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 - -	*11th October 2025*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 30(2), 41(4)(a), 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 11 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 16.

3. In regulation 2 (interpretation) after the definition of "relevant benefit" insert—

> ""residential care" means, disregarding any period of temporary absence, a care home or an independent hospital where the individual has lived in a care home or independent hospital throughout the qualifying week and for the 12 weeks immediately preceding the qualifying week,".

(**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.

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

"(a) meets—

(i) the age condition in regulation 6, and

(ii) the residence condition in regulation 8, and".

5. Omit regulation 7 (relevant benefit condition)(**a**).

6. For regulation 8 (residence condition)(**b**) substitute—

"Residence condition

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

(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(**c**), 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(**d**) 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) 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).

(4) 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).

(5) In this regulation "immigration rules" means the rules laid before the United Kingdom Parliament under section 3(2) of the Immigration Act 1971(**e**).".

(**a**) In regulation 7(a), the word "or", and regulation 7(b) ceased to have effect by virtue of reg 17(a) and (b) of the Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024 ("the principal Regulations").

(**b**) In regulation 8(a), the word "or", and regulation 8(b) ceased to have effect by virtue of regulation 17(c) and (d) of the principal Regulations.

(**c**) 1999 c. 33. Section 115(9) was amended by S.I. 2020/1309.

(**d**) OJ C 202, 7.6.2016, p. 144.

(**e**) 1971 c. 77.

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

"Individuals not entitled to Pension Age Winter Heating Payment

9. An individual is not entitled to Pension Age Winter Heating Payment where they are—

(a) an individual who is receiving free in-patient treatment throughout the qualifying week and has been receiving that treatment for the 52 weeks immediately preceding the qualifying week,

(b) an individual who is detained in legal custody under a sentence imposed by a court throughout the qualifying week,

(c) an individual who is entitled to a relevant benefit throughout the qualifying week and is in residential care,

(d) one member of a couple or polygamous marriage who is entitled to a relevant benefit throughout the qualifying week where Pension Age Winter Heating Payment, or a winter fuel payment under legislation mentioned in regulation 4(1)(a) or (b), has been paid in respect of the qualifying week to the other member of that couple or another member of that marriage, respectively.".

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.

(4) Where an opt-out request is in effect the amount of Pension Age Winter Heating Payment to be paid to the individual is £0 instead of an amount set out in regulation 10 (amount of Pension Age Winter Heating 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 payable to an entitled individual is decided in accordance with this regulation.

(2) Where the individual is entitled to a relevant benefit on a day in the qualifying week paragraph (4) applies.

(3) Where the individual is not entitled to a relevant benefit on a day in the qualifying week and in that week, is—

(a) under the age of 80, paragraph (5) applies,

(b) aged 80 or over, paragraph (6) applies.

(4) The amount payable is—

(a) £305.10, if the individual—

(i) has reached the age of 80 in or before the qualifying week, or

(ii) is a member of a couple or a polygamous marriage in which the other member of the couple or another member of that marriage has reached that age in or before that week,

(b) £203.40, in any other case.

(5) The amount payable is—

(a) £203.40, if the individual does not live with any other entitled individual,

(b) £101.70, if the individual—

(i) lives with any other entitled individual, or

(ii) is in residential care.

(6) The amount payable is—

(a) £305.10, if the individual does not live with any other entitled individual,

(b) £203.40, if the individual lives with any other entitled individual who has not reached the age of 80 in or before the qualifying week,

(c) £152.55, if the individual—

(i) lives with any other entitled individual who has reached the age of 80 in or before the qualifying week, or

(ii) is in residential care.

(7) Where paragraph (5) or (6) applies, the amount payable is to be decided by reference to which sub-paragraph applies on the last day of the qualifying week.

(8) In this regulation, an individual is to be treated as if they were entitled to a relevant benefit where the individual 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 a relevant benefit.

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

(9) In this regulation and regulation 11A, "lives with" means, disregarding any period of temporary absence, two or more people who share accommodation as their mutual home and they are not in residential care, and cognate expressions are to be construed accordingly.".

