



Scottish
Commission
on Social
Security

Scottish Commission on Social Security

Scrutiny report on draft regulations:

Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020

**Submitted to the Scottish Government and the Scottish
Parliament's Social Security Committee on 27th July 2020.**

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Summary of recommendations and observations

Observation 1: In the interests of good use of limited time, and acknowledging that factors beyond anyone's control may prevent it, SCoSS asks the Scottish Government to make every effort to ensure clarity on all key policy areas and that impact assessments are provided at the same time that draft regulations are referred to us.

Recommendation 1: The Scottish Government should consider continuing to produce standalone regulations for provisions like CWA and Short Term Assistance to enable consistency, clarity and in-depth scrutiny, and thereby better outcomes.

Recommendation 2: The Scottish Government should ensure that the voices of children and young people inform the development of assistance that affects them and that their views inform the future implementation and evaluation of the CWA.

Recommendation 3: The Scottish Government should clarify further the rationale for targeting CWA only on the highest rate care component and whether it intends to extend eligibility in the future.

Recommendation 4: The Scottish Government should produce clear, detailed, accessible guidance to ensure clarity about the process when CWA becomes payable due to a retrospective award of DLA.

Recommendation 5: To maximise take-up amongst 16 to 18-year-olds, the Scottish Government should ensure that information on CWA and interactions with DLA and Personal Independence Payment is clear and reaches young people and those who support them.

Recommendation 6: As soon as an opportunity arises to review CWA, the Scottish Government should consider the feasibility of widening the qualification window to include children and young people in receipt of DLA at any point through the winter months.

Recommendation 7: The Scottish Government should extend CWA entilement to children in residential care so that they are treated the same as children in hospital.

Recommendation 8: The Scottish Government should remove regulation 4 (2), regarding a payment condition not being met where the individual has died before the qualifying week, and ensure there is clear, sensitive guidance in place concerning the recovery of payments.

Recommendation 9: The Scottish Government should ensure consistency across all types of social security assistance regarding the test of residency in Scotland.

Recommendation 10: The Scottish Government should clarify what will be treated as the day of application.

Observation 2: SCoSS welcomes the Scottish Government's expressed intention to amend the regulations to make it clear that anyone who applies for CWA will have a right to a determination and appeal.

Recommendation 11: The Scottish Government should develop processes for paying assistance to others that both protect and empower young people; and provide clarification that regulations are not required for appointees to act for children and young people in relation to applications, awards and payments.

Observation 3: SCoSS would welcome further clarity about the implications of the necessary DWP data not being made available when expected.

1. Introduction

The Scottish Commission on Social Security (SCoSS) welcomes the draft Regulations enabling the introduction of Winter Heating Allowance for Children and Young People, which we will refer to in this report as Child Winter Heating Assistance (CWhA). This new £200 annual lump sum payment will provide additional support with winter fuel costs to children and young people who are in receipt of the highest rate of Disability Living Allowance (DLA) care component.

SCoSS appreciates just how critical this support is likely to be at this time, due to increased financial hardship and especially with the anticipated increase in fuel poverty resulting from COVID-19.¹

Winter Heating Assistance was contained in regulation 17 of the draft Disability Assistance for Children and Young People (Scotland) Regulations 2020 (DACYP). The introduction of these separate regulations for CWhA is a welcome pragmatic response to the unavoidable delays to the laying of the DACYP Regulations, due to the challenging context of COVID-19. Crucially, this will allow CWhA to be payable in time for the coming winter for children and young people on DLA. Entitlement will then later be broadened to include children and young people receiving Child Disability Payment once the DACYP regulations come into effect.²

Recommendation 11 in our scrutiny report on the draft DACYP regulations³ called on the Scottish Government to attend to a number of technical issues concerning CWhA. In her letter referring the draft CWhA regulations to SCoSS, the Cabinet Secretary confirmed that a

¹ <http://www.social-policy.org.uk/spa-blog/tackling-fuel-poverty-the-implications-of-covid-19-by-baker-et-al/>

² The DACYP draft regulations provided for a Child Disability Payment for eligible children and young people.

