

2011 No. 2426

SOCIAL SECURITY

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

<i>Made</i>	- - - -	<i>5th October 2011</i>
<i>Laid before Parliament</i>		<i>10th October 2011</i>
<i>Coming into force</i>	- -	<i>31st October 2011</i>

The Secretary of State for Work and Pensions is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to social security(b).

Accordingly the Secretary of State makes these Regulations in exercise of the powers conferred by:

section 2(2) of the European Communities Act 1972;

sections 5(1)(b), 189(4) and 191 of the Social Security Administration Act 1992(c);

sections 75(1) and 175(3) of the Social Security Contributions and Benefits Act 1992(d); and

sections 10(6), 79(4) and 84 of the Social Security Act 1998(e).

In accordance with section 173(1)(b) of the Social Security Administration Act 1992, the Secretary of State has obtained the agreement of the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it.

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 2011 and come into force on 31st October 2011.

(a) 1972 c.68.

(b) S.I. 2010/2473.

(c) 1992 c.5. Section 189(4) is amended by paragraph 109(c) of Schedule 7, and Schedule 8, to the Social Security Act 1998 (c.14). Section 191 is an interpretation provision and is cited for the meaning of the word "prescribe". The definition of "prescribe" is amended by paragraphs 2 and 10 of Schedule 5 to the Welfare Reform Act 2007 (c.5).

(d) 1992 c.4. Section 75(1) is amended prospectively by paragraph 42 of Schedule 1 to the Pensions Act 2007 (c.22).

(e) 1998 c.14. Section 84 is an interpretation provision and is cited for the meaning of the word "prescribe".

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

2. In regulation 7 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(a)(date from which a decision superseded takes effect)—

- (a) at the beginning of paragraph (9) 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 Secretary of State 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 moving, or planning to move, from Great Britain to an EEA state or Switzerland; and
- (c) the Secretary of State 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.”.

Amendment of the Social Security (Claims and Payments) Regulations 1987

3. In regulation 6 of the Social Security (Claims and Payments) Regulations 1987(b) (date of claim), at the end, 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 Secretary of State 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 Great Britain 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 Secretary of State 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 Great Britain 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 award of attendance allowance or the care component of disability living allowance had ended, or would end, by virtue of a superseding decision made

(a) S.I.1999/991 to which there are amendments which are not relevant to these Regulations.

(b) S.I.1987/1968. Paragraph (34) is substituted by S.I.2008/2667.

on the ground of that person's moving from Great Britain 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)(d) and (36)(c), "extra-statutory payment" means a payment made by the Secretary of State, 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 1991

4. In regulation 3 of the Social Security (Disability Living Allowance) Regulations 1991(a)(age 65 or over), after paragraph (3) insert—

"(3A) A person shall not be precluded from entitlement to the care component of disability living allowance 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 Social Security (Claims and Payments) Regulations 1987 (date of claim)."

Amendment of the Social Security Contributions and Benefits Act 1992

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

- (2) In section 65 (attendance allowance), after subsection (6), insert the following subsection—

"(7) A person to whom either Regulation (EC) No 1408/71 or Regulation (EC) No 883/2004 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."

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

"(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 (the care component of disability living allowance), after subsection (7A), insert the following subsection—

"(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 122 (interpretation of Parts 1 to 6 and supplementary provisions), in subsection (1), at the appropriate place insert the following definitions—

"“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(b);"
;

(a) S.I.1991/2890. Regulation 3 is amended by S.I.1993/1939 and 1997/349.

(b) Consolidated version — OJ No L 28 of 30.1.1997, p.1.

““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(a);”.

Signed by authority of the Secretary of State for Work and Pensions.

Maria Miller
Parliamentary Under-Secretary of State
Department for Work and Pensions

5th October 2011

(a) OJ L166.30.4.2004, p1. The Regulation is amended materially by Regulation (EC) No 988/2009 (OJ L 284.30.10.2009,p.43).

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulations 2 to 4 of these Regulations amend three sets of regulations as a result of a judgment in 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 it was unlawful for the Department for Work and Pensions to terminate an award of attendance allowance, carer's allowance or the care component of disability living allowance when a person moves from Great Britain to elsewhere in the European Economic Area or to Switzerland. These Regulations ensure that persons whose award of one of these benefits was terminated upon such a move or a proposed move, may be re-awarded benefit from the date of the ECJ judgment.

Regulation 2 amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I.1999/991) so that where, as a result of the ECJ judgment, the Secretary of State supersedes the original decision to terminate entitlement to those benefits, this new supersession decision takes effect from the date of the ECJ judgment (allowing claimants to reclaim benefit from this date).

Regulation 3 amends the Social Security (Claims and Payments) Regulations 1987 (S.I.1987/1968) 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 that 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 1991 (S.I.1991/2890) 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 the care component of that allowance on such a move or proposed move, reclaims that benefit following the ECJ judgment.

In addition, regulation 5 amends the Social Security Contributions and Benefits Act 1992 (c.4) to ensure that a person to whom either Regulation (EC) No 1408/71 or Regulation (EC) No 883/2004 applies shall only be entitled to an attendance allowance, a 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.

Regulation 5 refers to both Regulation (EC) No 1408/71 and Regulation (EC) No 883/2004 given that whilst Regulation (EC) No 883/2004 came into force on 1 May 2010 replacing Regulation (EC) No 1408/71, Regulation (EC) No 1408/71 remains in force for the purposes described in Article 90 of Regulation (EC) No 883/2004.

A full impact assessment has not been produced for this instrument as it has no impact on the private sector or civil society organisations.

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STATUTORY INSTRUMENTS

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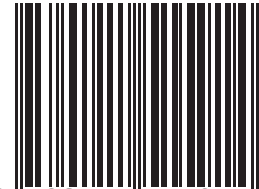
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