

EXPLANATORY MEMORANDUM TO
THE SOCIAL FUND WINTER FUEL PAYMENT (AMENDMENT) REGULATIONS 2013
2013 No. 1509

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 introduce:

- into GB legislation, a requirement, already being applied following approval of its application by case law of the Court of Justice of the European Union (CJEU), for people claiming Winter Fuel Payments from Switzerland and European Economic Area (EEA) countries outside the UK to have a genuine and sufficient link with the UK; and
- a cut off date for claims for the first three years of the Winter Fuel Payments scheme: 1997/98; 1998/99; and 1999/2000, as people can still currently claim for those years.

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

None.

4. **Legislative Context**

4.1 This instrument makes two changes to the Social Fund Winter Fuel Payment Regulations 2000 (*SI 2000/729*) <http://www.dwp.gov.uk/docs/a6-7203.pdf>.

4.2 The first change makes the genuine and sufficient link test explicit in legislation. 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

4.3 A second change introduces a cut off date for claims for the first three years of the Winter Fuel Payments scheme. Entitlement to a Winter Fuel Payment in the first three years was governed by the Social Fund Winter Fuel Payment Regulations 1998 (S.I. 1998/19) (for the winter of 1997-1998), amended by S.I. 1998/1910 (for the winter of 1998-1999) and 1999/1880 (for the winter of 1999-2000). These instruments were revoked by S.I. 2000/729 but by virtue of section 16(1)(c) of the Interpretation Act 1978 (c.30) (read with section 23(1) and (2) of that Act), this did not affect any right previously accrued. The cut off date is introduced in the Social Fund Winter Fuel Payment

Regulations 2000 to align claims for these early years with current practice of having a time limit for making applications.

5. Territorial Extent and Application

This instrument applies to Great Britain. Equivalent provisions 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*

Genuine and sufficient link

7.1 DWP began to operate the extended eligibility policy, along with a genuine and sufficient link test, in winter 2012/13 following the judgment in *Stewart*. The CJEU held member states could require claimants of non-contributory benefits to demonstrate a genuine and sufficient link with that state in order to qualify for such a benefit.

7.2 The genuine and sufficient link test takes into account several factors, for example:

- receipt of a UK benefit;
- periods of residence and/or work in the UK;
- family factors; and
- the length of time a person has spent out of the UK.

There are no set rules about, for example, the minimum amount of years someone must have lived and worked in the UK in order to pass the test. Rather, a DWP decision maker must consider all the relevant factors on a case-by-case basis when reaching a decision. People who have lived or worked in the UK for a significant period of time are likely to meet the conditions.

7.3 A genuine and sufficient link test is also used in relation to the export of certain other residence-based benefits - e.g. for the Disability Living Allowance care component, Attendance Allowance and Carers Allowance.

7.4 These Regulations amend the Social Fund Winter Fuel Payment Regulations 2000 to make the genuine and sufficient link test explicit in legislation.

Cut off date for claims

7.5 Winter Fuel Payments were first paid for winter 1997/98. For the first three years of the scheme, eligibility was linked to the State Pension age, which was, at the time, different for men and women, and Winter Fuel Payments were made automatically without the need for a claim. Therefore, no cut off date for claims was necessary.

7.6 From winter 2000/01, following the case of *C-382/98, Taylor* on gender discrimination (<http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-382/98&td=ALL>), a common eligibility age of 60, the then State Pension age for women, was introduced for men and women. The change was applied from the start of the scheme. This meant that most men under men's State Pension age, then age 65, but over 60, needed to claim their Winter Fuel Payments, as they would not already be known to DWP.

7.7 As a result, an annual cut off date was introduced for claims under the Social Fund Winter Fuel Payment Regulations 2000 – claim forms for winters made under those Regulations needed to be received on or before 30 March immediately following the relevant winter period. The cut off date was revised to 31 March in winter 2012/2013.

7.8 Claims for winters 1997/98, 1998/99, 1999/2000 are still being accepted. The facility to claim for the first three years of the scheme was originally left open to allow people, who became eligible under the change to age 60, to claim for past years. Current figures show DWP will pay around 1,100 of these cases from September 2012.

7.9 More than twelve years have passed since the years in question – DWP believes it is reasonable to assume that people will have claimed for those years by March 2014 if they wish to do so. People newly eligible under the *Stewart* changes have been able to claim for these years since the judgment in July 2011.

7.10 These Regulations introduce a cut off date for claims for those years. This aligns claims for the early years with current practice of having a time limit for making applications and removes the need for a dedicated claim form and assessment process for claims for these years. The change will only affect people aged 74 and over.

- *Consolidation*

7.11 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 changes and has concluded it is not necessary or appropriate to consult for the reasons below and using the Government's new guidelines on consultation.

8.2 The draft Regulations were presented to the Social Security Advisory Committee on 10 April 2013. The Committee confirmed that it did not require formal reference of these Regulations.

Genuine and sufficient link

8.3 The CJEU has held that it is legitimate for Member States to require claimants to have a genuine and sufficient link to their social security system in order to claim a non-contributory benefit. The genuine and sufficient link test for Winter Fuel Payments has been in operation for claims for winter 2012/13 and guidance about how the test works is on the DWP website <http://www.dwp.gov.uk/docs/dmgch0706.pdf>. DWP does not think that consulting on this proposal would change the approach taken for Winter Fuel Payments.

Cut off date

8.4 The introduction of a cut off date for claims for the first three years of the Winter Fuel Payments scheme is a tidying up measure to align with current practice on time limits for claims. It is a straightforward change on which DWP does not think there is a need to consult.

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 changes take place to ensure all staff involved in relevant processes are aware of the changes. 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 changes in products such as leaflets and GOV.UK pages, which will be updated as necessary.

9.3 The Decision Maker's Guide will be updated to reflect the new provisions and will be published on the main DWP website before September 2013. Prior to publication, the guidance in key policy areas will be shared with key stakeholders.

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 normal 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.