³ SCoSS's report is available here:

<https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2020/03/the-disability-assistance-for-children-and-young-people-scotland-regulations-2020-scrutiny-report-on-draft-regulations/documents/the-disability-assistance-for-children-and-young-people-scotland-regulations-2020-scrutiny-report-on-draft-regulations/the-disability-assistance-for-children-and-young-people-scotland-regulations-2020-scrutiny-report-on-draft-regulations/govscot%3Adocument/FINAL%2BSCoSS%2BReport%2Bon%2Bthe%2Bdraft%2BDACYP%2B%2528S%2529%2BRegs%2B2020.pdf>

number of revisions had been made to take these into account, including:

- Clarifying in regulations that children who get DLA and live in other parts of the UK are not eligible;
- Ensuring that children are entitled if the relevant rate of DLA for the qualifying week is awarded late as a result of, for instance, an appeal;
- Inclusion of a provision to allow access to CWHHA when DLA is awarded to correct an official error;
- Clarification that the payment is made on ‘per individual’ basis rather than ‘per household’.⁴

This scrutiny report on the separate draft CWHHA regulations builds on our scrutiny of the related provision in the draft DACYP regulations.

2. Approach to Scrutiny

As always, this report has been completed in accordance with our pre-legislative scrutiny function, as set out in sections 22 and 97 of the Social Security (Scotland) Act 2018.⁵ Section 97 requires us to carry out our role with regard to the Scottish social security principles and any relevant provisions of human rights law. The Commission’s scrutiny was also informed by our draft scrutiny framework.⁶

The draft CWHHA regulations were formally referred to SCoSS on 14 May 2020. Since then, we have had ongoing engagement with Scottish Government officials. This has provided welcome opportunities for SCoSS to request further information including, for example, on the wider fuel poverty landscape,⁷ thereby enabling us to inform and influence the development of the draft regulations and allow issues to be addressed prior to regulations being laid. Clearly, time can also be an issue when it comes to carrying out meaningful stakeholder

⁴ <https://www.gov.scot/publications/letter-from-the-cabinet-secretary-and-draft-winter-heating-assistance-regulations-14-may-2020/>

⁵ Social Security (Scotland) Act 2018 asp 9 s1

⁶ <https://www.gov.scot/publications/scottish-commission-on-social-security-draft-scrutiny-framework/>

⁷ <https://www.gov.scot/binaries/content/documents/govscot/publications/correspondence/2020/05/letter-from-the-cabinet-secretary-and-draft-winter-heating-assistance-regulations-14-may-2020/documents/briefing-from-scottish-government-to-scoess-on-schemes-to-reduce-fuel-poverty/briefing-from-scottish-government-to-scoess-on-schemes-to-reduce-fuel-poverty/govscot%3Adocument/SG%2BBriefing%2Bon%2BFuel%2BPoverty%2BSchemes.pdf>

engagement. On this occasion we were able to undertake some limited consultation with stakeholders, building on our previous CWhA evidence-gathering through our DACYP consultation. We sought views on the draft CWhA regulations from stakeholders, including through a public Twitter call. We thank those organisations that responded. Their submissions added real value to our scrutiny and have supported the compilation of this report.⁸

SCoSS acknowledges that there are exceptional demands on Scottish Government officials at the current time. Moreover, there will always be a balance to be struck between getting the assistance people need in place rapidly, and allowing time to ensure that draft regulations referred to us are of high quality, clear and complete. This is of the utmost importance to ensuring our scrutiny process is as efficient and effective as it can be. Otherwise, while the aim may be to save time, there is a risk that much time can be consumed by the need to repeatedly raise queries and make adjustments in light of new information.

On this occasion, it would have been helpful if the Scottish Government had been able to confirm, in advance of referring the draft regulations to SCoSS, its approach in relation to the average Scottish temperature in winter and the impact on entitlement for exportable cases. SCoSS would also have found it very helpful had the Scottish Government been able to provide impact assessments at the point the draft regulations were referred to us. The time lag between the referral of the draft regulations and the impact assessments (received on 17th June), and the lack of clarity concerning policy intent, unavoidably affected our ability to fully assess and scrutinise the regulations and consequently increased the number of times we had to seek further information from Scottish Government officials. However, we accept that factors beyond our knowledge or anyone's control may have meant that on this occasion there was no alternative, given the desirability of having CWhA in place for the forthcoming winter and the extent of Covid-19-related demands on officials. These are matters we can explore further with the Scottish Government as we develop a protocol setting out how we work together. The timeline of our scrutiny is contained in the [Annex](#).

