

**Review of Position Submitted by Pensioners' Representatives with Regards to
Anomalies in the Social Security Act**

Supplementary Paper Number 06

**New Pensions Working Group
December 2010**

Table of Contents

Table of Contents.....	i
01. Introduction.....	1
02. Defining the Term Anomaly.....	1
03. Discussion of Representations Submitted and Recommendations Proposed	2
03.1 Changes in the Definitions of the Social Security Act.....	2
03.2 Changes to the Definition of Service Pensions.....	3
03.3 Changes to Insurability.....	3
03.4 Changes to Crediting of Contributions	4
03.5 Changes to the Invalidity Pension System.....	4
03.6 Changes to the Widows' Pension: Eligibility to a Widows' Pension.....	5
03.7 Changes to the Widows' Pension: Changes in Basic Principles	6
03.8 Changes to the Widows' Pension: Elimination of Redundant Proviso.....	7
03.9 Changes to the Retirement Pension: Staggering of 2/3 rd Pension of Pre-1979 Pensioners	7
03.10 Changes to the National Minimum Retirement Pension: Changes with Respect to the Exemption of the Payment of Contributions	7
03.11. Changes to the Contribution Base for a 2/3 rd Pension Entitlement: Change of Statutory Condition from being in Insurable employment for at Least 10 Years to Actually Paying 10 Years Contribution.....	8
03.12. Changes to the Retirement Pension Provisions: Articles 53(1)(b), 53(1)(d) and 60.....	9
03.13. Changes to the 2/3 rd Pension Contribution Average Calculation.....	9
03.14. Changes to the 2/3 rd Pension Contribution Average Calculation.....	10
03.15. Changes to the Retirement Pension System	12
03.16. Changes to the Bonus Entitlements to Pensioners.....	12
03.17. Changes to the Provisions Safeguarding Pension Entitlements.....	12
03.18. Changes to Time Limits for Certain Benefit Entitlements	13
03.19. Changes to the Process of the Collection of Arrears of Revenue	14
03.20. Changes to the Procedure for Appeals.....	14
03.21. Changes to the Procedures for Appeal.....	15
03.22. Changes to the Procedure for Penalties on Non-Compliance of Contribution Provisions	16
03.23. Changes to the Definition of Employment.....	16
03.24. Changes to the Establishment of the Social Security Contribution Rates	16
03.25. Changes to the Assessment of the Pensionable Income	17
03.26. Increase in the Maximum Pensionable Income.....	17

01. Introduction

This paper outlines the reactions of the 2010 Pensions Working Group (NPW2010) with regards to issues raised by various Pensioner Associations / Unions with respect to alleged inconsistencies or anomalies in the Social Security Act (Cap 318).

This Supplementary Paper seeks to achieve the following:

01. Defines the term 'anomaly'.
02. Group an anomaly according to the specific social security provision (for example insurability, benefit / pension type, etc) and classify the anomaly as follows:
 - (a) Whether the issue constitutes an irregularity.
 - (b) Whether resolution of the issues requires a change in the legislation.
 - (c) Whether the issue is a principle which is being given a different interpretation.
03. Presents a synthesis of the relevant Article at law and correlate this with the request submitted.
04. Presents general recommendations.

It is to be noted that the recommendations presented in this Supplementary Paper provide a general direction for the consideration of the Government. In the event that the Government had to accept the recommendations presented then the Department of Social Security (DSS) should be tasked to articulate the recommendation into a policy instrument.

02. Defining the Term Anomaly

Often discussions or requests submitted by various entities representing pensioners refer to 'anomalies' in the Social Security Act. It is pertinent to underline that the term 'anomaly' is subjective. A conclusion that a particular provision of the law or impact of the law results in an anomaly is at times subject to a person's interpretation of the particular legislative provision or arising impact.

The term anomaly is defined as a consequence or impact which deviates from the standard or expected behaviour. An anomaly is in essence an irregularity which may be difficult to explain using existing rules or theory. The definition of anomaly is being put forwarded given that it is important to underline that an 'anomalous' situation is one that deviates from the norm or common order or rule.

In this regard it is important to emphasise that a basic principle enshrined in the Social Security Act can never be considered to be anomalous. Such a principle, nevertheless, may create an anomalous situation as will be shown in this Paper and therefore it is these anomalous situations that must be reviewed and rectified as and where appropriate.

An overview of the various submissions that have been made by organisations representing pensions has been made. Following a review of the proposals submitted by the National Association of Pensioners (NAP), the Pensioner's Section of the Union Haddiema Maghqudin (UHM) and Retired Persons Association of the General Workers Union (GWU) and the Alliance of Organisations of Pensioners, the PWG2010 has categorised them as follows:

Anomalies where the provisions of the Social Security Act (SSA) truly present results that seem irregular and difficult to explain.

Requests to change specific 'basic' principles of social security system.

Requests to change specific provisions of the law without affecting the principles behind them.

It thus, emerges, that in the representations made the aforementioned constituted bodies are interpreting as anomalies principles of the SSA or operational interpretation and administration of the said Act by the DSS. As will be discussed in this Paper the actual number of representations that relate to an anomalous situation are in fact far less than presented by the constituted bodies.

03. Discussion of Representations Submitted and Recommendations Proposed

03.1 Changes in the Definitions of the Social Security Act

The issue relates to Article 2, Definitions, of the Act and the request is being made for a number of definitions to be amended.

Specifically the representation submitted seeks to change the:

01. Categorisation of persons to be insured under the Act – which in social security technical parlance is referred to as insurability: that is, how should one be categorised and the rate of contribution applied depends on the resulting categorisation.

In essence, this particular request, seeks a revision of the principle of who is to be considered an employed or self employed person.

