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Frozen overseas pensions

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Summary

The UK State Pension is payable overseas but is not increased ('uprated') annually unless there is a legal requirement to do so, for example, where there is a relevant reciprocal social security agreement between the UK and the person's country of residence.

When it was part of the EU, the UK was part of the [EU social security co-ordination rules](#). This provided for the UK State Pension to be uprated in EU countries in the same way as it was in the UK. This was because social security co-ordination provided for benefits to be exportable but also for equal treatment on grounds of nationality. The arrangements also applied to EEA countries and Switzerland.

The situation to apply when the UK left the European Union, was considered as part of the Brexit negotiations.

In advance of these negotiations being concluded, the UK Government signed a convention with Ireland which meant that "reciprocal benefit and social security rights for Irish and UK nationals and their family members" would continue to operate, regardless of the outcome of the Brexit negotiations ([SI 2019/622](#); Gov.UK, [Living in Ireland](#)).

In relation to other EU countries, the Withdrawal Agreement of October 2019 and the Trade and Co-operation Agreement of December 2020 provide for State Pension uprating for those covered:

- For UK nationals living in an EU country by 31 December 2020, provided they meet one of the residence conditions, the [Withdrawal Agreement](#) provides for the UK State Pension to continue to be uprated. The UK has similar agreements with the EEA EFTA states (Norway, Iceland and Liechtenstein) and Switzerland (HM Government, [The Withdrawal Agreement: what UK nationals need to know about citizens' rights](#), Nov 2020).
- For people who move to an EU country from 1 January 2021, the EU-UK Trade and Co-operation Agreement's [protocol on social security co-ordination](#) provides for uprating of the UK State Pension (Gov.UK [Benefits and pensions for UK nationals in the EU, EEA or Switzerland](#), 31 December 2020).

In May 2020, there were 492,176 people overseas in receipt of a frozen UK State Pension. The vast majority (84%) live in Australia, Canada or New Zealand (DWP [Stat-xplore](#) and [Benefit Expenditure and Caseload Tables](#)). Their pension remains payable 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.

The policy of not awarding increases in some countries overseas has been followed by successive governments and continued with the introduction of the new State Pension in April 2016. Reasons given include cost and the desire to focus constrained resources on pensioners in the UK ([PQ 131353, 12 March 2018](#)).

The [All Party Parliamentary Group on Frozen British Pensions](#) has called on the Government to "urgently review the 'frozen' pension policy given the evidence of destitution facing many UK pensioners overseas and the recent impacts of COVID-19," and is drawing particular attention to the impact on "veterans, former public servants and members of the Windrush Generation who have returned to their country of birth."

The Government says it has no plans to change this long-standing policy:

The UK State Pension is payable worldwide to those who meet the qualifying conditions. It is up-rated where there is a legal requirement to do so, for example,

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where recipients are living in countries where there is a reciprocal agreement that provides for up-rating. The Government has no plans to change the policy on up-rating UK State Pensions overseas; the policy is longstanding and has been supported by successive Governments for over 70 years. The Government understands that people move abroad for many reasons and that this can have an impact on their finances. However, the decision to move abroad remains a personal choice. Advice that the UK State Pension is not up-rated overseas except where there is a legal requirement has been provided to the public for many years. Information is provided in leaflets and on gov.uk ([PO HL 11595 5 January 2021](#)).

In [February 2019](#), the Government estimated the cost of uprating frozen pensions to the amounts that would have been in payment had they not been frozen at £600 million in 2019/20, rising to £640 million by 2023/24. In 2016, the [International Consortium of British Pensioners](#) estimated the cost of 'partial uprating' (uprating frozen pensions from their current value) to be £30 million in year one, rising to £31.5 million by year three).

The issue has been raised in Parliament on numerous occasions. In some years, an early day motion has been tabled praying against the relevant statutory instrument that freezes pensions, which has led to a debate on the issue. The policy has also been subject to an unsuccessful legal challenge.

