

**EXPLANATORY MEMORANDUM TO
THE SOCIAL FUND WINTER FUEL PAYMENT (AMENDMENT)
REGULATIONS 2014**

2014 No. 3270

1. This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

These Regulations amend the eligibility criteria for Winter Fuel Payments made in Switzerland and European Economic Area (EEA) countries outside the UK.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 Following a 2011 CJEU judgment in the case of *Stewart C-503/09*, 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

4.2 Ministers are concerned about paying Winter Fuel Payments in EEA countries where the weather is generally warmer than the UK. Therefore, DWP has considered ways of ensuring that the payment is better targeted on people who live in countries with a cold climate.

4.3 This instrument subsequently amends the Social Fund Winter Fuel Payment Regulations 2000 (*SI 2000/729*) <http://www.dwp.gov.uk/docs/a6-7203.pdf>

4.4 The amendment goes toward restoring the original policy intention that Winter Fuel Payments are made to provide reassurance that older people in the UK can keep warm during periods of cold weather.

5. Territorial Extent and Application

This instrument applies to Great Britain. Equivalent amendments will be made for Northern Ireland by statutory rules to the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000 (*SI 2000/91*).

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Section 138 of the Social Security Contributions and Benefits Act 1992 provides powers to make payments to meet expenses for heating that have been, or are likely to be, incurred in cold weather, of prescribed amounts in prescribed circumstances to prescribed persons.

7.2 Winter Fuel Payments were originally introduced to give older people in the UK the reassurance they can keep warm during cold weather. As it is important to ensure public money is focused on the purpose for which Winter Fuel Payments were designed, DWP has modified the scheme using the UK climate to amend the eligibility criterion to qualify for Winter Fuel Payments outside the UK. Winter Fuel Payments made outside the UK are limited to claimants to whom the relevant provisions of EU social security co-ordination legislation apply.

7.3 Originally, DWP did not pay Winter Fuel Payments outside the UK. Then, because of the possibility of infraction proceedings, the UK agreed in July 2002 that Winter Fuel Payments would be made to people outside the UK but within the EEA or Switzerland who had previously qualified for a payment in the UK. Finally, as a result of the CJEU judgment in *Stewart*, DWP could no longer require that Winter Fuel Payments must be acquired in the UK where the claimant was subject to the EU social security co-ordination legislation and had a genuine and sufficient link with the UK.

- *Legislative change*

7.4 Climate data on which to base a country-level analysis was not readily available for all countries concerned. DWP worked closely with the Met Office to define requirements and commission a report that shows the average winter temperature data for each EEA country and Switzerland. DWP agreed that the Met Office would provide average (mean) temperatures covering the winter months (November-March).

7.5 DWP also made a decision to make a comparison with the warmest part of the UK as that approach ensured coverage for older UK people living in other EEA countries and Switzerland would be equivalent to the coverage they would receive anywhere within the UK.

7.6 The Met Office data shows the average winter temperature in the warmest part of the UK, the South West region, is 5.6°C. This point is the basis for the amendment DWP is making to the Winter Fuel Payments scheme. Therefore, people living in countries with an average winter temperature of 5.6°C or lower, or an average winter temperature that is close enough to that to be statistically equivalent, will be eligible for Winter Fuel Payments.

7.7 DWP is aware there will be people who live in cold regions of “warm” countries who will not be eligible for a Winter Fuel Payment. However, we would have to implement the scheme on a regional basis throughout the EEA in order to make a Winter Fuel Payment for even some of these people. DWP considered this very carefully but concluded that it would introduce disproportionate complexity and administrative costs. Therefore, the scheme has to be administered on a countrywide basis using the average winter temperature for each EEA country to determine where Winter Fuel Payments will be payable.

7.8 These Regulations amend the Social Fund Winter Fuel Payment Regulations 2000 to list countries where people who live outside the United Kingdom will potentially be eligible for Winter Fuel Payments, rather than specifying eligibility by reference to average winter temperatures. This makes it clear on the face of the Regulations, those countries where Winter Fuel Payments may be made.

- *Consolidation*

7.9 Informal consolidation of this instrument will be provided in due course in the “Law Relating to Social Security” (referred to as “The Blue Books”) which are regularly updated and are available to the public at no cost via the internet at: <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

8. Consultation outcome

8.1 A formal consultation has not been carried out by DWP on these Regulations. DWP has considered carefully whether it would be appropriate to consult on the proposed amendment and has concluded it is not necessary or appropriate to consult for the reasons below and using the Government’s guidelines on consultation.

8.2 However, DWP has taken into account that, over the years, there has been a steady stream of correspondence, Parliamentary Questions and media articles on the subject of Winter Fuel Payments, particularly in relation to payments made to people living in warmer countries. This has increased because of the CJEU case of Stewart and its implications.

8.3 Many customers in receipt of Winter Fuel Payments are in favour of the current eligibility criteria applied by DWP, regarding it as part of the rights associated with paying into the UK National Insurance system; however, eligibility for Winter Fuel Payments is not linked to National Insurance contributions. Other customers have strongly criticised making Winter Fuel Payments to people living in warmer climates.

8.4 The decision on which countries should be included or excluded has been based on the only comprehensive and comparable dataset available. The amendment has little detail that could be influenced by consultation or where views could genuinely be taken into account, beyond what has already been considered. Therefore, DWP does not think there is value in consulting on the policy intention or the way in which it is to be executed.

9. Guidance

9.1 Guidance is being developed for staff who advise the public, and for staff who determine claims and administer awards, including decision makers. Memos for the DWP decision maker's guidance will be published ahead of when the amendment comes into force to ensure all staff involved in relevant processes are aware of the amendment. Once published, an alert appears on the relevant intranet to ensure staff are aware that a new memo is available.

9.2 The public will be informed about the amendment in products such as leaflets and GOV.UK pages, which will be updated as necessary.

10. Impact

10.1 There is no impact on business or civil society organisations.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been produced for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The operation of the Regulations will continue to be reviewed through the avenues of: guidance; enquiries received from DWP offices; and correspondence from members of the public.

13. Contact

Paul Lapraik at DWP (e-mail: state.pensions@dwp.gsi.gov.uk) can answer any queries regarding this instrument.