02. Definition to the term “Retirement” as a consequence of the changes being requested in 01 above.

03. Definition of ‘widow’.

It is the PWG2010’s considered view that:

01. The acceptance of the submission to change categorisation of employed or self employed will result in a fundamental change in the underlying ethos of Malta’s insurance scheme.

Such a change would impact:

- A person’s insurability under the national social security scheme and future entitlement to social benefits
- The number and category of contributors, therefore resulting in direct financial implications to the revenue generated from the same scheme and its sustainability.

02. The current definition of ‘Retirement’ is dependant upon the categorisation of insured persons and it is the PWG2010’s considered opinion that this should not be changed

03. What the association is requesting with regards to changes in the definition of widow is cosmetic and the PWG2010 is of the considered opinion that no anomaly arises from this definition.

As part-time and casual employment is increasing, and as government efforts are aimed at increasing female participation in the labour market, the current social security regime (with the minimum contribution tied up with the national minimum wage level) is being viewed as a possible stumbling block for a person to decide to move into the labour market given the relatively high rate of the minimum social security contributions.

In the Budget speech for 2007, government introduced the ‘pro-rata’ contributions. An employee now has the option either to continue to pay the basic contribution rate (which is 10% of the National Minimum Wage) and therefore enjoy full social security contributory benefits or the employee may opt to pay a social security contribution on the actual income being earned. In such an event, the employee will receive pro-rata benefits.

Also, the Social Security Working Group (SSWG) in its review of the social security system is already agreed that the issue of 'insurability' may require further changes in order to meet the current demands and needs of the modern labour market.

Recommendation 01

The 2010 Pensions Working Group recommends that the Ministry for Pensions should consider rejecting the submission recommending changes in the definitions relating to insurability, retirement and widows.

03.2 Changes to the Definition of Service Pensions

The issue relates to Article 2, Definition of the term Service Pension, of the Act and the request is being made for the elimination of the calculation of the Service Pension.

The pensioner's representatives are requesting certain changes with respect to the calculation of a service pension. The main request is that pensioners of the British Services are to enjoy a full social security pension without the consideration of a service pension. There are also requests for certain exemptions, such as is for commuted pensions or part pensions.

The following is the view of the PWG2010. There is no doubt that the issue relating to a Service Pension has long been on the agenda. Be that as it may, the PWG2010 does not recognise this representation as an anomaly. There is no anomalous behaviour between one Service Pensioner and the other as each is treated under the same parameters.

In essence both the UHM and the GWU are contesting the principle upon which the definition of how the social security pension rate is established.

Recommendation 02

The 2010 Pensions Working Group recommends that the Ministry responsible for Pensions should not consider the representation with regards to the calculation a Service Pension as an anomaly given that Service Pensioners are treated equally but rather a contestation of the principle upon which the definition of how the social security pension rate is established.

03.3 Changes to Insurability

The issue relates to Article 12 titled Exemptions from Payment of Class Two Contributions. The request is made with regards exemptions of self employed person and this ties with the proposal discussed in 03.1 above.

The PWG2010's position in this regard is similar to that presented with regards to 03.1.

Recommendation 03

The 2010 Pensions Working Group recommends that Ministry responsible for Pensions should consider rejecting the submission recommending changes with regards to exemptions of self employed persons.

03.4 Changes to Crediting of Contributions

The issue relates to Article 16(3)(b) titled Crediting of Contributions.

It is being requested that this proviso in Article 16(3)(b) be deleted. Article 16(3)(b) states that if a person who for a period has opted out of the labour market in any way, then such person shall not be entitled to a credited contribution during any period of unemployment.

It is the considered opinion of the PWG2010 that this provision should stand. An underlying principle of Malta's social security system is that the award of credits to persons who due to sickness, injury or unemployment are incapable of work is based on the condition that they continue to remain considered to be in the labour market (actively working or seeking work).

If a person has moved out of the labour market (in the majority of cases they do so to work in the black economy and avoid paying social security contributions), one cannot accept such a person to be covered also by contribution credits. Such a move to delete the said provision would encourage people more to move into the black economy knowing the social security system is providing a credited contribution for their efforts!!

Recommendation 04

The 2010 Pensions Working Group recommends that Ministry responsible for Pensions should consider rejecting the submission recommending changes with regards to exemptions crediting of contributions.

03.5 Changes to the Invalidity Pension System

A request has been made to carry out certain changes to the invalidity pension system with specific reference to Article 26(8) of SSA. Article 26(8) provides for an annual revision of an invalidity pension.

It is being stated that DSS is not observing Article 26(8) of the Social Security Act and also that the DSS is only applying the said Article with regards to a person who is in receipt of a 'service' pension. As a consequence of this it is alleged that a person with a service pension has his or her pension revised according to increases in wages whilst an invalidity pensioner who is not in receipt of a 'service' pension receives on the 2/3rd cost of living increase.

It is the PWG2010's position the reviews, where so appropriate and necessary, are carried out in line with all the relevant provisions of the SSA including this Article.

It is important to underline that the invalidity pension scheme in Malta is not an earnings related pension scheme. The maximum and minimum pension rates are fixed at law and are substantially lower than the maximum rates for a retirement pension. There are basically three different categories of invalidity pensioners. These are:

1. Invalidity Pension – where the total sum of flat rate invalidity plus any service pension exceeds 2/3rds of the pensionable income of the pensioner
2. The Increased Invalidity Pension - where the total sum of the flat rate Invalidity Pension plus the service pension is less than 2/3rds of the Pensionable Income of the pensioner
3. National Minimum Invalidity Pension – that is the National Minimum Pension payable to a person who is *not* in receipt of a service pension.

The National Minimum Invalidity Pension rate is the highest of the three Invalidity Pensions.

