also HL Deb, 7 February 2007, c143WA

> only to their "home" social security scheme. DCCs will not be suitable vehicles to provide benefits reciprocity and will not unfreeze pensions or widows benefits.[4]

Since 1981, the government has given no new commitments to uprate pensions abroad.[5] The Memorandum goes on to outline the agreements with specific countries, including the United States of America, Australia, New Zealand, Canada and South Africa.

A Parliamentary Written Answer on 14 March 2007 compared the reciprocal agreement with United States to that with Canada:

> **Pensions: Overseas Residence**
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> Natascha Engel: To ask the Secretary of State for Work and Pensions what the policy reasons are for the different rules which apply to providing index-linked pensions to British pensioners living in Canada and the United States. [126543]
>
> James Purnell: The UK has a full reciprocal social security agreement with the United States covering a range of contributory social security benefits for people moving between the countries, including provision allowing annual UK state pension uprating increases to be paid.
>
> The arrangement with Canada is very limited in scope and does not allow annual UK state pension uprating increases. The arrangement, which was first entered into in 1959, helps only persons coming to the UK from Canada. For retirement pension purposes, it allows former residents of Canada to qualify for an enhanced amount of UK basic state pension by treating periods of residence in Canada as periods when UK national insurance contributions had been paid, provided the person has resided in the UK for 10 years following arrival or return here. There is no corresponding arrangement that would help a person going from the UK to Canada to qualify for either UK or Canadian benefits on taking up residence there.
>
> An agreement between the UK and the USA, which was concluded in 1969, allowed future annual uprating increases, that became payable after its coming into force, to be paid to UK pensioners living in the USA. Talks were subsequently held with Canada about a possible similar agreement. However, Canadian legislation prevented payment of Canadian old age security pension (COASP) under reciprocal agreements with other countries, ruling out the scope for reciprocity in the export of pensions. Although this legislation was amended in 1977 to allow COASP to be paid outside Canada, UK Ministers at that time decided, in line with the UK's general policy on frozen pensions, that insufficient resources were available for increasing the rates of UK pension payable in Canada. The arrangement between the UK and Canada was updated at the time, to reflect the developments in Canadian legislation, but the changes to it were limited to ensuring that there was no double concurrent provision of both countries' pensions for former Canadian residents living in the UK.[6]

1.3 Numbers affected

The latest estimate of the number of UK state pensions paid to pensioners living in frozen rate countries is approximately 530,000.[7] This is around half of all those in receipt of UK state pension living outside the United Kingdom.[8]

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4 Social Security Committee, *Uprating of State Retirement Pensions Payable to People Resident Abroad,* Third Report of 1996-7, HC 143, Ev, p41

5 Ibid, p40

6 HC Deb, 14 March 2007, c377-8W

7 HC Deb, 16 Oct 2008 ,c 1374W

8 HC Deb, 1 October 2007, c2375W

A Parliamentary Written Answer from January 2007 provided details of state pension recipients living abroad by country of habitation.[9] A subsequent Written Answer in September 2007, provided information on the numbers of pensioners living in each of the British Overseas Territories who had frozen pensions.[10]

1.4 Legislative mechanism – the Social Security Benefit Uprating Regulations

A neat summary of the legislation preventing certain pensioners resident overseas from qualifying for pension increases - and the role of Regulation 5 of the 1975 regulations (SI 1975/563, as amended) – was given by Lord Hoffman in his opinion in the *Carson* case:

> 9. The general rule, subject to limited exceptions, has always been that social security benefits are payable only to inhabitants of the United Kingdom. A person "absent from Great Britain" is disqualified: section 113(1) of the Social Security Contributions and Benefits Act 1992. But there is a power to make exceptions by regulation. Regulation 4 of the Social Security Benefit (Persons Abroad) Regulations 1975 (SI 1975/563) (deemed to have been made under the 1992 Act) makes such an exception for retirement pensions. But regulation 5 makes an exception to the exception. In the absence of reciprocal treaty arrangements, persons ordinarily resident abroad continue to be disqualified from receiving the annual increases.[11]

The *Social Security Benefit Uprating Regulations* are an annual event and are consequent on the *Social Security Benefits Uprating Order,* also an annual event. The uprating regulations have the following main purposes:

> In particular they:
> • provide that, where a question has arisen about the effect of the Up-rating Order on a benefit already in payment, the altered rates will not apply until that question is determined by the Secretary of State, an appeal tribunal or a Commissioner,
> • restrict the application of the increases specified in the Up-rating Order in cases where the beneficiary lives abroad,
> • raise the earnings limits for child dependency increases payable with a Carer's Allowance in line with the increase for other benefits in Article 8 of the Up-rating Order, and
> • increase the amount of benefit that a person must be left with after any deductions in respect of care home fees.[12]
>
> The specific part of the *Uprating Regulations* which relates to pensioners not ordinarily resident in Great Britain is regulation 3. This:
>
> restricts the application of increases specified in the Up-rating Order where the beneficiary lives abroad. This provision follows the long-standing policy that benefits payable to people living abroad are not up-rated unless there is a legal obligation or reciprocal agreement to do so. (Around 1 million benefit recipients live abroad of whom around half will not have their benefit up-rated.)[13]

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9 HC Deb 24 January 2007, c1874W
10 HC Deb, 12 September 2007, c2100W
11 *Regina v Secretary of State for Work and Pensions (Respondent) ex parte Carson (Appellant),* 26 May 2005
12 Explanatory Memorandum to Social Security Benefits Uprating Regulations 2008 (SI 2008 No. 667)
13 Ibid, para 7.2

It does this by applying, to any additional benefit payable by virtue of the *Uprating Order*, regulation 5 of the *Social Security Benefit (Person's Abroad) Regulations* 1975 (SI 1975 No. 563), which states that:

> References to additional benefit are to be construed as referring to additional benefit of that description which is, or but for this regulation would be, payable by virtue (directly or indirectly) of the said order.

