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18 MAY 1994 DB/1016/94

HEAD OF THE  
7560  
16 MAY 1994  
CIVIL SERVICE

*Linda Rosborough*  
6/6  
FROM: LINDA ROSBOROUGH  
Police Division  
13 May 1994

cc PS/Sir John Wheeler (B&L) - B  
PS/PUS (B&L) - B  
PS/Mr Feld - B  
Mr Legge - B  
Mr Lyon - B  
Mr McMeel - B  
Mrs Collins  
Mr Cornick  
Mr Jones  
Mr Kerr

786/s

*Mr W. Watkins*

*Mr J. Jones*

*for file*  
*Done*  
*17/5*

PS/SECRETARY OF STATE (B&L) - B

**RUC RESERVE PENSION SCHEME**

Miss Dullaghan's minute of 3 May asked for an update on progress on the Full-time Reserve Pension Scheme. This minute provides an update and invites the Secretary of State to write to the Chief Secretary to the Treasury to seek his approval for the provision of retrospective credit to the FTR. It is submitted provisionally subject to any final DFP advice on Monday.

Background

2. The background to this complex issue is as follows. There is no provision for a pension for the RUC Reserve over and above SERPS despite the provision of enabling legislation in the 1970 Police Act for application to reserve constables of the pensions payable to regular members of the RUC. Recently, and in particular over the last 3 years there has been increasing pressure on Ministers for pension provision to be made.

3. Under the Police Act, the approval of Treasury is required for all police pension regulations. Treasury were approached in April 1993 and asked to approve the extension of the regular pension scheme to members of the Reserve. Immediately before the 1993 Police Federation Conference, Treasury gave their approval, subject

to certain conditions, and the Secretary of State was able to announce at the Conference that the members of the Reserve would in future be able to join the RUC Pension Scheme.

4. Treasury approval was conditional upon recommendations arising out of the Sheehy Inquiry and other matters of detail. Over the ensuing months, officials have discussed the details with Treasury and succeeded in securing Treasury concurrence to Reservists being provided with equivalent provisions to those of the Regulars. Regulations have been drafted to enable implementation of the decision from 1 July. A separate submission will be forwarded shortly inviting the Secretary of State to make these regulations.

Retrospection

5. The major outstanding issue is the claim by Reservists for retrospective credit for past service. The opinion of successive Senior Crown Counsels (Mr Brian Kerr and Mr Patrick Coghlin) has been that the Secretary of State is vulnerable to judicial review for failure to consider making regulations under Section 26(f) of the Police Act and consideration ought to be given to retrospective credit. Mr Coghlin's advice was:

"There is no statutory obligation upon the Secretary of State to incorporate retrospective credit for previous service into the proposed Regulations and, essentially, such provision would be a matter for his discretion. However, it seems to me that such a discretion would have to be exercised judicially and would be vulnerable to challenge by way of judicial review upon the basis that, in the circumstances, such retrospective provision was a factor which ought to have been taken into consideration and, having been considered, no reasonable Secretary of State could fail to make some appropriate provision. .... It is my view that there would be a significantly better prospect of successfully upholding a decision including some provision for retrospective credit than

there would be of defending a decision which made no such provision at all."

6. Against the background of a threat of immediate judicial review proceedings, and on the advice of Mr Brian Kerr, in 1992 officials discussed with representatives of the Police Federation on a without prejudice basis, what might constitute a reasonable recognition of past service. 50% credit was considered by the Federation to be reasonable and this was the basis upon which Treasury were asked to agree to the extension of the regular pension scheme to the Reserve.

Treasury Views acceptance of the principle that the Reserve should have been on the outset and it can be argued that in the early years when the lifetime of the Reserve was thought to be short the

7. It is Government policy that benefits are not increased retrospectively - a policy which has been held to in recent 'hard cases' such as the War Widows. Treasury have therefore been extremely reluctant to concede that any retrospective credit would be made. The question of whether retrospection could be countenanced has turned entirely on the legal arguments. Discussions between the NIO and Treasury officials have been protracted.