As can be seen, where a person is not in receipt of a 'service pension', then the applicable pension rate payable is only the National Minimum Pension which is annually increased by 4/5^{ths} of the Cost of Living increase awarded in wages in the case of a married person and 2/3rds in the case of a single person. Therefore there is no need to carry out pension reviews in such cases in order to determine the pension increase.

On the other hand where a service pension is payable an assessment is required to determine which rate (i.e. the Invalidity Pension rate or the Increased Invalidity Pension) is due.

From this aspect DSS sees no need for any change or anomaly in the current procedures and application of the SSA. It is, in fact, to be noted that no appeals have been lodged on this process.

The issue of whether the scheme should be earnings-related based on the 2/3rds principle adopted for Retirement Pensions is an issue of policy change which if it is to be considered requires a cost benefit assessment and modelling of the financial cost related to its introduction.

The number of invalidity beneficiaries currently amounts to approximately 5,500 persons. Thus the recommendation presented will definitely have a financial impact should the invalidity scheme be converted to an earnings-related scheme.

It is pertinent to underline that historically claims to convert an invalidity scheme to an earnings-related scheme were not accepted since such a scheme could be viewed as an early retirement opt-out. Further, the invalidity procedure was never viewed as a water-tight system that ensures that only those really with work-related impairments are boarded-out.

Nevertheless, a counter argument put forward is that a person (more specifically a head of a household) who is really incapable of work cannot support himself or his family on the National Minimum Invalidity Pension.

Given that the reform of the invalidity system is embarked upon with the introduction an Impairment Tables which should help to keep control on medical assessments, the PWG2010 is of the opinion that a review should be made in order to see whether changes to the invalidity pension levels (not necessarily reverting to an earnings-related system) should be considered. For example – the payment of an additional allowance in those cases of invalidity pensioners that participate in rehabilitation programmes for jobseekers.

The PWG2010 is undertaking appropriate modelling in this regard to determine the financial feasibility of such a policy change. On the conclusion of these studies the PWG2010 will present its recommendations to the Ministry responsible for pensions for its consideration.

Recommendation 05

The 2010 Pensions Working Group is carrying out the necessary appropriate modelling with regards to determining the financial feasibility of a policy change that embraces an earnings related mechanism to the invalidity pension scheme and will submit its recommendations to the Ministry for Pensions for its consideration.

03.6 Changes to the Widows' Pension: Eligibility to a Widows' Pension

Another request by pensioner organisations relates to a person's eligibility to a widows' pension as defined in Article 32(1). It has been recommended that a new provision is introduced to this Article which will specifically state that a widow's pension is payable only to a widow who is entitled to maintenance on the day of widowhood.

The PWG2010 is of the considered opinion that the Maltese Courts of Law has upheld in various court sentences that a widows' pension is only payable to a spouse who is entitled to maintenance from the deceased spouse.

Thus, the PWG2010 concludes that there is no need to specifically include such a proviso in the DSS given that the principle is established by the Courts of Law.

So therefore the current provisions suffice and the PWG2010 sees no reason why such a proposal should be carried out.

Recommendation 06

The 2010 Pensions Working Group concludes that there is no need to specifically include a proviso in the DSS which establishes that a widow's pension is payable only to a widow who is entitled to maintenance on the day of widowhood given that the principle is established by the Courts of Law.

03.7 Changes to the Widows' Pension: Changes in Basic Principles

The issue relates to amendments carried out by Act II of 1999 and specifically relate to Articles 33A(1) and 33A(2) where-in it is argued that these changes have reduced the value of the widow's pension.

It is pertinent to underline that the PWG2010 views this matter as a technical complex issue which requires elaboration.

In 1995, the Government of the day had decided that it was time to extend the earnings related scheme (the 2/3rds pension introduced in 1979) to those persons who had retired prior to January 1979 and who were receiving only a flat rate pension. Given that the widows' pension of pre-January 1979 widows was also on a fixed rate basis, the new amendments were to be extended also to such widows.

Relevant amendments to the legislation were made in 1996. Following these amendments the DSS had to basically work out all pre-January 1979 pensions on the 2/3rds pension criteria. It is pertinent to underline that the amendment to the Act provided that any increase in pension was to be staggered over three years for obvious financial reasons.

Following this work, the DSS was advised that the wording of the relative Article 33 A (1) and (2) as then draft, could be open to interpretation where-in the said clause could be interpreted to mean that a widow could receive 2/3rds of a pension higher than that actually that which would have been received by the deceased husband.

In essence the drafting did correctly reflect the amendment that the Government sought to achieve and thus, as the wording stood, the said Articles could be interpreted to mean that the widow could receive a full two-thirds pension from year one and not staggered as proposed by Government . The DSS was thus informed that due consideration was being given to legal action by a number of pensioners on this issue and this meant that Government was faced with a possible decision which would effectively had meant that a substantial amount of arrears would have been payable.

After discussions with the Attorney General at the time, and following due consideration by the Minister for Social Policy at the time, amendments to ensure that the *correct* interpretation was given to the relevant Article (basically that no widow would receive a pension higher than 2/3rds of the rate which would have been otherwise due to the late husband) were presented to Cabinet and approved.

Government has always upheld that Act II of 1999 was intended simply to clarify the correct interpretation of the said Article following the change from the old widows' pension scheme to the new scheme which saw pre-1979 pensioners increased to the 2/3rds level.

The PWG2010 is of the considered position that state of play with regards to Act II of 1999 has not changed and that there is no anomaly in this regard.

Recommendation 07

The 2010 Pensions Working Group concludes that Act II of 1999 was directed to amend earlier drafting in order to correctly reflect the policy intention and measure introduced in 1995 with regards where-in it was direct to extend the earnings relating scheme and not to provide widows with a pension higher than that which would have been received by the deceased husband and, therefore, recommends that the Ministry responsible for Pensions should not consider this as an anomalous situation.

