POLICY NOTE

THE WINTER HEATING ASSISTANCE (PENSION AGE) (SCOTLAND) REGULATIONS 2024

SSI 2024/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) and 52 of the Social Security (Scotland) Act 2018. The instrument is subject to affirmative procedure.

Summary Box

This instrument sets out the rules and eligibility criteria for Pension Age Winter Heating Payment (PAWHP) for winter 2024/25. This is a form of assistance to mitigate some of the impact of additional domestic heating costs for those of state pension age who are in receipt of relevant benefits. Following the recent changes to Winter Fuel Payment (WFP) this will be administered by the Department for Work and Pensions (DWP) in 2024/25 through an agency agreement laid out under a section 93 Scotland Act Order.

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 regulations will ensure payment is made by the DWP to eligible pensioners in winter 2024/25 following the UK Government's announcement to restrict WFP to those in receipt of relevant benefits.

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 the most financially vulnerable people of pension age who may struggle to manage increasing energy costs over the winter.

PAWHP will be a single annual payment of £200 or £300 for individuals, dependent on the person's age and their entitlement to relevant benefits during the qualifying week.

The regulations reflect the UK Government's decision to restrict eligibility for Winter Fuel Payments and enable DWP to make payments in Scotland this winter (2024/25). They include details of eligibility rules for entitlement to PAWHP and the value of the payment, as well as provision for determining eligibility, exclusions to entitlement, making a determination after an error has occurred resulting in overpayments or underpayments.

Eligibility Rules

A person will be eligible if, during the qualifying week, they are:

- Of state pension age
- Receiving a relevant benefit
    - Pension Credit
    - Income-based Jobseeker's Allowance (JSA)
    - Income-related Employment and Support Allowance (ESA)
    - Income Support
    - Universal Credit
    - Working Tax Credits or Child Tax Credits (where the award is not less than £26 in respect of the tax year 2024-25)

The qualifying week is the third week in September. This reflects the approach taken currently for Child Winter Heating Payment and, importantly, aligns with the qualifying week for WFP.

Payments are made to individuals or to households in respect of joint claims the relevant benefit. Where this is a couple or someone who is part of a polygamous marriage, one payment is issued on behalf of all people within that couple or marriage.

Individuals not entitled to PAWHP

We continue to reflect the current exclusions to entitlement that are currently in place for WFP. We have regulated for the exclusion of:

a) Those receiving free in-patient treatment throughout the qualifying week and have been receiving free in-patient treatment for more than 52 weeks;
b) Those detained in custody throughout the qualifying week under a sentence imposed by a court;
c) Those living in a care home or independent hospital throughout the qualifying week and the 12 weeks immediately prior to the qualifying week and receiving Pension Credit, Income-based Job Seekers Allowance, Income-related Employment and Support Allowance or Income Support.
d) An individual who, throughout the qualifying week, is another member of a household of a joint claim for a relevant benefit who has already received a payment of PAWHP, whether the joint claim is for a couple or members of a polygamous marriage;

The exclusions in relation to residential care are rationalised by the time spent in the relevant accommodation, which indicates that someone is in care for a longer period than would be considered temporary and are therefore less likely to return home during the forthcoming winter.

An individual is only treated as living in a care home or independent hospital where they live there throughout the qualifying week and for the 12 weeks immediately preceding the qualifying week. Any period of residence shorter than this is treated as temporary, and is disregarded.

An individual who is in prison during the entirety of the qualifying week under a sentence imposed by a court will receive public funding for their heating costs and they are therefore not entitled to a payment. This approach reduces duplication in use of public funds.

Residence conditions

A person will be eligible if, during the qualifying week, they are:

- Ordinarily resident in Scotland or are;
- (in winter 2024-25 only) habitually resident within an eligible EEA country or Switzerland, in at least one day during the qualifying week, and have a genuine and sufficient link to Scotland.

Regulations came into force on 21 September 2015 which meant that from winter 2015/16, WFP would no longer be payable in certain EEA countries (and associated territories) where the average winter temperature is higher than the warmest region of the UK, which is South West England.

For PAWHP we are reflecting the same residency criteria as WFP which will mean if someone falls into scope of the UK-EU Withdrawal Agreement or equivalent agreement, has a genuine and sufficient link to Scotland, they may still be eligible for a PAWHP.

We intend to continue to use the warmest region of the UK as a proxy for the EEA countries and associated territories to maintain alignment with the DWP and to ensure support continues to be provided to people who have moved to the Republic of Ireland who would otherwise likely lose entitlement to support through PAWHP.

