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

2024 No.

SOCIAL SECURITY

The Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024

Made - - - -	*2024*
Coming into force - -	*20th November 2024*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 30(2), 41(4)(a), 43(5) and 52 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.

PART 1

Introductory and interpretation

Citation and commencement

1. These Regulations may be cited as the Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024 and come into force on 20 November 2024.

Interpretation

2. In these Regulations—

"the 2018 Act" means the Social Security (Scotland) Act 2018,

"care home" means an establishment which provides a care home service as defined in paragraph 2 of schedule 12 of the Public Services Reform (Scotland) Act 2010(**b**),

(**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**) 2010 asp 8.

"child tax credit" has the same meaning as in the Tax Credits Act 2002(**a**),

"couple" means two people who are—

(a) married to, or civil partners of, each other and are members of the same household, or

(b) not married to, or civil partners of, each other but are living together as if they were a married couple or civil partners,

"determination" means a determination of entitlement within the meaning of section 25 of the 2018 Act (meaning of "determination of entitlement"),

"free in-patient treatment" has the same meaning as in regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005 (hospital in-patients entitled to an increase in benefit for a dependant)(**b**),

"income support" means income support under Part VII of the Social Security Contributions and Benefits Act 1992 (income-related benefits)(**c**),

"income-based jobseeker's allowance" means income-based jobseeker's allowance under the Jobseekers Act 1995(**d**),

"income-related employment and support allowance" means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance)(**e**),

"independent hospital" means an independent healthcare service specified in section 10F(1)(a) and (b), and defined in section 10F(2), of the National Health Service (Scotland) Act 1978 (meaning of "independent health care services")(**f**),

"Pension Age Winter Heating Payment" means winter heating assistance given in accordance with these Regulations,

"pensionable age" has the meaning given by the rules in paragraph 1 of schedule 4 of the Pensions Act 1995 (equalisation of and increase in pensionable age for men and women)(**g**),

"polygamous marriage" means any marriage which took place under the laws of a country which permits polygamy where—

(a) any member of the marriage is for the time being married to more than one person, and

(b) all the members of the marriage are members of the same household,

"qualifying week" means in respect of any year the week beginning on the third Monday in the September of that year,

"relevant benefit" means—

(a) state pension credit,

(b) income-based jobseeker's allowance,

(c) income-related employment and support allowance,

(d) income support,

(e) universal credit,

(f) child tax credit or working tax credit (where the award is not less than £26 in respect of the tax year 2024 to 2025),

"state pension credit" has the meaning set out in section 1 of the State Pension Credit Act 2002 (entitlement)(**h**),

---

(**a**) 2002 c. 21.
(**b**) S.I. 2005/3360.
(**c**) 1992 c. 4.
(**d**) 1995 c. 18.
(**e**) 2007 c. 5.
(**f**) 1978 c. 29. Section 10F was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8).
(**g**) 1995 c. 26. Paragraph 1 of schedule 4 was amended by paragraph 39 of schedule 2 of the State Pension Credit Act 2002 (c. 16), paragraph 13 of schedule 3 of the Welfare Reform Act 2007 (c. 5), paragraph 4 of schedule 3 of the Pensions Act 2007 (c. 22), section 1 of the Pensions Act 2011 (c. 19) and section 26 and paragraph 30 of schedule 12 of the Pensions Act 2014 (c. 19).
(**h**) 2002 c. 16.

"universal credit" means universal credit under Part 1 of the Welfare Reform Act 2012 (universal credit)(**a**),

"working tax credit" has the same meaning as in the Tax Credits Act 2002.

PART 2

Pension Age Winter Heating Payment

Overview

3.—(1) Regulations 4 to 9 provide for eligibility rules for determining entitlement to Pension Age Winter Heating Payment.

(2) Regulations 10 to 14 make provision about matters of procedure for determining entitlement to Pension Age Winter Heating Payment.