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<https://www.gov.scot/binaries/content/documents/govscot/publications/correspondence/2020/05/letter-from-the-cabinet-secretary-and-draft-winter-heating-assistance-regulations-14-may-2020/documents/draft-winter-heating-assistance-regulations-submissions/draft-winter-heating-assistance-regulations-submissions/govscot%3Adocument/Draft%2BWinter%2BHeating%2BAssistance%2Bregulations%2B-%2Bsubmissions.pdf>

Observation 1: In the interests of good use of limited time, and acknowledging that factors beyond anyone’s control may prevent it, SCoSS asks the Scottish Government to make every effort to ensure clarity on all key policy areas and that impact assessments are provided at the same time that draft regulations are referred to us.

SCoSS welcomed the opportunity to scrutinise standalone regulations for CWhA. Since the Winter Heating Assistance provisions were only one element of the much wider, complex DACYP Regulations our scrutiny of them made up just a small part of our overall report. Separating these out has produced fuller, clearer and more prominent provisions. It has also allowed SCoSS to undertake more in-depth scrutiny within the time available. Winter Heating Allowance and Short Term Assistance, provisions for which were also contained within the DACYP regulations⁹, are made using powers conferred by different sections of the 2018 Act. Such forms of assistance may be reflected in regulations for other forms of assistance. There is therefore a case for considering whether standalone regulations would be preferable. While acknowledging that time constraints may militate against developing standalone regulations, this could promote greater consistency and facilitate in-depth scrutiny, leading to better policy and improved outcomes for recipients.

Recommendation 1: The Scottish Government should consider continuing to produce standalone regulations for provisions like CWhA and Short Term Assistance to enable consistency, clarity and in-depth scrutiny, and thereby better outcomes.

3. Rights and Principles

Section 97 of the Social Security (Scotland) Act states that, when exercising its pre-legislative scrutiny function, the Commission must have regard to any relevant human rights instrument ratified by the UK. In common with our previous report on the draft DACYP Regulations, our focus here is on the most relevant provisions of the Convention on the Rights of the Child. The Convention on the Rights of Persons with Disabilities also contains a number of relevant provisions. We are also required to have regard to the Scottish social security principles. In

⁹ Section 36 and Schedule 10 of Social Security (Scotland) Act.

practice, the requirements/objectives of human rights law and the principles overlap to a significant extent.

As we stated in our DACYP report, and as recognised by both the WHO guidelines and primary legislation,¹⁰ disabled children’s enjoyment of the highest attainable standard of health can involve households spending extra on heating.¹¹ To fulfil the right to an adequate standard of living, the state may need to provide support with these additional costs where households face difficulty doing so themselves.¹² CWHA is a step towards meeting these rights. In doing so, it can be portrayed as an enhancement of the child’s right to benefit from social security and an example of the Scottish Government prioritising the best interests and “recognising the special needs” of disabled children.¹³

Correspondingly, CWHA is likely to contribute to the realisation of several of the social security principles, including by ensuring social security contributes to the realisation of other rights in line with principle (b). By providing extra financial resources to households including disabled children, who are disproportionately likely to experience fuel poverty and other forms of poverty,¹⁴ it can be expected to reduce levels of both low income poverty and material deprivation¹⁵ in line with principle (e) and the statutory targets.¹⁶ It can also be argued that providing additional support to a vulnerable group is in the interests of those who have been identified as requiring assistance and can help them feel their dignity is protected by making a contribution towards income adequacy, in line with principles (d) and (g).

¹⁰ Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 s3; WHO guidelines cited in the EQIA

¹¹ Convention on the Rights of the Child article 24; ; Convention on the Rights of Persons with Disabilities article 25

¹² Convention on the Rights of the Child article 27; Convention on the Rights of Persons with Disabilities article 12

¹³ Convention on the Rights of the Child article 3; article 23; article 26

¹⁴ See CRWIA and Fairer Scotland Duty reports

¹⁵ The material deprivation indicators include “in winter, able to keep accommodation warm enough” – see

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875331/households-below-average-income-quality-methodology-2018-2019.pdf

¹⁶ Child Poverty (Scotland) Act 2017

Prohibition of discrimination in the enjoyment of social rights

Non-discrimination provisions appear in multiple human rights agreements and it is well established that disability falls within this protection even when not explicitly listed as a prohibited ground for discrimination.¹⁷ Principle (g) also requires improvement of the Scottish social security system in ways that advance equality and non-discrimination. The absence of formal discrimination against disabled people is not sufficient to comply with the non-discrimination provisions. Special measures may be required to eliminate substantive discrimination, enabling people with impairments to participate in society and enjoy their other rights on equal terms with others.¹⁸

