Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade - inquiry into trade and investment relationship with the UK concerning:

UK Overseas Frozen State Pensions

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1 Summary – Frozen Pensions

This paper summarises the current position regarding the discriminatory freezing of UK state pensions when paid overseas. It also provides conclusions and recommendations on how the freezing of UK state pensions may be overcome.

The key recommendations are that the Australian government should link the uprating of UK pensioners living in Australia to any future trade agreement that may result between the UK and Australia, and append the uprating of UK pensions to the agenda for the 2018 Commonwealth Heads of Government Meetings (CHOGM). The other recommendations are that with the help of other Commonwealth countries the Australian government should continue to pressure the UK government for the UK state pensions to be uprated to those living overseas.

Should the Australian government be successful then there will be considerable saving to the taxpayer amounting to thousands of Australian dollars per year. In addition, self-funded retirees in receipt of UK state pensions would benefit financially, which would result in an increase in tax being collected in Australia.

Half of the UK pensioners living abroad do not have their pension payments uprated annually as does a pensioner living in the UK, Europe, the US and some other countries. About 550,000 UK pensioners living overseas, i.e. those living in predominately Commonwealth countries have their pension payments frozen from the time they left the UK, or when they first started to receive their pensions when abroad. Prior to the recent UK Pension Act 2014, the freeze was implemented by a Regulation 3, but now it is imposed by section 20 of the Pensions Act 2014.

A common theme reported is that a UK pensioner living in Canada has their pension frozen, while someone living 500 metres away across the border in the US on the other side of the Niagara Falls has their pension uprated. There can be no justification for such discrimination. UK pensioners in Australia, suffer the same discrimination as those in Canada. There are many UK pensioners suffering financial hardship. It is no good the UK government stating that "they chose to go and live in a country where they knew their pensions would not be uprated annually". Are people expected to live away from their families because of this discrimination? This needs to be addressed.

With the UK soon to leave the European Union there is a golden opportunity to bring the annual uprating of UK state pensions with the UK government back to the table for discussion. Although the annual uprating of UK state pensions cannot form part of any future trade agreement between the UK and Australia, there is an opportunity to link the annual uprating of UK pension paid in Australia to the any future trade agreement that may result between the UK and Australia.

Another key opportunity to explore is through the Commonwealth Heads of Government Meetings (CHOGM), where the uprating of UK pensions could be appended to the agenda for the 2018 meeting.

2 Current Position

More than half of those UK pensioners living abroad do not receive any increase in their state pensions once they have taken their state pension or when they leave the UK and take up residence in another country. Given the countries involved are largely in the Commonwealth, countries such as Australia are disproportionately impacted.

According to the British Age Pensioner Alliance, there are over 11 million pensioners in the UK, plus another 550,000 in other countries who have their UK state pensions uprated annually. Currently, the UK state pension rises each year in line with the 'triple-lock' agreement, so it will increase based on whatever is highest of inflation, average earnings, or 2.5 per cent.

However, there are another 550,000 UK state pensioners in countries where there UK state pensions are frozen. Within Australia there 255,000 are approximately of which 190,000 are non-self-funded retirees who have had to fall back on the Australian government for financial help as their UK state pensions have been eroded through inflation. Current estimates are that it costs the Australian government approximately GBP80 million per annum (131 million AUD), a sum that should be paid by the UK government.

In the UK, everybody receives the same state pension for the same contributions to the National Insurance Fund (NIF) unless they decide to retire overseas, in which case their UK state pension may be frozen at its initial value when they left the UK, or when they first took their pension when overseas. To receive the full UK state pension required payments into the National Insurance Fund for 40 years, now 35 years.

In addition to the UK state pension, the government introduced a second pension scheme for those not in an employer occupational scheme called the State Earnings Related Pension Scheme (SERPS). This too has been included in freezing of UK state pensions. If a private company was to discriminate with its pension payments due to a person's location then they would be hauled before the Courts.

Considering that all UK state pensioners have paid the same contributions it seems extremely unfair to discriminate in this way. However, the UK government while recognising this anomaly just says it cannot afford to uprate everyone's pensions annually, which is surprising considering that the National Insurance Fund has a surplus of GBP 70 billion.

Estimates to fully uprate UK state pension vary. An article in money.co.uk estimates that in the first year this would be GBP580 million, and then approximately GBP450 million per annum thereafter. Much of this would be offset by the fact that every pensioner who moves abroad will not use National Health Services (NHS) or care benefits, or any other benefits from the UK government.

