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 applies in countries which are not party to a reciprocal social security agreement with the UK which requires increases to be paid. Where the individual lives in an EEA country, or one with which there is a relevant reciprocal agreement, the pension is uprated. The policy of not awarding increases has been followed by successive governments. 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. This policy will continue to apply when the single-tier State Pension is introduced for future pensioners from April 2016.

The policy has been subject to legal challenge. The case was heard by the European Court of Human Rights' Grand Chamber in September 2009 and the Court's judgment of March 2010 was in the UK Government's favour.

The policy has been debated in Parliament on numerous occasions. Early Day Motions have been tabled praying against the *Social Security Benefits Uprating Regulations,* providing an opportunity to debate the issue. In addition, amendments to a number of Pensions Bills over the years have provided an opportunity to debate the issue.

Contents

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
>
> 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.

1 Article 11 of Council Regulation (EEC) no 1408/71; HL Deb 25 October 2005, cc 1153-1154 [Lord Hunt of Kings Heath]

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.

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 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]
>
> **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 UK State Pension is uprated if the pensioner is resident in an EEA country, or one in which where there is a reciprocal agreement requiring this.

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2 Social Security Committee, *Uprating of State Retirement Pensions Payable to People Resident Abroad,* Third Report of 1996-7, HC 143, Ev 39-40

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

A DSS Memorandum to the Social Security Committee in 1996 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 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, there have been 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**
>
> 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

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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

> 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]

The reciprocal agreement with Australia ended in 2001.[7] DWP explains that for people living in or coming to the UK after the agreement ended, the UK Government made special arrangements to allow periods of residence in Australia, up to April 2001, to be taken into account in claims for basic State Pension and bereavement benefits:

> The Social Security Agreement between the United Kingdom (UK) and Australia was terminated by Australia and ended on 28 February 2001. When in force the agreement helped people moving between the two countries by allowing periods of UK residence to be treated as periods of residence in Australia, in claims for Australian Age Pension, and periods of Australian residence to count as periods when UK National Insurance Contributions had been paid in claims for UK basic State Pension and bereavement benefits made in the UK. People getting benefit under the terms of the Agreement when it ended continue to be helped by it. However, any additional amount of benefit that becomes payable under the agreement is no longer paid if the person leaves the UK to live permanently elsewhere (outside the UK, the Isle of Man or the Channel Islands).
>
> For people living in or coming to the UK after the agreement ended, the UK Government has made special arrangements to allow periods of residence in Australia, up to April 2001, to be taken into account in claims for basic State Pension and bereavement benefits. Any additional amount of benefit that becomes payable under the special arrangements remains payable as long as the person continues to live permanently in the UK or the Isle of Man.
>
> For former residents of the UK who now live in Australia, the Agreement counted residence in the UK towards the 10-year residence test for Australia's Age Pension. UK pensioners have the amount of their UK State Pension deducted from any Australian Age Pension awarded in this way. We understand that Australia continues to apply this to people who emigrated before 1 March 2000. People arriving in Australia after that date now have to satisfy the ten year residence test before they can qualify for Age Pension.

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

7 *Social Security (Australia) Order 2000* (SI 2000 No. 3255)

For more information contact the International Pension Centre.[8]

In December 2013, Lord German asked the Minister how many Governments had offered to enter into reciprocal agreements with the UK on the uprating of pensions.[9] In a written response, Lord Freud said:

> In the past decade the UK Government has received a number of requests to enter into reciprocal agreements covering up-rating. In some cases, there was insufficient parity between the respective systems to provide the required reciprocity. The Government has not entered into any wholly new agreements since 1981, principally on the grounds of the costs involved and because it would lead to calls from other countries to negotiate similar agreements. In recent times, there have been requests from Columbia (2008), Mongolia (2007), Thailand (2010), Uruguay (2011) and Brazil (2011).
>
> In recent months the Government has received representations from both Australia and Canada in which they raised the issue of up-rating the UK State Pension. Those two countries represent by far the largest proportion of recipients in countries where the UK state pension is not index-linked and indexation would present a considerable cost to the Exchequer, particularly considering the wide disparity in the number of pensioners involved. The Government has therefore informed the Australian and Canadian governments that it will not be opening formal discussions on this policy.[10]

