

## EXPLANATORY MEMORANDUM

### THE SOCIAL SECURITY (APPLICATION OF RECIPROCAL AGREEMENTS WITH AUSTRALIA, CANADA AND NEW ZEALAND) (EEA STATES AND SWITZERLAND) REGULATIONS (NORTHERN IRELAND) 2015

#### S.R. 2015 No. 281

#### 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 Examiner of Statutory Rules considered previously made Regulations (S.R. 2015 No. 207) to be of “*doubtful vires*” having been purportedly made by the Department for Work and Pensions.
- 1.3 The Department for Social Development is also designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to social security and proposes to regularise the position by revoking S.R. 2015 No. 207 and bringing forward these Regulations.
- 1.4 The Statutory Rule is made under powers conferred by the powers conferred by section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

#### 2. Purpose

- 2.1 The Social Security (Application of Reciprocal Agreements with Australia, Canada and New Zealand) (EEA States and Switzerland) Regulations (Northern Ireland) 2015 modify Northern Ireland Reciprocal Agreement Orders which give effect to Reciprocal Agreements on social security between the UK and Australia, Canada and New Zealand (the ANZAC countries). The proposed modification removes the requirement for a person, who meets certain criteria, to be resident in the UK when they apply for an enhanced State Pension or survivor’s benefit under the relevant Agreement and allows them to retain entitlement if they become resident in another EEA state. The residence condition still applies to those persons moving to a country outside the EEA.
- 2.2 The modification will apply where the person in question:
  - is an EEA or Swiss National;
  - is habitually resident in an EEA State or Switzerland;

- can demonstrate a genuine and sufficient link to the UK social security system; and
  - is within the scope of;
    - Regulation (EC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, or
    - Regulation (EC) No 883/2004 on the coordination of social security systems.
- 2.3 The result will be that persons who satisfy the cumulative conditions in the Regulations, and whose UK pension, widow's benefit or orphan's benefit would have been enhanced in accordance with the reciprocal agreement with the relevant country if they had been resident in the UK, will be able to benefit from the enhancement if they are resident in another EEA State or in Switzerland.
- 2.4 These Regulations include the requirement that a person must be subject to one of the EU Social Security Regulations. This prevents the overlapping of entitlement under different bilateral agreements by the application of Article 10 of Regulation 883/2004 and of Article 12 of 1408/71.
- 2.5 Regulation 1 provides for citation and commencement.
- 2.6 Regulations 2 and 3 modify:—
- Article 2 of the Social Security (Australia) Order (Northern Ireland) 1992;  
 Article 2 of the Social Security (Canada) Order (Northern Ireland) 1995;  
 and  
 Article 2 of the Social Security (New Zealand) Order (Northern Ireland) 1983.
- 2.7 Regulation 4 makes a revocation of Regulations of doubtful validity.

### 3. Background

- 3.1 The pension schemes in Australia, New Zealand and Canada (the ANZAC countries) are essentially residence-based schemes. The UK's social security agreements with those countries allow for periods of residence in those countries to be treated as if they were UK national insurance contributions for both state pension and survivors' benefits. The UK will take those qualifying periods of residence in the ANZAC countries into consideration when awarding UK state pension<sup>1</sup>. Under the agreements, a UK pension is enhanced if the individual meets the residence condition in the UK when they apply, and

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<sup>1</sup> The Social Security (Australia) Order (Northern Ireland) 1992 (S.R. 1992 No. 269) was revoked in 2001 with savings, and continues to have effect by virtue of section 299 of the Pensions Act 2004 to a limited extent. The effect is that only those who retired before it was terminated, or who were resident in the Australia before it was terminated can rely on the Australia Order.

the enhanced part of the UK pension is only payable while the claimant resides in the UK. Once the person ceases to be permanently resident in the UK, the ANZAC enhanced portion is no longer payable, only the UK portion is paid. In free movement terms this results in a person moving to an EEA country or Switzerland being treated differently from someone resident in the UK

- 3.2 The European Commission took the position that this residence condition imposes a restriction on a citizen's free movement rights and commenced infringement proceedings under Article 21 of the Treaty on the Functioning of the EU, governing the right to move freely within the Union. The UK has accepted this reasoning.
- 3.3 The Regulations are therefore being amended to remove the condition that a person who meets certain criteria must be resident in the UK when they apply for an enhanced pension, and allows them to retain their entitlement if they become resident in another EEA state. The residence condition still applies to those persons moving to a country outside the EEA. The cumulative conditions for a person to satisfy in order to have the benefit of the 3 agreements are: firstly, that they are an EEA or Swiss national, secondly that they are habitually resident in an EEA State or Switzerland, thirdly that they have a genuine and sufficient link with the UK, and fourthly that they are subject to one of the EU social security coordination Regulations. Where those conditions are met the application of the agreements to that person are modified so that any reference to being "resident" in the UK is replaced by a reference to being "resident" in a territory comprising the EEA States and Switzerland in the way defined by the different agreements (for example - permanently resident for the Australia agreement).
- 3.4 The effect is that an EEA or Swiss national who has a genuine and sufficient link to the UK and is entitled to a UK pension can apply from another EEA State, or from Switzerland, and their periods of insurance or work in one of the three countries who have the benefit of the agreement, (or those of their spouse in relation to survivors' benefits) will be taken into account for the purposes of their UK pension or other benefit as provided for by the agreements. If they are in the UK when they become entitled to the benefit in question, they will be able to export that pension fully within the EEA and Switzerland and not lose any part of the pension based on insurance or work in one of the three States to which the agreements relate. Those who had the ANZAC agreement-enhanced portion of their benefit removed when they went to live in another EEA state have had, or will have, their pension backdated to the date they ceased to reside in the UK, providing for a continuous claim.

#### **4. Territorial Extent and Application**

4.1 This instrument relates to Northern Ireland. There is no provision specifying the territorial extent of the Regulations. This is because they operate to modify the Social Security (Australia) Order (Northern Ireland) 1992, the Social Security (Canada) Order (Northern Ireland) 1995 and the Social Security (New Zealand) Order (Northern Ireland) 1983 each of which expressly give effect to the reciprocal agreement concerned so far as each one relates to Northern Ireland. It follows that these Regulations will have the same territorial extent as those Orders.

#### **5. Consultation**

5.1 There is no requirement to consult on the proposals for this Statutory Rule.

#### **6. Equality Impact**

6.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the proposals and concluded that the proposals do not have significant implications for equality of opportunity.

#### **7. Regulatory Impact**

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

#### **8. Financial Implications**

8.1 The Regulations are not expected to give rise to any significant cost.

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

9.1 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.

## **10. EU Implications**

- 10.1 The proposed Regulations will implement an EU obligation and are to be made under section 2(2) of the European Communities Act 1972.

## **11. Parity or Replicatory Measure**

- 11.1 The corresponding Great Britain Regulations are The Social Security (Application of Reciprocal Agreements with Australia, Canada and New Zealand) (EEA States and Switzerland) Regulations 2015 (S.I. 2015/349) and came into force on 01 April 2015. 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.