

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL FUND WINTER FUEL PAYMENT (AMENDMENT)**  
**REGULATIONS (NORTHERN IRELAND) 2013**

**2013 No. 191**

**1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under sections 134(2) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and sections 5(1)(a) and (2)(f) and 165(1) and (4) of the Social Security Administration (Northern Ireland) Act 1992 and is subject to the negative resolution procedure.

**2. Purpose**

- 2.1. The Regulations introduce:
  - into legislation, a requirement, already being applied following approval of its application by case law of the Court of Justice of the European Union (CJEU), for people claiming Winter Fuel Payments from Switzerland and European Economic Area (EEA) countries outside the UK to have a genuine and sufficient link with the UK; and
  - a cut off date for claims for the first three years of the Winter Fuel Payments scheme: 1997/98; 1998/99; and 1999/2000, as people can currently still claim for those years.

**3. Background**

- 3.1. Winter Fuel Payments were first paid for winter 1997/98. They are an annual payment made to most people over women's State Pension age who are ordinarily resident in NI during a qualifying week.
- 3.2. Since 2002, Winter Fuel Payments have been exportable to people who first acquired the benefit in the UK and then moved to another EEA country or Switzerland (referred to below as EU).
- 3.3. The primary aim of Winter Fuel Payments is to provide reassurance that older people can keep warm during periods of cold weather.

Genuine and Sufficient Link

- 3.4. The first change made by these Regulations makes the genuine and sufficient link test explicit in legislation. Following a 2011 CJEU judgment in the case of Stewart C-503/09, the Department and DWP can no longer require that Winter Fuel Payments must be acquired in the UK where the claimant is subject to the EU social security co-ordination legislation (Regulations EC 1408/71 or EC 883/04) and has a genuine and sufficient link with the UK. Internet links:

- Stewart C-503/09 –  
<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-503/09>
- Regulation EC 1408/71 –  
<http://www.dwp.gov.uk/docs/a9-2001.pdf>
- Regulation EC 883/04 –  
[http://europa.eu/legislation\\_summaries/internal\\_market/living\\_and\\_working\\_in\\_the\\_internal\\_market/c10521\\_en.htm](http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/c10521_en.htm)

- 3.5. The Department for Social Development and the Department for Work and Pensions began to operate the extended eligibility policy, along with a genuine and sufficient link test, in the winter of 2012/13 following the judgement in Stewart. The CJEU held that member states could require claimants of non-contributory benefits to demonstrate a genuine and sufficient link with that state in order to qualify for such a benefit.
- 3.6. The genuine and sufficient link test takes into account several factors, for example: receipt of a UK benefit; periods of residence or work in the UK; family factors; and the length of time a person has spent out of the UK.
- 3.7. There are no set rules about, for example, the minimum amount of years someone must have lived and worked in the UK in order to pass the test. Rather, the decision maker must consider all the relevant factors on a case-by-case basis when reaching a decision. People who have lived or worked in the UK for a significant period of time are likely to meet the conditions.
- 3.8. A genuine and sufficient link test is also used in relation to the export of certain other residence-based benefits, for example Disability Living Allowance care component, attendance Allowance and Carers Allowance.
- 3.9. These Regulations will make the genuine and sufficient link test explicit in legislation. Guidance on how the test works is available on the DSD website: [http://www.dsdni.gov.uk/dmser\\_chapter07part6.doc](http://www.dsdni.gov.uk/dmser_chapter07part6.doc)

#### Cut off date for claims

- 3.10. A second change introduces a cut off date for claims for the first three years of the Winter Fuel Payments scheme. Entitlement to a Winter Fuel Payment in the first three years was governed by the Social Fund Winter Fuel Payment Regulations 1998 (S.R. 1998 No. 3) (for the winter of 1997-1998), amended by S.R. 1998 No. 276 (for the winter of 1998-1999) and S.R. 1999 No. 312 (for the winter of 1999-2000). These Regulations were revoked by S.R. 2000 No. 91 but by virtue of section 28(2)(c) of the Interpretation Act 1954 (c.33), this did not affect any right previously accrued. The cut off date is introduced in the Social Fund Winter Fuel Payment Regulations 2000 to align claims for these early years with current practice of having a time limit for making applications.
- 3.11. For the first three years of the Winter Fuel Payments scheme, eligibility was linked to the State Pension age (which was at the time different for men and women) and payments were made automatically without the need for a claim. Therefore, no cut off date for claims was necessary.

- 3.12. From winter 2000/01, following the case of C-382/98, Taylor on gender discrimination, a common eligibility age of 60, the then State Pension age for women, was introduced for men and women. The change was applied from the start of the scheme. This meant that most men under men's State Pension age, then age 65, but over 60, needed to claim their Winter Fuel Payment, as they would not already be known to the Department. As a result, an annual cut off date was introduced for claims under the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000 – claim forms for winters made under those Regulations needed to be received on or before 30 March immediately following the relevant winter period. The cut off date was revised to 31 March in winter 2012/2013
- 3.13. Claims for winters 1997/98, 1998/99, 1999/2000 are still being accepted. The facility to claim for the first three years of the scheme was originally left open to allow people, newly eligible under the change to age 60, to claim for past years. More than twelve years have passed since the years in question – the Department believes it is reasonable to assume that people will have claimed for those years by March 2014 if they wish to do so. People newly eligible under the Stewart changes have been able to claim for these years since the judgment in July 2011.
- 3.14. These Regulations will introduce a cut off date for claims for those years. This will align claims for the early years with current practice of having a time-limit for making applications and remove the need for a dedicated claim form and assessment process for claims for these years. The change will only affect people aged 74 and over.

#### **4. Consultation**

- 4.1. As the Regulations make, in relation to Northern Ireland, only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain they do not have to be submitted to the Social Security Advisory Committee.

#### **5. Equality Impact**

- 5.1. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals and has concluded that the proposals do not have significant implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is not necessary.

#### **6. Regulatory Impact**

- 6.1. These Regulations do not require a Regulatory Impact Assessment as they do not impose a cost on business, charities or voluntary bodies.

## **7. Financial Implications**

7.1. Not Applicable

## **8. Section 24 of the Northern Ireland Act 1998**

8.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—

- (a) is not incompatible with any of the Convention rights,
- (b) is not incompatible with Community law,
- (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
- (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

## **9. EU Implications**

9.1. The CJEU judgment in the case of *Stewart C-503/09*, means there can no longer be a requirement that Winter Fuel Payments must be acquired in the UK where the claimant is subject to the EU social security co-ordination legislation (Regulations EC 1408/71 or EC 883/04) and has a genuine and sufficient link with the UK.

## **10. Parity or Replicatory Measure**

10.1. The corresponding Great Britain Regulations are the Social Fund Winter Fuel Payments (Amendment) Regulations 2013. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998

## **11. Additional Information**

11.1. Not applicable