EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (SCOTLAND) ACT 2018 (WINTER HEATING ASSISTANCE) (CONSEQUENTIAL MODIFICATIONS) ORDER 2022

2022 No. 1018

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Social Security legislation for Great Britain as a consequence of the Social Security (Scotland) Act 2018 ("the 2018 Act") introducing the Winter Heating Payment ("WHP") from 1 November 2022. The changes made by this instrument will ensure that from this date only claimants who live in England and Wales will be eligible for a Cold Weather Payment ("CWP") and that there is no double provision for people in Scotland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This Order is made in exercise of the powers conferred by sections 104, 113(4) and 113(5) of the Scotland Act 1998 ("the 1998 Act"). Section 104 of the 1998 Act [1] allows consequential modifications to be made to reserved legislation in consequence of any provision made by or under an Act of the Scottish Parliament.

6.2 The Scotland Act 2016[2] ("the 2016 Act") devolved responsibility for certain social security benefits to the Scottish Parliament. This included providing financial assistance for heating expenses in cold weather[3].

[1] The Scotland Act 1998 http://www.legislation.gov.uk/ukpga/1998/46/contents
[2] 2016 c. 11 http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted
[3] Exception 4(b), paragraph 1 of Head F of Part II of Schedule 5 of the 1998 Act, as amended by section 23 of the 2016 Act.

6.3 Under section 30 of the 2018 Act, the Scottish Government is introducing WHP from Winter 2022/23 for people ordinarily resident in Scotland. This is a form of assistance for the cost of winter heating for people on low incomes and replaces CWP which is currently paid by the UK Government.

6.4 CWP will continue to be payable under the Social Fund Cold Weather Payment (General) Regulations 1988[4] to eligible households in England and Wales. The provisions in this instrument amend these Regulations to restrict eligibility to claimants living in England and Wales and to prevent double provision in Scotland.

7. Policy background

What is being done and why?

7.1 The 2016 Act devolved responsibility for providing financial support to those with expenses for heating in cold weather. This support is currently provided by DWP through CWP and Winter Fuel Payment (WFP). CWP and WFP are available to people who meet the qualifying criteria in England, Wales and Scotland through the Social Fund. WFP is payable to people over State Pension age without a means test, and for the time being, at the request of the Scottish Government, will continue as a reserved benefit in Scotland.

7.2 CWP is payable to those in receipt of eligible benefits with a pension element or disability component or where there is a child aged under five living with them. The qualifying income-related benefits include Pension Credit, Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, and Universal Credit (CWP is not available to Universal Credit recipients if they are employed, unless there is a disabled child amount in their claim). Those in receipt of a Support for Mortgage Interest Loan will also usually be eligible. Payment is £25 for each week of cold weather (that is, where the average temperature is recorded as, or forecast to be, zero degrees celsius or below over seven consecutive days at the weather station linked to an eligible person's postcode) between 1 November and 31 March.

7.3 From Winter 2022/2023 the Scottish Government is to introduce WHP which will replace CWP for people living in Scotland with a single annual payment not linked to temperature. To prevent dual provision for the same need, the changes made by this instrument will ensure that eligibility for CWP will be limited to households meeting the qualifying criteria in England and Wales from 1 November 2022.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The regulations will be consolidated in due course within the published legislation at www.legislation.gov.uk.

[4] S.I. 1988 No. 1724 https://www.legislation.gov.uk/uksi/1988/1724

10. Consultation outcome

10.1 Consultation is not required for this instrument as the policy for CWP remains the same in England and Wales.

11. Guidance

11.1 Relevant guidance will be provided to DWP staff. Social Security Scotland will be responsible for providing guidance to its own staff.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 Therefore, an Impact Assessment has not been prepared for this instrument.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The entitlement to, and payment of, CWP is a reserved matter. System changes will be made to ensure operational compliance with the revised legislation.

15. Contact

15.1 Yasmin Dalvi at the Department for Work and Pensions (YASMIN.DALVI@DWP.GOV.UK) can be contacted with any queries regarding the instrument.

15.2 Andrew Latto, Deputy Director for Devolution, Pensioner Benefits and Carer's Allowance at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Claire Coutinho MP, Minister of State for Disabled People, Health and Work at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.