However, the approach embodied by these draft Regulations creates some differences of treatment that may require justification. The targeting of CWA at children in receipt of the highest rate care component of DLA excludes both children in receipt of DLA at lower rates and households in which only an adult is disabled. Yet such households with a disabled person are also disproportionately likely to be fuel poor and to contain poor children as per the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019. This issue is explored further in our report. Social security principle (g) on the advancement of equality and non-discrimination may be relevant to consider here.

Principle (h) states that the Scottish social security system should be efficient and deliver value for money. The Scottish Government's explanation that it is targeting support at households in which children are known to require care at night – so that warmer temperatures are required for longer periods – seems to speak to this principle. However, it is always important to reflect on whether efficiency and value for money are achieved at the expense of fairness.

¹⁷ International Covenant on Economic, Social and Cultural Rights article 2(2); European Convention on Human Rights article 14; Convention on the Rights of the Child article 2(1); Convention on the Rights of Persons with Disabilities article 5; European Social Charter preamble; see also CESCR general Comment 19 on the right to social security

¹⁸ CESCR General Comment 20 on non-discrimination in economic, social and cultural rights

The best interests of the child and the right to a voice

Children have a right to express their views on matters affecting them and to be heard in administrative proceedings¹⁹, while disabled people in general have a comparable right to an environment that facilitates their participation in public affairs.²⁰ This falls within the requirement of principle (f) that the social security system should be designed with the people of Scotland. It has implications for the policy development process, which ought to provide opportunities for input from disabled children themselves, and not just from parents, carers and organisations or professionals speaking on their behalf.

In the Children's rights and wellbeing impact assessment (CRWIA), the Scottish Government states that direct consultation with children and young people on the development of these Regulations was not possible due to COVID-19. This is undoubtedly true. However, the policy reflected in the current regulations was developed alongside policy for Child Disability Payment, long before Covid-19 was an issue. The intent is essentially unchanged from that embodied by Part 6 of the DACYP Regulations, prior to which there was no equivalent obstacle to involving children in policy development. While the Scottish Government has informed the Commission that some engagement with children and young people and their families took place in the development of policy on CDP, we have not seen any document setting out how this process informed the development of policy on CDP in general or CWHA in particular. Indeed, the CRWIA for CDP makes no mention of direct involvement of children and young people in its development. In line with the Lundy model of child participation,²¹ it is important that children and young people are not only consulted, but have a genuine influence and are seen to have an influence on policy decisions affecting them.

Recommendation 2: The Scottish Government should ensure that the voices of children and young people inform the development of assistance that affects them and that their views inform the future implementation and evaluation of the CWHA.

¹⁹ Convention on the Rights of the Child article 12; Convention on the Rights of Persons with Disabilities article 7

²⁰ Convention on the Rights of Persons with Disabilities article 29

²¹ https://ec.europa.eu/info/sites/info/files/lundy_model_of_participation.pdf

4. Policy intentions

Overview

The purpose of CWHHA is to recognise that children and young people in receipt of the highest rate of DLA care component will require significant levels of support both through the day and night. The payment aims to mitigate some of the increased fuel costs these individuals and families experience as a result of requiring to heat their homes through the night and reflect that, for many families, they will also be present in their home more often throughout the day. The assistance is forecast to benefit around 16,000 children in the first year, at a cost of £3.5m.²²

A household is in fuel poverty if it needs to spend more than 10 per cent of income, after having paid housing costs, on reasonable fuel needs and is not left with enough money to maintain an acceptable standard of living. This is set out in the Fuel Poverty Act, which also sets out a reasonable temperature for the home to support wellbeing and how many hours it should be heated to that temperature.

If someone has a long-term health condition or is in receipt of a disability benefit such as DLA or Personal Independence Payment, they are assumed to need a warmer home e.g. 23 degrees Celsius for the living room instead of the standard 21 degrees. If they are at home morning or afternoon on weekdays, they are assumed to need to heat their home for 16 hours every day, instead of the standard 9 hours on a weekday and 16 hours at the weekend. Thus, these higher requirements and consequently higher fuel costs mean that households where someone is on a disability benefit need a higher level of income to maintain a healthy temperature and to stay out of fuel poverty. Providing a cash lump sum in the winter to families of disabled children with high support needs is one way (although not the only possible way) of reducing their exposure to fuel poverty. It may also contribute to addressing child poverty targets more generally, given evidence that families with disabled children are disproportionately likely to be poor.²³

²² <https://www.gov.scot/publications/consultation-disability-assistance-scotland-scottish-government-response/pages/4/>.