The *Social Security Benefits Uprating Order* includes figures for the amount of social security benefits and pensions. The 2008 Order, for example, specified the amount of the Category A retirement pension in 2007/08: £90.70. [14]

Cost of uprating frozen pensions

The Government estimates that it would cost "around £440 million in 2007-08 to bring all frozen-rate pensions up to the current rate, and this would be an ongoing cost, increasing year on year."[15]

Figures provided during debate on the *Pensions Bill 2006-07* are for 2006-07, but indicate the relative costs of the different approaches to uprating frozen pensions:

> Current estimates are that it would cost approximately £3 billion, in 2007-08, to bring frozen rate pensions up to current levels and to pay all the arrears. It would cost around £420 million if arrears were not paid and this would be ongoing costs which will rise year on year.[16]

The estimated initial annual cost of uprating (in line with prices) frozen pensions at the rate they were currently being paid was £30 million.[17]

The *Pensions Act 2007* included legislation to re-link increases in the Basic State Pension to average earnings, probably from 2012.[18] Pensions Reform Minister, James Purnell, explained the cost of uprating frozen pensions in line with earnings:

> would be £50 million in 2007-08, the first year. However, as people move overseas that cost would escalate over time, so long-term projections are that the costs would rise by upwards of £2 billion by 2050, based on earnings uprating from 2012.[19]

A Parliamentary Written Answer from 12 December 2007 provided the following details about overseas recipients of the additional state pension:

> We estimate that there are around 110,000 overseas recipients of the UK additional state pension (SERPS and/or S2P) who live in countries were the pension is not uprated.
>
> The estimated cost to uprate additional state pension is around £18 million in 2007-08 and it would cost around £170 milllion in 2007-08 if this was backdated and arrears paid.[20]

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[14] Social Security Benefits Uprating Order 2008 (SI 2008 No. 632), Article 4 (3)(b)
[15] HC Deb, 26 July 2007, c122WA
[16] HL Deb, 21 February 2007, c261WA
[17] PBC Deb, 25 January 2007, c111; Letter from Pensions Reform Minister to Chair of Public Bill Committee dated 31 January 2007
[18] *Pensions Act 2007*, s5; DWP, Security in retirement: towards a new pensions system. Cm 6841, para 3.24
[19] PBC Deb, 25 January 2007, c111
[20] HC Deb, 17 December 2007, c606W

A Parliamentary Written Answer of 18 November 2008 gave the cost of uprating frozen pensions for older pensioners:

> **Mr. Waterson:** To ask the Secretary of State for Work and Pensions what estimate he has made of the cost of up-rating the frozen pensions for retired UK nationals resident abroad who have reached the ages of *(a)* 70, *(b)* 75 and *(c)* 80 years. [235305]
>
> **Ms Rosie Winterton:** The latest estimates for the cost of uprating the UK state pension for all those in the relevant age groups living in frozen-rate countries are in the following table. They relate to the estimated additional cost that would be incurred in 2008-09 were frozen pensions to be uprated to their unfrozen level but without paying arrears.
>
> *2008-09 price terms*
>
> | Age | £million |
> |---|---|
> | Age 70 and above | 430 |
> | Age 75 and above | 360 |
> | Age 80 and above | 260 |
>
> *Note*: Figures are rounded to the nearest £10 million
> *Source*: Internal estimates using September 2007 retirement pension administrative data: 5 per cent sample.[21]

1.5 Information and leaflets

Information on the rules regarding the payment of the state pension abroad can be found in the Pension Service's leaflet, *Guide to State Pensions*, NP46 (August 2008). There is a list of FAQs on the Pension Service website.

Information can also be found on the Direct Gov website.

2 Debates in Parliament

2.1 Social Security Committee Report

The Social Security Committee commissioned a report from the Department of Social Security in order to contribute to "a debate expected to take place during the Report stage of the Pensions Bill [Lords] on extending uprating to more (or all) pensioners living abroad." The memorandum outlines the historical background to the issue and debates In Parliament up to 1996 (see Section A above). The Committee recommended that "there should be a free vote at prime time to allow Members to express their opinion on the principle of whether the Government should pay upratings to some or all of those pensioners living in countries where upratings are not paid at present".[22]

The response of the then Secretary of State for Social Security to the Committee report reiterated the Government line and was given in a written answer:

> **Mr. Nigel Evans**: To ask the Secretary of State for Social Security if he will publish the Government's response to the Third report of the Social Security Committee, "Uprating of State Retirement Pensions Payable to People Resident Abroad" (HC 143 of Session 1996-97).

21 HC Deb, 18 November 2008, c445W
22 Ibid, para 39

> **Mr. Lilley**: The Government welcome the Committee's report, which focused on the long-standing policy of uprating UK state retirement pensions when paid abroad in specific countries. The report is an important and useful study. The report contained one recommendation: "That there should be a free vote at prime time to allow Members to express their opinion on the principle of whether the Government should pay upratings to some or all of those pensioners living in countries where upratings are not paid at present".
>
> Whipping arrangements are a matter for the business managers of all parties. The Government note that the House had the opportunity to debate the uprating of pensions paid abroad during the passage of the Pensions Bill in July 1995. Over 200 hon. Members voted on amendments aimed at providing uprating increases, which were heavily defeated. The Committee's report rightly recognises that priorities for public expenditure will inevitably be taken into account in considering the issue. Almost £1 billion a year is paid to UK pensioners abroad. It would cost another £250 million a year to bring frozen pensions up to the rate that would be paid if the pensioner were in the UK.[23]

No debate took place on the report.

