

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (WIDOW'S BENEFIT AND RETIREMENT PENSIONS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2023

S.R. 2023 No. 192

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under sections 78(3) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations amend regulation 10 of the Social Security (Widow's Benefit and Retirement Pensions) Regulations (Northern Ireland) 1979 (S.R. 1979 No. 243) ("the 1979 Regulations"), so that a Category D retirement pension can continue to be claimed by those resident in a European Economic Area (EEA) state or Switzerland, provided a claimant is covered by a relevant agreement.

3. Background

- 3.1 A Category D retirement pension is a non-contributory benefit for older pensioners. The eligibility conditions for the benefit are set out in section 78 of the Social Security Contributions and Benefits Act 1992 and regulation 10 of the 1979 Regulations.
- 3.2 While regulation 10 of the 1979 Regulations requires claimants to be resident in Northern Ireland on their 80th birthday or the date of claim, if later, the European Court of Justice's judgment in the case of *Lucy Stewart v Secretary of State for Work and Pensions* (2011), ("the Stewart Judgment") modifies this requirement so that, in practice, residents in an EEA state or Switzerland can also claim a Category D retirement pension.
- 3.3 While the Stewart Judgment prompted a change in the residence conditions for a Category D retirement pension, the existing legislation was not amended to give effect to the judgment. Instead, the legislation was read with the residence condition disapplied in order to be consistent with the Stewart Judgment.
- 3.4 The Stewart Judgment formed part of retained European Union (EU) case law following the United Kingdom's withdrawal from the EU. Under section 2 of the Retained EU Law (Revocation and Reform) Act 2023

(“the 2023 Act”), directly effective rights recognised in retained EU case law will sunset at the end of 2023.

3.5 The 2023 Act will sunset the effect of the Stewart Judgment on the residence conditions for future Category D retirement pension claimants; this Statutory Rule maintains the existing residence conditions which result from the Stewart Judgment and gives it effect in domestic legislation insofar as it applies to the Category D retirement pension.

3.6 This legislation is being made to maintain the effect of the Stewart Judgment, to ensure that those who are resident in an EEA state or Switzerland, and who are in scope of a relevant agreement, can continue to claim a Category D retirement pension while resident in those countries. The relevant agreements are listed in regulation 2(b) of the Regulations and include the Protocol on Social Security Coordination to the Trade and Cooperation Agreement, which covers the future relationship between the UK and the EU.

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 GB, consultation with the Social Security Advisory Committee was not required.

4.2 A public consultation is not required as these Regulations merely implement a permanent legislative amendment to reflect an existing policy.

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 the legislative proposals for these Regulations. The Department has concluded that they would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 The Regulations do not require a Regulatory Impact Assessment as they have no impact on costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 None for the Department.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department is content that these Regulations comply with section 24 of the Northern Ireland Act 1998 (Convention rights, etc.).

9. EU Implications

- 9.1 This rule does not relate to withdrawal from the European Union.
- 9.2 This rule does however relate to the reform of retained European Union law because it gives effect to the Stewart Judgment insofar as it applies to Category D retirement pensions for those not in scope of the UK-EU Withdrawal Agreement.

10. Parity or Replicatory Measure

- 10.1 The Great Britain Regulations are the Social Security (Widow's Benefit and Retirement Pensions) (Amendment) Regulations 2023 (S.I. 2023/1237) which come into force on 31st December 2023. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions in line with section 87 of the Northern Ireland Act 1998. It was therefore necessary to make the Regulations during the period of interregnum.