8. The outcome has been that Treasury's own solicitors have confirmed that there is a real danger of a successful challenge and officials have agreed that some retrospective credit can be given. However Treasury officials have rejected the 50% credit option and suggested that credit should be provided for a fixed period before the date that regulations are introduced. They consider a period of 6 years as reasonable because it corresponds with the change in the threshold for pensionability in April 1988 from 5 years to 2 years' service. Since the people concerned are on 3-year contracts it could be argued that this should have been the trigger for pension provision. Added weight to the choice of this date is given by the fact that six years is the period provided by the Limitation Act.

they seek to challenge a decision in favour of this option. Mr Coglin's advice is that while a successful defence to a

Two Options

50% Credit

9. The 50% credit option would involve giving credit for service on the basis of one year's credit for every two years served. It has the advantage of being the Federation's preference and we know that they have raised expectations that this is deliverable throughout the Reserve. It would be equitable since all service in the Reserve would count. The main disadvantage is that it implies acceptance of the principle that the Reserve should have been pensionable from the outset and it can be argued that in the early years when the lifetime of the Reserve was thought to be short the lack of a pension scheme was entirely reasonable. It would be possibly open to a challenge for 100% of past service. It would also be difficult to administer. Treasury officials have advised us that they could not advise their Ministers to accept this option, because of the precedent which would be set and the potential read-across to other issues.

14. In the light of the legal advice, our view is that

Backdating to 1988

10. Backdating would involve an immediate credit to all members of the Reserve of for up to 6 years' service. Former members would also be credited for service between 1988 and 1994 (although a pension would only be payable to those who had served for more than two years during that period).

11. The advantage of this option is that there is a logical start date for the provision of retrospective credit. The credit covers the period when there has been pressure for a pension from the Federation (it has pressed hard on the issue only since 1991). It is relatively simple to administer. However difficulty may arise if the Federation is so firmly wedded to the 50% credit option that they seek to challenge a decision in favour of this option. Mr Coghlin's advice is that while a successful defence to a

challenge cannot be guaranteed, the court would be slow to interfere with a choice by the Secretary of State between reasoned alternative methods of providing an element of retrospective credit.

12. In terms of winners and losers, under the 6-year option, those with more than 12 years' service and former members would be net losers, serving members with less than 12 years' service would gain. In all almost 70% of the Federation's members would be net gainers.

Finance

13. Details of the costs of two options are set out in Annex A. The costs are broadly similar, with the 6-year option being very marginally more expensive. The 6-year option would be in credit for the first 15 years and the 50% option for the first 14 years.

Advice

14. In the light of the legal advice, our view is that retrospective credit should be offered to members of the Full-time Reserve. While it would have been preferable to implement an option that we know is acceptable to members of the Reserve, in the light of the firm Treasury stance, this appears to be impossible. There are administrative arguments in favour of the 6-year option.

The Next Steps

15. The next step is to seek Treasury Minister's concurrence. A draft letter is provided at Annex A. It is obviously important to receive an answer as soon as possible and well in advance of the Police Federation Conference on 7 June. Although we understand Treasury officials will be advising agreement, Mr Portillo may have his own views on the matter and there may be a need to follow up the letter with direct contact.

Handling the Federation

OPTION 1 20% CREDIT - CASH FLOW PROJECTIONS

16. It is difficult to gauge how the Federation will react to a different package from the one which they have been seeking. On past experience any discussion with Federation officials is quickly disseminated to their Members and we believe it would be unwise at this stage to raise their expectations, while Michael Portillo's reaction is still unclear. This may need to be reconsidered immediately before the Conference, if no decision from the Treasury has been forthcoming.

17. In any case it will be necessary to broach the subject with Federation officials before the Conference to prepare the way. We consider this should be done by the end of May at the latest (the Conference is on 7 June). The suggested draft letter to the Chief Secretary requests a rapid turn around to allow for this.

18. An amendment to the Reserve Pensions Regulations will be needed to implement the changes after the final details have been settled.

SIGNED:

L ROSBOROUGH

2009	8,774	7,559	1,200	35
2010	9,492	7,673	1,200	619
2011	10,505	7,786	1,200	1,599
2012	11,672	7,892	1,200	2,580
2013	13,066	7,998	1,200	3,808
2014	14,806	8,091	1,200	5,315
2015	16,395	8,179	1,200	7,006
2016	18,817	8,258	1,200	8,585
2017		8,332	1,200	10,485
2018	22,377	8,404	1,200	12,773
2019	23,655	8,462	1,200	13,993
2020	28,214	8,532	1,200	18,482
2021	27,605	8,559	1,200	17,846
2022	32,145	8,629	1,200	22,306
2023	31,432	8,698	1,200	21,542
2024	35,844	8,773	1,200	25,856
2025	34,632	8,824	1,200	24,808
2026	32,743	8,930	1,200	22,815
2027	37,128	9,089	1,200	26,879
2028	36,991	9,210	1,200	26,581
2029	36,864	9,355	1,200	26,329
2030	38,165	9,528	1,200	27,487
2031	38,927	9,691	1,200	28,036
2032	39,621	9,850	1,200	28,561
2033	38,344	10,032	1,200	27,112

