

EXPLANATORY MEMORANDUM

THE SOCIAL SECURITY (DISABILITY LIVING ALLOWANCE, ATTENDANCE ALLOWANCE AND CARER'S ALLOWANCE) (MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2011

SR 2011 No. 356

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development (“the Department”) to accompany the above Statutory Rule which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under section 2(2) of the European Communities Act 1972. The Department is designated to make this amendment by virtue of SI 2010/2473.
- 1.3 It is also made under sections 5(1)(b) and 165(4) of the Social Security Administration (Northern Ireland) Act 1992, sections 75(1) and 171(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and Articles 11(6) and 74(3) of the Social Security (Northern Ireland) Order 1998 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These regulations enable claimants of Attendance Allowance, Carer's Allowance and Disability Living Allowance (care component) whose claims were disallowed following their move to another European Economic Area (EEA) State or Switzerland prior to 18 October 2007 to be paid benefit from the first benefit week after that date.
- 2.2 They also ensure that people moving within the EEA and Switzerland will only be entitled to Attendance Allowance, Carer's Allowance and Disability Living Allowance (care component) if the UK, rather than another Member State, is responsible under EU legislation coordinating social security schemes for payment of “sickness benefits”.
- 2.3 The regulations amend —
 - the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

- the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987;
- the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992; and
- the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999.

- 2.2 Regulation 1 provides for the citation and commencement of the Regulation.
- 2.3 Regulation 2 amends the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to ensure that a person to whom either Council Regulation (EEC) No. 1408/71 or Regulation (EC) No 883/2004 (“the EU Regulations”) applies shall only be entitled to an attendance allowance, carer’s allowance or the care component of a disability living allowance when the United Kingdom (rather than another EEA Member State or Switzerland) is responsible under the EU Regulations for payment of sickness benefits to that person.
- 2.4 Regulation 3 amends the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 so that where supersession is not available a claim can be backdated to the date of the ECJ judgment, provided that the claimant has not already received an extra-statutory payment for the same period.
- 2.5 Regulation 4 amends the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 to ensure that the normal condition that new claims for disability living allowance are not payable to those aged 65 or over is not applicable where a person who lost entitlement to that benefit on moving to another Member State or Switzerland reclaims it following the ECJ judgment.
- 2.6 Regulation 5 amends the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 so that where, as a result of the ECJ judgment, the Department for Social Development supersedes an original decision to terminate entitlement to attendance allowance, carer’s allowance or the care component of disability living allowance, the superseding decision is treated as having been made on the date of the ECJ judgment (allowing claimants to reclaim benefit from this date).

3. Background

- 3.1 On 18 October 2007, the European Court of Justice determined that Attendance Allowance, Carer’s Allowance and Disability Living Allowance (care component) are sickness benefits for the purposes of Regulation (EEC) No 1408/71 (case C-299/05 Commission of the European Communities v

European Parliament and Council of the European Union (2007 ECR I-8695)). As such, they may be “exported” to another EEA State or Switzerland provided the person concerned meets the relevant conditions of entitlement under domestic legislation and European law.

3.2 Prior to the judgment, claimants in receipt of Attendance Allowance, Carer’s Allowance and Disability Living Allowance (care component) who moved to another EEA State or Switzerland had their benefit disallowed.

3.3 In order to be eligible for reinstatement, a person must have:

- been entitled to a relevant benefit on or after 8 March 2001 (the date of an earlier judgment of the Court);
- been disallowed benefit because they moved to another European Economic Area State or Switzerland before 18 October 2007; and
- continued to meet all relevant conditions of entitlement since their benefit was disallowed.

3.3 Domestic legislation relating to claims and payments and to decisions and appeals do not allow those affected to have their claims backdated. So far, they have been made extra-statutory payments. These regulations ensure that claimants are paid on a statutory basis.

3.4 Provision is included to ensure those claimants who have received an extra-statutory payment prior to these regulations coming into force will not be paid twice for the same period.

3.5 Regulations (EEC) No 1408/71 and (EC) No 883/2004 determine which Member State is responsible for the payment of sickness benefits to persons exercising rights of free movement within the EU. These regulations include provision to ensure that Attendance Allowance, Carer’s Allowance and Disability Living Allowance (care component) are only payable to individuals arriving from another EEA State or Switzerland when the UK, rather than another State, is responsible for sickness benefits.

4. Consultation

4.1 As the regulations make in relation to Northern Ireland only provision corresponding to provision 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. They implement a European Court

ruling that makes disability benefits exportable as sickness benefits under European law.

5. Position in Great Britain

5.1 The corresponding Great Britain Statutory Instrument will come into force on 31 October 2011. In line with the long-standing policy of parity in social security, the Northern Ireland Order should come into operation on the same date. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions provided for in section 87 of the Northern Ireland Act 1998.

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 proposal and has concluded that it does not have any implications for equality of opportunity. These Regulations are required to ensure compliance with European Law following the judgment European Court of Justice of 18 October 2007.

7. Regulatory Impact

7.1 The regulations do not require a Regulatory Impact Assessment as they do not impose a cost on business, charities, social enterprises or voluntary bodies.

8. Financial Implications

8.1 The Department has incurred expenditure in making extra-statutory payments (including interest) to people affected by the ruling. A similar amount has been paid to those people following restoration of their entitlement to a relevant benefit.

8.2 Northern Ireland estimates the cost of reinstating cases and ongoing payment of benefit to be approximately £4.4m by 2021. Payments will be charged to Annually Managed Expenditure.

9. EU Implications

9.1 The Regulations implement a judgment of the European Court of Justice.

10. Section 24 of the Northern Ireland Act 1998

10.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that the proposed Regulation:

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