

## **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 1975<sup>1</sup> and now vested in them<sup>2</sup>, hereby make the following direction.

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

"the Administration Act" means the Social Security Administration Act 1992<sup>3</sup>;

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits Act 1992<sup>4</sup>;

"the Pensions Act" means the Social Security Pensions Act 1975<sup>5</sup>;

"additional benefit" has the meaning given by regulation 5(2)(a) of the Social Security Benefit (Persons Abroad) Regulations 1975<sup>6</sup>;

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

"official pension" has the meaning given by section 5(1) of the Pensions (Increase) Act 1971<sup>7</sup>;

"pension authority" has the meaning given by section 7(1) of the Pensions (Increase) Act 1971;

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

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<sup>1</sup> Section 59A was inserted by section 11(4) of the Social Security Act 1979 (c.18). It was amended by section 9(9) of the Social Security Act 1986 (c.50), and section 190 of and Schedule 8 paragraph 9(2) to the Pension Schemes Act 1993 (c.48).

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

<sup>3</sup> 1992 c. 5.

<sup>4</sup> 1992 c. 4.

<sup>5</sup> 1975 c. 60.

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

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

“section 59 order” means an order made by the Treasury under section 59 of the Pensions Act<sup>8</sup>;

“section 109 order” means an order made by the Secretary of State under section 109 of the Pension Schemes Act 1993<sup>9</sup>;

“surviving civil partner’s pension” means an official pension payable in respect of the services of the pensioner’s deceased civil partner;

“surviving spouse’s pension” means an official pension payable in respect of the services of the pensioner’s deceased spouse;

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

2. Paragraphs 3 to 6 apply in the case of a pensioner who reaches pensionable age on or before 5 April 2016.

3. 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 or she is entitled; or
- (b) the pensioner has not claimed his or her retirement pension and is not treated as having claimed it by virtue of regulations made under Part I of the Administration Act; or
- (c) the pensioner has made an election under regulation 2(1) of the Social Security (Widow’s Benefit and Retirement Pensions) Regulations 1979<sup>10</sup>; or

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<sup>8</sup> 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; by the Social Security (Consequential Provisions) Act 1992 (c.6), Schedule 2, paragraph 34; by the Pension Schemes Act 1993 (c. 48), section 190 and Schedule 8, paragraph 9(1); by the Pensions Act 2008 (c. 30), section 137; by S.I. 2014/560, S.I. 2014/3168 and S.I. 2014/3229.

<sup>9</sup> 1993 c. 48. Section 109 was amended by section 55 of the Pensions Act 1995 (c. 26); by S.I. 2005/2050; and by the Pensions Act 2014 (c. 19), section 24(1) and Schedule 13, Part 1, paragraphs 1 and 40.

<sup>10</sup> S.I. 1979/642. Regulation 2(1) was amended by S.I. 1989/1642, S.I 2005/453, and S.I. 2005/1551.

- (d) the application of regulation 5 of the Social Security Benefit (Persons Abroad) Regulations 1975<sup>11</sup> is disqualifying the pensioner for the receipt of any additional benefit which would otherwise be payable to him or her 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) in respect of a surviving spouse's or surviving civil partner's pension, the pensioner is not entitled to a Category A retirement pension by virtue of section 41 of the Contributions and Benefits Act<sup>12</sup>, or a Category B retirement pension by virtue of section 48B<sup>13</sup> or section 51<sup>14</sup> 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 5 and 6, in any 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).

4. Where the condition specified in paragraph 3(a), (b), (c), (e), or (f) 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 or she first became entitled to a guaranteed minimum pension arising from the employment which gave rise to the official pension.

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<sup>11</sup> S.I. 1975/563. Regulation 5 was amended by S.I. 1977/1679, S.I. 1983/186, S.I. 1984/1303, S.I. 1986/1545, S.I. 1990/40, S.I. 1994/268, S.I. 1995/829, S.I. 2005/2877, S.I. 2013/388, and S.I. 2013/591.