Amount of Payment

A single payment is made to an individual or a 'benefit household' i.e. a couple in receipt of a joint claim, or individuals in a polygamous marriage. If the individual or individuals in the claim are aged 66-79 they will receive a payment of £200. If an individual or individuals in the joint claim are aged 80+ they will receive a payment of £300.

Determination of entitlement without receiving an application

Automatic payments will be made for clients who are in receipt of a relevant benefit and of state pension age during the qualifying week and who are ordinarily resident in Scotland based on information available to Ministers.

The entitlement to PAWHP for each of these individuals will be subject to a determination without application under the provision in these regulations made under section 52 of the Social Security (Scotland) Act 2018. This mechanism provides Scottish Ministers with powers to make determinations, in such circumstances as prescribed in regulations, without receiving an application. This should ensure take-up levels are high and reduces the burden on the client.

A determination without application must be made prior to 31 March following the qualifying week (unless that is based on a person becoming entitled to a relevant benefit in respect of any day during the qualifying week i.e. backdated payment of Pension Credit, Universal Credit, Child Tax Credit or Working Tax Credit)

Determinations Following Error

We have regulated for determinations following official error (underpayment) as well as for determinations following error (overpayments). We intend to recover any overpayment on the basis that the value exceeds £65 (the small overpayment figure).

Periods in respect of a re-determination request

The regulations provide 31 days for a client to request a re-determination and 56 days for a decision on a re-determination request to be made. Given that payments are made this winter by the DWP on behalf of Scottish Ministers under agency agreement the timescale for requesting a re-determination have been amended to align with DWPs 'mandatory reconsiderations', to help streamline the process for winter 2024/25. We have maintained the timescale for making a decision on a request for a re-determination to ensure DWP have sufficient time to manage these requests effectively, reducing the risk of requests for re-determinations going out-of-time.

This approach promotes informed decision making at re-determination stage and is likely to reduce the likelihood of appeals. It is important to note that 56 days would be the upper limit for completing a re-determination.

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) Regulations 2024 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 to support freedom of movement, but this legislation is not relevant to social security co-ordination specifically.

Consultation

The Scottish Government consulted between 23 October 2023 and 15 January 2024 on the delivery of PAWHP. The consultation proposed eligibility for payments to all relevant people of pensionable age on a 'like-for-like' basis to WFP, the equivalent DWP benefit. The consultation also covered other aspects of the eligibility criteria, and the value, form and timing of the payment. The consultation asked about the following areas:

- Whether the proposals are likely to meet the policy intent;
- Whether the eligibility criteria are clear;

- The amount, form and timing of the payment;
- Our assessment of the impact of the policy;
- Improvements that would support rural/island communities; and,
- Potential longer term development of PAWHP to provide effective support.

We received 906 responses to the consultation:

- 25 were submitted on behalf of organisations including Age Scotland, The Scottish Fuel Poverty Advisory Pannel, The ALLIANCE, Energy Action Scotland, Independent Age, Citizen's Advice Bureau Scotland, Inclusion Scotland, National Carer Organisations and Scottish Community Safety Network.
- 881 responses were made by private individuals.

The consultation analysis was carried out by an independent research organisation and the report and the Scottish Government's response is available at www.gov.scot/publications.

We also engaged with people who have experience of the social security system through our Experience Panels and a report detailing those responses has been published: Social Security Experience Panels: Pension Age Winter Heating Payment - gov.scot (www.gov.scot).

On 29 July the Chancellor of the Exchequer announced that eligibility for WFP from winter 2024-25 would no longer be paid on a universal basis to relevant people of pension age but that eligibility would be restricted to those in receipt of Pension Credit and certain other social security benefits. This decision reduced the Block-Grant Adjustment associated with devolution of the UK's WFP by an estimated £150 million in 2024-25. After careful consideration, given the significant impact of this decision, and the wider cuts being imposed by the Chancellor of the Exchequer, Scottish Ministers have been left with no choice but to mirror this approach in Pension Age Winter Heating Payment.

Scottish Commission on Social Security - scrutiny of the draft Regulations

Section 97(2) of the Social Security (Scotland) Act 2018 requires Scottish Ministers to inform the Scottish Commission on Social Security (SCoSS) of these proposals in the form of draft regulations.

The Scottish Ministers provided draft regulations to SCoSS prior to the UK Government's decision to restrict WFP eligibility to those in receipt of relevant benefits, Given the late decision by the UK Government it has not been possible, if the regulations are to be in place in good time for payments to be made this winter, to provide SCoSS with the necessary time to scrutinise and publish a report on the revised regulations prior to laying them before Parliament.

