

PRIME MINISTER

c.c. Mr. Gow
Mr. Lankester

Pensions Uprating

After the exchanges in the House yesterday afternoon, I thought it might be helpful for you to see the legal advice from the DHSS on the question which was raised: namely, whether the Secretary of State for Social Services must, under the existing legislation, put up long-term benefits by the higher of his estimates of earnings and prices movements, or whether he can merely "have regard to" the movement in earnings, but put the benefit rates up by a (lower) prices figure nonetheless.

You will see that the DHSS advice is unequivocal. It is that new main legislation would be needed to do away with the link between earnings and the rates of pensions and other long-term benefits.

I understand that Mr. Jenkin and the Chancellor are already holding discussions about the prospects for prices and earnings movements, and that, as things stand, Mr. Jenkin has no proposal on the table for legislation.

Although it may be a little while before recommendations come to you, I thought you should nonetheless see now the terms of this legal advice so that you have the full background to the current discussions.

N. J. SANDERS

17 May, 1979.

THE CURRENT STATUTORY PROVISIONS RELATING TO THE UP-RATING OF
SOCIAL SECURITY BENEFITS

National Insurance and Industrial Injury Benefits

1. Sections 124, 125 and 126 of the Social Security Act 1975, as amended, provide that, in each tax year, the Secretary of State shall review the rates of the main national insurance and industrial injuries benefits to determine whether they have retained their value in relation to the general level of earnings or prices. If they have not, he is required to lay a draft Order, subject to the affirmative procedure, increasing those benefits "at least to such extent as he thinks necessary to restore their value". Basic pensions and other long-term benefits have to be increased in line with the movement of earnings or prices, whichever is more advantageous to beneficiaries. Graduated pensions, the earnings-related additional components under the new pension scheme and short-term benefits, such as sickness and unemployment benefit, have to be increased in line with the movement of prices.

2. The new rates of benefit have to come into force not later than 12 months after the date on which the current rates came into force. This year, they must ~~come into force~~ come into force not later than week commencing 12 November. A copy of the relevant sections is attached.

The method of determining the new rates of national insurance and industrial injury benefits

3. The Courts have held* that in order to restore the value of benefits, it is necessary for the Secretary of State to make a forecast of the likely percentage movements in earnings and prices between the previous up-rating date and the date of the intended up-rating - on this occasion, November 1978 and November 1979 - and to increase the rates of benefits at least by the appropriate percentage. The Courts made clear that the Secretary of State is not in breach of his statutory duty if the

* (see Metzger v. DHSS [1977] 3 All E.R. 444, Megarry V-C; [1978] 3 All E.R. 753, CA)

actual movements of earnings and prices turn out to be less than the forecast movements (as occurred in 1978) and that, whilst he has power to rectify any resulting shortfall in the restoration of values, he is under no statutory duty to do so.

Supplementary Benefit and War Pensions

4. There are no statutory provisions relating to the increase of these benefits but, by convention, war pensions are increased in line with industrial injury benefits and supplementary benefits go up by the same cash amount as the corresponding national insurance benefits.

Child Benefit

5. There is no statutory requirement to up-rate child benefit but the Secretary of State is required by the Child Benefit Act to consider in each year beginning on 4 April whether the rates should be increased, having regard to the national economic situation as a whole, the general standard of living and other such matters as he thinks relevant.

Mobility Allowance

6. There is no statutory requirement to increase mobility allowance but the Secretary of State is obliged to consider in each tax year whether the rate of mobility allowance should be increased having regard to a variety of factors such as changes in taxation which directly affect motoring costs. Under the Social Security Act 1979, he is obliged to lay before Parliament a formal statement "as soon as is reasonably practicable" giving his conclusion on the rate of mobility allowance and his reasons for that conclusion.

Family Income Supplement

7. There is no statutory requirement to review or increase Family Income Supplement. In practice it has been up-rated at the same time as other benefits.

The present position

8. The review of the rates of NI and II benefits for 1978-79 was carried out in March 1979 by the then Secretary of State who, having regard to the then known movement of earnings and prices since November 1978, found that the rates of benefits had not retained their value. (This review had of course to be carried out before the end of the 1978-79 tax year.) The necessary determination of the increase of rates of benefit to be introduced in November 1979 under the present statutory provisions, and the laying of the Order, must now await the firm Treasury estimates of the movements of earnings and prices over the 12 months to November 1979 which, if they are to take account of the effect of the Budget proposals, will not be available until shortly before the Chancellor's Budget statement in June.

The proposal to link pension increases to prices

9. The present Government's proposal to do away with the link between earnings and the rates of pensions and other long-term benefits will require main legislation. If the June forecasts of the movements of earnings and prices reveal that prices are likely to exceed earnings, no problems will arise since the up-rating Order can be laid, increasing all benefits in line with prices, without the need for main legislation (apart from that needed for the proposed freezing of the earnings rule limit for the dependent wives of retirement and invalidity pensioners to the sum introduced in November 1978). Amending legislation will of course be necessary for future up-ratings.