At Committee Stage, Lord German asked whether the possibility of entering into new reciprocal arrangements should be investigated, to see if there was any mutual benefit in such an approach.[11] Lord Freud responded that:

> We are aware of research that suggests that a theoretical and economic case can be made to support the uprating of state pensions for all recipients abroad. However, it is notable that this analysis has not been able to provide evidence of a proven behavioural link between uprating and pensioner migration. In fact, we think it unlikely that any review would demonstrate that. In any case, the decision to emigrate abroad remains a personal choice for individuals. In the absence of that kind of evidence, we know that the cost of extending the uprating of pensions currently paid overseas remains significant at more than £0.5 billion per annum. The Government, like their predecessors over the past 60 years, believe that they must put the interests of pensioners living in the UK over the interests of those living overseas by restricting the availability of uprates to those living here or in a country where we have a legal or treaty obligation to provide them.[12]

On 3 March 2014, Pensions Minister Steve Webb confirmed that:

> […] the UK Government has no plans to relax the current restrictions on up-rating UK state pensions paid overseas or to enter into fresh bilateral agreements which provide for up-ratings overseas.[13]

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8 DWP website – International Social security agreements
9 HL Deb 3 December 2013 c151
10 DEP 2013-1970
11 HL Deb 8 January 2014 c401-2 GC
12 Ibid c409GC
13 HC Deb 3 March 2014 c688W

1.3 Numbers

The DWP is responsible for nearly 13 million individual state pensions for people in Great Britain and elsewhere. Currently, 1.2 million of these people are living outside the UK. Around 560,000 (46%) of those overseas are in countries where their pensions are frozen; the remaining 660,000 (54%) are paid to people living in countries where the pension is uprated in the same way as for pensioners living in the UK. Most of those with frozen pensions are in Australia, Canada and New Zealand.

DWP State Pensioners in countries with frozen pensions - August 2013

	Top 10 countries	Number	%
1	Australia	250,820	45%
2	Canada	154,160	28%
3	New Zealand	57,980	10%
4	South Africa	37,630	7%
5	India	5,240	1%
6	Pakistan	4,080	1%
7	Japan	3,720	1%
8	Thailand	3,710	1%
9	Nigeria	3,130	1%
10	Republic of Yemen	2,590	0%
	All countries	558,920	100%

For the 660,000 DWP state pensioners living outside the UK whose pensions are uprated in the same way as for those living in the UK, the USA is the most popular location, followed by Ireland and Spain. These three account for 57% of the non-frozen cases.

DWP State Pensioners in countries with non-frozen pensions - August 2013

	Top 10 countries	Number	%
1	USA	140,220	21%
2	Ireland	131,140	20%
3	Spain	106,580	16%
4	France	60,810	9%
5	Germany	40,500	6%
6	Italy	38,050	6%
7	Cyprus	18,400	3%
8	Jamaica	17,370	3%
9	Netherlands	11,730	2%
10	Switzerland	10,950	2%
	All Countries	661,190	100%

Over the years, various estimates have been provided of the cost of starting to uprate frozen pensions according to different approaches (for example, uprating them from the level at which they are frozen level or bringing them all up to the level of pension paid to UK pensioners and increasing them in line with prices and earnings).[14] In December 2013, DWP estimated that if all frozen-rate pensions were to be upgraded in 2014/15 to the level that they would have reached if they had been uprated in line with inflation from the outset, this would cost an extra £590 million in the first year of implementation (2014/15).[15]

1.4 Legislative mechanism

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.[16]

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.[17]

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.)[18]

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[14] HC Deb, 26 July 2007, c122WA; HL Deb, 21 February 2007, c261WA; PBC Deb, 25 January 2007, c111; Letter from Pensions Reform Minister to Chair of Public Bill Committee dated 31 January 2007; HC Deb, 18 November 2008, c445W; HC Deb, 17 December 2007, c606W