To comply with section 97(2) Scottish Ministers have written to SCoSS, providing the revised draft regulations, responding to the previous SCoSS report, highlighting the changes to the regulations and invited a further scrutiny report after the regulations have been laid.

This draft instrument is therefore laid under section 97(9)(b) of the Act along with the response the SCoSS scrutiny of the previous draft regulations and a statement explaining why

the Ministers consider it appropriate to lay the draft PAWHP instrument before SCoSS has submitted its report on the revised regulations.

Impact Assessments

Draft impact assessments had been prepared prior to the decision to restrict eligibility for PAWHP. These assessments have now been updated to reflect the change in policy following the UK Government's decision to move away from a universal Winter Fuel Payment.

We have published the following revised 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 continue to find that PAWHP will provide older people on relevant benefits with the same level of support as is available elsewhere, as the payment will mirror the current WFP eligibility criteria although further guaranteed support is also available to people of pensionable age in Scotland only who also meet the eligibility criteria for Winter Heating Payment.

The Scottish Government estimates that the changes to WFP eligibility reduce the Block-Grant Adjustment associated with devolution of the UK's WFP by an estimated £150 million in 2024-25, over 80% of the cost of the Scottish Government's new replacement benefit. Given this significant reduction in budget, after careful consideration of options the Scottish Government has taken the difficult decision to replicate the restricted eligibility of WFP.

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 expenditure.

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". Having considered the measures in these regulations, the SFC forecast that 137,000 households will receive PAWHP in 2024-25. The SFC forecasts that the total spending on PAWHP will be £32 million in 2024-25, which is £148 million lower than the previous forecast in December 2023 before the policy change.

The Scottish Government acknowledges that other people of pensionable age may also face financial difficulties and would benefit from this support. The UK Government decisions means it is not possible to extend the payment on a universal basis. As the impact assessment shows, older people on low incomes are among the most vulnerable to cold winter temperatures and, within the budgetary restraints imposed by the UK Government's decision, support is targeted on those individuals who can readily be identified as most likely to benefit most from this support this winter.

The Scottish Government is committed under the 'Fairer Scotland for Older People' strategy to seek to ensure the financial security of older people in Scotland. PAWHP will contribute to that ambition together with a wider range of initiatives to mitigate fuel poverty, such as our energy efficiency delivery programmes – Warmer Homes Scotland and Area Based Schemes – which have supported over 150,000 households living in, or at risk of fuel poverty in the past decade, as well as our Islands Cost Crisis Emergency Fund which helps island authorities support their island communities through cost-of-living pressures. Additional support through Winter Heating Payment is available to pensioners in receipt of Pension Credit.

Support in addition to social security payments, and the support mentioned above, is available through the Scottish Governments investment in our Council Tax Reduction Scheme and free bus travel for all older people over the age of 60 in Scotland. The Scottish Government has also provided over £2 million from our Equality and Human Rights Fund, supporting older people's organisations to deliver work focused on tackling inequality and enabling older people to live independent and fulfilling lives. The Minister for Climate Action has also secured the agreement of energy suppliers to participate in a working group aimed at co-designing a social tariff.

The Scottish Government continues to support vulnerable households from fuel poverty through a range of actions within our limited devolved powers. This year alone, we are spending £134 million on activities to mitigate UK Government policies through schemes such as Discretionary Housing Payments and the Scottish Welfare Fund, which provide vital support to households struggling to meet their housing and energy costs.

The Scottish Government is committed to tackling fuel poverty and has consistently supported vulnerable households through a range of actions, including delivering our Winter Heating Payment which, in contrast to the UK Governments Cold Weather Payment, guarantees a reliable annual payment of £58.75 to people on low-incomes, including those pensioners in receipt of Pension Credit each winter.

Similarly, ending child poverty is our single greatest priority. We've already consistently up-rated all benefits in line with inflation, and our intention now is to provide certainty to families and put more money in their pockets by making it a legal requirement to annually up-rate all devolved benefits – including Best Start Grants, Best Start Foods and our winter heating payments. This is an estimated investment of at least £6 million for 2025-26, rising to at least £12 million in 2029-30, according to the latest published SFC forecasts.

The Scottish Government has consulted with the Information Commissioner's Office (ICO) on Article 36(4) of the General Data Protection Regulation (GDPR), who have confirmed that the Scottish Government has met its obligation to consult the ICO under UK GDPR 36(4), and have agreed this legislation does not require a Data Protection Impact Assessment.

As per the requirements set out in the UNCRC (Incorporation) (Scotland) Act 2024 (UNCRC Act), there is now 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. Civic 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.

Scottish Government
Social Security Directorate
September 2024