

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), a form of assistance to mitigate some of the impact of additional domestic heating costs for those of state pension age. This new form of social security assistance will be administered by Social Security Scotland and will replace Winter Fuel Payment (WFP) in Scotland.

Policy Objectives

Section 30 of the Social Security (Scotland) Act 2018 confers powers on 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.

We are introducing Pension Age Winter Heating Payment (PAWHP) which will replace the UK Government's Winter Fuel Payment (WFP) in Scotland from winter 2024/25.

The key aim of this benefit is to mitigate some of the impact of additional domestic heating costs in winter by providing universal, reliable financial support to people of pension age who are more vulnerable to cold temperatures due to their age and therefore have a greater need for household heating.

The Scottish Government have committed to a like-for-like replacement of this benefit for launch in winter 2024/25. Therefore, everyone who would currently be eligible for WFP will continue to receive the same level of support. PAWHP will be a single annual payment of £100, £150, £200 or £300 for individuals, dependent on the person's age and their household circumstances during the qualifying week. We anticipate that approximately 1 million individuals will receive PAWHP each year, the biggest transfer of cases from the Department of Work and Pensions (DWP) since the inception of Social Security Scotland.

The regulations include details of eligibility rules for entitlement to PAWHP and the amount (or value) of the payment, as well as provision for determining eligibility (with and without application), making a determination after an error has occurred

resulting in overpayments or underpayments, and lays out the relevant provision for Social Security Scotland to handle redeterminations.

Eligibility Rules

We will continue to identify eligible clients each year during the relevant qualifying week. The qualifying week will be the seven consecutive calendar days starting on the third Monday of September. This reflects the approach taken currently for Child Winter Heating Payment and, importantly, aligns with the qualifying week for Winter Fuel Payment.

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 residential care 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.

The rationale behind the exclusions is that public funds are likely to cover the costs of heating the accommodation and therefore no additional support is required.

Those who are living in residential care (and have been for the 12 weeks prior to the qualifying week) and receiving one of the specific benefits receive no payment. This is because people living in a care home and in receipt of an income-related benefit are likely to receive public funding for their care and accommodation costs including heating through funding from the local authority. As this is still the case for the vast majority of people receiving Pension Credit, the WFP is not payable. These exclusions 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.

We have also excluded the non-lead claimant of one of the 'relevant benefits'. This is because payments are made to the lead claimant on behalf of both individuals within that claim, reflecting the approach taken for delivery of WFP.

Residence and Presence conditions

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

- Of state pension age
- Ordinarily resident in Scotland or are;

- 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, and hasn't been claiming WFP previously, 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 Pension Age Winter Heating Payment

Household composition will be taken into consideration when determining payment amount. Generally, a household with individuals who are state pension age but under 80 will receive £200. Households with an individual over 80 will receive £300.

Household composition	State pension age during qualifying week but under 80	80 or over during qualifying week
Person qualifies and lives alone (or none of the people they live with qualify)	£200	£300
Person qualifies and lives with someone under 80 who also qualifies	£100	£200
Person qualifies and lives with someone 80 or over who also qualifies	£100	£150
Person qualifies and lives in a care home and do not get certain benefits	£100	£150

Payment value may be different if the client or their partner get one of the following benefits:

- Pension Credit
- Income-based Jobseeker's Allowance (JSA)
- Income-related Employment and Support Allowance (ESA)

- Income Support

Where someone receives Pension Credit, for example, (either individually or jointly) a single payment to the lead claimant will be made and this will always be the maximum value available for the age bracket of those in that claim, acknowledging that they have a lower income and therefore may require additional support.

Household composition	State pension age during qualifying week but under 80	80 or over during qualifying week
Qualifies if person gets one of the benefits and lives alone (or none of the people they live with qualify)	£200	£300
Person qualifies and lives with someone who also gets one of the benefits (joint claim)	£200 – only the lead claimant will get the payment	£300 – only the lead claimant will get the payment
Person qualifies, lives in a care home and gets one of the benefits	Nil	Nil

Determination of entitlement without receiving an application

DWP will provide Social Security Scotland with the data required to make automatic payments for clients who are of state pension age during the qualifying week and who are ordinarily resident in Scotland. This data will be processed by Social Security Scotland and payments made to each of these individuals (or other appropriate person) as soon as practicable when launched in Winter 2024/2025.

