Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2025 No.

SOCIAL SECURITY

The Winter Heating Assistance (Pension Age) (Scotland) Amendment Regulations 2025

Made - - - -	*2025*
Coming into force - -	*3rd October 2025*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 30(2), 41(4)(a), 43(5), 52 and 95 of the Social Security (Scotland) Act 2018(**a**) and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Winter Heating Assistance (Pension Age) (Scotland) Amendment Regulations 2025 and come into force on 3 October 2025.

(2) In these Regulations, "the principal Regulations" means the Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024(**b**).

Amendment of the Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024

2. The principal Regulations are amended in accordance with regulations 3 to 14.

3. In regulation 5 (eligibility rules), for paragraph (a) substitute—

"(a) meets—

(i) the age condition in regulation 6,

(ii) the residence condition in regulation 8, and

(**a**) 2018 asp 9 ("the 2018 Act"). Schedule 4 of the 2018 Act makes provision about the exercise of powers under section 30. Section 41 was amended by paragraph 2 of schedule 7 of the Coronavirus (Scotland) Act 2020 (asp 7). The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(**b**) S.S.I. 2024/351, amended by S.S.I. 2025/100.

(iii) where the individual makes an application for Pension Age Winter Heating Payment, the application condition in regulation 8A (subject to regulation 8A(2)), and".

4. Omit regulation 7 (relevant benefit condition).

5. For regulation 8 (residence condition) substitute—

"Residence condition

8.—(1) An individual satisfies the residence condition where that individual meets the condition in either paragraph (2) or (3).

(2) The condition is that on at least one day falling within the qualifying week—

(a) the individual is ordinarily resident in Scotland, and

(b) either—

(i) the individual is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(**a**), or

(ii) the individual is a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 where that person—

(aa) is lawfully working in the United Kingdom and is a national of a state with which the United Kingdom has concluded an agreement which replaces in whole or in part an agreement under Article 217 of the Treaty on the Functioning of the European Union(**b**) which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory state and their families,

(bb) is a member of the family of, and living with, a person specified in sub-head (aa), or

(cc) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules, to be responsible for their maintenance and accommodation.

(3) The condition is that the individual—

(a) is habitually resident in one of the countries listed in the schedule,

(b) is covered by—

(i) Title III of Part 2 of the EU withdrawal agreement, as set out at Article 30 of that agreement,

(ii) the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1 February 2019(**c**) (as modified from time to time in accordance with any provision of it) as set out in Article 2 of that Convention,

(iii) Part Three of the Swiss citizens' rights agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020(**d**) ("the 2020 Act") as set out at Article 25 of that agreement, or

(iv) Title III of Part 2 of the EEA EFTA separation agreement (as defined in section 39(1) of the 2020 Act), as set out at Article 29 of that agreement,

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(**a**) 1999 c. 33. Section 115(9) was amended by S.I. 2020/1309.
(**b**) OJ C 202, 7.6.2016, p. 146.
(**c**) 2019 CP 49.
(**d**) 2020 c. 1.

(c) is an individual in respect of whom the United Kingdom is, as a result, competent for payment of old-age benefits, and

(d) has a genuine and sufficient link to Scotland.

(4) Where an individual is ordinarily resident in Scotland on at least one day falling within the qualifying week but is no longer so resident by the last day of that week, the individual is to be treated as not meeting the condition in paragraph (2)(a).

(5) Where an individual is habitually resident in a country which is listed in the schedule on at least one day falling within the qualifying week but is no longer so resident by the last day of that week, the individual is to be treated as not meeting the condition in paragraph (3)(a).

(6) Where an individual is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 on at least one day falling within the qualifying week but is subject to immigration control within the meaning of that section by the last day of that week, the individual is to be treated as not meeting the condition in paragraph (2)(b)(i).".

6. After regulation 8 (residence condition) insert—

"Application condition

8A.—(1) The condition is that where—

(a) none of regulation 11, 11A or 13A applies, and

(b) an individual makes an application for Pension Age Winter Heating Payment in respect of a qualifying week,

that application is made on or before 31 March in the year following that week.