10. If however the movement of earnings over the 12 months to November 1979 is likely to exceed that of prices, main legislation will be needed urgently to amend the existing statutory provisions so that the proposal to increase pensions and other long-term benefits in line with prices can be carried out.

Up-rating of benefits

Power to increase rates of benefit.

124.—(1) The Secretary of State may by order increase any of the sums specified in—

- (a) Schedule 4 to this Act;
- (b) Schedule 6 to this Act, paragraphs 3(1)(a)(i) and (ii) (calculation of earnings-related supplement and addition); and
- (c) sections 2(1)(c) and 7(2)(b) of the Old Cases Act;
- (d) sections 30(1) . . .², 45(3) . . .² and 66(4) . . .² of this Act (earnings rules).

(2) No order shall be made under this section unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

(3) The Secretary of State shall lay with any draft order under this section a copy of a report by the Government Actuary giving the latter's opinion on the likely effect on the National Insurance Fund of the making of the order.

¹ Words added by Social Security (Miscellaneous Provisions) Act 1977 (c. 5), s. 1(1)(c).

² References omitted by the Social Security (Miscellaneous Provisions) Act 1977 (c. 5), s. 5(1).

125.—(1) The Secretary of State shall in the tax year 1975-1976 and each subsequent tax year review the sums specified in—

Duty to increase rate of certain benefits.

(a) [¹Parts I, IV and V of Schedule 4 to this Act and paragraphs 1 to 3, 4 and 5 of Part II; and]

(b) sections 2(6)(c) and 7(2)(b) of the Old Cases Act;

[²(c) sections 30(1), 45(3) and 66(4) of this Act, excluding paragraphs (a) and (b) of those provisions].

for the purpose of determining whether those sums have retained their value in relation to the general level of earnings or prices obtaining in Great Britain.

(2) For the purposes of any such review the Secretary of State shall estimate the general level of earnings and prices in such manner as he thinks fit and shall have regard either to earnings or prices according to which he considers more advantageous to beneficiaries, except that he shall have regard only to prices as respects the sums specified in—

(a) Part I of Schedule 4 to this Act, paragraphs 1 and 4, and Part IV of that Schedule, paragraphs 1(a) and 3 (unemployment and sickness benefit and maternity allowance); and

(b) Part V of that Schedule, paragraphs 1, 9, 11 and 15(b) (injury benefit and lower rate allowance in respect of deceased's children).

[³and shall have regard only to earnings as respects the sums specified in the provisions mentioned in subsection (1)(c) of this section.]

(3) If on any such review the Secretary of State concludes that any of the sums in question have not retained their value as mentioned above, he shall prepare and lay before each House of Parliament the draft of an up-rating order increasing those sums at least to such extent as he thinks necessary to restore their value.

(4) If a draft order laid before Parliament in pursuance of this section is approved by resolution of each House, the Secretary of State shall make the order in the form of the draft.

126.—(1) If on a review under section 125 above the Secretary of State determines that he is not required to prepare and lay the draft of an up-rating order, he shall instead lay before each House of Parliament a report explaining his reasons for arriving at that determination.

Supplementary provisions as to up-rating.

(2) The Secretary of State shall with any report under subsection (1) above lay a copy of a report by the Government Actuary giving the latter's opinion on the likely effect on the National Insurance Fund of the Secretary of State's determination that no order is required.

¹ Paragraph substituted by Social Security Pensions Act 1975 (c. 60), s. 65, Sch. 1, para. 51.

² Paragraph added by Social Security (Miscellaneous Provisions) Act 1977 (c. 50), s. 5(1).

³ Words inserted by the Social Security (Miscellaneous Provisions) Act 1977 (c. 50), s. 9(2).

(3) Section 125(3) above shall not require the Secretary of State to provide for an increase in any case in which it appears to him that the amount of the increase would be inconsiderable.

(4) The Secretary of State may, in providing for an increase in pursuance of section 125(3), adjust the amount of the increase so as to secure that the sums specified for any particular benefits continue to differ from each other by the same amount, or so as to round any sum up or down to such extent as he thinks appropriate having regard [1, in the case of a sum specified in a provision mentioned in section 125(1)(a) or (b),] to the nature and the rate or amount of the benefit in question.

(5) A draft order prepared under section 125(3) shall be framed so as to bring the increase of any sum to which it relates into force not later than the expiration of the period of 12 months [or, in the case of the first increase by order of a sum specified in a provision mentioned in section 125(1)(c), the prescribed period] beginning with the date on which the provision fixing the current amount of that sum came into force; but if since that date there have been laid before Parliament under subsection (1) of this section one or more reports, or one or more draft orders not increasing that sum, that period shall be extended by a further 12 months for each such report or draft order.

(6) Schedule 14 of this Act has effect with respect to benefit under this Act or the Old Cases Act, where rates of benefit are altered--

(a) by an Act subsequent to this Act or by an up-rating order; or

(b) in consequence of any such Act or order altering any maximum rate of benefit.