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.

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).

Applications

Applications will be required in specific circumstances as laid out in the draft regulations. Ministers will be under a duty to make a determination of an applicant's entitlement on receiving an application in terms of section 37 of the Social Security (Scotland) Act 2018. These determinations will be subject to both re-determination and appeal rights as will the determinations without application.

Application window

We have regulated for the closure of the application window only to allow operational flexibility in when applications open going forward. Applications for PAWHP will close on 31 March, reflecting the service DWP currently provide. The rationale for this is that PAWHP is intended to provide support during the winter. If the winter has passed and the individual has not received automated support and has not applied during the winter period, then it can be assumed the support is no longer required after 31 March. Late applications will be permitted in exceptional circumstances.

Periods in respect of a re-determination request

The regulations provide 42 days for a client to request a re-determination and 56 days for Social Security Scotland to make a decision on a re-determination request. These timescales are deemed appropriate given the high caseload associated with the launch of PAWHP and the complexity of decision making on individual cases.

PAWHP is an age-based benefit with variable award levels, which would impact the challenge process due to increased complexity. During a re-determination for PAWHP, household matching may be required, as well as allowing time for clients to gather further supporting information regarding the qualifying week. This timescale to complete re-determinations will allow Social Security Scotland to manage these requests effectively, reducing the risk of re-determinations going out-of-time.

In summary, these enhanced timeframes for re-determinations would provide more time and flexibility for clients to challenge their PAWHP award, as well as ensuring sufficient time for Social Security Scotland to consider PAWHP award level, gather supporting information and complete household matching during the re-determination. This aligned approach would promote 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, and it is anticipated most re-determinations will be completed more quickly.

Consultation

We consulted between 23 October 2023 and 15 January 2024 on the proposed policy: a like-for-like transfer of the benefit, 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 Panel, 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 will be published imminently and will be 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 \(www.gov.scot\)](http://www.gov.scot)

Scottish Commission on Social Security - scrutiny of the draft Regulations

Under section 97 of the Social Security (Scotland) Act 2018, the Scottish Ministers are required to inform the Scottish Commission on Social Security (SCoSS) of their proposals in relation to regulations made under any section in Chapter 2 of Part 2 to the 2018 Act. Having been informed of any such proposals, SCoSS must then prepare a report setting out its observations and recommendations in relation to the proposals. SCoSS may also be required to scrutinise and report on any further matters which the Scottish Ministers request under section 22(1)(b) of the 2018 Act. As a result a draft of the regulations is now shared with SCoSS.

The Scottish Government will publish its formal response to SCoSS's report when laying these regulations before the Scottish Parliament.

Impact Assessments

Draft versions of the Equalities Impact Assessment, Fairer Scotland Duty Assessment and Island Communities Impact Assessment were previously published alongside the consultation. The final version of these are due to be published alongside the regulations when these are laid in Parliament. Due to the like-for-like delivery of this benefit, these impact assessments have identified that the introduction of PAWHP is likely to have a neutral impact. A Data Protection Impact Assessment (DPIA) was developed alongside the consultation and further work is underway to develop a DPIA to accompany this legislation when laid in parliament.

PAWHP will not solely be a fuel poverty measure but continues to provide reassurance to older people that they can afford to keep warm in the winter months when heating bills are higher. This is particularly important given the significant increase in the cost of living. In addition to the targeted support for fuel for older

households, this also provides a vehicle for any additional financial support that may be required.

Financial Effects

A draft Business and Regulatory Impact Assessment (BRIA) has been published alongside the consultation, with the final version due to be published alongside the regulations when these are laid in Parliament. The Scottish Government does not believe that Pension Age Winter Heating Payment 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. Legal Assistance will continue to be available to individuals to appeal an entitlement decision to the Upper Tribunal, Court of Appeal or Supreme Court. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of Pension Age Winter Heating Payment. Current recipients of Winter Fuel Payment are already able to access legal aid to appeal entitlement decisions.

Scottish Government
Social Security Directorate
29 April 2024