



Scottish  
Commission  
on Social  
Security

**Scottish Commission on Social Security**

**Scrutiny report on draft Regulations:**

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

**Submitted to the Scottish Government and the Scottish Parliament's Social Security Committee on 22 July 2024.**

**SCoSS/2024/05**

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## **Summary of recommendations and observations**

**Recommendation 1: The Scottish Government should define in regulations what constitutes “free in-patient treatment”.**

**Recommendation 2: In regulation 5(a) the Scottish Government should replace the words “in the qualifying week” with the words “throughout the qualifying week”.**

**Recommendation 3: The Scottish Government should amend regulation 5(c)(iii) to add the words “in respect of the qualifying week” to ensure that getting benefit for an earlier period is ignored in deciding whether someone living in a care home is excluded from Pension Age Winter Heating Payment. Similar amendments should be made to regulations 9(2)(c)(ii) and 10(3)(b)(ii).**

**Recommendation 4: The Scottish Government should define in regulations what constitutes a “lead claimant” in terms that reflect how Pension Credit and other relevant benefits operate legally.**

**Recommendation 5: Following the launch of Pension Age Winter Heating Payment, the Scottish Government and Social Security Scotland should monitor the numbers and characteristics of people who apply for the benefit and how the application process is working in practice. Data collected should inform work with stakeholder organisations to help people understand whether they can expect to be paid Pension Age Winter Heating Payment automatically, or need to apply.**

**Recommendation 6: The Scottish Government should align the periods of time in which requests for re-determinations for Scottish winter heating payments can be made.**

**Recommendation 7: The Scottish Government should ensure provision of suitable information materials to allow people to check whether they should have received an award of Pension Age Winter Heating Payment, but did not.**

**Recommendation 8: The numbers opting out of receiving Pension Age Winter Heating Payment, and associated communications, processes and administration of opt-outs by Social Security Scotland, should be kept under review.**

**Recommendation 9: When revising its equality impact assessment the Scottish Government should give consideration to the aims of the Public Sector Equality Duty and collect further relevant data to inform longer-term development of Pension Age Winter Heating Payment.**

**Observation 1: SCoSS recognises that there may be practical administrative barriers to changing the proposed qualifying week for Pension Age Winter Heating Payment this winter, and we believe that aiming to make payments in time for winter fuel bills is the right priority. However, after this winter, a solution should be sought to align qualifying weeks while not excluding people from help.**

**Observation 2: SCoSS notes that temporary circumstances such as a short period in legal custody can result in people being excluded from Pension Age**

**Winter Heating Payment. As part of its plans for monitoring and research of Pension Age Winter Heating Payment the Scottish Government could consider the impact on people who are excluded from entitlement due to temporary circumstances.**

## Executive summary

This report details our views on Pension Age Winter Heating Payment (PAWHP) as per the draft Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024. The draft regulations introduce PAWHP, initially as a like-for-like replacement for the UK Government's Winter Fuel Payment. PAWHP will have the same eligibility criteria and payment amounts, so that people who are currently eligible for a WFP continue to be so for the winter 2024/25.

We have recommended that entitlement rules could be further defined to outline what constitutes "free in-patient treatment" and the circumstances in which this would affect someone's entitlement to PAWHP. The regulations also use the term "lead claimant" and we believe that the draft regulations would benefit from a definition of this term to reflect how Pension Credit and other relevant benefits operate.

While an individual would, generally, not need to apply for PAWHP because payment is usually made automatically, applications could be required in certain circumstances. We believe that close monitoring of how this works in practice would aid future public understanding of whether they can expect to be paid PAWHP automatically, or if they need to apply.

Under the Winter Fuel Payment scheme there were errors relating to whether an eligible pensioner lived with another eligible person, leading to both overpayments and underpayments. To mitigate the risk of similar errors going unnoticed when PAWHP is live, we have recommended that the Scottish Government should ensure provision of suitable information materials to allow people to check whether they should have received an award of PAWHP, but did not.

The Scottish Government will provide an option for people to opt out of receiving PAWHP if they feel they do not require the additional support. We have noted that the numbers opting out of receiving Pension Age Winter Heating Payment, and associated communications, processes and administration of opt-outs by Social Security Scotland, should be kept under review.

SCoSS asked a significant number of written questions of officials which received responses to a short timescale. We would like to express our thanks to officials for the detailed responses they have given which have been helpful in improving our understanding of decisions they have made and the policy intention behind the draft regulations.

# 1. Introduction

## 1.1 Overview

The Scottish Commission on Social Security (SCoSS) is pleased to present its report on the draft Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024 (referred to in this report as the 'draft Regulations').

Currently most older people over State Pension age in the UK are entitled to a Winter Fuel Payment (WFP) from the UK Government.<sup>1</sup> Paid to more than a million people in Scotland at a total cost of around £180m for winter 2024/25,<sup>2</sup> WFPs were introduced in 1997 as a one-off payment each winter to help with fuel costs, in addition to any payments from the cold weather scheme. Older people were targeted due to their vulnerability to the cold and the greater likelihood of being on fixed incomes.<sup>3</sup> Payments are largely automatic for a qualifying person, being based on the Department for Work and Pensions' (DWP) records rather than an application.