²³ The CRWIA notes, for example, that “Child material deprivation in households containing a disabled person reaches 20% compared to 8% of households without a disabled person.”

Targeting assistance

The Scottish Government's impact assessments²⁴ reflect a well-established evidence base that households including a disabled person can have additional heating requirements and are disproportionately likely to experience poverty, including fuel poverty. However, the statistics presented show the relationship between poverty and disability generally, rather than a specific link between poverty and child disability. While the Fuel Poverty Act identifies people on **any** rate of DLA care or mobility component as having extra fuel costs, the CWHA is targeted only at children and young people on the highest rate of DLA care component. The reasoning is that, because entitlement conditions for this rate of DLA require a child to need attention or supervision both day and night to qualify, fuel costs will be higher still for these households. This effectively targets the payment at those who need to heat their home for 24 hours a day rather than the 16 hours a day specified in the Fuel Poverty Act.

The Scottish Government is developing a fuel poverty strategy, as required by the Act. Moreover, legislative competence for winter fuel-related benefits will transfer to Scottish Ministers in 2022, at which point there should be an opportunity to review and simplify the plethora of different forms of winter fuel-related provision. In line with the principle of continuous improvement and the objective of progressive realisation of social and economic rights, the Scottish Government should continue to consider the appropriateness of extending additional support with energy costs to a wider range of households including a disabled person as it develops policy on devolved disability and winter heating assistance.

Recommendation 3: The Scottish Government should clarify further the rationale for targeting CWHA only on the highest rate care component and whether it intends to extend eligibility in the future.

Retrospective awards

SCoSS welcomes the clear policy intention, reflected in simple, straightforward rules in the draft CWHA Regulations, for accessing this assistance and the automation of payments through a shared data agreement with DWP. This is the first time SCoSS has scrutinised regulations which provide for a payment to be administered mainly on a

²⁴ Equality Impact Assessment; Business and Regulatory Impact Assessment; Child Rights and Wellbeing Impact Assessment; and the Island Communities Impact Assessment. The Scottish Government also provided a report under the Fairer Scotland Duty.

fully automated basis. The automation of payments where possible, particularly where relatively small sums of money are involved, is consistent with social security principle (h) and the Charter commitment to make processes and systems simple, clear and timeous.²⁵

However, in circumstances where DLA care component at the highest rate is awarded retrospectively, for example following a revision, supersession or appeal, the policy intention, and hence the regulations, could be more explicit. Clear, detailed guidance will be needed to ensure consistency of decision-making in such situations. Clearly, take-up will be maximised if payments can still be made automatically. However, if this is not practicable, guidance will need to clarify the process to be followed. We note a possible role here for DWP. A child retrospectively awarded DLA at the qualifying rate would have to apply for CWA, so ideally when a child in Scotland receives a retrospective award they would be signposted to apply for CWA.

Recommendation 4: The Scottish Government should produce clear, detailed, accessible guidance to ensure clarity about the process when CWA becomes payable due to a retrospective award of DLA.

6. Eligibility

16 to 18-year-olds

Young people under age 18 are eligible for CWA as long as they are on the right rate of DLA. From age 16, the usual process has been to invite young people on DLA to claim Personal Independence Payment (PIP), which would mean losing eligibility for CWA. However, Scottish Government officials have confirmed that young people in Scotland who reach 16 from September 2020 will be able to stay on DLA until age 18 if they choose. This is called the 'Rising 16' policy.²⁶ In terms of eligibility for CWA under these draft regulations, the Rising 16 policy essentially means that 16 to 18-year-olds will be eligible for CWA in much the

²⁵ "Make communications, processes and systems as simple and clear as possible by testing them with the people who will use them"

https://dgxmvz0tgkndr.cloudfront.net/production/images/general/Our-Charter_1.pdf

²⁶ Now in the Personal Independence Payment (Transitional Provisions) Amendment (Scotland) Regulations 2020

same way as if the introduction of Child Disability Payment (the replacement in Scotland for DLA) had not been delayed.