[15] DWP, Estimated cost of uprating State Pension in frozen rate countries, DWP ad-hoc statistical analysis, 13 December 2013

[16] *Regina v Secretary of State for Work and Pensions (Respondent) ex parte Carson (Appellant),* 26 May 2005

[17] Explanatory Memorandum to Social Security Benefits Uprating Regulations 2008 (SI 2008 No. 667)

[18] 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 2014 Order, for example, specified the amount of the Category A retirement pension in 2014/15 as £113.10.[19] The *Social Security Benefits Uprating Regulations 2014 (SI 2014/618)* were laid before Parliament on 17 March 2014 and came into force on 7 April 2014.

The Social Security (Uprating) Regulations are subject to the negative parliamentary procedure. In a number of years, an Early Day Motion praying against the regulations 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.[20] The regulations have been debated on a number of occasions.[21]

2 The approach of successive governments

2.1 The current State Pension

The current State Pension has two tiers: the basic State Pension and the additional State Pension. The legislative requirement is to uprate the basic State Pension at least in line with average earnings and the additional State Pension at least in line with prices.[22] This is discussed in more detail in Library Note SN 5649 *State Pension Uprating – 2010 onwards* (26 March 2014).

In 1996/7, 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 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".[23] The response of the then Secretary of State for Social Security to the Committee report 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

[19] Social Security Benefits Up-rating Order 2014 (SI 2014/516)

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

[21] See, for example, HL Deb 25 October 2005, cc 1153-1154; First Standing Committee on Delegated Legislation, 15 May 2006; EDM 1195 SOCIAL SECURITY (S.I., 2007, No. 775) 21.03.2007, Campbell, Menzies; First Delegated Legislation Committee, 8 May 2007;

[22] *Social Security Administration Act 1992*, section 150 and 150A

[23] Social Security Committee, Uprating of State Retirement Pensions Payable to People Resident Abroad,(HC 143, 1996-97), para 39

> of State Retirement Pensions Payable to People Resident Abroad" (HC 143 of Session 1996-97).
>
> **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.[24]

No debate took place on the report.

The policy of not awarding increases has been followed by successive governments.[25] 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 Labour Government's approach

The Labour Government said it did not intend to change policy in respect of 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.[26]

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 Shadow 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."[27] 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."[28]

24 HC Deb 19 March 1997 cc 679-80W
25 See, for example, HL Deb 26 April 1989 c1352; HC Deb 6 July 1994 c 432
26 HC Deb 16 May 2000 c 118W; See also HL Deb, 13 July 1999, c190 [Baroness Hollis of Heigham]; HC Deb 3 April 2001 cc43-48WH [Hugh Bayley] on the difference between NI contributions and contributions to an occupational pension scheme
27 Pensions Bill Deb, 18 March 2004, c258
28 Pensions Bill Deb, 18 March 2004, c258-9

In debate on the uprating regulations in 2005 Lord Hunt of Kings Heath, said that the Government was "not persuaded that they should change their existing policy":

> 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.[29]

The *Pensions Act 2007* would restore the link between increases in the basic State Pension and earnings, probably from 2012.[30] 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.[31] He argued that the introduction of earnings uprating for some but not for others would result in the "existing injustice" being "considerably magnified".[32] The then Shadow Pensions Minister Nigel Waterson explained that the Conservatives had "considerable sympathy with the concerns expressed" on this issue.[33] Responding, Pensions Minister James Purnell, explained that the key issue was cost and that the Government's "main priority must be pensioners living here".[34] 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."[35]

The current Government's approach

The current Government also has no plans to change the arrangements:

> **State Retirement Pensions: Overseas Residence**
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> Mr Burley: To ask the Secretary of State for Work and Pensions whether he plans to review state pension arrangements for expatriates. [28341]
>
> Steve Webb: The UK state pension is payable world-wide but is only up-rated abroad where there is a legal requirement or reciprocal agreement to do so. A well known court case challenging the UK's position was heard by the European Court of Human Rights' Grand Chamber in September 2009 and the Court's judgment of March 2010 was in the UK's favour.