1. Introduction

1.1 Overview of the current position

The general position is that the UK State Pension is payable overseas but, 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, it will be uprated where there is a legal requirement to do so, for example, where UK State Pension recipients are living in countries where there is a reciprocal agreement that provides for the uprating of the UK State Pension. The Government has said repeatedly that it has no plans to change the policy which is "longstanding and has been supported by successive Governments for over 70 years."¹

When it was part of the EU, the UK was part of the [EU social security co-ordination rules](#). This provided for the UK State Pension to be uprated in EU countries in the same way as it was in the UK. This was because social security co-ordination provided for benefits to be exportable but also for equal treatment on grounds of nationality.² The arrangements also applied to EEA countries and Switzerland.³

In advance of Brexit, many UK state pensioners resident in other EU countries asked whether their pensions would still be increased annually when the UK was no longer part of the EU.⁴ This was considered as part of the Brexit negotiations.⁵ The current position is summarised on Gov.UK as follows:

You can carry on receiving your UK State Pension if you move to live in the EU, EEA or Switzerland and you can still claim your UK State Pension from these countries.

Your UK State Pension will be increased each year in the EU in line with the rate paid in the UK.

You can also count relevant social security contributions made in EU countries to meet the qualifying conditions for a UK State Pension.

This guidance is for UK nationals, however these rules on the State Pension apply to everyone regardless of your nationality and regardless of when you moved.⁶

The way in which this is covered by the agreement with Ireland, the Withdrawal Agreement and the EU-UK Trade and Co-operation Agreement is discussed in more detail in [below](#).

¹ [PQ133278, 11 January 2021](#); [PQ99784, 12 October 2020](#)

² Now in EC Regulations [883/2004](#) and [987/2009](#)

³ For more detail, see [Brexit and State Pensions](#) (January 2021)

⁴ Exiting the European Union Select Committee, [The Government's negotiating objectives: the rights of the UK and EU citizens](#), 3 March 2017, para 33

⁵ [PQ 67111, 17 March 2017](#); [PQ HL6343, 3 March 2016](#)

⁶ Gov.UK [Benefits and pensions for UK nationals in the EEA and Switzerland](#), 24 December 2020

1.2 Policy origins

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.

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 they 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.⁷

1.3 EU social security co-ordination

When it was part of the EU, the UK was part of its [social security co-ordination rules](#). This provided for the UK State Pension to be uprated in EU countries in the same way as it was in the UK. This was because social security co-ordination provided for benefits to be exportable but also for equal treatment on grounds of nationality.⁸ The arrangements also applied to EEA countries and Switzerland.⁹

⁷ Social Security Committee, [Uprating of State Retirement Pensions Payable to People Resident Abroad, Third Report of 1996-7, HC 143](#), Ev 39-40

⁸ Now in EC Regulations [883/2004](#) and [987/2009](#)

⁹ For more detail, see [Brexiteers and State Pensions](#) (January 2021)

An outcome of Brexit negotiations was agreement to continue uprating of the UK State Pension for residents of EU countries.¹⁰ The detail is in three agreements:

- A [UK/Ireland Convention on Social Security](#) published in February 2019. This was in recognition of the shared commitment of the two Governments to the Common Travel Area and the rights and privileges associated with it. The purpose was to ensure that reciprocal social security rights would continue to operate, regardless of the outcome of the Brexit negotiations.¹¹
- The October 2019 [Withdrawal Agreement](#) which provides for the EU social security co-ordination rules (including uprating) to continue for those in scope (principally, people in a “cross-border situation” involving the UK and an EU country on 31 December 2020 who continue to be so).¹² Equivalent [separation agreements](#) have been made with Switzerland and the EEA/EFTA states.
- The EU-UK [Trade and Co-operation Agreement](#) announced on 24 December 2020 includes a [protocol on social security co-ordination](#) which ensures that individuals who move between the UK and the EU from 1 January 2021 continue to have access to an uprated State Pension.¹³

1.4 Reciprocal agreements

The UK also has bilateral social security agreements with individual states outside of the EU and EEA. 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

¹⁰ Gov.UK [Benefits and pensions for UK nationals in the EEA and Switzerland](#), 24 December 2020

