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Information request

Winter Fuel Payments – Civil Partnerships

In the case of a married couple the Winter Fuel payment is divided equally between the two people. Is this also the case with Civil Partnerships? If not – why not? What has been the cost of not applying common treatment?

DWP response

Winter Fuel Payments are determined on an individual basis. Where a person shares accommodation with another qualifying individual they receive a shared rate payment. Civil partners are treated exactly the same as married couples. References to the definition of 'couples' is contained within the Winter Fuel Payment regulations. A couple can be of differing or same gender. I enclose a copy of these regulations for your information.

2000 No. 729

SOCIAL SECURITY

The Social Fund Winter Fuel Payment
Regulations 2000

Made - - - 13th March 2000
Laid before Parliament 13th March 2000
Coming into force 3rd April 2000

The Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 138(2) and (4) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a) and sections 5(1)(a) and (i), and 189(1) and (4) of the Social Security Administration Act 1992(b) and section 16(1) and section 79(1) and (4) of, and paragraph 3 of Schedule 5 to, the Social Security Act 1998(c) and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it(d), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Fund Winter Fuel Payment Regulations 2000 and shall come into force on 3rd April 2000.

(2) In these Regulations—

►¹“care home” in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000(e), and in Scotland means a care home service as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001(f); ◀

¹Defn. of “care home” inserted by reg. 8(2) of S.I. 2005/2687 as from 24.10.05.

►²“couple” means—

²Defn. of “couple” inserted by para. 32 of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

- (a) a man and woman who are married to each other and are members of the same household;
- (b) a man and woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex; ◀

“free in-patient treatment” shall be construed in accordance with regulation ►³2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005(g); ◀

³Words in defn. of “free in-patient treatment” substituted by reg. 7 of S.I. 2005/3360 as from 10.4.06.

- (a) 1992 c. 4; section 138(4) is an interpretation provision and is cited because of the meaning ascribed to the word “prescribed”. Section 175(1) was amended by the Social Security (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 8, paragraph 4.
- (b) 1992 c. 5.
- (c) 1998 c. 14.
- (d) See section 173(1)(b) of the Social Security Administration Act 1992.
- (e) 2000 c. 14.
- (f) 2001 asp. 8.
- (g) S.I. 2005/3360.

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¹Defn. of “income-related employment and support allowance” inserted by reg. 7(2) of S.I. 2008/1554 as from 27.10.08.

²Defn. of “independent hospital” substituted by reg. 10 of S.I. 2010/1881 from 1.10.10.

³Words substituted in para. (a) of defn. of “partner” by para. 32 of Sch. 3 to S.I. 2005/2871 as from 5.12.05.

⁴Defn. of “qualifying age for state pension credit” inserted & reg. 2(1)(b) substituted by regs. 19(2) & 20 of S.I. 2009/1488 as from 6.4.10.

⁵Defn. of “nursing home” & “residential accommodation” omitted by reg. 8(2)(a) of S.I. 2005/2687 as from 24.10.05

⁶Defn. of “state pension credit” inserted by reg. 2(a) of S.I. 2004/2154 as from 20.9.04.

⁷Defn. of “residential care home” omitted by reg. 2(a)(i) of S.I. 2000/2864 as from 13.11.00.

⁸Paras. (3) & (3A) in reg. 1 substituted by reg. 2(2) of S.I. 2001/3375 as from 2.11.01.

⁹In reg. 1 words omitted in para. (3), para. (3)(a) (i)-(ii) substituted by (i) & (ii) & paras. (3)(iii) & (3A) omitted by reg. 8(2)(b) & (c) of S.I. 2005/2687 as from 24.10.05.

¹⁰Reg. 2 substituted by reg. 2 of S.I. 2003/1737 as from 1.9.03.

“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance); ◀

“Income Support Regulations” means the Income Support (General) Regulations 1987(a);

²“independent hospital”–

- (a) in England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section;
- (b) in Wales, has the meaning assigned to it by section 2 of the Care Standards Act 2000; and
- (c) in Scotland, means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001; ◀

“partner” means a member of–

- (a) ³a couple ◀; or
- (b) a polygamous marriage;

⁴“qualifying age for state pension credit” means–

- (a) in the case of a woman, pensionable age; or
- (b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man; ◀

“qualifying week” means in respect of any year the week beginning on the third Monday in the September of that year;

⁵ ◀

⁵ ◀

⁶“state pension credit” has the meaning assigned to it by section 1 of the State Pension Credit Act 2002(b) ◀

⁷ ◀

⁸(3) ⁹◀ In these Regulations a person–

- (a) is in residential care if, disregarding any period of temporary absence, he resides in–
 - ⁹(i) a care home;
 - (ii) an independent hospital; or
 - (iii) ⁸◀
 - (iv) accommodation provided under section 3(1) of the Polish Resettlement Act 1947 (provision by the Secretary of State of accommodation in camps), throughout the qualifying week and the period of 12 weeks immediately before the qualifying week;
- (b) lives with another person if–
 - (i) disregarding any period of temporary absence, they share accommodation as their mutual home; and
 - (ii) they are not in residential care.

(3A) ⁹◀◀

Social fund winter fuel payments

Amounts in reg. 2 are modified in respect of the 2010-11 winter, see S.I. 2010/1161, reg. 2 ibid at page 6.9411 for details.

¹⁰2.—(1) Subject to paragraphs (2) and (3) and regulation 3 of these Regulations, and regulation 36(2) of the Social Security (Claims and Payments) Regulations 1987(c) the Secretary of State shall pay to a person who–

- (a) S.I. 1987/1967.
- (b) 2002 c. 16.
- (c) S.I. 1987/1968; paragraph (2) was added by S.I. 2002/2660.

