EXPLANATORY MEMORANDUM TO

THE SOCIAL FUND WINTER FUEL PAYMENT (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2015

2015 No. 216

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under sections 134(2) and 171(1) and (3) and is subject to the negative resolution procedure.

2. Purpose

2.1. The Regulations amend the eligibility criteria for Winter Fuel Payments made in Switzerland and European Economic Area (EEA) countries outside the United Kingdom.

3. Background

3.1. Winter Fuel Payments were first paid for winter 1997/98. They are an annual payment made to most older people that are ordinarily resident in NI during a qualifying week and have reached the qualifying age.

3.2. Since 2002, Winter Fuel Payments have been exportable to people who first acquired the benefit in the UK and then moved to another EEA country or Switzerland.

3.3. The primary aim of Winter Fuel Payments is to provide reassurance that older people in the UK can keep warm during periods of cold weather.

3.4 Following a 2011 CJEU judgment in the case of Stewart C-503/09, the Department and Department for Work and Pensions (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.

3.5. The Department alongside the Department for Work and Pensions is concerned about paying Winter Fuel Payments in EEA countries where the weather is generally warmer than the UK. Therefore, consideration was given to ways of ensuring that the payment is better targeted at people who live in countries with a cold climate.

3.6. These Regulations subsequently amend the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000 (S.R. 2000 No. 91).

3.7. The amendment goes toward restoring the original policy intention that Winter Fuel Payments are made to provide reassurance that older people in the UK can keep warm during periods of cold weather. As it is important to ensure public money is focused on the purpose for which Winter Fuel Payments were designed, the scheme has been modified using the UK climate to amend the eligibility criterion to qualify for Winter Fuel Payments outside the UK. Winter Fuel

Payments made outside the UK are limited to claimants to whom the relevant provisions of EU social security co-ordination legislation apply.

3.8. It was decided to make a comparison with the warmest part of the UK as that approach ensured coverage for older UK people living in other EEA countries and Switzerland would be equivalent to the coverage they would receive anywhere within the UK.

3.9. Met Office data shows the average winter temperature in the warmest part of the UK, the South West region, is 5.6°C. This point is the basis for the amendment to the Winter Fuel Payment scheme. Therefore people living in countries with an average winter temperature of 5.6°C or lower, or an average winter temperature that is close enough to that to be statistically equivalent, will be eligible for Winter Fuel Payments.

3.10. These Regulations amend the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000 so as to list countries where people who live outside the UK will potentially be eligible for Winter Fuel Payments, rather than specifying eligibility by reference to average winter temperatures. This makes it clear on the face of the Regulations, those countries where Winter Fuel Payments may be made.

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 Great Britain they do not have to be submitted to the Social Security Advisory Committee.

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 these legislative proposals and has concluded that the proposals do not have significant implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

6.1. These Regulations do not require a Regulatory Impact Assessment as they do not impose a cost on business, charities or voluntary bodies.

7. Financial Implications

7.1. Not Applicable

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—

(a) is not incompatible with any of the Convention rights,

(b) is not incompatible with Community law,

(c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and

(d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. The CJEU judgment in the case of *Stewart C-503/09*, means there can no longer be a requirement 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.

10. Parity or Replicatory Measure

10.1. The corresponding Great Britain Regulations are the Social Fund Winter Fuel Payment (Amendment) Regulations 2014. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998

11. Additional Information

11.1. Not applicable