¹¹ Cabinet Office, [Memorandum of Understanding between the UK and Ireland on the CTA](#), May 2019, para 10 (social security co-ordination); [UK/Ireland: Convention on social security \[CS Ireland No1.2019\]](#), Feb 2019; Gov.UK, [Living in Ireland](#)

¹² [Withdrawal Agreement](#), 19 October 2019, Article 30 (3) or (1); HM Government, [Explainer for part two \(citizens' rights\) of the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union](#), October 2020, para 29

¹³ UK Government, [UK-EU Trade and Co-operation Agreement – Summary](#), December 2020, Part 2, heading 4, title 1, para 113

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.¹⁴

In response to a PQ in February 2020, the Government said it had reciprocal agreements with the following countries:¹⁵

Country	Date of Signature
Barbados	07 January 1992
Bermuda	13 October 1969 (London) 23 October 1969 (Hamilton)
Ireland*	01 February 2019
Israel	25 April 1957
Jamaica	12 November 1996
Mauritius	22 April 1981
New Zealand	01 November 1983
The Phillippines	27 February 1985
Turkey	09 September 1959
USA	13 February 1984
Former Yugoslavia**	24 May 1958
* The agreement with Ireland maintains the social security and pensions rights associated with the Common Travel Area after the UK's exit from the EU	
**The agreement with Yugoslavia continues to be applied bilaterally, and with their consent, to the now separate republics - Bosnia-Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia	

Information about these reciprocal agreements is in DWP's Decision Makers' Guide, para [070310 ff.](#) For Ireland, see below.

¹⁴ Social Security Committee, [Uprating of State Retirement Pensions Payable to People Resident Abroad](#), Third Report of 1996-7, HC 143, Ev, p41

¹⁵ [PQ11557 11 February 2020](#)

2. The legislative mechanism

A neat summary of the legislation preventing certain pensioners resident overseas from qualifying for pension increases 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 Up-rating Regulations* are an annual event. They are consequent on the *Social Security Benefits Up-rating Order*, which provides for the increases in the State Pension and certain social security benefits each year.¹⁷

The up-rating 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.¹⁸

The specific part of the *Up-rating 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.¹⁹

It does this by applying, to any additional benefit payable by virtue of the *Up-rating Order*, [regulation 5 of the Social Security Benefit \(Persons Abroad\) Regulations 1975 \(SI 1975 No. 563\)](#), which states that:

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

¹⁷ See Library Briefing Paper, [State Pension uprating](#), January 2021

¹⁸ Explanatory Memorandum to [Social Security Benefits Up-rating Regulations 2008 \(SI 2008 No. 667\)](#)

¹⁹ Ibid, para 7.2

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.

When the new State Pension was introduced from 6 April 2016 under the [Pensions Act 2014](#), section 20 enabled regulations to be made providing that “an overseas resident who is entitled to a state pension under this Part is not entitled to uprating increases.” The [State Pension and Occupational Pension \(Miscellaneous Amendment\) Regulations 2016 \(SI 2016/199\)](#) amended the [State Pension Regulations 2015 \(SI 2015/173\)](#) with the effect of continuing the policy of not providing uprating in some overseas countries.²⁰

Debate

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 never 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 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.²¹

The regulations have been debated on a number of occasions.²² For example, in 2017, [Early Day Motion 1097](#), calling for [SI 2017 No 349](#) to be annulled, got 76 signatures and provided an opportunity for the regulations to be debated.²³

The relevant SI for 2021 has not yet been published.

²⁰ [Explanatory Memorandum to the State Pension and Occupational pension Schemes \(Miscellaneous Amendments\) Regulations 2016: Delegated legislation committee, 26 January 2016](#), c3 [Shailesh Vara]

²¹ *Social Security Benefits Uprating Order 2007 (SI 2007 No. 668)*, Regulations 4 and 5

²² 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](#);

²³ [HC Deb 20 April 2017 c827](#)

3. Statistics

3.1 Numbers of overseas pensioners

The table below shows the number of State Pensioners by country of residence. In May 2020 the DWP paid State Pensions to around 1.16 million people living abroad, of whom 492,000 had frozen entitlements – mostly living in Australia, Canada, and New Zealand:

DWP State Pension caseload and expenditure by country			
	May 2020		2019/20
	Caseload	Average payment (£ per week)	Expenditure, total (£ million)
Total	12,418,151	154.32	98,807
<i>Of which: country of residence</i>			
United Kingdom (a)	11,260,501	163.00	94,607
Non-UK cases	1,157,667	69.86	4,201
<i>of which: by uprating arrangement</i>			
Not frozen: total	652,978	83.99	2,819
<i>of which:</i>			
EEA countries & Switzerland	479,953	85.08	2,101
Frozen: total	492,176	50.07	1,381
Not known: total	12,503	111.49	..
<i>Top foreign countries of residence, grouped by uprating arrangement and ranked by caseload</i>			
Not frozen			
Ireland (Republic of)	129,661	66.11	442
USA	128,108	73.62	488
Spain	103,382	119.75	636
France	66,715	113.33	387
Germany	42,683	46.06	100
Italy	33,435	56.43	98
Cyprus	17,219	122.20	109
Netherlands	13,413	55.25	37
Portugal	11,482	118.58	68
Switzerland	11,343	51.70	30
Frozen			
Australia	224,624	49.18	579
Canada	126,785	45.46	310
New Zealand	64,193	45.66	154
South Africa	31,114	55.94	94
Japan	6,700	46.37	16
Thailand	5,334	118.27	34
India	4,304	49.59	11
Pakistan	2,741	47.54	7
Hong Kong	2,370	84.29	11
Malaysia	2,193	77.91	9

Source DWP [Stat-xplore](#) and [Benefit Expenditure and Caseload Tables](#).

Components may not sum to totals due to rounding and disclosure control

Note (a) Relates only to DWP State Pension expenditure in the UK, not expenditure separately administered/paid by the Northern Ireland Executive.

3.2 Costs of changing the policy

The Government published updated estimates of the costs of changing its policy on overseas pensions in February 2019.²⁴ It said that around 510,000 recipients of the UK State Pension living overseas do not get State Pension increases – 84% of those live in Australia, Canada or New Zealand. Its estimated cost of uprating frozen pensions to the amounts that would have been in payment had they not been frozen is in the table below:

Estimated costs of uprating the State Pension in frozen rate countries each year	
Year	Estimated cost
2019 to 2020	£600 million
2020 to 2021	£610 million
2021 to 2022	£610 million
2022 to 2023	£630 million
2023 to 2024	£640 million
Total 2019/20 to 2023/24	£3,090 million

Source: DWP [estimated cost of uprating State Pension in frozen rate countries](#), Feb 2019

An alternative would be “partial uprating” – uprating frozen pensions going forward, but from their current rate only. The All Party Parliamentary Group on Frozen British Pensions has described this as possible interim solution (see below).²⁵ In 2016, the International Consortium of British Pensioners estimated that uprating frozen pensions from their current value, by the triple lock, would be £30 million in year one:

The initial cost of this policy option is much lower, estimated to be £30 million in year one, and the additional cost of uprating in subsequent years (£30.8 million in year two, £31.5 million in year three etc.)²⁶

The Government has not made its own estimate of the cost of partial uprating.²⁷

²⁴ DWP, [Estimated costs of uprating State Pension in frozen rate countries](#), February 2019

²⁵ [2020 Inquiry, APPG on Frozen British Pensions](#), p 20; [APPG on Frozen British Pensions – A solution. Why we are campaigning for partial uprating.](#)

²⁶ [Frozen British Pensions: the case for change. A report by the International Consortium of British Pensioners and the National Pensioners' Convention, Feb 2016, p18](#)

²⁷ [HL Deb 24 February 2016 c251](#)

4. Debate

4.1 Campaign for change

[Early Day Motion 476](#), UK Veterans and frozen pensions, tabled by SNP pensions spokesperson, Neil Gray, on 14 May 2020, with 21 signatures, states:

That this House notes the publication of Broken Faith, Britain's Forgotten Heroes by the Campaign to End Frozen Pensions, which highlights the continuing injustice of the UK frozen pensions policy which affects over 500,000 UK state pensioners, including an estimated 100,000 military veterans, living in countries that do not have a reciprocal state pension uprating agreement with the UK, a policy which results in the affected pensioners having their UK state pension frozen at the level it was in the year that they start to claim it overseas, meaning that many of these pensioners are living on as little as £40 a week due to being denied annual uprating as would happen if they had remained in the UK; and calls on the Government to end this injustice and to uprate the UK state pensions of all UK state pensioners in line with the triple lock, regardless of where they live.²⁸

The All-Party Parliamentary Group on Frozen British Pensions published the report of its 2020 Inquiry in December.²⁹ It called on the UK Government to “urgently review the ‘frozen’ pension policy given the evidence of destitution facing many UK pensioners overseas and the recent impacts of COVID-19.” It argued that the fact that the UK Government had reached agreement to maintain uprating or those living in the EU contradicted its previously stated position that it was not willing to enter into new reciprocal agreements. It questioned the justification for the policy – that the decision to move abroad is voluntary and that people are given information and advice on the impact on their State Pension of doing so. Responses to a survey showed the financial impact on pensioners:

- 1 in 2 ‘frozen’ pensioners receive a UK state pension of £65 per week or less
- Over half struggle financially because of their frozen pension
- Almost 90% of ‘frozen’ pensioners were **not** informed that their pension would be frozen before they left the UK

It expressed particular concern about the impact on “veterans, former public servants and members of the Windrush Generation who have returned to their country of birth.” It recommended an end to the policy on frozen rate countries, with partial uprating as a possible interim solution:

We urge the Government to seek to provide pensioners in ‘frozen’ countries with their full uprated UK State pension as soon as possible, particularly given the impacts of COVID-19 on this group.

²⁸ [EDM 476, tabled 14 May 2020](#)

²⁹ [All Party Parliamentary Group on Frozen British Pensions: 2020 Report](#), December 2020, p11

The APPG believe that this is such an injustice that the relatively modest cost should not be a barrier to ending the policy. Partial uprating of UK pensions could, however, be an interim solution to prevent the ‘freezing’ of UK pensions moving forward, with a view to addressing the historic injustice build into the present policy.³⁰

It said the Governments of Canada and Australia had shown a “clear willingness to work towards an end to frozen pensions.”³¹

The Government’s response

The Government’s consistent response has been that this has been the approach of successive governments and that it does not intend to change the policy:

Claire Hanna: To ask the Secretary of State for Work and Pensions, what assessment she has made of the implications for her policies of the December 2020 APPG report on Frozen Pensions.

Guy Opperman: The policy on the up-rating of UK State Pensions for recipients overseas is longstanding and has been supported by successive Governments for over 70 years. The Government has no plans to change this policy.³²

In more detail:

The Government has not made an assessment of the All-Party Parliamentary Group on Frozen British Pensions 2020 inquiry or its findings. The UK State Pension is payable worldwide to those who meet the qualifying conditions. It is up-rated where there is a legal requirement to do so, for example, where recipients are living in countries where there is a reciprocal agreement that provides for up-rating. The Government has no plans to change the policy on up-rating UK State Pensions overseas; the policy is longstanding and has been supported by successive Governments for over 70 years. The Government understands that people move abroad for many reasons and that this can have an impact on their finances. However, the decision to move abroad remains a personal choice. Advice that the UK State Pension is not up-rated overseas except where there is a legal requirement has been provided to the public for many years. Information is provided in leaflets and on gov.uk.³³

It has “no plans for discussions with either Australia or Canada” on the issue.³⁴

4.2 The approach of successive governments

The policy of not awarding increases has been followed by successive governments.³⁵ 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.

³⁰ Ibid

³¹ Ibid

³² [PQ 133276 11 January 2021](#)

³³ [PQ HL 11595 5 January 2021](#)

³⁴ [PQ 131193 11 January 2021](#)

³⁵ See, for example, HL Deb 26 April 1989 c1352; HC Deb 6 July 1994 c 432

The Conservative Government of 1979 to 1997

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 “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”.³⁶ The Government responded in a written answer:

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.³⁷

No debate took place on the report.