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) they have previously made a determination of the individual's entitlement to Pension Age Winter Heating Payment in respect of a qualifying week,

(b) that determination awarded the individual an amount of Pension Age Winter Heating Payment specified in—

(i) regulation 10(5)(b)(i),

(ii) regulation 10(6)(b),

(iii) regulation 10(6)(c)(i), and

(c) 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) Paragraph (1) does not apply where, on the last day of the qualifying week, the individual lived with the other entitled individual as a couple or as members of a polygamous marriage.".

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

"Determination without application following opt-in request

13A. 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.

Determination of entitlement to Pension Age Winter Heating Payment without receiving an application – ignorance of a material fact

13B. The Scottish Ministers must, without receiving an application, make a determination of an individual's entitlement to Pension Age Winter Heating Payment where the Scottish Ministers—

(a) have made a determination to award the individual Pension Age Winter Heating Payment, and

(b) become aware that that determination was made in ignorance of a material fact which would possibly result in a change to the amount payable to the individual or

which is likely to mean that the individual is not entitled to Pension Age Winter Heating Payment.".

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

13. For the heading of Part 7 substitute—

"Part 7

Payments and making of applications".

14. After regulation 16 (making payments) insert—

"**Calculation of payments**

16A. Where, under a determination, an individual has previously received an amount of Pension Age Winter Heating Payment in accordance with regulation 10 in respect of a qualifying week and a determination without application under Part 5 has subsequently been made that the same individual is entitled to Pension Age Winter Heating Payment at a higher amount in accordance with regulation 10 for that qualifying week, that individual will be entitled to the difference between the amount of Pension Age Winter Heating Payment payable under the subsequent determination and the amount of Pension Age Winter Heating Payment which that individual previously received in respect of that qualifying week.

Making of applications

16B.—(1) An application for Pension Age Winter Heating Payment is to be treated as made on the day it is received by the Scottish Ministers.

(2) Where an individual makes an application for Pension Age Winter Heating Payment in respect of a qualifying week, that application must be made on or before 31 March in the year following that week.

(3) Paragraph (2) does not apply where a decision is made after the qualifying week that—

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

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

(4) Despite paragraph (1), the Scottish Ministers may treat an application received after the date in paragraph (2) as made by that date where they consider that the individual has a good reason for not making the application by that date.".

15. Omit Part 8 (expiry).

16. Omit the schedule (countries).

Saving provision

17.—(1) Despite the coming into force of these Regulations, the principal Regulations continue to have effect on and after 11 October 2025 as they did immediately before that date for the purpose of determining entitlement to Pension Age Winter Heating Payment under those Regulations in respect of the qualifying week in 2024.

(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

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 inserts a definition of "residential care" into regulation 2 (interpretation) of the principal Regulations.

Regulation 4 amends the eligibility rules an individual must meet to be entitled to Pension Age Winter Heating Payment, including removing the requirement to meet the relevant benefit condition (regulation 7 of the principal Regulations). Consequently, regulation 5 omits the relevant benefit condition from the principal Regulations.

Regulation 6 clarifies 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 7 substitutes the exclusion to entitlement rules in regulation 9 of the principal Regulations, so that individuals who receive a specified low income benefit throughout the qualifying week who are in residential care (as defined) cannot receive payment.

Regulation 8 introduces new rules to allow individuals to opt out of and to opt in to the payment. Entitlement will be nil-rated where an opt-out request is in effect.

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.

Regulation 10 makes provision for determinations without application on entitlement after backdated low income benefits.

Regulation 11 makes provision for the Scottish Ministers to determine entitlement for those who opt in to payment, and makes provision for determinations without application where a determination has been made in ignorance of a material fact.

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

Regulations 13 and 14 add provision in relation to the making of applications by the end of March in the year following a qualifying week, and provision for the reduction of payments by any amount already received.

Regulation 15 omits Part 8 (expiry).

Regulation 16 omits the schedule.

Regulation 17 saves the principal Regulations so that they will continue to apply in the same way after the amendments made by these Regulations come into force for any determinations of entitlement to the payment for the 2024 qualifying week.

© Crown copyright 2025

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, the King's Printer for Scotland.

£8.14

http://www.legislation.gov.uk/id/sdsi/2025/9780111063392