2.2 Subsequent debates

The policy of not awarding increases has been followed by successive governments.[24] Essentially, the reason for not uprating retirement pension in these countries is cost and the desire to focus constrained resources on pensioners living in the UK.

The present Government has confirmed there is unlikely to be a change in policy in respect of these overseas pensioners. In May 2000, the then Pensions Minister, Jeff Rooker, said:

> Our priority is to concentrate any resources that may become available on pensioners resident in the UK. We have done much already for them but, as my right hon. Friend the Chancellor of the Exchequer announced in the Budget, we plan to do more. That is why we have no plans to unfreeze.[25]

In response to a Westminster Hall debate in April 2001,[26] the then Parliamentary Under Secretary of State for Social Security, Hugh Bayley, emphasised the difference between national insurance contributions and contributions to an occupational pension scheme:

> Paying contributions has never given an automatic entitlement to benefits. The national insurance scheme is different from a commercial insurance scheme in which premiums are linked to expected benefits. Although national insurance contributions provide a foundation for calculating personal future benefit entitlement, the contributions do not actually pay for those benefits.
>
> The agreement between the individual and the state is that the payment of contributions gives entitlement to a package of benefits subject to certain conditions. One condition is that retirement pension upratings are generally not payable abroad. That comes from the 1955 legislation, which provided for pensions to be paid abroad, but not for uprating.

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23 HC Deb 19 March 1997 cc 679-80W
24 See, for example, HL Deb 26 April 1989 c1352; HC Deb 6 July 1994 c 432
25 HC Deb 16 May 2000 c 118W; See also HC Deb 3 April 2001 cc43-48WH
26 HC Deb 3 April 2001 cc43-48WH

> The rate of national insurance contributions has never included an element for the indexation of pensions payable abroad, because the social security scheme is designed primarily for those living in the United Kingdom, and any uprating in the pension is designed to meet the cost of living here.[27]

2.3 Debates on the Social Security Benefit Uprating Regulations

The *Social Security (Uprating) Regulations* are subject to the negative parliamentary procedure. In successive years, an Early Day Motion praying against the regulations has led to an opportunity to debate the issue, although the regulations have not been annulled. Presumably, the main purpose of praying against them is to "unfreeze" pensions paid to people living abroad. However, annulling the SI would be presumably also prevent the other regulations taking effect, thus preventing the increase in the earnings limits for child dependency increases payable with Carer's Allowance and the increase in the amount of benefit that a person must be left with after any deductions in respect of care home fees.[28]

In response to the debate on the relevant regulations in 2005 Lord Hunt of Kings Heath, said that the Government was "not persuaded that they should change their existing policy". Again the cost argument was prominent in his defence of the current position:

> But I reiterate that successive governments have taken the view that all those who work in the UK and have built up an entitlement to state pension should have the right to receive it. There were no plans to change that arrangement. But the pension is increased or uprated in line with UK price inflation only where the recipient is a resident in the European economic area or in a country with which the UK has a reciprocal agreement. I know that noble Lords are well versed but, for the record, I should state that the uprating of pensions paid to people residing in the EEA is a requirement of EC law. As members of the EU, we are required to comply with that. Over the years, we have entered into a number of reciprocal agreements. They are not primarily concerned with the uprating of pensions; essentially they are about providing for the protection and rights of workers who move between the UK and the other country concerned. (…)
>
> I turn to the question of money because it is at the heart of this issue. Governments have to make hard decisions, and there is no question that, taking each of the options being presented to us, a considerable amount of public money is involved. I understand that if we fully uprated and back-paid, there would be an enormous amount to pay—in the region of £3 billion.[29]

The Regulations were debated again on 15 May 2006, following EDM praying against the regulations (1851) in the name of Sir Menzies Campbell.[30] In response to the debate, James Plaskitt, the then Parliamentary Under-Secretary of State for Work and Pensions, again cited cost as one reason for not changing current policy, but he also outlined the history of the payment of UK pensioners to people living abroad as a way of putting the "issue in context". He also cited the judgement of Lord Hoffman in the Carson case:

> Other hon. Members have quoted judgments, and I shall put on record the decision of Lord Hoffman in the lead case of Ms Carson, which is a very important judgment. (…)

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27 HC Deb 3 April 2001 c46WH

28 *Social Security Benefits Uprating Order 2007 (SI 2007 No. 668),* Regulations 4 and 5

29 HL Deb 25 October 2005, cc 1153-1154

30 First Standing Committee on Delegated Legislation, 15 May 2006

"The denial of a social security benefit to Ms Carson on the ground that she lives abroad cannot possibly be equated with discrimination on grounds of race or sex. It is not a denial of respect for her as an individual. She was under no obligation to move to South Africa. She did so voluntarily and no doubt for good reasons. But in doing so, she put herself outside the primary scope and purpose of the UK social security system. Social security benefits are part of an intricate and interlocking system of social welfare which exists to ensure certain minimum standards of living for the people of this country. They are an expression of what has been called social solidarity or fraternitÃ(c); the duty of any community to help those of its members who are in need. But that duty is generally recognised to be national in character. It does not extend to the inhabitants of foreign countries."[31]