03.8 Changes to the Widows' Pension: Elimination of Redundant Proviso

This issue relates to elimination of the first proviso to Article 35 of the Social Security Act given that a similar reference is made in the SSA in Article 53(d).

The PWG2010 has no difficulty in recommending the removal the aforesaid proviso subject to the condition, however, that the Attorney General assures the DSS that the removal of this proviso will have no adverse impact on others parts of the SSA.

Recommendation 08

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions the removal of the afore proviso subject to the condition, however, that the Attorney General assures the Department of Social Security that the removal of this proviso will have no adverse impact on others parts of the Social Security Act.

03.9 Changes to the Retirement Pension: Staggering of 2/3rd Pension of Pre-1979 Pensioners

The issue relates to re-drafting of the proviso to Article 47(1)(ii) given that the three year staggering of the 2/3rd level of the retirement pension of pre-1979 pensioners was reached in 1998.

The PWG2010 is in agreement that this article requires re-drafting.

Recommendation 09

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that Article 47(1)(ii) which relates to the three year staggering of the 2/3rd level of the retirement pension of pre-1979 pensioners should be re-drafted.

03.10 Changes to the National Minimum Retirement Pension: Changes with Respect to the Exemption of the Payment of Contributions

The issue relates to basic principle of the SSA where-in the Act should make no distinction between the rate of a National Minimum Pension of a single or married person as there currently is under Article 50 of the said Act.

There is, no doubt, that this is a debatable issue. In those benefits which provide for a flat-rate benefit or allowance, the SSA makes a distinction between a rate of pension payable to a person with dependants and a person on his / her own. This distinction essentially considers that the expenditure of the former is greater than that of the latter.

In the earnings-related two-thirds pension scheme there is no distinction between married and single rates except for the minimum pension level which even for the two-thirds pension scheme is tied to the National Minimum Pension rates for married or single persons.

It is to be noted, however, that international literature on the subject of a National Minimum Pension Guarantee shows that there is no consistent principle and a good number of jurisdictions differentiate in terms of rates applied to the national minimum income by different family types.

A move to apply a uniform rate to the National Minimum Pension Guarantee irrespective of the household and / or marital status is a policy change which, undoubtedly, will have a financial impact.

The PWG2010 is undertaking appropriate modelling in this regard to determine the financial feasibility of such a policy change. On the conclusion of these studies the PWG2010 will present its recommendations to the Ministry responsible for pensions for its consideration.

Recommendation 10

The 2010 Pensions Working Group is carrying out the necessary appropriate modelling with regards to determining the financial feasibility of a policy change that establishes a uniform rate for the National Minimum Pension and will submit its recommendations to the Ministry responsible for Pensions for its consideration.

03.11. Changes to the Contribution Base for a 2/3rd Pension Entitlement: Change of Statutory Condition from being in Insurable employment for at Least 10 Years to Actually Paying 10 Years Contribution

The issue relates to a principle of the SSA where-in it is being requested that there should be change to a statutory condition from being in insurable employment for at least 10 years to the actual payment of 10 years contributions as stipulated by Article 52(A) of the said Act.

Currently, one of the statutory conditions for a person to be entitled to be considered for a two-thirds pension is that such person was employed, self employed or self occupied for at least 10 years (note there is no emphasis on the payment of contributions – simply being considered as employed, self employed or self occupied).

It has been proposed that this is changed and the requirement becomes one where a person has to pay at least 10 years contributions prior to retirement.

It is to be noted that the statutory condition as found in the SSA was introduced in 1979. At the time the mandatory scheme for social security had been established approximately 14 years prior (on 1st Feb 1965). Hence there was a possibility that a beneficiary was actively employed prior to the introduction of the mandatory scheme and was not covered by social insurance.

In view of the above, it is obvious that the statutory condition under consideration was introduced in a way so as to cater for possible insured persons who would retire and who for some reason or other may not have ten years of paid contributions.

Given that the Social Security scheme is now over 40 years old, the PWG2010 is in agreement that Article 52(a) should be re-drafted as proposed by NAP.

Recommendation 11

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that Article 52(a) that relates to a statutory condition from being in insurable employment for at least 10 years to the actual payment of 10 years contributions should be re-drafted.

03.12. Changes to the Retirement Pension Provisions: Articles 53(1)(b), 53(1)(d) and 60

This issue relates to invalidity credits in the calculation of the contribution average on which the entitlement to a pension depends.

The request being proposed is that the drafting of Article 53 (1) is changed. The PWG 2010 agrees that paragraph (b) and (d) of Article 53 (1) speak on the same subject and should therefore be linked instead of separated. Article 60 is only being mentioned to show that the DSS already allows for the consideration of credited periods.

Recommendation 12

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that Articles 53(1)(b) and 53(1)(d) are amended.

03.13. Changes to the 2/3rd Pension Contribution Average Calculation

The issue relates to the contribution average test for entitlement to a contributory two-thirds pension as presented in Article 53 (1) (i); Article 53 (3); Article 55 of the SSA.

The proposal by the pensioner's organisations is the extension of the contribution period base from the current 30 years for the 2/3rds Scheme to 41 for males or 40 for females.

The PWG2010 agrees that this issue is an anomaly. The current 2/3rd pension contribution test is carried out on two periods (the last ten years prior to retirement and any other 20 years prior to the last ten). The mathematical calculation of such an assessment can, indeed, create an anomaly. For example, a person who has paid only 6 years of contributions in his / her life may qualify for a pension if this period was in the last ten years prior to retirement, but if the six years contribution were not during the last 10 years prior to retirement then she/he would not acquire the minimum contribution average required. On the other hand a person who has paid 11 years may not qualify if the 11 years were paid or credited only during the 20 year period prior to the last 10 years before retirement.

