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HM TREASURY

OFFICIAL COMMITTEE ON OCCUPATIONAL PENSIONS

NOTE BY THE SECRETARY

**REVISED PENSIONS INCREASE BOOKLET AND MINISTERIAL DIRECTION UNDER
SECTION 59A OF THE SOCIAL SECURITY PENSIONS ACT 1975**

Schemes will wish to be aware that:

- they can now purchase copies from the Stationery Office of the revised Pensions Increase booklet which sets out the arrangements for inflation proofing public service pensions (copy attached); and
- the Chief Secretary has approved a revise of the Ministerial Direction (a copy of the new version is attached) which permits the whole public service pension to be uprated in certain circumstances.

Both revisions also follow up recommendations made by the NAO in their report "Underpayments to Public Service Pensioners on Invalidity Benefit" (HC 681, Session 1997-98).

Pensions Increase booklet

2. The revised booklet will be published by the Stationery Office on 1st October. Schemes which wish to incorporate this information in their own scheme literature are welcome to do so.

3. The intention has been that the booklet should be more accurate, comprehensive and also is more professionally presented. Some schemes will have seen and commented on earlier drafts of the leaflet.

Revised Ministerial Direction

4. Public service pensions are increased annually by the same percentage as the State Earnings Related Pension Scheme (SERPS) under the provisions of the Pensions (Increase) Act 1971 and the Social Security Pensions Act 1975. Most public service pension schemes have been contracted out of SERPS, but as a consequence guarantee to pay pensioners who were contracted out between 1978 and 1997 a Guaranteed Minimum Pension (GMP) from State Retirement Pension age. Even where a scheme is contracted out of SERPS, the DSS calculates for each pensioner the SERPS equivalent of the GMP and from the date the basic State Retirement pension is paid, DSS pays inflation proofing on the GMP with the basic State Retirement Pension.
5. To avoid both the public service pension scheme and DSS inflation proofing the GMP, the Social Security Pensions Act 1975 requires the public service pension to be reduced by the GMP before calculating increases. In certain circumstances, however, DSS do not pay the inflation proofing on the GMP (eg where an individual remains on Incapacity Benefit after State retirement age or is in hospital for a year or more). To deal with such cases, the Social Security Pensions Act 1975 provides for the Treasury to make Ministerial Directions which permit the whole of the public service pension to be updated.
6. The attached Ministerial Direction replaces that first made in 1979 and last revised in 1990. The revised Direction takes account of changes in DSS legislation in recent years and for the first time includes an Explanatory Note

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SECTION 59A OF THE SOCIAL SECURITY PENSIONS ACT 1975

DIRECTION BY THE TREASURY

The Treasury, in exercise of the powers conferred by section 59A of the Social Security Pensions Act 1975¹ and now vested in them², hereby make the following direction.

1. In this direction, unless the context otherwise requires,

“the Administration Act” means the Social Security Administration Act 1992³;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992⁴;

“the Pensions Act” means the Social Security Pensions Act 1975⁵;

“additional benefit” bears the meaning given to it by regulation 5(2)(a) of the Social Security Benefit (Persons Abroad) Regulations 1975⁶;

“additional pension” means the sums which are referred to in section 150(1)(c) of the Administration Act;

“official pension” bears the meaning given to it by section 5(1) of the Pensions (Increase) Act 1971⁷;

¹ Section 59A was inserted by section 11(4) of the Social Security Act 1979 (c.18) and amended by section 9(9) of the Social Security Act 1986 (c.50)

² See the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).

³ 1992 c. 5.

⁴ 1992 c. 4.

⁵ 1975 c. 60.

⁶ S.I. 1975/563, to which there are amendments not relevant to this direction.

⁷ 1971 c. 56. Section 5(1) was amended by the Superannuation Act 1972 (c. 11), Schedule 6, paragraph 85.

“section 109 order” means an order made by the Secretary of State under section 109 of the Pension Schemes Act 1993⁸;

“section 59 order” means an order made by the Treasury under section 59 of the Pensions Act⁹;

“pension authority” bears the meaning given to it by section 7(1) of the Pensions (Increase) Act 1971;

“pensioner” means a person to whom an official pension has become payable;

“widower's pension” means an official pension payable in respect of the services of the pensioner's deceased wife;

and other expressions bear the same meaning as in the Administration Act and in the Contributions and Benefits Act.

2. Where the Treasury make a section 59 order increasing official pensions and the amount by reference to which the increase in an official pension under that order is to be calculated would, but for this direction, be reduced under section 59(5) of the Pensions Act by an amount equal to the rate of a guaranteed minimum pension, if at the time the section 59 order comes into force-

- (a) the additional pension to which the pensioner is entitled is less than the amount equal to the weekly rate or aggregate weekly rates of the guaranteed minimum pension or pensions to which he is entitled; or
- (b) the pensioner has not claimed his retirement pension and is not treated as having claimed it by virtue of regulations made under Part I of the Social Security Administration Act 1992¹⁰; or

⁸ 1993 c. 48. Section 109 was amended by section 55 of the Pensions Act 1995, c. 26.