Many have put a cost on the savings per head between GBP4,500 and GBP6,000 per annum. The savings are probably considerably higher than this, as for instance, a major operation (knee, heart, breast) in the UK (not private) would cost in the order of GBP6,000 alone and minor surgery, such as cataracts would cost GBP1,000. It is not difficult to see that these costs would soon add up. There are then other benefits payable, such as:

- free dental treatment,
- free NHS prescriptions,
- free NHS eye tests,
- voucher towards the cost of glasses or contact lenses,
- help with travel costs to receive NHS treatment,
- free NHS wigs and fabric supports,
- Pension Credit is an income-related benefit that tops up your weekly income to a guaranteed minimum level,
- Winter fuel payment,
- Housing benefit,
- Council Tax Support,
- Free older person's bus pass and other public transport concessions,
- Disability Living Allowance,
- Carer's Allowance,
- Bereavement benefits.

While not everyone is in receipt of all these benefits, the benefit payments must add up to a considerable sum annually. None of this has been taken into account by the UK government when calculating the cost of uprating overseas pension payments.

Recently, it is understood that campaigners discussed a compromise deal with the UK government, which would involve a partial uprating of UK state pensions, where existing frozen pensions would only be uprated from their current position from now on.

The International Consortium for British Pensioners (ICBP) and its allies have submitted cost and potential saving to the Cabinet Office. While the group remains hopeful of movement by the UK government, not everyone is in agreement on this compromise deal. In addition, a Department for Works and Pensions (DWP) spokesman said "We have a very clear position on this policy which has remained consistent for around 70 years. The UK state pension is payable worldwide, but is only uprated annually abroad where we have a legal requirement to do so, or a reciprocal agreement is in place. There are no plans to review this".

The uprating of UK state pensions was for many years taken through the courts and eventually reached the European Court for Human Rights (the "Annette Carson's case"), where the case was lost. It appears to have been lost on the basis that the UK government defined the UK state pension as a "benefit" that meant the government could decide to vary the payments according to its wishes, but not on financial grounds. In fact, the UK state pension is contributory – no contributions means no pension. However, this was not well presented to the court at the time and the case was lost on technical grounds. Although the basis of the findings was flawed, unfortunately there is no avenue for appeal.

3 UK Government Position

Successive UK governments have taken a negative view to the uprating of its pensioners living abroad.

The general position is that 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, increases are payable to UK pensioners living in European Economic Area (EEA) countries (i.e. European Union members together with Norway, Iceland, and Liechtenstein) or in countries where there is a reciprocal agreement which provides for an increase to be paid. This does not include Australia.

The UK government while recognising that some overseas pensioners do not have their state pension uprated is an anomaly, they will not change the status quo, on the grounds that the government cannot afford the extra money to fund this. This is just blatant discrimination. However, it is not the government's money, it is the money contributed by each pensioner during their working life to the National Insurance fund, which reportedly is in surplus to around GBP70 billion.

The UK government has produced a Government Briefing Paper to the UK Parliament Number SN-01457, dated 17 May 2016, written by Djuna Thurley.

See: http://researchbriefings.files.parliament.uk/documents/SN01457/SN01457.pdf

This has some useful background information and provides the historical perspective of how UK state pension was not uprated to those living overseas.

4 BREXIT Effect

The UK population voted for a British exit, or Brexit from the European Union (EU) on 23 June 2016. While the outcome prompted some jubilant celebrations, it sent shockwaves through the global economy. Following the result the pound fell to its lowest level since 1985 with significant falls against the Euro. Just this alone has created financial stress among the many thousands of retired UK citizens across Europe who rely solely on their UK state pensions to live.

Not only have the UK pensioners living in Europe already lost a considerable proportion of their pensions when converted into Euros through the currency falls; they may also lose their European Health Cards, which provide health cover across Europe. In addition, with the UK not in the EU anymore there will be no law requiring the UK government to uprate their pensions annually. This assumes that no other agreement is put in place, but the leaders of Europe have said that no negotiations can to take place until article 50 is invoked, so it is unlikely that an agreement will be in place by March 2019 to safeguard annual uprating of UK pensions when the UK leaves the EU. This appears to put the UK pensioners living in Europe in the same position as those UK pensioners living in Commonwealth countries, such as Australia and Canada.

If the UK government were to follow their policy of not uprating the payments to UK pensioners living in Europe, then there would probably be a mass return to the UK. In addition, mass demonstrations could be envisaged outside Parliament, which would be extremely embarrassing for the UK government. It would also put UK government in a difficult position with regards to the Commonwealth countries whose UK state pensions are not currently uprated.

5 Effect on Retirees in Australia

Approximately 255,000 UK pensioners in Australia do not have their pensions uprated. For example, a pensioner who retired in year 2000 on a basic UK state pension would receive a sum of GBP67.50 a week. However, if their pension payments had been uprated, they would now be receiving GBP115.95 per week. Thus, with time UK pensioners can experience considerable financial hardship if they choose to live abroad, say with their families as their pensions are inflated away. There financial hardship has been further exacerbated by Brexit, which has caused a considerable drop in the value of UK sterling.