As can be seen, the current 2/3rd pension scheme contribution average assessment is a weighted calculation giving priority to the payments of social security contributions during the last 10 calendar years prior to retirement. This may have been necessary in 1979 on the introduction of the earnings related scheme but is not the case today.

The DSS has always favoured the contribution average assessment employed for pensions under the 1956 Retirement Scheme under the Social Security Act. Basically this contribution average considers the contribution payments of a person over his / her insurable life from age 18 until retirement. On the current retirement age this would mean that the current contribution base being considered under the old scheme is 42 years of contributions. Given the principle of 40 years enshrined in the current Reform Act – it would be more opportune to retain the same contribution base over all our retirement schemes.

There is no doubt that the calculation of the contribution average of the 2/3rd scheme does create anomalies and imbalances between contributors. It is however to be pointed out that in the 2007 Pension Reform the contribution average assessment for the Switcher group was amended to ensure that such test be carried out on one period of 40 years which addresses in part the proposal mentioned above.

The current system for the transitional group has remained the same and is based solely on a weighted average based on two periods of contribution.

The PWG2010 is, however, of the considered opinion that the minimum contribution test to 20 as in the pre-1979 scheme is retained given that this would ensure that basically a person would have to contribute a minimum of at least 15 years contribution before becoming entitled to a pension.

In view of the above PWG2010 recommends that the DSS should present a paper to the Ministry responsible for Pensions regards to addressing anomalies that arise as a result of the current contribution average assessment for the Exempt and Transitional groups.

Further, the PWG2010 is of the considered opinion that the adoption of a change in this regard should have a neutral financial impact. Indeed, it should create a more just system of the contribution average assessment which is spread over the whole 40 year period instead of the weighted contribution average test currently employed which gives more advantage to a person who has paid contributions during the last 10 years of employment.

Recommendation 13

The 2010 Pensions Working Group recommends that the Department of Social Security should present a paper to the Ministry responsible for Pensions regards to addressing anomalies that arise as a result of the current contribution average assessment.

03.14. Changes to the 2/3rd Pension Contribution Average Calculation

The representation in this regard relates to Article 59(3) of the SSA which deals with the revision of the pensionable income of a pensioner which could then result in an increase in the pension entitlement given that a revision of pension is carried out under the parameters of Article 59.

Part of the basis for such a claim is the adverse result that can often result between pensioners of the same category. The following is being requested by the pensioner groups:

- (a) The pensionable income (average of 3 years in the case of employed) is eliminated and a system of current salary introduced; and
- (b) The Department considers 'unearned' increments when revising a pensionable income
- (c) Pension reviews are carried out with effect from the date of the collective agreement and not from the first Saturday in January of each year.

It is pertinent to underline that the PWG2010 recognises that the DSS has always acknowledged the anomalous results that can occur in cases of reviews where collective agreement increases are involved. This issue has been raised since the early 1990s.

The basic principle enshrined in the SSA since 1979 has always been that the calculation of the Pensionable Income (on which the rate of social security pension is based) is calculated on a period of year rather than on the final salary entitlement.

Obviously this method takes into consideration the sustainability of the scheme and also avoids abuses in the declaration of a higher than normal salary in the final year prior to retirement.

Further to the above, in the calculation of the Pensionable Income, it has always been a principle to consider only those salaries 'earned' by the insured person. This means that any increments in a salary scale which were not earned by the worker up to retirement were never considered. Therefore if, for example, a worker who retired on a salary scale of Minimum salary + 2 increments, then the current salary taken into consideration for the assessment or review of a pensionable income would be that current on the date of the review of the Minimum salary + 2 increments. The NAP is suggesting that a person should continue to earn increments and have his or her pension revised until he or she reaches the maximum salary.

The amendment of 1991 clarified this issue. It is pertinent to underline that it would be financially unsustainable to accept such a proposal.

The assertion made that the backbone of the SSA is the re-assessment on the current pay is, in the opinion of the PWG2010, wrong. In fact, the principle of the pensionable income was introduced in 1979 with the introduction of the earnings related scheme. Hence, the overriding principle has always been the assessment and revision on a pensionable income, which is based on an average period of salaries or income.

Should the request made by the pensioner representatives be accepted, there would be an upward shift in Pensionable Incomes and hence an increase in pension outlays. Apart from this, and in the considered opinion of the PWG2010 of far more significance, the acceptance of the proposal would create the possibility for abuses in the declaration of income in the retiring years of an employee; thereby leading to a non legitimate greater pension entitlement that would jeopardise the sustainability of the scheme.

Thus, whilst the PWG2010 recognises that a state of play where a calculation that is based on the current salary would essentially eliminate the anomalous situation it would, as stated above, open the system to possible abuse and therefore undermine the sustainability of the system in general.

The PWG2010 is recognisant of the fact that the DSS has carried out a number of alternative scenarios of the pensionable income calculation but these prove that the anomalous situation would continue to appear where the pensionable income is calculated on a period and not on the last salary. The only scenario that worked was the one where all collective agreement increases in the years taken for the average three year calculation are taken out of the three year calculation adding two-thirds of these increases being added at the end of the three year average calculation. Such an approach would eliminate the problem but is very complicated to put into practice and increases the burden on the administration of the system.

The DSS has, subsequently, worked upon a more streamlined approach that would eliminate completely the pensionable income review and introduce in its stead a system whereby pensions are increased by a mechanism that is constituted of an increase made up of 70% average wage increases 30% inflation. This mechanism has in fact now been adopted in the 2007 Pension Reform and forms part of the pension review mechanism of future pensions.

The PWG2010 agrees with the DSS that this would be the fairest way forward. The PWG2010 is undertaking appropriate modelling in this regard to determine the financial feasibility of such a policy change. On the conclusion of these studies the PWG2010 will present its recommendations to the Ministry responsible for pensions for its consideration.