(2) The condition in paragraph (1) does not apply where—

(a) a decision is made after the qualifying week that an individual is entitled in respect of a day in the qualifying week to a relevant benefit, or

(b) a decision is made after the qualifying week that section 115 of the Immigration and Asylum Act 1999 (exclusions from benefits) ceases to apply to that individual in respect of the qualifying week.

(3) An application for Pension Age Winter Heating Payment is to be treated as made on the day it is received by the Scottish Ministers.

(4) Notwithstanding paragraph (3), the Scottish Ministers may treat an application received after the date in paragraph (1) as made by that date where they consider that the individual has a good reason for not making the application by that date.".

7. In regulation 9 (individuals not entitled to Pension Age Winter Heating Payment)—

(a) in paragraph (1)(c), after "an individual who" insert "is entitled to a relevant benefit throughout the qualifying week who",

(b) at the end of paragraph (1)(c) omit "or",

(c) in paragraph (1)(d), after "marriage" insert "who is entitled to a relevant benefit throughout the qualifying week",

(d) after paragraph (1)(d) insert—

", or

(e) an individual who is—

(i) entitled to a relevant benefit throughout the qualifying week pursuant to a decision made after that week, and

(ii) a member of a couple or a polygamous marriage,

where a Pension Age Winter Heating Payment, at an amount set out in regulation 10(1)(a), or a winter fuel payment mentioned in regulation 4(1), is awarded to the

other member of that couple or another member of that marriage in respect of the qualifying week in consequence of that decision.".

8. After Part 3 (eligibility rules for Pension Age Winter Heating Payment) insert—

"Part 3A

Opt-out requests and opt-in requests

Request to opt out of payment of Pension Age Winter Heating Payment

9A.—(1) An individual who may otherwise be entitled to receive Pension Age Winter Heating Payment may notify the Scottish Ministers that they do not wish to receive the payment (to be known as an "opt-out request").

(2) An opt-out request is to be notified to the Scottish Ministers in such form as they may require.

(3) Once notified, an opt-out request will have effect—

(a) in respect of the next payment of Pension Age Winter Heating Payment that would otherwise fall to be made after the Scottish Ministers receive the opt-out request, and

(b) on an ongoing basis in respect of subsequent payments unless the individual notifies in accordance with regulation 9B(1) their wish to opt in to payment.

Request to opt in to payment of Pension Age Winter Heating Payment

9B.—(1) An individual who has notified an opt-out request under regulation 9A(1) may notify the Scottish Ministers that they wish to receive any payment of Pension Age Winter Heating Payment to which they may be entitled (to be known as an "opt-in request").

(2) An opt-in request is to be notified to the Scottish Ministers in such form as they may require.

(3) Once notified, an opt-in request will have effect—

(a) in respect of the next payment of Pension Age Winter Heating Payment that falls to be made after the Scottish Ministers receive the opt-in request, and

(b) in respect of any payment of Pension Age Winter Heating Payment that would have been made in respect of the current or immediately preceding qualifying week, had an opt-out request not been in effect, provided that the individual has not stated that the opt-in request is to take effect for future payments only and the opt-in request is made—

(i) no later than 31 March, or

(ii) after 31 March where the Scottish Ministers are satisfied the individual has good reason for not making the opt-in request by that date.".

9. For regulation 10 (amount of Pension Age Winter Heating Payment)(**a**) substitute—

"Amount of Pension Age Winter Heating Payment

10.—(1) The amount of Pension Age Winter Heating Payment is as follows—

(a) if the individual is entitled to a relevant benefit, or an equivalent benefit where regulation 8(3) applies, on a day in the qualifying week and—

(**a**) Regulation 10 was amended by S.S.I. 2025/100.

