**POLICY NOTE**

**THE WINTER HEATING ASSISTANCE (PENSION AGE) (SCOTLAND) AMENDMENT REGULATIONS 2025**

**SSI 2025/XXX**

The above instrument will, if approved by the Scottish Parliament, be made 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. The instrument is subject to affirmative procedure.

## Summary Box

This instrument sets out the amended rules and eligibility criteria for Pension Age Winter Heating Payment (PAWHP) from winter 2025/26. PAWHP is a form of assistance which provides a contribution towards meeting winter heating costs and is currently only available to pensioners who are in receipt of relevant benefits. In winter 2024/25, PAWHP was delivered by the Department for Work and Pensions (DWP) through an agency agreement with the Scottish Government laid out under a section 93 Scotland Act Order. Following the amendments to the Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024 brought about by these amendment regulations, PAWHP will be delivered for winter 2025/2026 onwards by Social Security Scotland as a universal payment for all pensioner households.

## Policy Objectives

Section 30 of the Social Security (Scotland) Act 2018 confers powers on the Scottish Ministers to make regulations prescribing the eligibility rules for assistance provided under section 24 of the 2018 Act to help an individual to meet, or help towards meeting, the individual's heating costs during the winter months.

These amendment regulations will introduce universal eligibility for Pension Age Winter Heating Payment (PAWHP) for winter 2025/2026 onwards.

The key aim of this benefit is to mitigate some of the impact of additional domestic heating costs in winter by providing reliable financial support to all pensioner households, who may struggle to manage increasing energy costs over the winter. With high energy prices continuing to be a key driver of fuel poverty, this support is particularly important given that energy prices remain high, and are higher than pre-Covid-19 levels, amid the cost of living crisis.

For those in receipt of relevant benefits, PAWHP will continue to be a single annual payment of £203.40 for those of pension age below the age of 80, and £305.10 for those aged 80 and over. Additionally, these regulations will introduce a universal payment of £100 for every other pensioner household not in receipt of relevant benefits.

The amendment regulations include details of eligibility rules for entitlement to PAWHP and the value of the payment, as well as provisions in relation to exportability, application window, opting out and opting in to PAWHP, determination without application whereby

someone has received a backdated award of a relevant benefit and timescales for a client to request a re-determination.

**Eligibility Rules**

Eligibility for PAWHP continues to be linked to the individual's age and their circumstances during the qualifying week. A person will be eligible if, during the qualifying week (the third full week in September), they are of state pension age.

These amendment regulations will provide the legal mechanism to make payment to those not in receipt of relevant benefits.

Those in receipt of relevant benefits will continue to receive a higher rate payment. The relevant benefits will be:

- Pension Credit
- Income-based Jobseeker's Allowance (JSA)
- Income-related Employment and Support Allowance (ESA)
- Income Support
- Universal Credit

Following the UK Government's discontinuation of Tax Credits, the removal of references in relation to tax credits from the principal Regulations will be done separately by the Social Security (Miscellaneous Amendment) (Scotland) Amendment Regulations 2025 which are due to come into force on 23 June 2025. These amendment regulations therefore do not remove reference to Tax Credits.

These amendment regulations will exclude entitlement for those who are in receipt of relevant benefits throughout the qualifying week, who have been in a care home or independent hospital throughout the qualifying week and for the 12 weeks immediately preceding the qualifying week. This is because these individuals are likely to receive public funding for their care and accommodation costs including heating through funding from the local authority.

**Amount of Payment**

For those in receipt of relevant benefits, a single payment is made to an individual or a 'benefit household' (a couple in receipt of a joint claim, or individuals in a polygamous marriage). If the individual, or the oldest individual in the joint claim, is aged 66-79 they will receive a payment of £203.40. If the individual, or the oldest individual in the joint claim, is aged 80+ they will receive a payment of £305.10.

For those not in receipt of relevant benefits, PAWHP will be a payment of £100 per household. Those living alone, or with no other entitled individuals, will receive a single payment of £100. For those living with other entitled individuals, this household payment will be given as an individual shared rate payment of £50. That includes those living in a care home or independent hospital for the entirety of the qualifying week and the 12 weeks prior. This reflects they are likely to be responsible for a share of the heating costs, through their fees.

## Exportability

The existing PAWHP Regulations included EEA residency conditions which expired on 1 April 2025. This is because the existing payment's income-related conditions would normally mean that it falls outside of the matters covered by EC Regulation 883/2004.

Universal PAWHP will retain an aspect of means testing to ensure that those in receipt of relevant benefits receive a higher rate of payment, while introducing universal payments to those of pension age who are not in receipt of relevant benefits. With the introduction of this universal eligibility to PAWHP, the Scottish Government considers that the benefit should be classified as an 'old-age benefit' in the matters covered by EC Regulation 883/2004.