The 1997 Labour Government

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.³⁸

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

³⁶ Social Security Committee, *Uprating of State Retirement Pensions Payable to People Resident Abroad* (HC 143, 1996-97), para 39

³⁷ HC Deb 19 March 1997 cc 679-80W

³⁸ 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

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.”³⁹ 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.”⁴⁰

In debate on the uprating regulations in 2005, Lord Hunt of Kings Heath said that the Labour 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.⁴¹

The *Pensions Act 2007* enabled the restoration link between increases in the basic State Pension and earnings.⁴² 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.⁴³ He argued that the introduction of earnings uprating for some but not for others would result in the “existing injustice” being “considerably magnified”.⁴⁴ The then Shadow Pensions Minister Nigel Waterson explained that the Conservatives had “considerable sympathy with the concerns expressed” on this issue.⁴⁵ Responding, Pensions Minister James Purnell, explained that the key issue was cost and that the Government’s “main priority must be pensioners living here”.⁴⁶ 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.”⁴⁷

³⁹ Pensions Bill Deb, 18 March 2004, c258

⁴⁰ Pensions Bill Deb, 18 March 2004, c258-9

⁴¹ HL Deb 25 October 2005

⁴² Pensions Act 2007, s5; The link was restored by SI in April 2011 ([HL Deb 14 March 2011 c75](#))

⁴³ Pensions Bill Deb, 25 January 2007, c89

⁴⁴ Pensions Bill Deb, 25 January 2007, c91

⁴⁵ Ibid, c105

⁴⁶ Ibid, c111-113

⁴⁷ Ibid, c112-114

The Coalition Government

The Coalition Government did not change the arrangements. In December 2010, the Pensions Minister Steve Webb said:

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. 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.⁴⁸

In debate in the House of Lords on 9 March 2011, the then Parliamentary Under Secretary of State at the DWP, 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.⁴⁹

Debate on the Pensions Bill 2013-14

When the new State Pension was introduced under the *Pensions Act 2014*, section 20 provided for the policy on frozen overseas pensions to continue to apply.

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.⁵⁰

In debate on the [Pensions Bill 2013/14](#), the then 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,

⁴⁸ [HC Deb, 2 December 2010, c953W](#); See also, [HC Deb, 7 July 2011, c1320W](#)

⁴⁹ [HL Deb, 9 March 2011, c1608](#)

⁵⁰ [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

it thought there should be a cross-departmental study “on the implications of this policy for pensioners deciding to live abroad.”⁵¹

Responding, the then Pensions Minister Steve Webb explained that most UK pensioners overseas lived in either Canada or Australia. Up-rating 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.⁵²

He added that the proportion of UK pensioners who had 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; they will have only part of their income based on the British system, and only that part will not be up-rated.⁵³

He did not believe that a review would achieve anything.⁵⁴

At Report Stage, Sir Peter Bottomley and Sir Roger Gale tabled an amendment to remove clause 20 from the Bill.⁵⁵ The effect of this would have been that the new single-tier State Pension would be up-rated 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 and argued for a review of the policy.⁵⁶ The Pensions Minister responded that up-rating the single-tier pension, but not the existing pension, overseas would create a new anomaly and result in significant costs to the Exchequer. There was an “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

⁵¹ [PBC Deb 4 July 2013 c210-4](#)

⁵² [PBC Deb 4 July 2013 c224](#)

⁵³ Ibid c225

⁵⁴ Ibid c226

⁵⁵ Pensions Bill 2013/14 - [Notice of amendments given up to and including clause 24 October 2013](#)

⁵⁶ [HC Deb 29 October 2013 c842-7](#)

are doing is implementing the law of the land as it has stood for decades.”⁵⁷

The Conservative Government

From the time of its election in 2015, the Conservative Government was clear that it intended to continue with the same policy.⁵⁸

In a backbench business debate on the issue in 2016, the then SNP pensions spokesperson Ian Blackford said:

[...] on frozen pensions, we remain concerned that those who have an entitlement to a UK pension are being denied their full rights. If we do not get sufficient answers this afternoon, the Scottish National party will oppose these measures.