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30 Pensions Act 2007, s5

31 Pensions Bill Deb, 25 January 2007, c89

32 Pensions Bill Deb, 25 January 2007, c91

33 Ibid, c105

34 Ibid, c111-113

35 Ibid, c112-114

> We continue to take our obligations under the terms of the European Convention on Human Rights seriously and are satisfied that we are complying. We therefore have no plans to make any changes to the current arrangements.[36]

In debate in the House of Lords on 9 March 2011, Parliamentary-Under Secretary of State, Lord Freud, said:

> My Lords, this is a much more complicated issue than it seems on the surface, because it is not a question of making a payment to a pensioner the entirety of which they then put into their pocket. The country where they are living will often supplement their pension, so it can often be a case, for instance, of us making a higher pension payment and the equivalent of pension credit being reduced. It is money out of the UK taxpayer's pocket into the pocket of the taxpayers of another country. It is a far more complicated issue than it seems on the surface. [...] The point about costs in the current environment is that this change to uprating in the frozen areas would cost us £620 million a year, and in the context of the austerity position that we are in - all noble Lords will be very familiar with the terrible dilemmas that we face as we look to get the budget under control - we should consider how much that £620 million represents.[37]

In debate on the *Pensions Bill 2013/14*, Shadow Pensions Minister, Gregg McClymont moved an amendment to require the Government to conduct a review of overseas residents' uprating entitlement. He explained that the Opposition was "not hostile to the Government's position of not uprating overseas residents' pension entitlement in countries where there are no reciprocal agreements", recognising that the cost of change was an important factor. However, it thought there should be a cross-departmental study "on the implications of this policy for pensioners deciding to live abroad."[38]

Responding, Pensions Minister Steve Webb explained that most UK pensioners overseas lived in either Canada or Australia. Uprating the State Pension in those countries would be at a cost the British taxpayer but would not necessarily benefit British citizens living in those countries:

> I understand that just short of three in four of the people we are talking about are in Canada or Australia. It was suggested that the Canadian and Australian Governments would like us to increase pensions in such cases, and indeed they would. That is because they have means-tested state pension systems. If we were to increase state pensions in Canada and Australia - for nearly three quarters of the people we are talking about - that would be a saving to the Canadian and Australian Exchequers at the cost of the British taxpayer, not necessarily to the benefit of the British citizen living abroad. There would be British citizens whose incomes would be above the level at which they qualify for the means-tested pension in those countries, but they are not the folk whom people are most concerned about - the folk who have nothing else to live on.[39]

He added that the proportion of UK pensioners who moved as pensioners was 2%. The remainder all moved at a working age:

> A significant number of British pensioners overseas went to Australia to work when they were in their 30s or 40s, for example, and have lived there for a significant part of their lives. They will have been building up pension rights under the Australian system;

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[36] HC Deb, 2 December 2010, c953W; See also, HC Deb, 7 July 2011, c1320W
[37] HL Deb, 9 March 2011, c1608
[38] PBC Deb 4 July 2013 c210-4
[39] PBC Deb 4 July 2013 c224

> they will have only part of their income based on the British system, and only that part will not be uprated.[40]

He did not believe that a review would actually achieve anything.[41]

2.2 The single-tier State Pension

The *Pensions Bill 2013/14,* which has almost finished its passage through Parliament, will provide for the introduction of a single-tier State Pension for future pensioners from 6 April 2016. People who have already reached State Pension age on that date will be entitled to receive a pension under current rules. Schedule 12 (14) of the Bill provides for the single-tier State Pension to be uprated at least in line with earnings.[42] The Government has said the precise policy on implementation will be decided prior to implementation:

> **Uprating the single-tier pension**
>
> 5. The basic State Pension must be increased at least in line with the average growth in earnings. This same legislative requirement will also apply to the single-tier pension. For the purposes of illustration, in this document it is assumed that the single-tier pension will be uprated by the triple lock (the highest of earnings, prices or 2.5 per cent), as per Government policy for the basic State Pension. Single-tier uprating policy will also be set shortly prior to implementation, taking account of the fiscal context at the time. Further decisions on uprating will be made by future governments on a yearly basis, as part of the annual uprating process.[43]

Clause 20 of the Bill provides for the current policy on overseas uprating to apply to the single-tier State Pension.