(3) Regulations 15 and 16 make provision about the Pension Age Winter Heating Payment that is to be given to individuals who are eligible for assistance.

Effect of award of another benefit

4.—(1) An individual is not entitled to a Pension Age Winter Heating Payment under these Regulations if the individual has been awarded a winter fuel payment under—

(a) the Social Fund Winter Fuel Payment Regulations 2024(**b**), or

(b) the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2024(**c**),

in respect of the qualifying week.

(2) An individual is not to be regarded as having been awarded a winter fuel payment specified in paragraph (1) in respect of the qualifying week if the award was made in error (whether or not induced by the individual).

PART 3

Eligibility rules for Pension Age Winter Heating Payment

Eligibility rules

5. An individual is entitled to be paid Pension Age Winter Heating Payment in respect of a qualifying week if the individual—

(a) meets—

(i) the age condition in regulation 6,

(ii) the relevant benefit condition in regulation 7, and

(iii) the residence condition in regulation 8, and

(b) is not an individual who is not entitled to Pension Age Winter Heating Payment by virtue of regulation 9.

Age condition

6. The condition is that the individual has reached pensionable age before or on a day in the qualifying week.

(**a**) 2012 c. 5.
(**b**) S.I. 2024/869.
(**c**) S.R. 2024 No. 160.

Relevant benefit condition

7.—(1) The condition is that the individual is—

(a) entitled to a relevant benefit on a day in the qualifying week, or

(b) able to demonstrate entitlement, in respect of a day in the qualifying week, to a benefit payable in the country in which the person is habitually resident that is equivalent to a relevant benefit, where regulation 8(b) applies.

(2) The reference in paragraph (1) to being entitled to a relevant benefit, or a benefit that is equivalent to a relevant 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.

Residence condition

8. The condition is that, in respect of any day falling within the qualifying week—

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

(b) the individual—

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

(ii) is covered by—

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

(bb) 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 (as modified from time to time in accordance with any provision of it) as set out in Article 2 of that Convention,

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

(dd) 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, and

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

Individuals not entitled to Pension Age Winter Heating Payment

9.—(1) 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—

(i) is living in a care home or independent hospital throughout the qualifying week, and

(ii) has lived in a care home or independent hospital for the 12 weeks immediately preceding the qualifying week, or

(d) one member of a couple or polygamous marriage where Pension Age Winter Heating Payment, or a winter fuel payment mentioned in regulation 4(1), has been paid in respect of the qualifying week to the other member of that couple or another member of that marriage, respectively.

(**a**) 2020 c. 1. Section 39 was amended by S.I. 2024/164.

(2) In this Regulation, where an individual lives in a care home or independent hospital, any period of temporary absence is disregarded.

PART 4

Amount of Pension Age Winter Heating Payment

Amount of Pension Age Winter Heating Payment

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

(a) if the individual has reached the age of 80 in or before the qualifying week, £300,

(b) if—

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

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

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

£300, or

(c) in any other case, £200.

PART 5

Determination of entitlement to Pension Age Winter Heating Payment without application

Determination of entitlement to Pension Age Winter Heating Payment without receiving an application

11.—(1) The Scottish Ministers must, without receiving an application, make a determination of an individual's entitlement to Pension Age Winter Heating Payment where it appears to the Scottish Ministers from information available to them that the individual is likely to meet the eligibility rules in regulations 4 to 9.

(2) Paragraph (1) applies—

(a) until 1 April following the qualifying week, or

(b) on and after 1 April following the qualifying week where an individual becomes entitled to a relevant benefit in respect of the qualifying week by virtue of a decision made after that week.

Determination following official error – underpayments

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

(a) have previously made a determination of the individual's entitlement to Pension Age Winter Heating Payment, and

(b) establish that, due to official error, that determination was incorrect resulting in the individual—

(i) not being given an award of Pension Age Winter Heating Payment, or

(ii) being given a lower award than that,

to which the individual was entitled.