In 2007, Sir Menzies Campbell again prayed against the Uprating Regulations.[32] The debate on the regulations took place on 8 May 2007.[33] On this occasion, the then Pensions Reform Minister, James Purnell, made the following comments about reciprocal agreements and the comparison between the policy of the British Government regarding overseas pensioners and that of other countries:

> As hon. Members know, regulation 3 comes out of an arrangement that we entered into with various other countries, which was about ensuring that people do not pay towards social security entitlement in two different countries but then receive entitlement in only one. We do not have any plans to negotiate any new reciprocal arrangements. I understand that the Australians terminated their arrangement unilaterally, but protections are in place to continue payment to the people affected. The core point is not really about reciprocal arrangements; it is about cost.
>
> The hon. Gentleman made a rather good point about the fact that the comparison between ourselves and other countries is sometimes less complete than it should be, and he asked me to comment on it. It is true that in Canada, if a pension is payable abroad, it is uprated, but it is quite hard to get a pension that is payable abroad, because someone has to have lived in Canada for at least 20 years from the age of 18. As the hon. Gentleman knows from the Pensions Bill, which is going through Parliament, we are getting rid of such periods of qualification. Therefore, in terms of who can qualify for a pension, our system is much more generous.
>
> Similarly, in Australia the pension is paid at the full domestic rate for only 26 weeks. After that period, it continues to be paid at the full rate only if the person had resided in Australia for 25 years or more, so the period is even longer than in Canada. In New Zealand, as the hon. Gentleman has said, there is a residence-based pension, which is not payable in the UK. In India, there is no national contributory pension system similar to ours, which is also the case in South Africa. The comparison between the two types of regime—the one here and the ones that apply in the countries without reciprocal arrangements—is more subtle than it is sometimes painted. Ours is more generous in terms of coverage, but it is not uprated in those countries that we have been talking about today.[34]

The *Social Security (Uprating) Regulations 2008 (SI 2008 No. 667)* were laid before Parliament on 13 March 2008.[35] An Early Day Motion has been tabled praying against the

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[31] First Standing Committee on Delegated Legislation, 15 May 2006, cc18-21
[32] EDM 1195 SOCIAL SECURITY (S.I., 2007, No. 775) 21.03.2007, Campbell, Menzies
[33] First Delegated Legislation Committee, 8 May 2007
[34] Ibid, c14-15
[35] http://www.opsi.gov.uk/si/si2008/uksi_20080667_en_1

regulations, in the name of Nick Clegg.[36] In debate on the regulations on 9 June, Liberal Democrat Work and Pensions spokesperson Jenny Willott suggested that it could be "cost effective" to start uprating "from this point in time, rather than bringing everybody up to the level at which they would be in the UK."[37] In response, the then Pensions Reform Minister, Mike O'Brien said there would be "significant long-term cost would be associated with that."[38]

2.4 Debates on Bills

The issue has been raised by means of amendments to a number of Bills over the years, none of which have resulted in the law being changed.

Earl Russell moved an amendment to the ***Welfare Reform and Pensions Bill 1998-9*** which would have extended upratings of the state pension to people living abroad.[39] In response, the then Parliamentary Under Secretary of State, Baroness Hollis of Heigham repeated the Government's view that this was "not a priority call on scarce resources". The amendment was withdrawn.[40]

An amendment was tabled to the ***Pensions Bill 2003-04*** by the then Liberal Democrat Work and Pensions Spokesperson Steve Webb, such that pensions paid to pensioners living outside the UK would be "be subject to annual uprating by the same percentage rate as is applied to such pensions payable to pensioners living in the United Kingdom." The then Chief Secretary to the Treasury, George Osborne commented that "if the system worked in the way that most people think, it would not matter where a person lived". However, sometimes logic in government runs into the buffers of cost."[41] In response, the then Work and Pensions Minister, Chris Pond said the Government's priority was "to ensure that we help the poorest pensioners living in this country." However, he suggested that one way forward might be to "argue for a bilateral agreement between those countries and the United Kingdom that would allow us to work out how to meet the reciprocal costs of such an arrangement."[42] The amendment was withdrawn.

The *Pensions Act 2007* would restore the link between increases in the basic State Pension and earnings, probably from 2012.[43] When the ***Pensions Bill 2006-07*** was before Parliament, the then Liberal Democrat Work and Pensions spokesperson David Laws tabled a probing amendment that would have had the effect of extending this to British citizens living abroad.[44] He argued that the introduction of earnings uprating for some but not for others would result in the "existing injustice" being "considerably magnified".[45] Nigel Waterson explained that the Conservatives had "considerable sympathy with the concerns expressed" on this issue.[46] In response, the then Pensions Reform Minister, James Purnell, explained that the key issue was cost and that the Government's "main priority must be pensioners living here".[47] He said he did not think it "would be appropriate to start negotiations on bilateral, reciprocal agreements when the Government's policy has not changed." The amendment

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36 EDM 1313 SOCIAL SECURITY (S.I., 2008, No. 667) 02.04.2008
37 Second Committee on Delegated Legislation, 9 June 2008, c5
38 Ibid, c8
39 HL Deb, 13 July 1999, c190
40 Ibid, c192
41 Pensions Bill Deb, 18 March 2004, c258
42 Pensions Bill Deb, 18 March 2004, c258-9
43 Pensions Act 2007, s5
44 Pensions Bill Deb, 25 January 2007, c89
45 Pensions Bill Deb, 25 January 2007, c91
46 Ibid, c105
47 Ibid, c111-113

was withdrawn.[48] A similar amendment was tabled in the House of Lords by Lord Oakeshott of Seagrove Bay and again withdrawn.[49]