⁹ Section 59 was amended by the Social Security Act 1979 (c.18), sections 11 and 21(4) and Schedule 3, paragraph 20, by the Social Security Act 1985 (c.53), Schedule 5, paragraph 33, by the Social Security Act 1986 (c.50), section 9(8), by the Pensions (Miscellaneous Provisions) Act 1990 (c.7), sections 1(7) and 5 and by the Social Security (Consequential Provisions) Act 1992 (c.6), Schedule 2, paragraph 34.

¹⁰ 1992 c. 5.

- (c) the pensioner has made an election under regulation 2(1) of the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979¹¹ and less than five years have expired after his attaining pensionable age; or
- (d) the application of regulation 5 of the Social Security Benefit (Persons Abroad) Regulations 1975 is disqualifying the pensioner for the receipt of any additional benefit which would otherwise be payable to him by virtue of an order under section 150 of the Administration Act; or
- (e) section 113(1)(b) of the Contributions and Benefits Act is disqualifying the pensioner for the receipt of any benefit and the pensioner requests the pension authority in writing that the reduction under section 59(5) of the Pensions Act should not be made; or
- (f) an adjustment under regulation 6 of the Social Security (Hospital In-Patients) Regulations 1975¹² is affecting the weekly rate of the personal benefit payable to the pensioner; or
- (g) in respect of a widower's pension, the pensioner is not entitled to a Category A retirement pension by virtue of section 41 of the Contributions and Benefits Act¹³, or a Category B retirement pension by virtue of section 48A or 48B¹⁴ or section 51¹⁵ of that Act;

the amount of that reduction shall be equal to the amount by which the pensioner's guaranteed minimum pension has been increased by virtue of a section 109 order in the tax year in which the section 59 order comes into force, and, subject to paragraphs 4 and 5, in any

¹¹ S.I. 1979/642. Regulation 2(1) was amended by S.I. 1989/1642.

¹² S.I. 1975/555. Amendments made to regulation 6 are not relevant for the purposes of this direction.

¹³ Section 41 was substituted by the Social Security (Incapacity for Work) Act 1994 (c.18), section 11(1), Schedule 1, Part I, paragraph 9. Before the substitution, sub-section (7) provided for the payment of a Category A retirement pension in certain cases. In the substituted section, such provision is made by sub-section (5).

¹⁴ Sections 48A, 48B and 48C were substituted for sections 49 and 50 by the Pensions Act 1995 (c. 26), section 126(b), Schedule 4, Part II, paragraph 3(1). Section 48A does not confer a right to a Category B retirement pension on a man by reason of his marriage to a woman who was born before 6th April 1950. Section 48B does not confer a right to a Category B retirement pension on a man who attains pensionable age before 6th April 2010.

¹⁵ Section 51 was amended by the Pensions Act 1995 (c.26), section 127(2). Section 51 does not confer a right to a Category B retirement pension on a man who attains pensionable age on or after 6th April 2010.

such case the increase shall, in respect of any period after the order comes into force, be calculated in accordance with this direction notwithstanding section 59(5).

3. Where the condition specified in paragraph 2(a), (b), (c), (e), (f) or (g) does not apply to a pensioner at the time a section 59 order comes into force but does apply to the pensioner at any time thereafter the rate of the official pension for any period following the application of the relevant condition shall be calculated as if that condition had applied to the pensioner since he first became entitled to a guaranteed minimum pension arising from the employment which gave rise to the official pension.

4. Where the condition specified in paragraph 2(b), (c), (d), (e) or (f) has applied to a pensioner and ceases to apply to the pensioner at any time after the section 59 order comes into force the rate of his official pension for any period following the date on which the condition ceases to apply shall subject to paragraph 5 be calculated as if the direction in paragraph 2 had never applied in respect of that pension.

5. Where the condition specified in paragraph 2(d) becomes applicable to a pensioner at any time and the direction in paragraph 2 has previously applied to his official pension by reason of the same sub-paragraph and this has ceased so to apply in accordance with paragraph 4, the rate of that pension shall be calculated as if the direction had been in force at all times since the direction had first so applied, unless the pensioner has been ordinarily resident in Great Britain at any time after the direction first so applied.

6. The direction made by the Treasury on 28th March 1990 under section 59A of the Pensions Act is hereby revoked.

6 July 2000

Two of the Lords Commissioners
of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Direction)

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 .

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 subparagraphs 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.