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FROM THE GENERAL SECRETARY'S OFFICE

IR/sg

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JBB CIRCULAR NO : 65/2008

Dear Colleagues

COMMUTATION FACTORS

The purpose of this Circular is to update Branch Boards in relation to the backdating of the new factors for commutation under the Police Pensions Regulations 1987 and to report that a judicial review challenge has been commenced.

At this year's Conference, the Home Secretary announced that new commutation factors would be introduced and backdated to 1 October 2007. Given the importance of the change to those who had retired prior to that date, correspondence was opened with the Home Office to establish how that date had been determined.

We have been informed that the new factors were first proposed by the Government Actuary Department ("GAD") in December 2006. The explanation given for the delay in implementation is that:

1. some details (such as the need to amend pension increase factors and to check whether the changes would breach HMRC limits) had to be finalised prior to implementation;
2. GAD did not intend the new factors should be implemented immediately and endorsed use of the old factors until at least 23 October 2007; and
3. therefore the Government was entitled to take policy issues (and in particular affordability) into account.

We have been advised that the decision is challengeable. The main point being that the relevant regulation (B7 Police Pensions Regulations 1987) requires a commuted lump sum to be actuarially equivalent to the pension given up, and that this is a purely actuarial assessment, which cannot be affected by wider policy issues.

Accordingly a claim for judicial review has today, 12 August 2008, been lodged at the Administrative Court. The Court is being asked to make a declaration that the Home Office and/or GAD acted unlawfully in choosing 1 October 2007 as the commencement date and to order them to reconsider the date from which the new factors should be effective.

The Court will now decide whether to grant permission for the judicial review to proceed. If permission is granted then the case will be determined at a hearing in the Administrative Court.

Branch Boards should note:

1. if the claim succeeds then the date to which the change is backdated will be reconsidered;
2. that there is no basis for a date earlier than 1 December 2006 being considered;
3. any revised date for backdating would be between 1 December 2006 and 1 October 2007.

I will ensure that Branch Boards are kept informed of future developments.

Yours sincerely



IAN RENNIE
General Secretary