3 Legal challenge

Annette Carson, a UK pensioner who is resident in South Africa, challenged the Government's policy under the *Human Rights Act 1998* in April 2002 in the High Court. She claimed that the government had infringed her rights under Article 1 of Protocol 1 and Article 14 of the European Convention on Human Rights (ECHR). Article 1 of Protocol 1 gives protection to property rights, and she claimed that her state pension was a pecuniary right, and therefore part of her property. She argued that the government's refusal to uprate her pension was depriving her part of her pension. Article 14 prohibits discrimination in securing the enjoyment of the rights protected by the ECHR. Ms Carson argued that she was discriminated against because she lived in South Africa.[50]

The judge ruled against Ms Carson on 22 May 2002:

> In my judgment, the remedy of the expatriate United Kingdom pensioners who do not receive uprated pensions is political, not judicial. The decision to pay them uprated pensions must be made by Parliament.[51]

On the issue of a state pension being counted as a property right, the judge found that there was a right to a state pension, but this did not include a right to uprate:

> In the present case, UK legislation has never conferred a right on the Claimant to the uprating of her pension while she lived in South Africa. She does not satisfy and has never satisfied the conditions for payment of an uprated pension. She has never had a right to an uprated pension. There can therefore be no question of her having been deprived of any such right.[52]

On the issue of whether this was unlawful discrimination, the judge ruled that the government is entitled to restrict payment, if it so chooses:

> The Government has decided that uprated pensions are to be confined to those living in this country or living in certain other countries. It seems to me that a government may lawfully decide to restrict the payment of benefits of any kind to those who are within its territorial jurisdiction, leaving the care and support of those who live elsewhere to the governments of the countries in which they live. Such a restriction may be based wholly or partly on considerations of cost, but having regard to the wide margin of discretion that must be accorded to the government, I do not think it one that a Court may say is unreasonable or lacking in objective justification. The lack of consistency in state practice indicates that there is no single right decision to be made as to the payment of pensions to those who go to live abroad. It is also difficult to criticise the position of the government if the limitation on the benefit has been published for some time, so that those who have gone to live abroad did know, or could easily have ascertained it, before deciding to live abroad. That is the case in relation to pensions.

48 Ibid, c112-114
49 HL Deb, 4 June 2007, c937-8
50 *Carson v DWP* 22 May 2002 para 8-13
51 *Carson v DWP* 22 May 2002 para 76
52 *Carson v DWP* 22 May 2002 para 48

> Similarly, I think that the government is entitled to consider the payment of uprated pensions to those living abroad on a country-by-country basis, taking into account the interests of this country in each case. I do not think that payment of uprated pensions to pensioners in any one foreign country (or several) is converted, by Article 14, into an obligation to pay uprated pensions to all pensioners living abroad: yet this is the effect of the Claimant's submissions. It would be curious indeed if Article 14 were to compel the government to pay uprated pensions to those living abroad irrespective of any countervailing benefit offered by their countries of residence, yet again that would be the effect of the Claimant's case. The accepted illogicality of the present position is the result of agreements providing for payment of uprated pensions having been entered into with some countries, but not others, at a time when governmental policy was different from the present policy.[53]

However the judge did recognise the illogicality of the current situation, in which the upratings are received in some countries, but not in others. In his introduction he also recognised the sense of grievance felt by pensioners living in frozen rate countries.

The decision was criticised by Age Concern. Gordon Lishman, said:

> People have to pay National Insurance contributions throughout their working life to be entitled to the full basic state pension, and therefore it is scandalous that they should not benefit from the annual inflationary increase that pensioners living in Britain receive.[54]

Annette Carson was given leave to appeal against the ruling, and her appeal was heard in the Court of Appeal in March 2003. The Court rejected this appeal and upheld the High Court's decision in a ruling issued on 17 June 2003.[55] However, leave to appeal to the House of Lords was granted on 6 November 2003.[56]

Ms Carson's case was heard on 28 February 2005. On 26 May 2005 the House of Lords delivered its judgement, rejecting the appeal.

> The exclusion of pensioners resident in other jurisdictions from the United Kingdom's annual uprating of the state retirement pension was not in breach of the European Convention on Human Rights.
>
> Similarly there was no breach of the Convention in the payment of jobseeker's allowance or income support to a person under the age of 25 at a different rate from payment to a person over that age.
>
> The House of Lords so held, Lord Carswell dissenting in part, dismissing the appeals of Annette Carson and Joanne Reynolds from the dismissal by the Court of Appeal (Lord Justice Simon Brown, Lord Justice Laws and Lord Justice Rix) (The Times June 28, 2003; (2003) 3 All ER 577) of their appeals against the upholding of decisions of the Secretary of State for Work and Pensions in relation to retirement pension and jobseeker's allowance and income support.
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> Annette Carson, a United Kingdom pensioner living in South Africa, had appealed from the dismissal by Mr Justice Stanley Burnton in the Queen's Bench Division (The Times May 24, 2002) of her application seeking a declaration by way of judicial review that

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53 *Carson v DWP* 22 May 2002 para 73-4
54 "Britons lose fight to uprate pensions" *Daily Mail* 23 May 2002
55 *(1)Carson (2) Reynolds v The Secretary of State for Work & Pensions (2003)*
56 BBC News Online, 6 November 2003, *Expat pensioner wins appeal right*

> regulation 3 of the Social Security Benefits Up-rating Regulations (SI 2001 No 910) was ultra vires.[57]