(i) if the individual has reached the age of 80 in or before the qualifying week, £305.10,

(ii) if—

(aa) the individual has not reached the age of 80 in or before the qualifying week,

(bb) the same individual is a member of a couple or a polygamous marriage, and

(cc) the other member of the couple or another member of that marriage has reached that age in or before that week,

£305.10, or

(iii) if neither head (i) nor (ii) applies, £203.40,

(b) if the individual is entitled to neither a relevant benefit, nor an equivalent benefit where regulation 8(3) applies, on any day in the qualifying week—

(i) £100 if, in the qualifying week, they do not live with any other individual who is entitled to Pension Age Winter Heating Payment, or,

(ii) £50 if, in the qualifying week, they either live—

(aa) with any other individual who is entitled to Pension Age Winter Heating Payment, or

(bb) in a care home or independent hospital,

(c) if an opt-out request is in effect in relation to the individual in accordance with regulation 9A, £0.

(2) In this regulation "an equivalent benefit" means a benefit payable in the country in which the person is habitually resident that is equivalent to a relevant benefit.

(3) The reference in paragraph (1)(a) to being entitled to a relevant benefit or an equivalent benefit includes where the person is a member of a couple or polygamous marriage and the other member of that couple or another member of that marriage is entitled to the benefit.

(4) Where paragraph (1)(b)(i) applies on at least one day falling within the qualifying week but paragraph (1)(b)(ii) applies by the last day of that week, the individual is to be paid the amount at paragraph (1)(b)(ii).

(5) Where paragraph (1)(b)(ii) applies on at least one day falling within the qualifying week but paragraph (1)(b)(i) applies by the last day of that week, the individual is to be paid the amount at paragraph (1)(b)(i).".

10. After regulation 11 (determination of entitlement to Pension Age Winter Heating Payment without receiving an application) insert—

"Determination of entitlement to Pension Age Winter Heating Payment without receiving an application following previous award for the same qualifying week

11A.—(1) The Scottish Ministers must, without receiving an application, make a determination of an individual's entitlement to Pension Age Winter Heating Payment where—

(a) a determination was made under regulation 11(1) of these Regulations or section 37 of the 2018 Act (duty to make a determination) to award the individual Pension Age Winter Heating Payment at an amount set out in regulation 10(1)(b) in respect of a qualifying week, and

(b) it appears to the Scottish Ministers from information available to them that a decision has been made after that qualifying week to award a relevant benefit to that individual in respect of that week.

(2) Where, in respect of a qualifying week—

(a) the Scottish Ministers have made a determination under paragraph (1) that the individual is entitled to Pension Age Winter Heating Payment at an amount set out in regulation 10(1)(a) ("the subsequent determination"), and

(b) the Scottish Ministers had previously made a determination that the individual was entitled to Pension Age Winter Heating Payment at an amount set out in regulation 10(1)(b) ("the earlier determination"),

the amount of the payment that is to be given to the individual by virtue of the subsequent determination is to be reduced by any amount paid to the individual under the earlier determination.".

11. After regulation 13 (determination following error – overpayments) insert—

"Determination without application following opt-in request

13A.—(1) The Scottish Ministers must, without receiving an application, make a determination of an individual's entitlement to Pension Age Winter Heating Payment in respect of the immediately preceding qualifying week where—

(a) they receive an opt-in request in relation to an individual which has effect in respect of the payment for the immediately preceding qualifying week in accordance with regulation 9B,

(b) the individual had previously notified an opt-out request in respect of Pension Age Winter Heating Payment under regulation 9A, and

(c) pursuant to that opt-out request the Scottish Ministers have made a determination that the individual is entitled to an award of Pension Age Winter Heating Payment of £0 in respect of the immediately preceding qualifying week.

(2) Where a determination of entitlement is made in accordance with paragraph (1), regulation 10(1)(c) does not apply and the amount of Pension Age Winter Heating Payment to which the individual is entitled is to be determined in accordance with regulation 10(1)(a) and (b).".

12. In regulation 14 (periods in respect of a re-determination request), in paragraph (1) for "31" substitute "42".

13. Omit Part 8 (expiry).

14. For the schedule of the principal Regulations(**a**), substitute the schedule set out in the schedule of these Regulations.

