

**EXPLANATORY MEMORANDUM TO  
THE SOCIAL SECURITY (DISABILITY LIVING ALLOWANCE, ATTENDANCE  
ALLOWANCE AND CARER'S ALLOWANCE (MISCELLANEOUS  
AMENDMENTS) REGULATIONS 2011**

**2011 No. 2426**

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

**2. Purpose of the instrument**

2.1 This instrument enables claimants of Attendance Allowance (AA), Carer's Allowance (CA) and Disability Living Allowance (DLA) (care component) (referred to as "disability benefits"), whose claims were disallowed following their move to another European Economic Area (EEA) State or Switzerland prior to 18th October 2007, to be paid benefit from the first benefit week after that date.

2.2 This instrument also ensures that people moving within the EEA and Switzerland will only be entitled to the disability benefits if the UK (rather than another State) is responsible under EU legislation coordinating social security schemes for payment of this type of benefit.

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

None.

**4. Legislative Context**

4.1 On 18th October 2007 the European Court of Justice<sup>1</sup> determined that the disability benefits were sickness benefits under EU social security Regulations<sup>2</sup>. This means that the disability benefits may now be exported to another EEA State or Switzerland provided the person meets the relevant conditions of entitlement under domestic and European law.

4.2 Prior to the judgment claimants in receipt of a disability benefit who moved to another EEA State or Switzerland had their benefit disallowed. The Secretary of State announced on 25th February 2010 that affected claimants could have their benefit reinstated, provided that they met the conditions set out in the following paragraph.

4.3 In order to be eligible for reinstatement, a person must meet the following conditions:

- a) have been entitled to a disability benefit on or after 8th March 2001;

---

<sup>1</sup> Case C-299/05 *Commission of the European Communities v European Parliament and Council of the European Union* [2007] ECR I-8695

<sup>2</sup> Council Regulation (EC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Council Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

- b) have had a disallowance decision by reason of their move to another EEA Member State or Switzerland before 18th October 2007; and
- c) have continued to meet all relevant conditions of entitlement throughout the period their benefit was stopped.

4.4 Domestic legislation relating to claims and payments<sup>3</sup> and to decisions and appeals<sup>4</sup> did not allow affected claimants to have their claims backdated. Affected claimants have therefore so far been given extra-statutory payments equivalent to backdated amounts of benefit dating from 18th October 2007. These regulations ensure that claimants who have not yet claimed a backdated award can be paid on a statutory basis.

4.5 The European Union (EU) social security Regulations determine which Member State is responsible for payment of sickness benefits to persons exercising rights of free movement within the EU.

## **5. Territorial Extent and Application**

This Instrument extends to Great Britain. Separate but corresponding provision will be made for Northern Ireland.

## **6. European Convention on Human Rights**

The Secretary of State for Work and Pensions has made the following statement regarding Human Rights:

“In my view the provisions of the Social Security (Attendance Allowance, Carer’s Allowance and Disability Living Allowance (Miscellaneous Amendments) Regulations 2011 are compatible with the Convention rights”.

## **7. Policy background**

### *What is being done and why*

7.1 These regulations enable certain former recipients of Disability Living Allowance (DLA) care component, Attendance Allowance (AA) or Carer’s Allowance (CA), who lost their entitlement when they left Great Britain to move permanently to another European Economic Area state or Switzerland before 18th October 2007, to have their claims backdated from the first benefit week after 18th October 2007.

7.3 There is also provision to ensure those claimants who have already received an extra-statutory payment prior to these regulations coming into force, will not be paid twice for the same period.

7.4 The existing legislation is amended to provide that, for the affected claimants, where the Secretary of State makes a decision overturning (i.e. superseding) their original decision to terminate entitlement to any of the disability benefits, the new decision by the Secretary of State is treated as having been made on 18th October 2007. This serves to enable the claimant to be paid the relevant disability benefit from the first

---

<sup>3</sup> Social Security (Claims and Payments) Regulations 1987, S.I. 1987/1968.

<sup>4</sup> Social Security and Child Support (Decisions and Appeals) Regulations 1999, S.I. 1999/991.

benefit week after that date. For those cases where the Secretary of State is unable to supersede his or her original decision (because the original supersession decision was appealed), fresh claims for those benefits by those affected are to be treated as backdated to 18th October 2007. The Regulations include provision to ensure that the normal rule that DLA is not payable to persons aged over 65 does not prevent affected claimants from receiving backdated DLA.

7.5 In addition, these regulations include provision to ensure that the disability benefits are only payable to individuals arriving from another EEA State or Switzerland when the UK (rather than another State) is responsible for payment under the EU social security regulations. Another Member State might be responsible for paying sickness benefits to such a person, but under domestic law as currently drafted, the person would still be entitled to disability benefits from the UK as there is currently no provision in domestic law to take account of similar benefits paid by another State.

### ***Consolidation***

7.6 Informal consolidation will be included in due course in the Department's "The Law Relating to Social Security" (the Blue Volumes which is available on the internet at <http://www.dwp.gov.uk/advisers/docs/lawvols/blue/vol/> at no cost to the public.

## **8. Consultation outcome**

8.1 There has been no consultation on the amendments to enable a claim to be paid from 18th October 2007 as these provisions are being made to ensure compliance with European law and there was therefore no scope for consultation to influence the final outcome. The decision to reinstate benefits to this category of people was announced to Parliament by Written Ministerial Statement on 25th February 2010.<sup>5</sup>

8.2 In the case of the provision for competency we did not carry out a consultation. The measure is primarily intended to avoid double payments and to reflect in our domestic legislation the position under EU law which co-ordinates (but does not harmonise) social security benefits in different countries. The policy of avoiding double payment is a wider departmental and long standing policy. We are unable to identify those customers arriving in Great Britain from other European Economic States who may have a sickness benefit from another state as this information is not currently obtained from customers. This measure will only affect those who have another Member State responsible for sickness benefits and is not intended to be punitive but to avoid double provision.

8.3 The Department has consulted the Social Security Advisory Committee about these Regulations as required by statute.

## **9. Guidance**

All individuals affected will be contacted directly by letter. A Decision Maker's Memorandum for staff will be published and will be available on the Department's internet site.

---

<sup>5</sup> <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100225/wmstext/100225m0002.htm>

## **10. Impact**

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible or low as it will primarily involve changes to the provision of advice within the Department. These changes will be absorbed into existing resources within the Department.

## **11. Regulating Small Business**

The legislation does not apply to small business.

## **12. Monitoring and Review**

The Department will monitor the take up of this change through performance data.

## **13. Contact**

Geraldine D'Arcy at the Department for Work and Pensions Tel: 020 7449 5283 or email: [Geraldine.D'Arcy@dwp.gsi.gov.uk](mailto:Geraldine.D'Arcy@dwp.gsi.gov.uk) can answer any queries regarding the instrument.