Either way (under DLA or under Child Disability Payment), this does mean that young people under 18 who choose to claim PIP instead will not be eligible for CWHA. Benefit transitions generally for young disabled people are complex and often not well understood. This can lead to young people not getting all their entitlements or not being aware of the implications of choices they make. For example, they may be incentivised to stay on DLA so as to keep CWHA, when in practice they might be better off on PIP. In disseminating information about CWHA, the Scottish Government should therefore make particular efforts to ensure information is clear about 16 to 18-year-olds' entitlement.

Recommendation 5: To maximise take-up amongst 16 to 18-year-olds, the Scottish Government should ensure that information on CWHA and interactions with DLA and Personal Independence Payment is clear and reaches young people and those who support them.

Qualifying Week

The eligibility date for claiming the CWHA is restricted to a one week period in September. SCoSS understands that this date has been set to allow for DWP data transfer processing/ data cleansing to be done in advance, and to align with DWP benefits. It is unclear whether this is a temporary expedient arrangement to enable the introduction of CWHA for the coming winter, or whether it is intended as a longer term arrangement and, if so, how much scope there would be to change it.

Overall, SCoSS questions whether there is a need to restrict eligibility to a qualifying week at all, not least because the regulations provide for eligibility for CWHA to be determined with and without an application. We would like to understand why it would not be possible for any household in which a child/young person receives DLA at the appropriate rate at any point during the winter to be eligible for CWHA.

Recommendation 6: As soon as an opportunity arises to review CWHA, the Scottish Government should consider the feasibility of widening the qualification window to include children and young people in receipt of DLA at any point through the winter months.

Furthermore, SCoSS noted in its report on the DACYP draft regulations that, in time, the Scottish Government aims to improve the way WHA is delivered, including to rural households who are not on the gas grid and may have higher upfront costs. It would seem sensible to consider the feasibility of paying WHA early to off-grid households, reviewing implementation and comparing the impact across urban and rural areas, when reviewing the case for the qualifying week.

Residential Care

SCoSS notes that there is a distinction drawn in the regulations between children and young people in hospital and those in residential care. Those in hospital will receive CWHA but those in residential care will not.

This difference was not highlighted in the Scottish Government's policy note accompanying the draft regulations and we are grateful to SCoSS stakeholders for pointing it out. We understand from the Scottish Government that underlying this is a view that hospital admissions are temporary whereas moving into residential care tends to be for a longer period, and perhaps even permanent.

SCoSS considers this approach to be overly restrictive. It cannot safely be assumed that a stay in residential care would be long-term, or that in hospital it would be short-term. Children and young people who normally live at home and have regular short breaks in a care home could miss out depending on the timing of the break in relation to the qualifying week for the CWHA. Short-term breaks can benefit the wellbeing of all concerned and there should be no disincentive to take them when needed. Moreover, the onus should not be on families to know enough about the CWHA to be able to base a decision on the timing of short breaks.

Furthermore, winter heating assistance for disabled children is being introduced ahead of winter heating assistance for people over pension age, which will replace the current Winter Fuel Payment. We note that Winter Fuel Payment **is** paid to people who live in residential care. It would be inconsistent if people over pension age living in residential care were to be eligible for winter heating assistance but not disabled children living in residential care.

Recommendation 7: The Scottish Government should extend CWHA entitlement to children in residential care so that they are treated the same as children in hospital.

Death before qualifying week

Draft regulation 4(2), 'Eligibility rules for winter heating assistance', states that a payment condition is not met where the individual has died before the qualifying week. Given that benefit entitlement stops when somebody dies, it is not clear why this provision is needed for CWHAs and not for other types of assistance. If a payment is made before Social Security Scotland has been notified of the death of a child, there should be clear guidance about whether the payment would be recovered and this should be in line with the social security principle (d) on dignity and respect.

Recommendation 8: The Scottish Government should remove regulation 4 (2), regarding a payment condition not being met where the individual has died before the qualifying week, and ensure there is clear, sensitive guidance in place concerning the recovery of payments.