OPTION 1 50% CREDIT - CASH FLOW PROJECTIONS

PENSION BENEFITS TO ALL FTR MEMBERS IN RESPECT OF SERVICE AFTER 1 APRIL 1994 AND FOR ALL CURRENT AND FORMER MEMBERS 50% OF PRE-1 APRIL 1994 SERVICE

Year	(1) Benefit Outgo £(000)s	(2) Members Contributions £(000)s	(3) Employers NI Saving £(000)	(4) Net Cost (1)-(2)-(3) £(000)s
1994	2,493	5,883	1,327	(4,717)
1995	2,170	5,913	1,336	(5,079)
1996	2,422	6,032	1,186	(4,796)
1997	2,852	6,163	1,217	(4,528)
1998	3,126	6,272	1,242	(4,388)
1999	3,446	6,383	1,269	(4,206)
2000	3,803	6,502	1,297	(3,996)
2001	4,223	6,619	1,172	(3,568)
2002	4,763	6,742	1,197	(3,176)
2003	5,100	6,852	1,220	(2,972)
2004	5,577	6,973	1,246	(2,642)
2005	6,208	7,093	1,271	(2,156)
2006	6,622	7,207	1,126	(1,711)
2007	7,266	7,330	1,148	(1,212)
2008	8,123	7,448	1,170	(495)
2009	8,774	7,559	1,190	25
2010	9,492	7,673	1,200	619
2011	10,585	7,786	1,200	1,599
2012	11,672	7,892	1,200	2,580
2013	13,066	7,998	1,200	3,868
2014	14,606	8,091	1,200	5,315
2015	16,385	8,179	1,200	7,006
2016	18,043	8,258	1,200	8,585
2017	20,017	8,332	1,200	10,485
2018	22,377	8,404	1,200	12,773
2019	23,655	8,462	1,200	13,993
2020	28,214	8,532	1,200	18,482
2021	27,605	8,559	1,200	17,846
2022	32,145	8,639	1,200	22,306
2023	31,432	8,690	1,200	21,542
2024	35,844	8,778	1,200	25,866
2025	34,632	8,824	1,200	24,608
2026	32,745	8,930	1,200	22,615
2027	37,128	9,089	1,200	26,839
2028	36,991	9,210	1,200	26,581
2029	36,884	9,355	1,200	26,329
2030	38,165	9,528	1,200	27,437
2031	38,927	9,691	1,200	28,036
2032	39,621	9,860	1,200	28,561
2033	38,344	10,032	1,200	27,112

LETTER FOR SIGNATURE BY THE SECRETARY OF STATE

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OPTION 2 BACKDATING TO 1988 - CASH FLOW PROJECTIONS

PENSION BENEFITS TO ALL MEMBERS AND FORMER FTR MEMBERS IN RESPECT OF SERVICE AFTER 1 APRIL 1988

HM Treasury  
Whitehall  
LONDON

Year	(1) Benefit Outgo £(000)s	(2) Members Contributions £(000)s	(3) Employers NI Saving £(000)	(4) Net Cost (1)-(2)-(3) £(000)s
1994	2,241	5,883	1,327	(4,969)
1995	1,820	5,913	1,336	(5,429)
1996	2,086	6,032	1,186	(5,132)
1997	2,515	6,163	1,217	(4,865)
1998	2,797	6,272	1,242	(4,717)
1999	3,091	6,383	1,269	(4,561)
2000	3,480	6,502	1,297	(4,319)
2001	3,862	6,619	1,172	(3,929)
2002	4,416	6,742	1,197	(3,523)
2003	4,752	6,852	1,220	(3,320)
2004	5,222	6,973	1,246	(2,997)
2005	5,836	7,093	1,271	(2,528)
2006	6,296	7,207	1,126	(2,037)
2007	6,950	7,330	1,148	(1,528)
2008	7,825	7,448	1,170	(793)
2009	8,529	7,559	1,190	(220)
2010	9,275	7,673	1,200	402
2011	10,387	7,786	1,200	1,401
2012	11,548	7,892	1,200	2,456
2013	12,946	7,998	1,200	3,748
2014	15,373	8,091	1,200	6,082
2015	16,511	8,165	1,200	7,146
2016	18,364	8,245	1,200	8,919
2017	20,223	8,320	1,200	10,703
2018	22,670	8,393	1,200	13,077
2019	28,583	8,452	1,200	18,931
2020	30,397	8,452	1,200	20,745
2021	29,006	8,476	1,200	19,330
2022	31,631	8,564	1,200	21,867
2023	31,682	8,635	1,200	21,847
2024	33,406	8,730	1,200	23,476
2025	34,065	8,830	1,200	24,035
2026	34,217	8,949	1,200	24,068
2027	35,911	9,094	1,200	25,617
2028	36,841	9,234	1,200	26,407
2029	36,574	9,380	1,200	25,994
2030	38,051	9,550	1,200	27,301
2031	38,807	9,711	1,200	27,896
2032	39,480	9,877	1,200	28,403
2033	38,242	10,048	1,200	26,994