The Work and Pensions Select Committee, which scrutinised the legislation, suggested that the introduction of a new state pension provided an opportunity to address the "anomaly" of uprating a new state pension in some countries but not others.[44]

For the Bill's Report Stage, Sir Peter Bottomley and Sir Roger Gale tabled an amendment to remove clause 20 from the Bill.[45] The effect of this would have been that the single-tier State Pension would be uprated regardless of the country of residence. Although there was no vote on the amendment, the issue was raised in the debate. Sir Peter Bottomley argued that there was no 'rhyme or reason' in the existing policy, whereby pensioners in some overseas countries got annual increases while others did not. He was concerned that this anomaly was to continue with the single-tier State Pension:

> I received a letter from the Prime Minister about half an hour ago confirming what I had anticipated. He has said that
>
> > "the case for not departing from the position of successive Governments is clear."
>
> I have already pointed out how the position has changed in respect of the reciprocal arrangements. His letter goes on:

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40 Ibid c225
41 Ibid c226
42 Bill 6-EN, para 36
43 DWP, The single-tier pension: a simple foundation for saving, Cm 8528, January 2013, p90; See also, Executive Summary, para 29
44 Work and Pensions Committee, The Single-tier State Pension: Part 1 of the draft Pensions Bill, Fifth Report of 2012-13, HC 1000, 4 April 2013, para 138
45 Pensions Bill 2013/14 - *Notice of amendments given up to and including clause 24 October 2013*

> "To do so would cost hundreds of millions of pounds at a time when the pressure on a welfare system is considerable and when we are asking many people who live in the UK to make sacrifices."

> That could be an argument for cutting off increases for all overseas pensioners, but that is not going to happen. The anomaly will continue.[46]

He argued for a "significant review of what we do with overseas pensioners".[47]

Sir Roger Gale said:

> The denial of the money to people who have in many cases served their country and fought for it—some of their friends and families have died for this country—and who have worked here and paid their taxes, is indefensible. Their case is morally right.[48]

The Pensions Minister responded that uprating the single-tier pension but not the current pension overseas would create a new anomaly and result in significant costs to the Exchequer:

> Amendment 1, which stands in his name and that of my hon. Friend the Member for North Thanet (Sir Roger Gale), would delete clause 20. As the Chair of the Select Committee pointed out, that would do nothing for any of the overseas pensioners who have contacted us as their MPs; it would only remove the freezing for single-tier pensioners. I am sure that my hon. Friend the Member for Worthing West (Sir Peter Bottomley) understands that point, but I just want to be clear that if we voted for the amendment, all we would be doing is creating a new anomaly.

> In a sense, the Chair of the Select Committee urged us to create that new anomaly. She said that we cannot defend the old one and that we should at least not carry on with it, but by doing that we would create a new anomaly. It is not just about which side of the Niagara falls one happens to live on, because single-tier pensioners would get indexation but nobody else would. I think that we all know what would happen: we would end up back in court. My hon. Friend the Member for Worthing West referred, quite properly, to the extensive legal background to the issue, because it has been tried and tested by the International Consortium of British Pensioners in a range of courts, and all have found that in many cases what the Government are doing is implementing the law of the land as it has stood for decades.[49]

The text of the *Pensions Bill 2013/14* has now been agreed by both Houses and the Bill awaits Royal Assent.

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

[46] HC Deb 29 October 2013 c845
[47] Ibid, c842
[48] Ibid, c847
[49] HC Deb 29 October 2013 c854-5

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.
>
> 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]

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[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
[53] *Carson v DWP* 22 May 2002 para 73-4

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.
>
> 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 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.