<sup>12</sup> Section 41 was substituted by the Social Security (Incapacity for Work) Act 1994 (c.18), section 11(1) and Schedule 1, Part I, paragraph 9. Section 41(5) confers entitlement to a Category A retirement pension on certain men whose wife died on or after 6 April 1979. Section 41 has been repealed by the Welfare Reform Act 2007 (c. 5), Schedule 8, from a date to be appointed.

<sup>13</sup> 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 48B(1), (1ZA), (1ZB), (1A) and (1B) were substituted by the Pensions Act 2014 (c. 19), Schedule 12, Part 2, paragraphs 57 and 61 with effect from 6 April 2016. Section 48B confers a right to a category B retirement pension on certain persons whose spouse died while they were married or whose civil partner died while they were civil partners.

<sup>14</sup> Section 51 was substituted by the Pensions Act 2014 (c. 19), Schedule 12, Part 2, paragraphs 57 and 64 with effect from 6 April 2016. Section 51 confers a right to a category B retirement pension on certain persons who attained pensionable age before 6 April 2010 and whose spouse died while they were married or whose civil partner died while they were civil partners.

5. Where the condition specified in paragraph 3(b), (c), (d) or (e) 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 or her official pension for any period following the date on which the condition ceases to apply shall subject to paragraph 6 be calculated as if the direction in paragraph 3 had never applied in respect of that pension.

6. Where the condition specified in paragraph 3(d) becomes applicable to a pensioner at any time and the direction in paragraph 3 has previously applied to his or her official pension by reason of the same sub-paragraph (or its predecessor in an earlier direction) and this has ceased so to apply in accordance with paragraph 5, 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.

7. Paragraph 8 applies in the case of a pensioner who reaches pensionable age in the period 6 April 2016 to 5 December 2018 inclusive.

8. 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, 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 in any 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).

9. This direction comes into force on 6 April 2016.

10. The direction made by the Treasury on 6<sup>th</sup> July 2000 under section 59A of the Pensions Act is hereby revoked.

*Charlie Elphicke*

*John Penrose*

5th April 2016

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 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 requires the Treasury to make a parallel order increasing official pensions.

For those reaching pensionable age on or before 5 April 2016, 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 or her 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, DWP pays in addition to the basic pension an increase to the SERPS element, calculated by reference to the increase in retail prices. DWP 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, DWP 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 1975 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.

Paragraphs 3 to 6 apply to pensioners who reach state pensionable age on or before 5 April 2016. (Paragraph 1 has the effect that in this direction “pensionable age” has the meaning given by section 122(1) of the Contributions and Benefits Act.)

Paragraph 3(a) specifies the case where DWP is not in effect 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 or her GMP.

Paragraph 3(b) specifies the case where the pensioner does not receive a state retirement pension because he or she has not yet claimed it because, for example, he or she is in receipt of incapacity benefit, or he or she is not treated as having claimed it.

Paragraph 3(c) specifies the case where the pensioner does not receive a state pension because he or she has elected to be treated as not having retired.

Paragraph 3(d) specifies the case where a state retirement pension is in payment but DWP 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 3(e) specifies the case where the pensioner is disqualified for receiving a state retirement pension because he or she is in prison.

Paragraph 3(f) specifies the case of a GMP paid to a surviving spouse or civil partner, unless he or she is entitled to a Category A or Category B state retirement pension by virtue of his or her late spouse or civil partner's National Insurance contributions.

Paragraphs 4, 5 and 6 prescribe how pensions increase is to be calculated when the conditions in sub-paragraphs 2(a), (b), (c), (d), (e) and (f) variously begin or cease to apply.

Paragraph 8 specifies all pensioners who reach state pensionable age in the period 6 April 2016 to 5 December 2018 inclusive.

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%, paragraphs 3 and 8 require 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.

The direction comes into force on 6 April 2016 and revokes the previous direction made on 6<sup>th</sup> July 2000.