He called on MPs to “unite in the House, standing up for all our pensioners, regardless of domicile.”⁵⁹

The then Shadow Pensions Minister Angela Rayner said the logic was “just not there” for the current arrangements and called for a solution that was “credible, affordable and fair” – such as partial uprating.⁶⁰

Chair of the APPG, Sir Roger Gale, said:

The all-party group recognises the very real difficulties involved in resolving a problem that has been allowed to build up over many years. With great respect to my hon. Friend the Minister, it is facile to say that successive Governments have done this. Successive Governments have, but successive Governments have been wrong, and it is time we put the injustice right. There has to be a way of addressing the issue.⁶¹

In response, Shailesh Vara said the Government had to take difficult decisions about how to use limited resources:

The majority of pensioners abroad live in countries such as Australia, Canada, New Zealand and South Africa. The rules in those countries vary. Some have largely means-tested pension systems, whereby a significant proportion of any increase in the amount of the UK state pension would go to the Treasuries of those countries, rather than the pensioner [...]. The crux of the issue is individual choice. Those who have contributed to the UK state pension scheme are free to draw their entitlement from wherever they choose to live. The rules governing the uprating of pensions are straightforward and widely publicised [...] I am very pleased to have been able to set out the Government’s position, which remains unchanged.⁶²

In a written answer on 12 March 2018, Pensions Minister Guy Opperman explained why the Government did not intend to change the policy:

The policy on uprating pensions abroad is a long-standing one of successive post-war Governments. UK State Pensions are payable

⁵⁷ [HC Deb 29 October 2013 c854-5](#)

⁵⁸ [Delegated Legislation Committee, 26 January 2016 c4; HC Deb 17 March 2015 c1103](#)

⁵⁹ [HC Deb 11 May 2016 c657](#)

⁶⁰ Ibid c663-4

⁶¹ Ibid c665

⁶² Ibid c661

worldwide, however they are up-rated overseas only where there is a legal requirement to do so.

There are two main reasons for not paying annual up-ratings to non-residents. First, up-ratings are based on levels of earnings growth and price inflation in the UK which have no direct relevance where the pensioner is resident overseas. Second, the cost of up-rating state pensions overseas in countries where we do not currently up-rate would increase immediately by over £0.5 billion per year if all pensions in payment were increased to current UK levels.⁶³

On 19 May 2019, he said that “unquestionably the situation in relation to overseas pensions has been consistently enforced by every Government of every persuasion since the second world war, and there is no anticipation of changing that.”⁶⁴

The current Government has confirmed this position in response to more recent PQs on the issue.⁶⁵

⁶³ [PQ 131353, 12 March 2018](#)

⁶⁴ [HC Deb 13 May 2019 c12](#)

⁶⁵ [PQ 133276 11 January 2021](#)

5. Legal challenge

Annette Carson, a UK pensioner resident in South Africa, challenged the Government's policy under the *Human Rights Act 1998* in April 2002 in the High Court. She claimed that the government had infringed her rights under Article 1 of Protocol 1 and Article 14 of the European Convention on Human Rights (ECHR). Article 1 of Protocol 1 gives protection to property rights, and she claimed that her state pension was a pecuniary right, and therefore part of her property. She argued that the government's refusal to uprate her pension was depriving her part of her pension. Article 14 prohibits discrimination in securing the enjoyment of the rights protected by the ECHR. Ms Carson argued that she was discriminated against because she lived in South Africa.⁶⁶

Mr Justice Burnton 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.⁶⁷

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.⁶⁸

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.