Lord Hoffman said that Ms Carson's case was typical of over 400,000 United Kingdom pensioners living abroad in countries which did not have reciprocal treaty arrangements under which cost of living increases were payable. However, while His Lordship believed that there was "no doubt" that Ms Carson was being treated differently from a pensioner who had the same contribution record but lived in the UK or a treaty country, this was not enough to amount to discrimination:

> Discrimination meant a failure to treat like cases alike. There was obviously no discrimination when the cases were relevantly different.
>
> Article 14 expressed the Enlightenment value that every human being was entitled to equal respect. Characteristics such as race, caste, noble birth, membership of a political party and, here a change in values since the Enlightenment, gender, were seldom, if ever, acceptable grounds for differences in treatment.
>
> In some constitutions, the prohibition on discrimination was confined to grounds of that kind. But the Strasbourg court had given article 14 a wide interpretation.
>
> It was therefore necessary to distinguish between those grounds of discrimination which prima facie appeared to offend our notions of the respect due to the individual and those which merely required some rational justification.
>
> While the courts, as guardians of the right of the individual to equal respect, would carefully examine the reasons offered for any discrimination in the first category, decisions about the general public interest which underpinned differences in treatment in the second category were very much a matter for the democratically elected branches of government.[58]

On Ms Carson's claim that she had a right to equal treatment in respect of her pension because she had paid the same National Insurance Contributions to someone remaining in the UK, his Lordship remarked:

> In effect, her argument was that because contributions were a necessary condition for the retirement pension paid to UK residents, they ought to be a sufficient condition. No other matters, like whether one lived in the United Kingdom and participated in the rest of its arrangements for taxation and social security, ought to be taken into account. But that was an obvious fallacy. National Insurance contributions had no exclusive link to retirement pensions, comparable with contributions to a private pension scheme. In fact the link was a rather tenuous one.[59]

An application has now been made to the European Court of Human Rights. The then Pensions Reform Minister, James Purnell, said on 25 January 2007:

> After the final UK stage, Ms Carson had six months to decide whether to take the case to the European Court of Human Rights in Strasbourg. In 2005, we were made aware that she and 12 others had made an application to the European Court of Human

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[57] *Carson v DWP* 26 May 2005 paras 1-4
[58] *Carson v DWP* 26 May 2005 paras 13-17
[59] *Carson v DWP* 26 May 2005 paras 22-24

Rights. We are unlikely to know whether it is successful until early in the summer of 2007. [60]

In June 2007, Baroness Morgan said that the Government expected "to hear from the court later this summer". [61]

The ECHR issued its decision in *Carson and Others v. the United Kingdom* on 4 November 2008.[62] It held that the policy of not index-linking the state pension of pensioners in some countries abroad did not violate Article 14 (prohibition of discrimination) of the European Convention on Human Rights. It decided it did not need to go on to consider the applicants' complaint under Article 14 in conjunction with Article 8 (right to respect for private and family life). The Court issued a press release summarising its decision:

> **Decision of the Court**
>
> Article 14 taken in conjunction with Article 1 of Protocol No. 1
>
> First, as regards the question of whether the applicants were in an analogous situation to British pensioners who had chosen to remain in the United Kingdom, the Court noted that the Contracting State's social security system was intended to provide a minimum standard of living for those resident within its territory. Insofar as concerned the operation of pension or social security systems, individuals ordinarily resident within the Contracting State were not therefore in a relevantly analogous situation to those residing outside the territory.
>
> Furthermore, the Court was hesitant to find an analogy between applicants who live in a "frozen pension" country and British pensioners resident in countries outside the United Kingdom where up-rating was available through a reciprocal agreement. National Insurance Contributions were only one part of the United Kingdom's complex system of taxation and the National Insurance Fund was just one of a number of sources of revenue used to pay for the United Kingdom's Social Security and National Health systems. The applicants' payment of National Insurance Contributions during their working lives in the United Kingdom was not therefore any more significant than the fact that they might have paid income tax or other taxes while domiciled there. Nor was it easy to compare the respective positions of residents of States in close geographical proximity with similar economic conditions, such as the United States of America and Canada, South Africa and Mauritius, or Jamaica and Trinidad and Tobago, due to differences in social security provision, taxation, rates of inflation, interest and currency exchange.
>
> As emphasised by the British domestic courts, the pattern of reciprocal agreements was the result of history and perceptions in each country as to perceived costs and benefits of such an arrangement. They represented whatever the Contracting State had from time to time been able to negotiate without placing itself at an undue economic disadvantage and to apply to provide reciprocity of social security cover across the board, not just in relation to pension up-rating. In the Court's view, the State did not therefore exceed its very broad discretion to decide on matters of macro-economic policy by entering into such reciprocal arrangements with certain countries but not others.

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[60] PBC, 25 January 2007, c112

[61] HL Deb, 4 June 2007, c938.

[62] European Court of Human Rights, Judgement in the case of Carson and others v United Kingdom, Application no. 42184/05

At any rate, the Court concluded that the difference in treatment had been objectively and reasonably justified. While there was some force in the applicants' argument, echoed by Age Concern, that an elderly person's decision to move abroad might be driven by a number of factors, including the desire to be close to family members, place of residence was nonetheless a matter of choice. The Court therefore agreed with the Government and the national courts that, in that context, the same high level of protection against differences of treatment was not needed as in differences based on gender or racial or ethnic origin. Moreover, the State had taken steps, in a series of leaflets which had referred to the Social Security Benefits Up-rating Regulations 2001, to inform United Kingdom residents moving abroad about the absence of index linking for pensions in certain countries.

It followed that there had been no violation of Article 14 taken in conjunction with Article 1 of Protocol no. 1.