With respect to the claim for the payment of arrears from the date of the collective agreement, the DSS together with PWG2010 are of the opinion that given the advantage of the DSS information systems it is technically possible to accept this proposal. The acceptance of this proposal would, however, result in additional expenditure.

Currently, if a collective agreement increase is awarded, for example, from the 1st of July 2007, it does not reflect itself in the pensionable income of a pension until the next pensionable income review which takes place effective from the first Saturday in January of 2008. Hence had the Government to accept this proposal, it would mean that in essence an additional expenditure in the example given would be the six months arrears from July to December.

Recommendation 14

The 2010 Pensions Working Group is carrying out the necessary appropriate modelling with regards to determining the financial feasibility of a policy change that indexes the pensionable income to a formula of 70% Wages : 30% Inflation and will submit its recommendations to the Ministry responsible for Pensions for its consideration.

03.15. Changes to the Retirement Pension System

A representation has been made to clarify Article 63 of the SSA which deals with the staggering up to two-thirds level of the Retirement Pension of pre-1979 pensioners.

The PWG2010 agrees the referred-to proviso is re-drafted in order to reflect today's needs subject to the condition, however, that the provisions employed during 1996 to 1998 are safeguarded.

Recommendation 15

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that Article 63 is re-drafted in order to reflect today's needs subject to the condition, however, that the provisions employed during 1996 to 1998 are safeguarded.

03.16. Changes to the Bonus Entitlements to Pensioners

The representation in this regard relates to Article 85 of the SSA which provides for the payment of the annual June and December bonuses and also an additional bonus at €3.12 per week which represents 2/3rds of the March and September bonuses paid to employed persons. The Unions are requesting that the March and September bonuses be paid in full instead of the 2/3rds ratio.

Obviously the result of the award of a full March and September bonus would increase the financial outlay on social benefits. It is to be kept in mind that the March and September bonuses are not payable solely to retirement pensioners. Such bonus is payable to widows, invalidity beneficiaries and other non-contributory beneficiaries such as social assistance, unemployment assistance and old age pensioners.

From a calculation of the estimated expenditure on all such beneficiaries, the projected increase in expenditure yearly would be in the region of approximately €7.45m (circa 93,000 beneficiaries (70,000 contributory beneficiaries) receiving the additional bonus @ €81.16 per year). It is emphasised that the adoption of this proposal would constitute a recurrent expenditure and that the social beneficiary population increases yearly. Therefore this recurrent expenditure will increase with the beneficiary population.

The PWG2010 is of the opinion that such an increase in recurrent expenditure would impact on the sustainability of the pensions scheme and should therefore it recommends to the Ministry responsible for pensions that it be considered within the whole framework of the sustainability and adequacy of the pensions framework.

Recommendation 16

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions consider this proposal within the general framework for the sustainability and adequacy of the pension system given its financial implications.

03.17. Changes to the Provisions Safeguarding Pension Entitlements

The representation in this regard relates to Article 89 of the SSA which provides a safeguard from reduction in certain pension entitlements if a service pension is increased. The pensioner groups feel that this proviso needs to be deleted following the amendment to the meaning of service pensions whereby certain increases in service pensions are no longer considered.

The PWG disagrees with NAP as it is its considered opinion that there is a very important principle under this Article – that of safeguarding pensions from reduction that should be protected.

It is to be underlined that the increases in service pension that are not considered by DSS are the increases emanating from cost of living increases. Increases in service pensions other than that for cost of living are to be considered for social security purposes. Thus, the Article still has its importance today to safeguard the fact that no social security pension is reduced as a result of an increase in a service pension.

Recommendation 17

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that the submission with regards to Article 89 is rejected given that this Article still has its importance today to safeguard the fact that no social security pension is reduced as a result of an increase in a service pension.

03.18. Changes to Time Limits for Certain Benefit Entitlements

The issue relates to Article 97 of the SSA which deals with the need for a person to apply for a benefit and sets out the various time limits for benefit for the submission of such claims.

It is being proposed amongst others, that this proviso needs to be deleted and that the onus to inform the citizen about his/her benefit eligibility be placed on the Department. It is also proposed that the Department should do its best to inform prospective pensioners of their entitlement before they reach pension age.

The PWG2010 agrees that the DSS should undertake every effort to keep people informed of their rights and that processes should be simplified. Be that as it may, the obligation of the responsibility that a person should apply within the appropriate time limits on benefit claims should continue to apply. Whilst this is a practice generally employed across any insurance system it is also a matter of personal responsibility that should apply to the pension system as it applies with every other legal obligation.

The PWG2010 underlines that the provision of pre-advice to pensioners to apply at pension age is a process which is already being carried out. The PWG2010 recognises continuous fine tuning is necessary and efforts in this regard are underway – including the keying in of all contributions within the social security database (SABS).

Once the contribution history of each individual is captured then the DSS would be in a position to provide a person with a tentative assessment prior to his or her retirement. Obviously in order to achieve such an objective further enhancement and improvements are required SABS and on the information that the department can obtain from other entities such as CIR, Treasury etc.

The PWG2010 underlines that this submission is not an anomaly but is directed towards the improvement of the administration of the pensions system.

Recommendation 18

Whilst the 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that the Department of Social Security is assisted with the necessary resources so at the earliest possible it will be in a position to provide persons with a pre-assessment of the person's pension prior to his or her retirement, it further recommends that the removal of the principle of responsabilisation on the individual person with regards applying within the appropriate time limits on benefits claims should be rejected.

03.19. Changes to the Process of the Collection of Arrears of Revenue

Article 102(3) of the SSA which provides the Director of the DSS Director with the necessary power to deduct any monies owing to the DSS in respect of social security contributions a person has failed to pay from any future benefit he / she will receive.