Residency

Each type of Scottish social security assistance has rules about residence in Scotland. In these CWHAs regulations, the rule (in regulation 4(1)(c)(ii)) is that to qualify a person must be 'resident in Scotland'. In contrast, in Best Start Grant regulations, the rule is that a person must be '**ordinarily** resident' in Scotland, which is the more usual formulation for benefit entitlement. In practice, there may be little difference in the way Social Security Scotland decides about residency. However, in law, the definitions are different, with 'ordinarily resident' drawing a clearer line where there is potential residency in more than one country.

SCoSS has previously highlighted the importance of ensuring consistency wherever possible when establishing different forms of devolved social security assistance, in the interests of designing out avoidable complexity and promoting simplicity from the outset. This is a case in point.

Recommendation 9: The Scottish Government should ensure consistency across all types of social security assistance regarding the test of residency in Scotland.

7. Applications and determinations

Day of application

Draft regulation 7, dealing with applications, states that an application is to be treated as made on the day—

“(a) it is received by the Scottish Ministers, or

(b) when the Scottish Ministers receive evidence of a genuine and sufficient link to Scotland”.

Clearly, the day an application is received and the day evidence of a genuine and sufficient link to Scotland is received could be different days. Furthermore, the day of application is relevant to the right to getting a determination and therefore onward redetermination and appeal rights. It would therefore be helpful to clarify which day will take priority.

Recommendation 10: The Scottish Government should clarify what will be treated as the day of application.

Right to a Determination

At present the draft Regulations only place a duty to make a determination on an application if the individual is thought to be entitled to CWA. However, the Social Security (Scotland) Act (sections 37 and 40) requires that a determination be made and notification issued whatever the outcome. This is an important procedural point, as a notification of determination is required in order to be able to request redeterminations and appeals.

Having raised this with Scottish Government officials we welcome their confirmation that regulation 6 will be re-drafted to make clear that anyone who applies for CWA – however that application is decided – will receive a determination and will, therefore, have a right to a redetermination and a subsequent appeal.

Observation 2: SCoSS welcomes the Scottish Government’s expressed intention to amend the regulations to make it clear that anyone who applies for CWA will have a right to a determination and appeal.

8. Delivery

Provision for Appointees

Draft regulation 13 allows Social Security Scotland to make a young person's £200 payment to someone else, for example their parent, if that is what the young person prefers, without having someone formally appointed to act on their behalf in every aspect of their application and award.

Officials have assured the Commission that guidance will underpin the process of paying assistance to another person to safeguard young people from potential financial abuse. In developing this process, there is also a need to take the views of young people into account and, in line with the Charter, ensure these powers do not just protect young people from harm but actively support them to play a full and active part in society, for example, by being able to choose how their social security assistance is managed.

Provision for formal appointments is in the Social Security (Scotland) Act 2018, and changes to these are planned in the Social Security Tribunal Membership and Administration Bill. The Commission would welcome clarification that draft regulation 13 is not required to provide for payments to appointees and that, more generally, regulations are not required for appointees to act for children and young people in other aspects of the application and award.

On a technical note, draft regulation 13(2) provides for switching the person to whom continued payment is made. While this would be relevant to DACYP, where regular payments are made, it seems unnecessary for CWHA where there is one payment per year. Rather, we would suggest that payment should not default to another person who received the payment the year before but that the situation is considered afresh.

Recommendation 11: The Scottish Government should develop processes for paying assistance to others that both protect and empower young people; and provide clarification that regulations are not required for appointees to act for children and young people in relation to applications, awards and payments.

Reliance on DWP data

The delivery of CWHAs to schedule depends on the receipt of data from DWP to identify eligible households at a time when, as the Cabinet Secretary has acknowledged, DWP faces considerable operational pressures. We are pleased that the Scottish Government nonetheless reports that preparatory work is “progressing well” and that it is confident of delivering on time.

Observation 3: SCoSS would welcome further clarity about the implications of the necessary DWP data not being made available when expected.

9. Annex - Scrutiny timeline

14 April 2020: Draft policy note on CWHA provided by Scottish Government officials

13 May 2020: SCoSS Board meeting: Briefing from Scottish Government official on draft policy note

14 May 2020: Draft CWHA Regulations referred to SCoSS by the Cabinet Secretary for Social Security and Older People

20 May 2020: SCoSS requested written submissions from stakeholders

16 June 2020: SCoSS Board meeting: Members discussed issues to include in the SCoSS scrutiny report and then received further briefing from Scottish Government

17 June 2020: Scottish Government provided CWHA impact assessments

6 July 2020: Informal SCoSS meeting to consider draft report