

**2011 No. 356**

**SOCIAL SECURITY**

**The Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Miscellaneous Amendments) Regulations (Northern Ireland) 2011**

*Made* - - - - *10th October 2011*

*Coming into operation* - *31st October 2011*

The Department for Social Development is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to social security(b).

Accordingly the Department for Social Development makes these Regulations in exercise of the powers conferred by section 2(2) of that Act, sections 75(1) and 171(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(c), sections 5(1)(b) and 165(4) of the Social Security Administration (Northern Ireland) Act 1992(d) and Articles 11(6) and 74(3) of the Social Security (Northern Ireland) Order 1998(e) and now vested in it(f).

**Citation and commencement**

1. These Regulations may be cited as the Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Miscellaneous Amendments) Regulations (Northern Ireland) 2011 and shall come into operation on 31st October 2011.

**Amendment of the Social Security Contributions and Benefits (Northern Ireland) Act**

2.—(1) The Social Security Contributions and Benefits (Northern Ireland) Act 1992 is amended in accordance with paragraphs (2) to (5).

(2) In section 65 (attendance allowance: period and rate of allowance), after subsection (6) add—

“(7) A person to whom either Regulation (EC) No 1408/71(g) or Regulation (EC) No 883/2004(h) applies shall not be entitled to an attendance allowance for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the person for the purposes of Chapter 1 of Title III of the Regulation in question.”.

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- (a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7)
- (b) S.I. 2010/2473
- (c) 1992 c. 7; section 75(1) was amended by paragraph 39 of Schedule 1 to the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.)); *see also* section 11(3) of that Act
- (d) 1992 c. 8
- (e) S.I. 1998/1506 (N.I. 10)
- (f) *See* Article 8(b) of S.R. 1999 No. 481
- (g) OJ L 28 of 30.1.1997, p.1
- (h) OJ L 166, 30.4.2004, p.1 as amended by Regulation (EC) No. 988/2009 (OJ L 284, 30.10.2009, p. 43)

(3) In section 70 (carer's allowance), after subsection (4) insert—

“(4A) A person to whom either Regulation (EC) No 1408/71 or Regulation (EC) No 883/2004 applies shall not be entitled to an allowance under this section for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the person for the purposes of Chapter 1 of Title III of the Regulation in question.”.

(4) In section 72 (disability living allowance: the care component), after subsection (7A)(a) insert—

“(7B) A person to whom either Regulation (EC) No 1408/71 or Regulation (EC) No 883/2004 applies shall not be entitled to the care component of a disability living allowance for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the person for the purposes of Chapter 1 of Title III of the Regulation in question.”.

(5) In section 121(1) (interpretation of Parts I to VI), after the definition of “qualifying young person”(b) insert—

““Regulation (EC) No 1408/71” means 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;

“Regulation (EC) No 883/2004” means Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems;”.

### **Amendment of the Social Security (Claims and Payments) Regulations**

**3.** In regulation 6 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(c) (date of claim), after paragraph (34) add—

“(35) A claim for attendance allowance or the care component of disability living allowance which is in respect of a period beginning on or before 18th October 2007 but which is made after that date, is to be treated as made on 18th October 2007 where—

- (a) on or after 8th March 2001, the claimant had an award of that benefit;
- (b) the Department made a superseding decision to end that award on the ground that there had been, or it was anticipated that there would be, a relevant change of circumstances as a result of the claimant's moving, or planning to move, from Northern Ireland to an EEA State or Switzerland;
- (c) that superseding decision was confirmed on appeal; and
- (d) the claimant has not received an extra-statutory payment in respect of the benefit being claimed.

(36) A claim for carer's allowance which is in respect of a period beginning on or before 18th October 2007 but which is made after that date, is to be treated as made on 18th October 2007 where—

- (a) on or after 8th March 2001, the claimant had an award of that benefit;
- (b) the Department made a superseding decision to end that award on the ground that there had been, or it was anticipated that there would be, a relevant change of circumstances as a result of—
  - (i) the claimant's moving from Northern Ireland to an EEA State or Switzerland, or
  - (ii) the claimant no longer caring for a severely disabled person, as defined in section 70(2) of the Contributions and Benefits Act, because that person's

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(a) Subsection (7A) was inserted by section 48(7) of the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.))