The representatives of pensioners are of the considered opinion that this specific paragraph should be deleted since the right to recover any monies due as social security contributions exists in the Article 116 of the Act.

The PWG2010 does not agree that Article 102 conflicts with Article 116. Whilst the former Article (and more specifically 102 (3)) provides the Director with the power to collect monies due as social security contributions from self employed or self occupied from any benefits they may be entitled to, the latter Article (116) deals with self employed, self occupied **and** employers and their failure to pay contributions and the penalties due to non-compliance of contribution conditions. Article 116 therefore only gives the outline of the penalties due on non-compliance and the legal action to be taken whilst Article 102 (3) gives the power to collect the money.

In this way Article 102 is **not** in conflict with Article 116 but enhances it by giving the Department the right to collect contribution and penalty dues from any benefits payable.

It is to be emphasised that deductions from benefits of social security contributions due are in practice only carried out only if the contributor makes a request *prior* to pension age to settle any outstanding contributions for the five years immediately preceding his claim. In such a case if the person proves that he or she does not have the funds to pay immediately the dues by him, the Director can make provisions for the deduction of the amount due from his or her benefit entitlement. It is only when *all* dues are covered that the pension rate is revised to reflect the payments of contributions made.

The Director has never utilised this particular Article to make a request for unpaid contributions *after* the person has attained pension age for the simple reason that such payments are by the same Act not valid for any contribution assessment if paid after retirement.

Once again, the PWG2010 underlines that this request is not an anomaly but relates to the administration of the pension system.

Recommendation 19

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that the submission with regards to Article 102(3) is rejected given that this Article does not conflict with Article 116.

03.20. Changes to the Procedure for Appeals

Article 108 of the SSA which deals with the procedure for the functioning of the office of the Umpire. A specific pensioner association has in the past requested that:

01. It be specifically appointed as an assessor on the panel, and
02. The period in which an appeal can be made is increased from the current 30 days to 60 days, and
03. Pensioner associations are to be included in the composition of the panel of assessors assisting the Umpire.

The PWG2010 is of the considered opinion that in the event that the request for an association to be accepted on the assessor panel, such an invitation to be appointed to an assessor would have to be presented to all associations that represent pensioners..

Further, in the event that any association is appointed on the Umpire's team of assessors whilst at the same time it continues to represent pension appeals a conflict of interest would arise. Should this take place the PWG 2010 is strongly of the view that the integrity of the impartiality of the appeal's process will be compromised.

The PWG2010 is not convinced that an increase of the period within which an appeal can be submitted from 30 to 60 days will result in an improved appeals process..

It is a fact that in the intervening period between the lodgement of the appeal to the date of hearing, cases may have been settled and the person can withdraw his or her appeal but this can happen even if an appeal is not made. In fact on the presentation of evidence to justify a claim, the Director has the power to revise any previous decision (Article 110).

It is to be noted that where the person representing the department, or any other officer of the Department for that matter, feels that the case is to be revised, the Umpire is informed immediately and when possible all revisions are carried out before the initial hearing with the beneficiary informed of the outcome. In the circumstances the PWG2010 cannot see the benefit of extending the time limit for appeals. Even a cursory look into the judicial system of our courts indicates that the time frame for an appeal is not normally greater than 30 days.

Once again, the PWG2010 underlines that this request is not an anomaly but relates to the administration of the pension system.

Recommendation 20

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that the submission with regards to Article 108 of the Social Security Act which deals with the procedure for the functioning of the office of the Umpire is rejected.

03.21. Changes to the Procedures for Appeal

Article 109 of the SSA which deals with the right of an interested party in an appeal from the decision of the department to seek redress in the Court of Appeal. A proposal has been made by one organisation for a case to be referred to the Attorney General for his opinion before an appeal is lodged.

The PWG2010 is of the considered opinion that the acceptance of this request would undermine the Umpire's role. The Umpire has been established to *decide* on issues of conflict between the beneficiary and the Department. In fact the Umpire has the right to call before him any expert and to summon any person. The power of the Attorney General's office at this stage is to offer 'advice'.

It should be further stressed that the Attorney General is the advisor of the Department on legal matters and where there is doubt about the case on the part of the Department the advice of the Attorney General is sought before the case is presented before the Umpire.

Once again, the PWG2010 underlines that this request is not an anomaly but relates to the administration of the pension system.

Recommendation 21

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that the submission with regards to Article 109 of the Social Security Act is rejected as it is believed that if introduced such a measure would undermine the Umpire's role.

03.22. Changes to the Procedure for Penalties on Non-Compliance of Contribution Provisions

The representation in this regard relates to Article 116 of the SSA which deals with the failure of employer or self employed to pay contributions. It is the PWG2010's interpretation that the position submitted by NAP is stating that that the fine for the non payment of contributions is waived.

In the event that PWG2010 is interpreting correctly this request then it recommends to the Ministry responsible for Pensions that the said position should be rejected.

Once again, the PWG2010 underlines that this request is not an anomaly but relates to the administration of the pension system.

Recommendation 22

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that the submission with regards to Article 116 of the Social Security Act that the fine for the non payment of contributions is waived is rejected.

03.23. Changes to the Definition of Employment

The First Schedule of the SSA defines the meaning of insurable 'employment' and describes the situations where persons are considered to be in insurable employment and where not. It has been suggested that this Schedule is amended to include any directors that are not shareholders themselves but are related to shareholders of the companies.

The PWG2010 does not agree with this recommendation given that it will complicate the administrative process for no relative gain.

Once again, the PWG2010 underlines that this request is not an anomaly but relates to the administration of the insurability of persons on the national insurance scheme..