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ANNEX A

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LETTER FOR SIGNATURE BY THE SECRETARY OF STATE

Rt Hon Michael Portillo MP  
Chief Secretary  
HM Treasury  
Whitehall  
LONDON

I am writing to seek your agreement to the final details for the provision of a pension to members of the RUC Reserve.

The RUC Reserve are a force of 3,170 police constables who carry out policing duties on 3-year rolling contracts. They were conceived as a temporary force in 1970 but because of the continuing security situation members have de facto been in continuous employment for up to 24 years. No pension provision was made for the Reserve apart from SERPS up till now although enabling legislation for the extension of the provisions of the regular pension scheme are contained in the 1970 Police Act NI.

It has been of considerable concern to me that these officers despite carrying out a full range of policing duties and suffering from terrorist attack after retirement as well as while serving as police officers, did not enjoy the benefits of an occupational pension. Indeed they must rely on social security payments between the compulsory retirement age until they reach 65 and receive the state pension. After lengthy discussions last year between our officials, we decided to bring the members of the Full-time Reserve into the regular police pension scheme, in line with general Government policy on occupational pension provision.

last year, with Treasury agreement, I was able to announce that arrangements would be made to enable members of the FTR to join the Regular RUC pension scheme. Regulations will be made shortly to implement this.

Because Reservists have not had the opportunity of belonging to an occupational scheme and in view of the dedicated service they provide in the most difficult of circumstances, it seemed to me to be appropriate in providing for a pension to make some recognition of past service, Indeed, I have been advised that I would find it extremely difficult to defend the introduction of a pension scheme without making some retrospective credit for past service, if the matter came before a court.

My officials have been in discussion with yours on the subject. My preference has been for the Police Federation's proposal for 50% credit to be given for past service to former and present members of the Reserve. However Treasury officials have advocated backdating credit in full to all members of the Reserve, both former and present, for service rendered since 6 April 1988. This is the date from which Social Security legislation reduced the threshold for requiring preservation of pensions on leaving employment from 5 years to 2 years' service.

As members of the Reserve are employed on 3-year contracts the bringing of the qualifying period for preservation within the period of the contracts should have led to consideration being given at

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at time as to whether a pension scheme should have been provided for the Reserve. It seems certain that if such consideration had been given a pension scheme would have been provided. Legal advice confirms that the date of the change in the minimal service requirements for preservation would be a logical point to commence the retrospective credit period, so I therefore now wish to proceed on this basis.

- PS/PUS (SpL) - 5
- Mr Legge - 5
- Mr Bell - 5
- Mr Steele - 5
- Mr Wood (SpL) - 5
- Mrs Collins - 5
- Mr Perry - 5
- Mr Maccabe - 5
- Mr Daniell - 5
- Mr Bramley - 5
- Mr McCaffrey - 5

Overall this is a cost neutral package for the first 14 years and thereafter costs will be maintained within the NI block.

Mr March (Draft letter as somewhat amended. Sir Louis)

I am due to speak at the Police Federation Conference on 7 June and the debate rather than a set of definite recommendations. The I would very much like to be able to make a positive announcement on that date. I would be extremely grateful if you were able to respond in the next few days, so that the final details can be settled and clarified in good time.

INDEPENDENT COMMISSIONER FOR THE HOLDING CENTRES: SIR LOUIS BLON-COOPER'S FIRST ANNUAL REPORT

The purpose of this submission is to report to the Secretary of State progress on our consideration of the major issues raised by Sir Louis Blon-Cooper in his first annual report which was published on Monday 14 March. The Secretary of State is also invited to write to the Independent Commissioner setting out where we have reached on consideration of the proposals and recommendations, which will clear the way for a reference to be made to the report in the Secretary of State's report.

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