⁶⁶ *Carson v DWP* 22 May 2002 para 8-13

⁶⁷ *Carson v DWP* 22 May 2002 para 76

⁶⁸ *Carson v DWP* 22 May 2002 para 48

Similarly, I think that the government is entitled to consider the payment of uprated pensions to those living abroad on a country-by-country basis, taking into account the interests of this country in each case. I do not think that payment of uprated pensions to pensioners in any one foreign country (or several) is converted, by Article 14, into an obligation to pay uprated pensions to all pensioners living abroad: yet this is the effect of the Claimant's submissions. It would be curious indeed if Article 14 were to compel the government to pay uprated pensions to those living abroad irrespective of any countervailing benefit offered by their countries of residence, yet again that would be the effect of the Claimant's case. The accepted illogicality of the present position is the result of agreements providing for payment of uprated pensions having been entered into with some countries, but not others, at a time when governmental policy was different from the present policy.⁶⁹

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.⁷⁰

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 2003.⁷¹ However, leave to appeal to the House of Lords was granted on 6 November 2003.⁷²

Ms Carson's case was heard on 28 February 2005. On 26 May 2005 the House of Lords delivered its judgement, rejecting the appeal. It held that 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. Lord Hoffman said that while there was "no doubt" that Ms Carson was being treated differently, there was nothing unfair or irrational about according different treatment to people who live abroad:

8. In my opinion the sense of grievance may be understandable but it is not justified. There is nothing unfair or irrational about according different treatment to people who live abroad. The primary function of social security benefits, including state retirement pensions, is to provide a basic standard of living for the inhabitants of the United Kingdom. They do so as part of an interlocking system of taxation and social welfare, including the provision of benefits in kind such as social housing and the National Health Service. The system as a whole is neither adapted nor intended to maintain the standard of living of inhabitants of other countries, even if they have past connections with the

⁶⁹ *Carson v DWP* 22 May 2002 para 73-4

⁷⁰ "Britons lose fight to uprate pensions" *Daily Mail* 23 May 2002

⁷¹ (1)*Carson* (2) *Reynolds v The Secretary of State for Work & Pensions* (2003)

⁷² BBC News Online, 6 November 2003, *Expat pensioner wins appeal right*

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United Kingdom. The rules relating to some benefits do, exceptionally, provide limited recognition of the claims of expatriates such as Ms Carson on the ground of their past contributions to United Kingdom public funds. But they are in a different position from United Kingdom residents whose participation in those same benefits is integrated with the system as a whole. They therefore have no claim to be treated in the same way.⁷³

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:

21 In effect, Mrs Carson's argument is 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 in my opinion is an obvious fallacy. National Insurance contributions have no exclusive link to retirement pensions, comparable with contributions to a private pension scheme. In fact, the link is a rather tenuous one.⁷⁴

An application was then 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 2007.⁷⁵

The ECHR issued its decision in *Carson and Others v. the United Kingdom* on 4 November 2008.⁷⁶ It held that the policy of not index-linking the state pension of pensioners in some countries abroad did not violate Article 14 (prohibition of discrimination) of the European Convention on Human Rights. It decided it did not need to go on to consider the applicants' complaint under Article 14 in conjunction with Article 8 (right to respect for private and family life). The Court issued a press release summarising its decision:

Decision of the Court

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

First, as regards the question of whether the applicants were in an analogous situation to British pensioners who had chosen to remain in the United Kingdom, the Court noted that the Contracting State's social security system was intended to provide a minimum standard of living for those resident within its territory. Insofar as concerned the operation of pension or social security systems, individuals ordinarily resident within the

⁷³ [R v Secretary of State for Work and Pensions ex parte Carson](#), [2005 UKHL 37]

⁷⁴ *Carson v DWP* 26 May 2005 paras 22-24

⁷⁵ PBC Deb 25 January 2007, c112

⁷⁶ European Court of Human Rights, [Judgement in the case of Carson and others v United Kingdom](#), Application no. 42184/05

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.⁷⁷

⁷⁷ ECHR, [‘Chamber Judgement, Carson and Others v the United Kingdom’](#), Press release issued by the Registrar, No 773, 4 November 2008

The case was referred to the Grand Chamber of the European Court of Human Rights on 6 April 2009 and was heard on 2 September 2009.⁷⁸ 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 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 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

⁷⁸ Press release issued by the registrar, No. 629, 26 August 2009

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.⁷⁹

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

⁷⁹ [Press release issued by the Registrar. Grand Chamber judgment – Carson and others v the United Kingdom, 16 March 2010](#)

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