Article 14 taken in conjunction with Article 8

The Court held unanimously that it was not necessary to consider separately the applicants' complaint under Article 14 in conjunction with Article 8.

Judge Garlicki expressed a dissenting opinion, which is annexed to the judgment.[63]

The case was referred to the Grand Chamber of the European Court of Human Rights on 6 April 2009[64] and is to be heard on 2 September 2009:

Wednesday 2 September 2009: 9.15 a.m.

Grand Chamber

Carson and Others v. the United Kingdom (application no. 42184/05)

The applicants are 13 British nationals: Annette Carson, Bernard Jackson, Venice Stewart, Ethel Kendall, Kenneth Dean, Robert Buchanan, Terrance Doyle, John Gould, Geoff Dancer, Penelope Hill, Bernard Shrubsole, Lothar Markiewicz and Rosemary Godfrey, born between 1913 and 1937. The applicants spent most of their working lives in the United Kingdom, paying National Insurance Contributions in full, before emigrating or returning to South Africa, Australia or Canada.

The case concerned the applicants' complaint about the United Kingdom authorities' refusal to up-rate their pensions in line with inflation.

In 2002, Ms Carson brought proceedings by way of judicial review to challenge the failure to index-link her pension. She claimed that she had been the victim of discrimination as British pensioners were treated differently depending on their country of residence. In particular, despite having spent the same amount of time working in the United Kingdom, having made the same contributions towards the National Insurance Fund and having the same need for a reasonable standard of living in her old age as British pensioners who were living in the United Kingdom or in other countries where up-rating was available through reciprocal agreements, her basic State pension was frozen at the rate payable on the date she left the United Kingdom.

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[63] EHCR, 'Chamber Judgement. Carson and Others v the United Kingdom', Press release issued by the Registrar, No 773, 4 November 2008

[64] The Basic information on procedures section of the ECHR website explains that "within three months of delivery of the judgment of a Chamber, any party may request that the case be referred to the Grand Chamber if it raises a serious question of interpretation or application or a serious issue of general importance."

Her application for judicial review was dismissed in May 2002 and ultimately on appeal before the House of Lords in May 2005.

In the House of Lord's judgment all but one of the judges who examined Ms Carson's complaint held that she was not in an analogous, or relevantly similar, situation to a pensioner of the same age and contribution record living in the United Kingdom or in a country where up-rating was available through a reciprocal bilateral agreement. Social security benefits, including the State pension, were part of an intricate and interlocking system of social welfare and taxation which existed to ensure certain minimum standards of living for those in the United Kingdom. Contributions to the National Insurance Fund could not be equated to contributions to a private pension scheme, because the money was used, together with money provided from general taxation, to finance a range of different benefits and allowances. Quite different economic conditions applied in other countries: for example, in South Africa, where Ms Carson lived, although there was virtually no social security, the cost of living was much lower, and the value of the rand had dropped in recent years compared to sterling.

The domestic courts further held that Ms Carson and those in her position had chosen to live in societies, or more pointedly economies, outside the United Kingdom; to accept her arguments would be to lead to judicial interference in the political decision as to the redeployment of public funds.

Ms Carson receives a basic State pension of 67.50 pounds sterling (GBP) per week. It has been frozen at that rate since 2000. Had that basic pension been up-rated in line with inflation, it would now be worth GBP 82.05 per week. Ms Carson, now retired, is almost entirely dependent on her British pension to support her.

The applicants alleged, in particular, that the United Kingdom authorities' refusal to up-rate their pensions in line with inflation was discriminatory and that some of them had to choose between surrendering a large part of their pension entitlement or living far away from their families. They relied on Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination) and Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

In a judgment of 4 November 2008, the Court held, by six votes to one, that there had been no violation of Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (protection of property) to the Convention. On 6 April 2009 the case was referred to the Grand Chamber at the applicants' request.[65]

4 Public service pensioners living overseas

Campaigners often argue that public servants, including Members of Parliament, are treated differently and are able to receive pension increases if they live abroad.

This is not the case. The freezing of pensions applies to state retirement pensions. A retired public servant living overseas would have his state pension frozen in exactly the same way as a retired private sector worker.

Members of all the statutory public service pension schemes receive annual upratings in line with inflation to their public service pensions. These increases are paid irrespective of where they live. In this respect there is no difference between public service pension schemes and private sector occupational pension schemes which would apply their uprating policies to all their pensioners wherever they live.

65 Press release issued by the registrar, No. 629, 26 August 2009

However, there is an issue connected with the uprating of the Guaranteed Minimum Pension (GMP) part of public service pensions.

Most public service schemes – like the Principal Civil Service Pension Scheme (PCSPS), the Armed Forces Pension Scheme (AFPS) and the Parliamentary Pension Scheme – are contracted out of the State Earnings Related Pension Scheme (SERPS). Ever since SERPS was introduced in April 1978, under the *Pensions Act 1975*, it has been possible to "contract out" of the additional pension into an approved occupational pension scheme. People who are contracted out pay lower National Insurance Contributions (NICs). In return, their private pension scheme is expected to provide a pension over and above the basic state pension.

The Department of Health and Social Security leaflet, *New Pensions: a more secure future*, (NP34), issued in January 1978, explained:

> The new state pension will operate in partnership with good occupational schemes … if your employer operates such a scheme he can apply to contract you out … of the state scheme's additional pension and you would then pay lower contributions to the state scheme … Your basic pension would then be provided by the state scheme and your additional pension by your employer's occupational scheme, with inflation-proofing after the pension is in payment provided by the state (…)
>
> **Guaranteed minimum pensions**
>
> A contracted-out occupational pension scheme must provide you with at least a guaranteed minimum pension, to match the additional pension you would have earned from the state scheme … Your occupational pension may, of course, be much higher than the guaranteed minimum pension, particularly if you are already a member of a scheme.