This exportability will only apply to those people who retained protections after EU exit as a result of the various international agreements to which the UK is party.
We intend to continue to use the warmest region of the UK as a temperature link for the relevant EEA countries and Switzerland – limiting export only to those countries which have the same or colder average winter temperature.

## Cross-border Moves

If a client moves out of Scotland and is no longer ordinarily resident in Scotland by the last day of the qualifying week, they are not treated as meeting the conditions to be ordinarily resident in Scotland. The qualifying week is taken as a proxy for the individual's circumstances for the forthcoming winter; where someone has ceased to be ordinarily resident in Scotland by the end of the qualifying week, it is therefore taken that they will not be resident in Scotland throughout the winter, and so they would no longer meet the residency criteria. This prevents a client from being eligible for both PAWHP and Winter Fuel Payment (WFP), in the event of a cross-border move from Scotland to England, for example, during the qualifying week.

Similarly, clients who are resident in an eligible EEA country and Switzerland who move to a country not listed in the schedule of the Regulations during the qualifying week will also not be considered as habitually resident in an eligible country abroad. This will mean that, like residents of Scotland, if these clients move to an ineligible country during the qualifying week they will not meet the residency requirements, and will not be eligible for PAWHP.

## Applications

There may be circumstances in which an individual is required to apply for assistance.

An individual may need to apply, if:

- they are not in receipt of a DWP-administered benefit (including their State Pension) and have not received PAWHP or WFP before, or have deferred their State Pension since their last PAWHP or WFP, or;
- they live abroad.

## Application window

This will allow people to apply for assistance until 31 March following the qualifying week. We do not intend to allow retrospective applications beyond this date unless there is good reason for that late application.

We have regulated for the closure of the application window only, to allow flexibility in when applications open.

This approach allows applications throughout the winter that the payment is intended to provide support with, and for a short period after that. The application window as described is appropriate as it intends to provide support over the winter. If an individual requires support, they may reasonably be expected to make their application during the winter period or shortly thereafter. If the winter has already passed and the individual has not already received automated support and has not applied during the winter period, applications may only be made with good reason. Guidance will be prepared to clarify what is meant by "for good reason".

Due to the complexities surrounding the process of household matching, it would not be practicable to have an open-ended application window for previous winters. The amount of PAWHP an individual receives is determined by their personal circumstances and the composition of their household during the qualifying week for a given winter. The difficulty of ascertaining an individual's household circumstances in previous years would introduce significant complexity, and any new information received in later years may have a knock-on impact on the entitlement of other clients who were paid during that previous winter. An open-ended application window for previous winters would therefore introduce extreme administrative complexity which would not be practicable to deliver.

## Opt-out and Opt-in Requests

All clients will be able to opt-in and opt-out of PAWHP payments. There will be no deadline for clients to opt out, and all opt-out requests will take effect for subsequent winters. Clients will be able to opt back in up to 31 March for the immediately preceding winter. Clients will be able to opt back in for the immediately preceding winter after the deadline of 31 March if they have a good reason for not opting back in sooner. If a client requests to opt back in after 31 March without good reason for not opting back in sooner, the client will be opted-in from the subsequent winter onwards.

Rather than cancelling entitlement, a decision to opt-out will result in a zero-rated award of entitlement. This will ensure clients receive a letter each year notifying them that they are not receiving a payment because they have opted out. This letter will provide information on how to opt back in, should they wish to do so.

For those not in receipt of a joint claim of a relevant benefit, if one member of a couple or household decides to opt-out, this will have no effect on the entitlement or payment value of the other member of the couple or other members of the household. If a client opts-out, they will remain opted-out for all subsequent winters until they choose to opt back in, and the client will remain opted-out even if they become eligible for a different payment rate of PAWHP.

**Determinations Without Application**

The introduction of a universal element to PAWHP introduces a greater range of conditions determining payment value, therefore increasing the likelihood of underpayment and overpayment as clients' circumstances may change following the qualifying week in ways which affect their entitlement. Provision has therefore been made to allow for new Determinations Without Applications to correct any changes to entitlement which may arise. For example, in the event that a client is not in receipt of relevant benefits and receives a lower rate of PAWHP, but retrospectively becomes eligible to a higher rate of payment through entitlement to a qualifying benefit which is backdated to the qualifying week, a new determination without application will be made. This new determination without application will allow for a top-up payment to be issued.

**Periods in respect of a re-determination request**

The regulations provide 42 calendar days for a client to request a re-determination.

In winter 2024/2025, payments were made by the DWP on behalf of Scottish Ministers under agency agreement, and the timescale for requesting a re-determination was therefore set at 31 days to align with DWPs 'mandatory reconsiderations', whereby clients should request a mandatory reconsideration within one month of their decision, to help streamline the process for winter 2024/25.

The current PAWHP regulations provided 31 days for a client to request a re-determination and 56 days for a decision on a re-determination request to be made.

By providing 42 days for a client to request a re-determination, this enhanced timescale for re-determinations will align with disability benefit timescales, offering increased time and flexibility for clients to request a re-determination.