(2) In this regulation, "official error" means an error made by someone acting on behalf of the Scottish Ministers or on behalf of a Minister of the Crown that was not materially contributed to by anyone else.

Determination following error – overpayments

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

(a) have previously made a determination of the individual's entitlement to Pension Age Winter Heating Payment, and

(b) establish that, due to an error, that determination was incorrect resulting in the individual being given—

(i) an award of Pension Age Winter Heating Payment to which the individual was not entitled, or

(ii) a higher award than that to which the individual was entitled.

(2) In this regulation, reference to an "error" is to—

(a) an error in the performance of a function conferred by these Regulations or the 2018 Act, including a determination being made—

(i) wrongly, or

(ii) correctly, but on the basis of

(aa) incorrect information, or

(bb) an assumption which proves to be wrong, or

(b) a new determination not being made after an assumption on the basis of which an earlier determination was made has proved to be wrong.

PART 6

Periods in respect of a re-determination request

Periods in respect of a re-determination request

14.—(1) The period for requesting a re-determination of entitlement to Pension Age Winter Heating Payment under section 41 of the 2018 Act (right to request re-determination) is 31 days beginning with the day that the individual is informed, in accordance with section 40 of that Act (notice of determination), of the right to make the request.

(2) In relation to determining entitlement to Pension Age Winter Heating Payment, the period allowed for re-determination (within the meaning of section 43 of the 2018 Act (duty to re-determine)) is 56 days beginning with—

(a) the day that the request for a re-determination is received by the Scottish Ministers,

(b) where the request for a re-determination is received by the Scottish Ministers later than the period prescribed by paragraph (1), the day on which the Scottish Ministers, or, on appeal, the First-tier Tribunal for Scotland, decide that the individual in question has a good reason for not requesting the re-determination sooner, or

(c) where the Scottish Ministers have informed the individual of their decision that the request for re-determination was not made in such form as the Scottish Ministers require, the day on which it is subsequently decided by the First-tier Tribunal for Scotland that the individual in question has made the request in such form as the Scottish Ministers require.

PART 7

Payments

Form of Pension Age Winter Heating Payment

15. Pension Age Winter Heating Payment is to be given in the form of money in a single payment in respect of the winter following the qualifying week.

Making payments

16. Where Pension Age Winter Heating Payment is payable in respect of an individual, the Scottish Ministers may, where they consider appropriate, make the payment to another person to be used for the benefit of the individual.

PART 8

Expiry

Expiry

17. The following provisions cease to have effect on 1 April 2025—

(a) in regulation 7(a) (relevant benefit condition), the word "or",

(b) regulation 7(b) (relevant benefit condition),

(c) in regulation 8(a) (residence condition), the word "or",

(d) regulation 8(b) (residence condition),

(e) the schedule (countries).

Name
A member of the Scottish Government

St Andrew's House,
Edinburgh
Date

SCHEDULE

Regulation 8(b)(i)

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 provide for winter heating assistance for eligible individuals who have reached state pension age.

Part 2 provides an overview of entitlement to Pension Age Winter Heating Payment and makes provision for individuals who are not entitled by virtue of receiving other benefits.

Part 3 provides for the eligibility rules in relation to age, entitlement to a relevant benefit and residence and for individuals who are not entitled in particular circumstances.

Part 4 provides for the amount of Pension Age Winter Heating Payment depending on the age of the individual and who they live with.

Part 5 provides for making determinations of entitlement without receiving an application and for determinations in respect of underpayments and overpayments.

Part 6 provides for the period for making a re-determination request and carrying out the re-determination.

Part 7 provides for the form of payment and payment to appropriate persons.

Part 8 provides for the expiry, on 1 April 2025, of provisions giving entitlement to Pension Age Winter Heating Payment to individuals habitually resident in one of the countries listed in the schedule.

© Crown copyright 2024

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/2024/9780111060940

ISBN 978-0-11-106094-0

9 780111 060940