Although there have been many changes to the scheme since 1978, the basic principle holds good: people who are contracted out of the state additional pension scheme pay lower NICs, but, in return, are expected to receive the earnings-related element of their pension from private pension schemes rather than the state.

For contracted out occupational pensions earned between 1978/79 and 1987/88, the state effectively provides for post-retirement inflation-proofing of the GMP through a SERPS payment. For contracted out pensions earned between 1988/89 and 1996/97, a SERPS payment makes up any inflation-proofing of the GMP above 3%. (Changes made by the *Social Security Act 1986* placed responsibility for post-retirement inflation-proofing of GMPs up to 3% on the contracted out occupational schemes themselves.)

The public service pension schemes are required by law to reduce the amount of inflation-proofing they would otherwise give their pensioners to take account of the fact that SERPS is indexing the GMP part of the pension.

However, pensioners who live abroad in countries where state pensions are frozen do <u>not</u> receive SERPS increases to inflation-proof their GMPs. So, by a Treasury Direction (currently dated 6 July 2000) the public service schemes do <u>not</u> reduce their inflation-proofing in these cases.

The Explanatory Note to this Direction is reproduced below:

> The *Pensions (Increase) Act 1971* makes provision for the increase of the occupational pensions, defined as official pensions, payable to or in respect of many former public

servants. Where the Secretary of State for Social Security makes a direction by virtue of section 151 of the Social Security Administration Act 1992 to the effect that certain social security benefits are to be increased by reference to the increase in retail prices over a specified period, section 59 of the Social Security Pensions Act 1975, which has effect as if it were contained in the 1971 Act, requires the Treasury to make a parallel order increasing official pensions.

The state retirement pension consists of two elements, namely a basic pension payable at a weekly rate and an earnings related pension commonly known as SERPS (state earnings related pension scheme). As a condition of contracting out of SERPS, an occupational pension scheme must pay to pensioners a guaranteed minimum pension (GMP) in respect of pensionable service in the tax years from 1978-79 until 1996-97 inclusive. The GMP approximates to the SERPS pension which the pensioner would have earned during such service had his occupational scheme not been contracted out. Even where a scheme is contracted out, under directions given by virtue of section 151 of the Social Security Administration Act 1992, DSS pays in addition to the basic pension an increase to the SERPS element, calculated by reference to the increase in retail prices. DSS indexes in full the earnings related element earned in respect of the tax years 1978-79 to 1987-88 inclusive. In respect of the tax years 1988-89 to 1996-7, DSS indexes it to the extent of any increase in retail prices above 3%.

To avoid the double indexation of the GMP element of official pensions, section 59(5) of the Social Security Pensions Act requires the pension paying authority before increasing a pension which includes a GMP to deduct the amount of the GMP from the amount to be increased. This direction makes an exception to this requirement in the circumstances specified.

Paragraph 2(a) specifies the case where DSS is not indexing the GMP element in full because the SERPS pension to which the pensioner would be entitled if the occupational scheme were not contracted out is less than his GMP.

Paragraph 2(b) specifies the case where the pensioner does not receive a state retirement pension because he has not yet claimed it because, for example, he is in receipt of incapacity benefit (formerly invalidity benefit), or he is not treated as having claimed it.

Paragraph 2(c) specifies the case where the pensioner does not receive a state pension because he has deferred his retirement.

Paragraph 2(d) specifies the case where a state retirement pension is in payment but DSS are not increasing it because the pensioner is resident in a country with which the United Kingdom does not have reciprocal arrangements for uprating social security pensions. (Emphasis added)

Paragraph 2(e) specifies the case where the pensioner is disqualified for receiving a state retirement pension because he is in prison.

Paragraph 2(f) specifies the case where the pensioner’s state retirement pension is reduced because he has been hospitalised for at least 52 weeks.

Paragraph 2(g) specifies the case of a widower’s GMP, unless he is entitled to a Category A or Category B state retirement pension by virtue of his late wife's National Insurance contributions.

Because section 109 of the Pension Schemes Act 1993 requires the occupational scheme to index the GMP earned in the tax years from 1988-89 to 1996-97 inclusive up to a limit of 3%, paragraph 2 requires the occupational scheme to deduct the amount of any increase under a section 109 order in the same tax year before calculating the increase due under an order under section 59.

Paragraphs 3, 4 and 5 prescribe how pensions increase is to be calculated when the conditions in sub-paragraphs 2(a), (b), (c), (d), (e), (f), and (g) variously begin or cease to apply.

The direction revokes the previous direction made on 28th March 1990.

There does seem to have been some interest in this subject, prompted by the PQ answered on 8 July 2004:

Expatriate Retired Civil Servants

Mr. Webb: To ask the Minister for the Cabinet Office whether civil servants who retire abroad to a country where pensions are frozen for expatriates continue to have their guaranteed minimum pension uprated; and if he will make a statement. [182040]

Mr. Alexander: When a pensioner covered by the Principal Civil Service Pension Scheme (PCSPS) becomes permanently resident in a country where state pensions are frozen for expatriates, the Inland Revenue advises the PCSPS that the state pension will not attract uprating increases. The PCSPS will then uprate the Guaranteed Minimum Pension element of the PCSPS pension in line with increases under the Pensions Increase Orders.[66]

[66] HC Deb 8 July 2004, cc 861-862W