- (a) in respect of any day falling within the qualifying week is ordinarily resident in Great Britain; and
- ¹(b) in or before the qualifying week has attained the qualifying age for state pension credit,◀

¹Regs. 2(1)(b) & 3(1)(a)(i) substituted by regs. 20 & 21 of S.I. 2009/1488 as from 6.4.10.

a winter fuel payment of—

- (i) £200 unless he is in residential care or head (ii)(aa) applies; or
- (ii) £100 if ²state pension credit◀³, an income based jobseeker's allowance or an income-related employment and support allowance◀ has not been, nor falls to be, paid to him in respect of the qualifying week and he is—
 - (aa) in that week living with a person to whom a payment under these Regulations has been, or falls to be, made in respect of the winter following the qualifying week; or
 - (bb) in residential care.

²Words substituted in reg. 2(1)(b)(ii) by reg. 2(b) of S.I. 2004/2154 as from 20.9.04.

³Words in reg. 2(1)(b)(ii) substituted by reg. 7(3) of S.I. 2008/1554 as from 27.10.08.

(2) Where such a person has attained the age of 80 in or before the qualifying week—

- (a) in paragraph (1)(i), for the sum of £200 there shall be substituted the sum of £300; and
- ⁴(b) in paragraph (1)(ii), for the sum of £100 there shall be substituted the sum of £200, except that—
 - (i) where he is in that week living with a person to whom a payment under these Regulations has been, or falls to be, made in respect of the winter following that week who has also attained the age of 80 in or before that week, or
 - (ii) where he is in residential care,

⁴Reg. 2(2)(b) substituted by reg. 2 of S.I. 2003/2192 as from 3.9.03.

there shall be substituted the sum of £150.◀

(3) Where such a person has not attained the age of 80 in or before the qualifying week but he is a partner of and living with a person who has done so, in paragraph (1)(i) for the sum of £200 there shall be substituted the sum of £300.◀

Persons not entitled to a social fund winter fuel payment

3.—(1) Regulation 2 shall not apply in respect of a person who—

- (a) is in the qualifying week—
 - ¹(i) a partner of, and living with, a person who attained the qualifying age for state pension credit in or before the qualifying week and to whom state pension credit, an income-based jobseeker's allowance or an income-related employment and support allowance has been, or falls to be, paid in respect of the qualifying week;◀
 - (ii) receiving free in-patient treatment and has been receiving free in-patient treatment for more than 52 weeks; or
 - (iii) detained in custody under a sentence imposed by a court; or
- (b) subject to paragraph (2), has not made a claim for a winter fuel payment before the 31st March following the qualifying week in respect of the winter following that week.

(2) Paragraph (1)(b) shall not apply where—

- (a) a payment has been made by virtue of regulation 4(1) before the 31st March following the qualifying week in respect of the winter following that week; or
- (b) regulation 4(2) applies.

Making a winter fuel payment without a claim

4.—(1) Subject to paragraph (2), the Secretary of State may before the 31st March of the year following the year in which the qualifying week falls make a winter fuel

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payment under regulation 2 in respect of the preceding winter to a person who (disregarding regulation 3(b)) appears from official records held by the Secretary of State to be entitled to a payment under that regulation.

¹Words inserted in reg. 4(2) by reg. 7(5) of S.I. 2008/1554 as from 21.10.08.

(2) Where a person becomes entitled to income support¹, state pension credit or an income-related employment and support allowance in respect of the qualifying week by virtue of a decision made after that week that section 115 of the Immigration and Asylum Act 1999 (exclusions) ceases to apply to him the Secretary of State shall make a winter fuel payment to that person under regulation 2 in respect of the winter following the qualifying week.

(3) Subject to paragraph (4), for the purposes of paragraphs (1) and (2) official records held by the Secretary of State as to a person's circumstances shall be sufficient evidence thereof for the purpose of deciding his entitlement to a winter fuel payment and its amount.

(4) Paragraph (3) shall not apply so as to exclude the revision of a decision under section 9 of the Social Security Act 1998 (revision of decisions) or the supersession of a decision under section 10(a) of that Act (decisions superseding earlier decisions) or the consideration of fresh evidence in connection with the revision or supersession of a decision.

Revocations

5. The Social Fund Winter Fuel Payment Regulations 1998(b), the Social Fund Winter Fuel Payment Amendment Regulations 1998(c) and the Social Fund Winter Fuel Payment Amendment Regulations 1999(d) are hereby revoked.

Signed by Authority of the Secretary of State for Social Security.

13th March 2000

Angela Eagle
Parliamentary Under-Secretary of State,
Department of Social Security

(a) Section 10 was amended by paragraph 23 of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(b) S.I. 1998/19.

(c) S.I. 1998/1910.

(d) S.I. 1999/1880.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for winter fuel payments to be made out of the social fund to persons who, in the third week of September in any year—

- (a) are aged 60 or over;
- (b) are ordinarily resident in Great Britain;
- (c) satisfy the criteria in regulation 2; and
- (d) are not excluded by regulation 3.

Regulation 4 provides for winter fuel payments to be made without the need for a claim to persons—

- (a) whose entitlement thereto can be established from official records held by the Secretary of State; and
- (b) who are entitled to income support in the third week in September in a year by virtue of a decision made after that week that they are refugees.

It further provides that decisions as to entitlement which are made without a claim may be made on the basis of official records but not so as to exclude the consideration of other evidence on a revision or supersession of that decision under the Social Security Act 1998.

Regulation 5 revokes legislation which has hitherto provided for social fund winter fuel payments.

These Regulations do not impose a charge on businesses.