UK pensioners living permanently in Australia can apply to the government for an Australian pension after 10 years permanent residence. Any pension payments from the UK are counted towards their income and the Australian pension reduced accordingly, which means that the Australian government is subsidising the UK.

Self funded retires also suffer the same losses as their UK state pensions are inflated away. Over the years, this adds up to thousands of pounds lost.

6 Australian Government Activity

The last major contact with the UK government concerning the uprating of UK pensions was through Jenny Macklin (MP for Jagagaga, Victoria). In a statement issued in Canberra in May 2012, Ms Macklin said that "The Australian government considers the indexation policy of the United Kingdom Government unfair and discriminatory".

"All UK pensioners paid into the National Insurance Fund under the same rules, in good faith, and the Australian government believes they should be paid their pensions under the same conditions no matter where they now live," she announced.

The frozen UK state pension policy currently penalises about 550,000 British expats in over 100 countries. However, more than half of all those expats (252,000) are living in Australia. In line with the frozen pension policy, their UK state pensions have not been uprated in line with inflation since they emigrated. Consequently, many pensioners who emigrated a long time ago survive only with the help of means-tested Australian assistance.

Ms Macklin said that around 190,000 of Britain's frozen pensioners currently receive an Australian age pension or partial pension, for which the estimated cost is roughly AUS$100 million (GBP70 million) a year. She pointed out that Australia would be saved that outlay if British expats received "fairly uprated" pensions from their home country.

"I have raised the issue several times with my UK counterparts," she said. "I have urged them to discuss options for resolving this long-standing issue." However, no positive response has been received.

7 Conclusions

The UK Government have continued to take a hard line on the uprating of UK pensions paid to those living overseas, stating that many knew when they moved abroad they would not receive an increase, so on this basis a UK pensioner should be cut off from their family living abroad.

Governments across the world use inflation as a means of reducing debt, it is outrageous that the UK government uses it to reduce the pay out to the most vulnerable, i.e. pensioners who have contributed to the UK economy all their working lives and expect to receive what is rightfully theirs and not be discriminated on the basis of where they live.

The non-uprating of UK state pensions for those living overseas is unfair and discriminatory. It causes financial hardship to those UK pensioners who have retired to Australia and who are dependent on their UK state pensions.

It means that the Australian government has to support those who are entirely dependent on their UK state pensions through means testing, and it is wrong that those who have paid into the UK National Insurance Fund for the required number of years have to suffer such an indignity.

With the UK soon to leave the European Union there is a golden opportunity to engage with the UK government to negotiate the uprating of UK state pension payments to those living in Australia. While the uprating of UK state pension payments cannot for part of a Free Trade Agreement, it could be linked to it.

There has been discussion of a partial uprating of pensions, i.e. just uprating pensions from today onwards. However, there are those who have been retired for many years who are receiving a miniscule pension who would see little benefit.

A key issue is that if the UK government appears to cave in on the uprating of pension payments, even a partial uprating, it will appear to be an admission of its discriminatory policy. There would then be a whole raft of court cases to obtain the full uprating of UK state pensions and there would be claims for back payments, perhaps going back 30 years. The UK government is fearful of this position.

Despite considerable campaigning from pressure groups such as the British Pensioners in Australia (BPIA) and the All-Party Parliamentary Group on Frozen British Pensioners (APPG) and International Consortium for British Pensioners (ICBP), the UK government has so far refused to budge and keeps repeating the same out of date policy. There is increasing mobility of people around the world, so the pressure to stop discriminating against UK pensioners who have retired overseas will only increase. The UK is the only Organisation for Economic Co-operation and Development (OECD) country to discriminate in this way.

It would be a benefit to the Australian government should the UK government agree to uprate UK state pensions as it would mean that the Australian government would not need to contribute as much to those retirees living in Australia on small incomes. For self-funded retirees, the Australian government would benefit from the extra income coming into Australia and from the tax payments it would generate.

8 Recommendations

The Australian government should:

- continue to put pressure on the UK government to uprate the UK state pensions of UK pensioners living in Australia;
- link the uprating of UK pensioners living in Australia to any future trade agreement that may result between the UK and Australia;
- append the uprating of UK pensions to the agenda for the 2018 Commonwealth Heads of Government Meetings (CHOGM);
- continue to lobby UK government ministers. to uprate UK state pensions paid overseas;
- if appropriate, maintain contacts with supporters of the uprating of UK pensions, i.e. those UK MPs who have supported Early Day Motions for the uprating of UK pensioners living overseas;
- work with other Commonwealth countries, such as Canada to pressure the UK government to uprate UK state pensions paid overseas.