The Scottish Government provides two other social security payments related to winter heating costs, the Child Winter Heating Payment<sup>4</sup> and the Winter Heating Payment.<sup>5</sup> The Child Winter Heating Payment is a payment made once per year in order to help disabled children and young people and their families with increased heating costs over winter. The payment is usually automatic where the child or young person is entitled to the highest rate of disability benefits.<sup>6</sup> The payment for winter 2024 to 2025 is £251.50.<sup>7</sup> The Winter Heating Payment is a payment made once per year in order to help people on means-tested benefits who might have extra heating needs. This payment is also usually automatic for those who have been awarded a means-tested benefit and meet the other criteria;<sup>8</sup> the payment for winter 2024 to 2025 is £58.75.<sup>9</sup>

As part of the continuing process of devolving some benefits to the Scottish social security system, the draft Regulations will introduce a Pension Age Winter Heating Payment (PAWHP) to Scotland, replacing WFP. PAWHP will, initially, be a like-for-like benefit with the same eligibility criteria and payment amounts as WFP. The Scottish Government has acknowledged, however, "that further development work will be required as we continue to explore the potential longer-term development of Pension Age Winter Heating Payment."<sup>10</sup> We discuss possible future changes to PAWHP in section 6 of this report.

Initially, PAWHP aims to address some of the impact of additional domestic heating costs in winter. The Scottish Government aims for PAWHP to provide "universal and

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<sup>1</sup> [Winter Fuel Payment: Eligibility \(www.gov.uk\)](http://www.gov.uk)

<sup>2</sup> Rising to £188m by winter 2028/29; draft Business and Regulatory Impact Assessment, p. 6.

<sup>3</sup> Section 3.2, [Pensioner benefits briefing paper CBP-06354, 14 January 2020 \(www.parliament.uk\)](http://www.parliament.uk).

<sup>4</sup> [The Winter Heating Assistance for Children and Young People \(Scotland\) Regulations 2020 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>5</sup> [The Winter Heating Assistance \(Low Income\) \(Scotland\) Regulations 2023 \(legislation.gov.uk\)](http://legislation.gov.uk)

<sup>6</sup> Such as the highest rate care component of Child Disability Payment or the enhanced daily living rate of Adult Disability Payment.

<sup>7</sup> [Child Winter Heating Payment \(www.mygov.scot\)](http://www.mygov.scot)

<sup>8</sup> Such as Universal Credit, you are responsible for a child under 5 and you are not in employment, or you have limited capability for work or your award includes a disabled child addition.

<sup>9</sup> [Winter Heating Payment \(www.mygov.scot\)](http://www.mygov.scot)

<sup>10</sup> [Referral – Winter Heating Assistance \(Pension Age\) \(Scotland\) Regulations 2024 - Scottish Commission on Social Security \(socialsecuritycommission.scot\)](http://socialsecuritycommission.scot)

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”.<sup>11</sup>

The Scottish Government refers to the policy rationale as to “mitigate some of the impact of additional domestic heating costs” and also to provide all older people with “additional money to meet increasing heating costs during the winter”.<sup>12</sup>

In this report we identify key regulations and areas for consideration.

## **1.2 Human rights and principles**

As required by the Act, our scrutiny was undertaken with regard to the Scottish social security principles<sup>13</sup> and relevant provisions of human rights law.

### **1.2.1 Human rights**

As a payment aimed at older people, the human rights instrument most relevant is the United Nations Principles for Older Persons (UNPOP).<sup>14</sup> This refers to principles of independence, participation, care, self-fulfilment and dignity.<sup>15</sup> PAWHP should contribute to these UNPOP principles in making a contribution to meeting the additional fuel costs, and continuing existing entitlement for individuals.

In themselves, the draft regulations introducing PAWHP make little or no additional contribution towards fulfilment of these rights compared to WFP, as the conditions and rates of award broadly mirror the existing WFP rules. As a like-for-like replacement benefit, the introduction of PAWHP is unlikely to change people’s rights in Scotland in the short term. In common with the launch of previous Scottish benefits, there are likely to be sound administrative reasons for this approach.

As we have stated in previous reports, good operational delivery that gives people confidence in the continuity of their payments and can effectively administer new claims is critical. Changing the rules too much before the transfer is completed could risk undermining delivery with detrimental consequences.

However, the principle of ‘progressive realisation’ of rights<sup>16</sup> will be relevant to considerations of proposals for the longer-term development of PAWHP. The Scottish Government will need to consider how future iterations of PAWHP and changes to the benefit over time interact with human rights and social security principles. These issues are considered further in section 6.

### **1.2.2 Social Security principles**

The Scottish social security principles are listed in Annexe A. The principles are embedded in Our Charter which sets out what people can expect from the social

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<sup>11</sup> [Policy Note \(socialsecuritycommission.scot\)](https://socialsecuritycommission.scot.nhs.uk/policy-note)

<sup>12</sup> Pages 2 and 3 respectively of the draft Equality Impact Assessment.