Saving provision

15.—(1) Despite the coming into force of these Regulations, the principal Regulations continue to have effect on and after 3 October 2025 as they did immediately before that date for the purposes of—

(a) determining entitlement to Pension Age Winter Heating Payment under those Regulations in respect of the qualifying week in 2024,

(b) any request for a re-determination of entitlement to Pension Age Winter Heating Payment in respect of the qualifying week in 2024.

(**a**) The schedule ceased to have effect on 1 April 2025 by virtue of S.S.I. 2024/351, referred to in this instrument as the principal Regulations.

(2) In this regulation, "qualifying week" has the meaning given by regulation 2 (interpretation) of the principal Regulations.

Name
A member of the Scottish Government

St Andrew's House,
Edinburgh
Date

SCHEDULE

Regulation 14

“SCHEDULE

Regulation 8(3)(a)

Countries

Republic of Austria

Kingdom of Belgium

Republic of Bulgaria

Republic of Croatia

Czech Republic

Kingdom of Denmark

Republic of Estonia

Republic of Finland

Federal Republic of Germany

Hungary

Iceland

Republic of Ireland

Italian Republic

Republic of Latvia

The Principality of Liechtenstein

Republic of Lithuania

Grand Duchy of Luxembourg

Kingdom of the Netherlands

Kingdom of Norway

Republic of Poland

Romania

Slovak Republic

Republic of Slovenia

Kingdom of Sweden

Swiss Confederation”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024 ('the principal Regulations').

Regulation 3 amends the eligibility rules an individual must meet to be entitled to Pension Age Winter Heating Payment, reflecting that regulation 4 omits the relevant benefit condition (regulation 7 of the principal Regulations) and regulation 6 adds the application condition.

Regulation 5 clarifies the residence condition in regulation 8 of the principal Regulations to provide that the United Kingdom must be the competent state for the payment of old-age benefits so that pensioners who are habitually resident in a country listed in the schedule and who are covered by a relevant agreement or Convention can export Pension Age Winter Heating Payment. Other amendments are made to clarify that an individual who is subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 is not entitled to payment, other than in specified circumstances. Provision is also made to treat individuals as not meeting the relevant residence condition in circumstances where they did meet it on at least one day falling within the qualifying week but, by the final day of the qualifying week, they no longer did.

Regulation 6 makes provision so that an individual who makes an application for assistance, in circumstances where the determination without application provisions do not apply, must do so by a specified date, unless they have good reason for doing so later.

Regulation 7 amends the exclusions to entitlement in regulation 9 of the principal Regulations, so that individuals who receive public funding for their stay in a care home or independent hospital for 13 weeks including the qualifying week itself cannot also receive payment of the means tested payment, and so that the lead claimant of a low income relevant benefit (including where the award is backdated to the qualifying week) receives the payment and not the non-lead claimant.

Regulation 8 introduces new rules to allow individuals to opt out of and to opt in to the payment.

Regulation 9 amends the Amount of Pension Age Winter Heating Payment rules to provide different rates of payment depending on whether the individual is, or is not, entitled to a specified low income benefit. For individuals not entitled to a specified low income benefit, provision is also made for the shared rate payments where individuals live with other entitled individuals. Entitlement will be nil-rated where an opt-out request is in effect.

Regulation 10 makes provision for determinations without application on entitlement after backdated low income benefits, with payments reduced by any amount already received.

Regulation 11 makes provision for the Scottish Ministers to determine entitlement for those who opt in to payment.

Regulation 12 extends the re-determination request period from 31 to 42 days to align with other devolved benefits.

Regulation 13 omits Part 8 (expiry).

Regulation 14 inserts a schedule of countries individuals may export the payment to, so long as they are habitually resident in one of those countries, with a genuine and sufficient link to Scotland, and covered by a relevant agreement or convention.

Regulation 15 saves the principal Regulations so that they will continue to apply in the same way after the amendments come into force for any determinations of entitlement to the payment for the 2024 qualifying week including the previous period for requesting a re-determination.

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