POLICY NOTE

THE WINTER HEATING ASSISTANCE FOR CHILDREN AND YOUNG PEOPLE (SCOTLAND) AMENDMENT REGULATIONS 2021

SSI 2021/XXX

The above instrument was made in exercise of the powers conferred by sections 30(2) and 52 of the Social Security (Scotland) Act 2018 ("the 2018 Act"). For the purposes of this policy note, "the principal regulations" means the Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020[1]. The instrument is subject to affirmative procedure. As required by section 97(2) of the 2018 Act, the Scottish Ministers have consulted the Scottish Commission on Social Security (SCoSS) and a response to the Commission's report on the proposals is published along with the draft instrument.

This instrument amends "the principal regulations" which set out the rules and eligibility criteria for Child Winter Heating Assistance (CWHA).

This instrument extends eligibility for CWHA to young people who are entitled to be paid the enhanced rate of the daily living component of Personal Independence Payment (PIP) during the qualifying week (beginning with the third Monday in September of each year). The eligibility criteria are also amended with retrospective effect.

The instrument also extends eligibility for CWHA to those in receipt of the highest rate of the care component of Disability Living Allowance or the enhanced rate of PIP and undergoing period of inpatient hospitalisation and care home stay.

The Regulations further amend regulation 8 to enable the Scottish Ministers to make a determination of an individual's entitlement to CWHA following a backdated award of the enhanced rate of the daily living component of PIP, as a result of an appeal.

The Regulations also amend regulation 11 of the principal regulations to permit Scottish Ministers to pay CWHA to a person to be used for the benefit of a child.

The regulations also amend regulation 5 to remove the 31st December deadline for making determination of individual entitlement without application.

Policy Objectives

Prior to 1 September 2020, a child who was entitled to DLA immediately prior to age 16 was required to apply for Personal Independence Payment (PIP) on or after reaching age 16. The Scottish Ministers amended the eligibility criteria for DLA to allow a young person to remain entitled to that benefit, before being required to apply for PIP at age 18 instead. However, young people (aged 16 and over) who apply for a disability benefit for the first time, must continue to apply for PIP. A young person

[1] SSI 2020/352 https://www.legislation.gov.uk/ssi/2020/352/contents

who is terminally ill (within the meaning given in the Welfare Reform Act 2012) and makes an application for PIP will also be automatically awarded the enhanced rate of the daily living component.

The Scottish Government introduced CWHA in November 2020 for children and young people who receive the highest rate of the care component of Disability Living Allowance (DLA) or Child Disability Payment (CDP) for at least one day of the qualifying week in September. The assistance consists of an annual payment for each eligible child or young person. The amount payable for 2021/22 is £202.

The rationale for providing CWHA for this group of children and young people was to provide some mitigation:

- for heating their homes to a higher temperature in winter, in line with World Health Organization (WHO) Guidance on room temperatures for vulnerable people
- the increased costs these young people incur as a result of the likelihood for needing to heat their homes through the night, or periods of the night, because, as a result of their disability or condition, they require another person to provide care and support throughout the night.

The Scottish Government has carefully considered feedback from stakeholders and individuals about the extension of the eligibility criteria to include young people aged 16 to 18 who are entitled to the enhanced rate of the daily living component of PIP. Unlike the highest rate of the care component of DLA or CDP, daily living component of PIP does not explicitly require needs to be met throughout the night.

Nevertheless, a young person who is entitled to receive payment of the enhanced rate of the daily living component is likely to more generally have higher fuel costs, in the same way that a young person who remains entitled to the highest rate of the care component of DLA does. Due to the similar needs between these two groups the regulations are to be amended to extend eligibility to young people in receipt of the enhanced rate of the daily living component of PIP. The eligibility is to be further extended to ensure 18 year olds in receipt of the highest rate of care of DLA and the enhanced rate of the daily living component of PIP are still eligible for payment throughout a period of hospitalisation. The extensions to the eligibility criteria will be applied retrospectively to the 2020/21 payment for qualifying young people.

It is also considered necessary to amend regulation 11 of the principal regulations to ensure that Scottish Ministers may, where they consider it necessary, pay CWHA to another person to be used on behalf of the child. This ensures consistency with the existing provision with regulation 11 and ensures ministers have flexibilities to pay an individual CWHA for the benefit of the child without having to formally appoint them on behalf of the child

It is also considered necessary to amend regulation 5 and remove the deadline the 31st December for making determinations without application for CWHA. This will ensure for the 2021/22 year Social Security Scotland is able to make safe payment of this assistance owing to the operational pressures around CDP national launch in November 2021. In addition for future years it will enable ministers to gather data on

when the most appropriate date to pay our client base assistance would be in proceeding years.

Consultation

In accordance with section 97(2) of the Social Security (Scotland) Act 2018, the Scottish Ministers have consulted the Scottish Commission on Social Security (SCoSS). SCoSS published their scrutiny report on 16 September 2021[2]. The Scottish Government's response will accompany these regulations. This follows scrutiny by SCoSS of the amendment regulations, the result of which was one further change to the eligibility criteria.

Impact Assessments

The following impact assessments were completed on the draft regulations and accompany this policy note:

- Equality Impact Assessment,
- Child Rights and Wellbeing Impact Assessment,
- Fairer Scotland Duty Assessment,
- Island Communities Impact Assessment, and
- Business and Regulatory Impact Assessment

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) was completed as part of drafting of the amended regulations.

Young people who meet the eligibility criteria and their families will be directly affected. Any impact on welfare rights and income maximisation services due to young people seeking advice will be strictly limited. Through this widening of the eligibility criteria of this financial support to young people, the Scottish Government expects to invest around an extra £1.65 million into the Scottish economy this year, as CWHA is expected to be used to help ease the financial pressures of winter fuel bills. This sum represents a retrospective extension of the eligibility criteria.

There may be some impact on businesses and third sector organisations operating in Scotland in relation to the way the new Social Security Scotland agency delivers the devolved benefits compared to DWP.

The Scottish Government does not believe that CWHA will have an adverse impact on the competitiveness of businesses or the third sector in Scotland, the UK, Europe or the rest of the world. In addition, no adverse impact is expected on either eligible young people or any other consumer either within Scotland, the UK, or elsewhere in Europe or the rest of the world.

The right to appeal to a First-tier Tribunal is provided for in the Social Security (Scotland) Act 2018. Legal Assistance will continue to be available to individuals to

[2] Scottish Commission on Social Security: publications - gov.scot (www.gov.scot)

appeal an entitlement decision to the Upper Tribunal, Court of Appeal or Supreme Court.

The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the extension of the eligibility criteria for CWHA.

Scottish Government
Social Security Directorate

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