Recommendation 23

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that the submission with regards to the First Schedule of the Social Security Act in order to change the definition of employer to include directors that are not shareholders but are related to shareholders is rejected.

03.24 Changes to the Establishment of the Social Security Contribution Rates

A request submitted refers to the capping on the contribution rates mentioned in the Tenth Schedule of the SSA concerns a fundamental principle of the 2/3rd Pension System.

The capping on the contribution should be seen within the wider view of the whole system. Increasing the contribution capping will also effectively mean that a person who is receiving a salary equal to or higher than that maximum income on which a contribution is payable will have to pay a higher contribution and therefore this will have a direct impact on his / her purchasing power. At the same time it will also impact on employers who will have to fund an increased labour cost (their 10% share of the employee's contribution).

Following various studies and modelling, the 2007 Pension Reform Act has addressed this issue already and currently the capping is increasing by the Cost of Living increases generally awarded up to 2010 and as from 1st January 2011 that the Maximum Salary will continue to increase until it €20,970 (Lm9,000) in 2014 and for the Switchers Group to increase annually post 2014 by an

indexation of Inflation 70% : Wages 30%.. This will obviously mean that the contribution rates will increase accordingly.

Recommendation 24

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that no action should be taken with regards to the submission on the capping on the contribution given that the 2007 Pension Reform Act has addressed this issue already and currently the capping is increasing by the Cost of Living increases generally awarded up to 2010 and as from 1st January 2011 that the Maximum Salary will continue to increase until it €20,970 (Lm9,000) in 2014 and for the Switchers Group to increase annually post 2014 by an indexation of Inflation 70% : Wages 30%. This will obviously mean that the contribution rates will increase accordingly.

03.25. Changes to the Assessment of the Pensionable Income

Schedule Thirteen of the SSA specifies that any individual years' income shall in no case exceed the maximum pensionable income level established at law. It is being requested that the said Schedule be re-drafted to provide for consideration of any income higher than the maximum on which a contribution is paid to be considered for pension purposes.. The submission proposed concerns a principle that underpins the pension system.

The PWG2010 disagrees with the proposal given that the paragraph within Schedule Thirteen proposed for re-drafting was specifically introduced in order to curb abuse that was being experienced from certain employed and self employed persons before such amendments were made.

Prior to the introduction to the amendments, a number of employed and self employed were increasing their yearly income (above the Maximum Pensionable Income levels) in specific years only and by so doing they would qualify for a higher pension. At the same time they were also saving on social security contribution and tax payments.

Recommendation 25

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that the proposal to amend Schedule Thirteen of Social Security Act is rejected given that the paragraph proposed for re-drafting was specifically introduced in order to curb abuse that was being experienced from certain employed and self employed persons before such amendments were made.

03.26. Increase in the Maximum Pensionable Income Limit

Another submission which has been made refers to the Legal Notice referring to the Maximum Pensionable Income. The Maximum Pensionable Income was €15,727 (Lm6,750) – frozen in 1981 and starting to increase again in 2004.

It is being requested that the Maximum Pensionable Income should be reviewed to reflect all cost of living increases from 1981 to date whilst another proposal is also asking that the Maximum PI be reviewed but does not indicate how and up to which level. Moreover, the statement is also made that the provision of a new Maximum Pension Income as a result for the Transitional Group at €20,970 and the Switchers Group at €20,970 by 2014 and thereafter to increase with an index of Wages 70% : Inflation 30% creates an anomalous situation.

The PWG2010 does not agree that the 2007 reforms create an anomalous situation. The reforms leading to changes to Maximum Pension Income of the Transitional and Switchers' Group respectively were directed to ensure that the purchasing power of the pension over time retains the

same level of average pension replacement income to the average wage that *is enjoyed by pensioners today*.

Moreover, and of significant importance, the Switchers Group and the Transitional Group have been effected by fundamental reforms – increase in the official retirement age; increase in the contribution period to 40 years; increase in the calculation period to the best 10 years over 40 years' increase in the payment of the contribution.

The Exempt Group – that is employed persons who were aged 55 years and over in 2007 as well as existing pensions did not have their basic parameters changed other than positively: the increase of the Maximum Pensionable Income to €17,457 (Lm7,500) and the ability to retire at full pension and earn uncapped income.

Additionally, any increases to the Maximum Pensionable Income of the Exempt Group would undermine a fundamental principle of the pension system: that the pension received is equal to the contributions paid by the insured person subject to the 2/3rd cap on the basic wage.

An increase, therefore, of the Maximum Pensionable Income would mean that current and future employees will be subsidise a portion of pensionable income received by current pensioners to which they would have made no contribution to. The 2010PWG is of the considered opinion that such inter-generational subsidisation by current and future employees to existing pensioners is unfair and therefore not acceptable.

Recommendation 26

The 2010 Pensions Working Group recommends to the Ministry responsible for Pensions that the proposal to increase the Maximum Pensionable Income and therefore increase the pension received by current pensioners is rejected given that that:

- (i) the changes to the Maximum Pensionable Income on 2007 are directed to secure that the average pension replacement rate of the Transitional and Switchers groups respectively remains as close as possible to that of current pensioners today.
- (ii) the Transitional and Switchers groups are contributing to towards the increased Maximum Pensionable Income through an increase in the official retirement age; an increase to the contribution period of 40 years; an increase in the pension calculation to the best 10 years out of 40 years; the payment of increased contribution whereas the Exempt Group which includes current pensioners were no affected by the reforms.
- (iii) any increases to the Maximum Pensionable Income of the Exempt Group would undermine a fundamental principle of the pension system: that the pension received is equal to the contributions paid by the insured person subject to the 2/3rd cap on the basic wage. An increase, therefore, of the Maximum Pensionable Income would mean that current and future employees will be subsidise a portion of pensionable income received by current pensioners to which they would have made no contribution to.