

OCOP(99)5
25 August 1999

HM TREASURY

OFFICIAL COMMITTEE ON OCCUPATIONAL PENSIONS

PENSIONS INCREASE: EQUAL TREATMENT: IMPLEMENTING S3(2)(c) AND
3(11) OF THE PENSION INCREASE ACT

Note by the Treasury

Purpose of this Paper

The purpose of this paper is to remind schemes that if a male pensioner aged under 55 has at least one young dependant, he satisfies the qualifying condition in Section 3(2)(c) of the Pensions Increase Act 1971. As a result he is entitled to pensions increase in respect of service covering 17th May 1990 to 31st December 1992.

Background

2. As schemes will be aware, one result of the *Barber** judgment was to reopen an area of unequal treatment between men and women earlier addressed by the Pensions (Miscellaneous Provisions) Act 1990 (the "1990 Act")
3. Under Section 3(2)(c) of the Pensions (Increase) Act 1971 as originally enacted, a woman pensioner with at least one young dependant was eligible for pensions increase even if she had not attained the age of 55 (and was not in receipt of an ill-health retirement pension). The 1990 Act provided for this advantage to cease in respect of service from 1st January 1993, thus equalising treatment for future service for men and women. However, as *Barber* imposed equal treatment with effect from 17th May 1990 there was a need to ensure equal treatment in the period between 17th May 1990 and 31 December 1992.
4. Between 1990 and 1994, a series of ECJ judgements clarified aspects of the *Barber* judgement. MOCOP members were kept informed and consulted about issues such as the equal treatment of men with dependent children.
5. Section 171 of the Pensions Act 1995 was passed as a result of the **Barber** and subsequent ECJ decisions. It confers an entitlement to pensions increase to a male pensioner who has not reached 55, if he has one or more dependants. Broadly a "dependant" is someone who

* The European Court of Justice ruled on 17 May 1990, in the case of *Barber v Guardian Royal Exchange* (GRE) under Article 119 of the EEC Treaty, that occupational pension schemes should equalise the age at which pensions are payable to men and women. A copy of the judgement was attached to MOCOP(90)5 dated 21 May 1990.

ENTITLED

- is under age 17, is in full-time vocational training for two years or more, or is in full-time education, and
- is wholly or mainly supported by the pensioner

This applies **only** in respect of service from 17th May 1990 to 31st December 1992 (inclusive).

6. Revised versions of the Treasury's leaflet on Pensions Increase and the OCOP paper on the operation of Pensions Increase Legislation (last revised as OCOP (94)1), which should be available later this year, will mention this entitlement

Identifying and Informing Possible Claimants

7. How to identify and inform possible claimants is a matter for individual schemes to decide, although there is an obligation on schemes to ensure potential claimants are aware of their rights. There is also the requirement imposed by Regulation 5(2) and Schedule 2, paragraph 3 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996/1665) to inform pensioners when they retire of the provisions (if any) under which the amount of pension payable may be altered

NDPBs

8. Sponsoring departments should ensure their NDPBs are aware of this entitlement to pensions increase

Action to Take

9. Schemes may wish to consider whether their scheme literature adequately explains this entitlement and whether they have appropriately informed individuals of their entitlement. Schemes may also wish to consider whether they hold suitable information on individuals' dependants to identify entitled individuals

Contact

10. If you require further information or assistance, you can contact Jamie Hutchinson (PSP team, ext 4645) and Deane Gable (PSP team, ext 4525)

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