(b) The definition of “qualifying young person” was inserted by paragraph 34(3) of Schedule 1 to the Child Benefit Act 2005 (c. 6)

(c) S.R. 1987 No. 465; paragraph (34) was substituted by regulation 2(4)(d) of S.R. 2008 No. 417

award of attendance allowance or the care component of disability living allowance had ended, or would end, by virtue of a superseding decision made on the ground of that person's moving from Northern Ireland to an EEA State or Switzerland; and

(c) the claimant has not received an extra-statutory payment in respect of that allowance.

(37) In paragraphs (35) and (36)—

“EEA State”, in relation to any time, means—

(a) a state which at that time is a member State; or

(b) any other state which at that time is a party to the EEA Agreement,

and in this definition “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;

“extra-statutory payment” means a payment made by the Department, in respect of attendance allowance, the care component of disability living allowance or carer's allowance which, but for the superseding decision referred to in paragraph (35)(b) or, as the case may be, (36)(b), would have been payable from 18th October 2007.”.

#### **Amendment of the Social Security (Disability Living Allowance) Regulations**

4. In regulation 3 of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(a) (persons aged 65 and over), after paragraph (3) insert—

“(3A) A person not be precluded from entitlement to the care component by reason only that he has attained the age of 65 years if the claim is treated as made on 18th October 2007 in accordance with regulation 6(35) of the Claims and Payments Regulations (date of claim).”.

#### **Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations**

5. In regulation 7 of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(b) (date from which a decision superseded under Article 11 takes effect)—

(a) in paragraph (9) at the beginning insert “Except where paragraph (9A) applies,”;

(b) after paragraph (9) insert—

“(9A) Where—

(a) on or after 8th March 2001, the claimant had an award of attendance allowance, carer's allowance or the care component of disability living allowance;

(b) the Department made a superseding decision in accordance with regulation 6(2)(a) to end that award on the ground that there had been, or it was anticipated that there would be, a relevant change of circumstances as a result of the claimant's moving, or planning to move, from Northern Ireland to an EEA State or Switzerland; and

(c) the Department supersedes that decision in accordance with regulation 6(2)(b)(i) on the ground that it was erroneous in point of law,

the superseding decision referred to in sub-paragraph (c) shall take effect from 18th October 2007.

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(a) S.R. 1992 No. 32; relevant amending Regulations are S.R. 1993 No. 340, S.R. 1996 No. 225 and S.R. 1997 No. 69

(b) S.R. 1999 No. 162; paragraph (9) was substituted by regulation 2(2) of S.R. 2000 No. 3 and amended by regulation 3(6)(d) of S.R. 2003 No. 224 and regulation 3(4)(e) of S.R. 2008 No. 417

(9B) In paragraph (9A)—

“EEA State”, in relation to any time, means—

(a) a state which at that time is a member State; or

(b) any other state which at that time is a party to the EEA Agreement,

and in this definition “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time.”.

Sealed with the Official Seal of the Department for Social Development on 10th October 2011

(L.S.)

*Anne McCleary*

A senior officer of the Department for Social Development

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend certain social security legislation as a result of the judgment of the European Court of Justice (ECJ) in October 2007 in case C-299/05 Commission of the European Communities v European Parliament and Council of the European Union ([2007] ECR I-8695). This judgment determined that attendance allowance, carer's allowance and the care component of disability living allowance are sickness benefits for the purposes of either Council Regulation (EC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community ("the 1971 Regulation") or Regulation (EC) No 883/2004 on the coordination of social security systems ("the 2004 Regulation") and may be payable when a person moves from the United Kingdom to another European Economic Area (EEA) State or to Switzerland. These Regulations ensure that persons whose award of one of these benefits was terminated upon moving or proposing to move to one of those states, may be re-awarded benefit from the date of the ECJ judgment.

Regulation 2 amends the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to ensure that a person to whom either the 1971 Regulation or the 2004 Regulation applies shall only be entitled to attendance allowance, carer's allowance or the care component of a disability living allowance when the United Kingdom (rather than another EEA State or Switzerland) is responsible under those Regulations for payment of sickness benefits to that person. Regulation 2 refers to both the 1971 Regulation and the 2004 Regulation because, while the 2004 Regulation came into force on 1 May 2010 to replace the 1971 Regulation, the latter Regulation remains in force for the purposes described in Article 90 of the 2004 Regulation.

Regulation 3 amends the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 so that where there was an earlier award and the decision to terminate entitlement could not be superseded, 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.

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 EEA State or Switzerland, reclaims it following the ECJ judgment.

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 takes effect from the date of the ECJ judgment (allowing claimants to reclaim benefit from this date).

Regulations 3 to 5 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 Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

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STATUTORY RULES OF NORTHERN IRELAND

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