## Saving Provision

Any retrospective determinations of entitlement made after the coming into force date of our 2025 amendments – whether pursuant to an application, re-determination or appeal – in relation to the qualifying week in 2024 will be made applying the law as it was in force prior to the regulations being amended. This provision will also retain the 31 day time period for making a re-determination request for all awards in relation to the qualifying week in 2024.

## UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ("the Act"), the Scottish Ministers certify that, in their view, the Winter Heating Assistance (Pension Age) (Scotland) Amendment Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

## EU Alignment Consideration

This legislation is not relevant to the Scottish Government's policy to maintain alignment with the EU, because each EU member state has its own social security laws.

EU rules co-ordinate these separate social security systems between member states (and associated states) to support freedom of movement. This co-ordination continues to apply in respect of the UK for people who fall under the various international agreements to which the UK is party. The Scottish Government considers that PAWHP will fall into the scope of the co-ordination rules and relevant EEA residency and export conditions are included in the regulations.

Scottish Commission on Social Security - scrutiny of the draft Regulations
Under section 97(2) of the Social Security (Scotland) Act 2018, the Scottish Ministers are required to inform the Scottish Commission on Social Security (SCoSS) of their proposals in relation to regulations made under any section in Chapter 2 of Part 2 to the 2018 Act. Having been informed of any such proposals, SCoSS must then prepare a report setting out its observations and recommendations in relation to the proposals. SCoSS may also be required to scrutinise and report on any further matters which the Scottish Ministers request under section 22(1)(b) of the 2018 Act. As a result a draft of the regulations was shared with SCoSS.

The Scottish Government will publish its formal response to SCoSS's report when laying these regulations before the Scottish Parliament.

## Impact Assessments

Draft impact assessments have been provided to SCoSS alongside the draft regulations, and will be published alongside the laying of the regulations.

We have provided the following impact assessments:

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

The impact assessments find that the introduction of universal eligibility to PAWHP will have a positive impact, providing all eligible pensioner households with a payment of at least £100. By maintaining the higher payment rates for those in receipt of relevant benefits, universal PAWHP will continue to protect the incomes of older people on relevant benefits, providing them with the same level of support as is currently available through PAWHP in 2024/25. With high energy prices continuing to be a key driver of fuel poverty, this support is particularly important given the significant increase in energy prices amid the cost of living crisis.

The introduction of universal eligibility to PAWHP is forecast to provide support to 812,000 households in 2025/26, an investment of £101 million. This compares to the 137,000 forecast to receive the payment under the current restricted eligibility in winter 2024/25.

We have also engaged with the Information Commissioner's Office who have confirmed that the Scottish Government has met its obligation to consult the ICO under UK GDPR 36(4). An operational Data Protection Impact Assessment will be produced by Social Security Scotland before the processing of data begins.

As per the requirements set out in the UNCRC (Incorporation) (Scotland) Act 2024 (UNCRC Act), there is a statutory requirement to complete a full Child Rights and Wellbeing Impact Assessment (CRWIA) when laying legislation. A full CRWIA has therefore been completed, finding an indirect positive impact of PAWHP on the rights and wellbeing of children, for those children who are part of a household in which an individual is entitled to PAWHP.

**Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been published. The Scottish Government does not believe that PAWHP will have an adverse impact on the competitiveness of Scottish companies or the third sector 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. Civil legal aid will continue to be available to individuals to appeal an entitlement decision to the Upper Tribunal, Court of Session or Supreme Court. Whilst the change in policy may lead to more people appealing, the Scottish Government does not anticipate significant numbers which would have any adverse impact to the Legal Aid budget as a result of the introduction of PAWHP. Current recipients of WFP are already able to access legal aid to appeal entitlement decisions.

The Scottish Fiscal Commission (SFC) has a statutory duty to provide independent and official forecasts of Scottish GDP, devolved tax revenues, and devolved social security spending. Under the Scottish Fiscal Commission Act 2016, the SFC may also produce forecasts on other 'fiscal factors', defined as "anything which the Scottish Ministers use to ascertain the amount of resources likely to be available for the purposes of sections 1 to 3 of

the Public Finance and Accountability (Scotland) Act 2000". The Protocol for engagement between the Scottish Fiscal Commission and the Scottish Government notes that the SFC may produce forecasts where it considers the policy, or policies, to have a "non-negligible impact on receipts or expenditure".

The SFC has reviewed these regulations and concluded that a costing of a policy produced at a previous fiscal event is appropriate to be used to accompany the legislation. The SFC's May 2025 forecast for Pension Age Winter Heating Payment reflects the Scottish Government's intent to deliver the payment under the new eligibility rules and payment amounts from winter 2025-26. The SFC forecasts the spending for Pension Age Winter Heating Payment at £98 million in 2025-26 and £113 million in 2030-31.

Scottish Government
Social Security Directorate
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