

To index or not the UK pensions to all those living abroad?

This is a question that has been asked of and ignored by the UK Parliament for many years. There are conflicting arguments.

The UK government's main reason not to index is one of cost.

“Successive Governments have taken the view it would be unfair to impose an extra burden on contributors and taxpayers in the UK to fund additional State Pensions for those who have chosen to live abroad. Current estimates show that it would cost around £420 million a year to unfreeze the State pensions paid to pensioners overseas and bring them up to the rate they would have been had the individuals concerned remained in the UK. As a Government we are accountable to Parliament and the taxpayers for the way in which we raise and spend taxes”.

“To index pensions in those countries not indexed will require the negotiating of bilateral agreements with each country to effect indexing”. [See below]

Arguments contrary to the UK Government's view include:-

With regards to the £420 million annual cost, the National Insurance account balance is currently, March 2007, at about £38Billion and growing each year. This is approximately £27Billion more than the Government Actuary's required minimum working balance, which is 1/6th of pension payments [approx £11 million]. So it would appear to most reasonable critics that the Government has the funds to pay the £420 million each year, even more so when it is discovered that the NI balance is forecast to reach almost £70Billion by March 2012. To index all expats' pensions will therefore make only a small difference to the growing NI balance.

The UK Government already indexes the pensions of nearly 490,000 British expats living abroad in a range of countries including all the EEA nations, The USA, Israel, The Philippines, Turkey and 6 Commonwealth countries.

Re the need for reciprocal or bilateral agreements, UK Pensions Minister James Purnell has recently agreed, in debate in a pensions committee reading, that there is no legal requirement for reciprocal agreements. He also indicated the UK Government has no intention to negotiate any in the future while ignoring the fact that other Commonwealth countries have tried to negotiate such agreements but had been denied the opportunity by the British.

From the House of Commons Select Committee report on pensions 1996/7. “It would be clearly impractical to negotiate individual bilateral agreements with each of the other countries where people draw British State retirement pensions and in any case it is unnecessary; a simple change in British law could enable upratings to be paid in any or all

countries, provided there was the political will to do so”.

Lord Carswell in his dissenting judgment 2005 is reported as saying; “Once it is accepted that pensions should be paid to contributing pensioner residents abroad, then no justification remains for paying some less than others and less than UK residents”.

“The UK government may be entitled under domestic law [to not index pensions] if it so chose but I consider that the [Council of Europe] Convention operates to prevent such discrimination. I would therefore... declare the [UK’s] Social Security Benefits Up-rating Regulation unlawful and of no effect as being incompatible with Convention rights”.

“The decision to uprate pensions to all abroad, not required by law at the moment, is a political question which includes but is not distinct from the moral question”. [Source, the HoC Select committee report]

It is claimed, Gordon Brown [PM elect], agrees with the need for a moral purpose in arguments. It is also claimed the moral imperative drives Gordon Brown and this was intended as the basis of his welfare policy.

Per Philip Tunley, Canadian lawyer, “according to all professional accepted pensions’ standards and practices the UK pension is a trust, based on the fact it is designed to provide pensioners with a return in old age, based on the value of their working contributions to the sponsor [the UK Government]. This therefore makes the Government a trustee and fiduciary for the contributors and pensioners and Common Law [quite apart from the Convention on human rights] requires trustees to treat beneficiaries with an even hand, a rule that actually originated in early British Common Law.

In support of this approach, The Commonwealth’s Singapore 1971 and Harare 1991 declarations, “unanimously commit the Commonwealth Heads of Government to foster human equality among all in the Commonwealth”. One must ask then why some Commonwealth residents with indexed pensions are treated more equally than others who do not have their UK pensions indexed?

Justice McComb in the Ghurkha Case was of the view that “equality is the cornerstone of British justice”. Again one should ask, with regards to pensions; why are some more equal than others?

Britain boasts of and promotes its adherence to the Rule of Law which when defined includes the fact that British law is supposed to be even-handed, promoting equality and fairness as its main aims. Again how does this rank when one consider the treatment meted out to those UK expats pensioners who have chosen to retire to mainly Commonwealth countries?

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20th June 2007