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[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*
[57] *Carson v DWP* 26 May 2005 paras 1-4

> 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 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:

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58 *Carson v DWP* 26 May 2005 paras 13-17

59 *Carson v DWP* 26 May 2005 paras 22-24

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

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.

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 was 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. 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.

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."

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]

The Grand Chamber issued its judgment on 16 March 2010. It did not consider that the applicants, who live outside the United Kingdom in countries which are not party to reciprocal social security agreements, were in a relevantly similar position to residents of the United Kingdom or of countries which were party to such agreements. It therefore held by eleven votes to six that there had been no discrimination and no violation of Article 14 taken in conjunction with Article 1 of Protocol No 1:

The applicants' complaint under Article 14 taken in conjunction with Article 8 was declared inadmissible as it had never been raised before the domestic courts.

Article 14 in conjunction with Article 1 of Protocol No. 1

In order for an issue to arise under Article 14, there had to be a difference in the treatment of persons in relevantly similar situations.

The Court did not consider that it sufficed for the applicants to have paid National Insurance contributions in the United Kingdom to place them in a relevantly similar position to all other pensioners, regardless of their country of residence. Claiming the contrary would be based on a misconception of the relationship between National Insurance contributions and the State pension. Unlike private pension schemes, National Insurance contributions had no exclusive link to retirement pensions. Instead, they formed a part of the revenue which paid for a whole range of social security benefits, including incapacity benefits, maternity allowances, widow's benefits, bereavement benefits and the National Health Service. The complex and interlocking system of the benefits and taxation systems made it impossible to isolate the payment of National Insurance contributions as a sufficient ground for equating the position of pensioners who received up-rating and those, like the applicants, who did not.

Moreover, the pension system was primarily designed to serve the needs of and ensure certain minimum standards for those resident in the United Kingdom. Indeed, the essentially national character of the social security system was recognised both at domestic (in the Social Security Administration Act 1992) and international (the 1952

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

International Labour Organisation's Social Security Convention and the 1964 European Code of Social Security) level.

Bearing that in mind, it was hard to draw any genuine comparison with the position of pensioners living elsewhere, because of the range of economic and social variables which applied from country to country. The value of the pension could be affected by any one or a combination of differences in, for example, rates of inflation, comparative costs of living, interest rates, rates of economic growth, exchange rates between the local currency and sterling (in which the pension is universally paid), social security arrangements and taxation systems. Furthermore, as noted by the domestic courts, as non-residents the applicants did not contribute to the United Kingdom's economy; in particular, they paid no United Kingdom tax to offset the cost of any increase in the pension.

Nor did the Court consider that the applicants were in a relevantly similar position to pensioners living in countries with which the United Kingdom had concluded a bilateral agreement providing for up-rating. Those living in reciprocal agreement countries were treated differently from those living elsewhere because an agreement had been entered into; and an agreement had been entered into because the United Kingdom considered it to be in its interests.

In that connection, States clearly had a right under international law to conclude bilateral social security treaties and indeed this was the preferred method used by the Member States of the Council of Europe to secure reciprocity of welfare benefits. If entering into bilateral arrangements in the social security sphere obliged a State to confer the same advantages on all those living in all other countries, the right of States to enter into reciprocal agreements and their interest in so doing would effectively be undermined.

In summary, the Court did not consider that the applicants, who live outside the United Kingdom in countries which are not party to reciprocal social security agreements with the United Kingdom providing for pension up-rating, were in a relevantly similar position to residents of the United Kingdom or of countries which were party to such agreements. It therefore held, by eleven votes to six, that there had been no discrimination and no violation of Article 14 taken in conjunction with Article 1 of Protocol No.1.

Judges Tulkens, Vajić, Spielmann, Jaeger, Jočienė and López Guerra expressed a joint dissenting opinion which is annexed to the judgment. [66]

The judgment *Case of Carson and Others v the United Kingdom* (Application no. 42184/05) is on the European Court of Human Rights website.

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.

[66] Press release issued by the Registrar. Grand Chamber judgment – *Carson and others v the United Kingdom,* 16 March 2010

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.

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.[67]

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