<sup>13</sup> [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2018/10)

<sup>14</sup> This statement of principles is not a legally binding set of rights (as would be the case for a human rights convention or covenant), but many of the principles broadly reflect rights protected by various conventions.

<sup>15</sup> [United Nations – OCHR and older persons](https://www.ohchr.org/en/instruments-treaties)

<sup>16</sup> And ‘non-regression’ of rights: see [Progressive Realisation and Non-regression \(www.escr-net.org\)](https://www.escr-net.org/).

These are contained in the International Covenant on Economic Social and Cultural Rights: [Frequently Asked Questions on Economic, Social and Cultural Rights \(www.ohchr.org\)](https://www.ohchr.org/en/instruments-treaties).

security system.<sup>17</sup> When viewed through the lens of the social security principles, PAWHP can represent an investment in the people of Scotland (principle (a)), especially as take-up is high (96%), and it represents a financial investment of £180m for about one million people.<sup>18</sup> Automatic payments may also support principle (d) (respect for the dignity of individuals is to be at the heart of the Scottish social security system).

In common with our observations above on human rights obligations, the additional contribution to the fulfilment of these principles compared to WFP will be limited. The level of investment in the people of Scotland and contribution to poverty reduction will likely be similar to WFP (although there may be some scope for improving take-up). If most people receive an automatic award, differences in operational practice between the DWP and Social Security Scotland should only be experienced by a minority who have to apply for PAWHP, or who request a redetermination.

The initial like-for-like transfer from WFP to PAWHP can also be seen as enabling the Scottish Government to fulfil the efficiency and value for money principle (principle (h)). Efficiency can be gained by ensuring a quick move which does not require expensive or detailed changes, though this like-for-like approach limits the scope to make improvements (principle (g)) from the start of its delivery.

From the consultation undertaken by the Scottish Government, with over 900 organisations and individuals responding to questions about PAWHP in the short and longer term, it appears that principle (f) that the Scottish social security system is to be designed with the people of Scotland on the basis of evidence, has been central to the initial thinking. The principles are considered further in section 6.

## **2. Eligibility**

### **2.1 Overview**

In the short term Pension Age Winter Heating Payment (PAWHP) will follow the UK Winter Fuel Payment (WFP) rules on a like-for-like basis so that people who are currently eligible for a WFP continue to be so for the winter 2024/25. The WFP provisions followed in the draft PAWHP regulations concern eligibility, exclusions from entitlement for certain groups (some hospital in-patients, some people in residential care or custody), applications, and payment amounts. However, the rules for challenging decisions will differ from WFP (see section 3.2).

### **2.2 Qualifying week**

Draft regulation 7 says that an individual must have reached pensionable age before or during the qualifying week. Draft regulation 2(1) says that the qualifying week begins on the third Monday in September.

Responses to the Scottish Government's consultation were broadly supportive of this approach, but some respondents noted concerns that "people who turn State Pension age following the qualifying week in September but during the winter will

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<sup>17</sup> [Our charter \(www.socialsecurity.gov.scot\)](http://www.socialsecurity.gov.scot)

<sup>18</sup> As expected in 2024/25, rising to £188m by winter 2028/29; draft Business and Regulatory Impact Assessment, p. 6.



miss out on support in that initial year”<sup>19</sup> (for example, those who claim State Pension between the end of the qualifying week and mid-December).<sup>20</sup>

PAWHP will become the third winter heating payment in Scotland. SCoSS notes that the qualifying weeks for these payments are not all the same. PAWHP has the same September qualifying week as Child Winter Heating Payment. However, the qualifying week for Winter Heating Payment, starts on the first Monday in November. The Winter Heating Payment qualifying week was moved from September to November in order to address concerns about the length of time between the qualifying week and the date of payment.<sup>21</sup>

In our Winter Heating Payment scrutiny report<sup>22</sup> SCoSS noted that moving the qualifying week to November was to the advantage of people who become eligible for a Winter Heating Payment later in the year (e.g. people who receive a qualifying benefit during the qualifying week).<sup>23</sup>

Similarly, a November qualifying week for PAWHP would enable people who reach pensionable age between September and November to qualify for that year’s payment. Further, those reaching age 80 in that period would be entitled to a higher rate for that year. However, this could have a knock-on impact on when individuals actually receive payment as data about entitlement to PAWHP would need to be available before payment can be processed, thus placing pressure on administrative processes.

Aligning qualifying weeks could aid simplicity and transparency for individuals and efficiency of administration. For example, someone who reaches pension age and receives Pension Credit may expect to get both PAWHP and Winter Heating Payment but receive only one due to the differing qualifying weeks (e.g. their birthday is between September and November). This kind of mismatch of expectations could put additional pressure on advice agencies and Social Security Scotland responding to queries from individuals.

SCoSS notes that responses to the Scottish Government’s consultation generally agreed with a November/December payment date, as this is when the weather is colder and heating bills increase. However, others argued for an earlier date (such as October) as Scotland becomes colder earlier than other parts of the UK and it would enable people to buy solid or liquid fuel in advance when they can be cheaper.<sup>24</sup>

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<sup>19</sup> [The Scottish Government Response to the Consultation on Pension Age Winter Heating Payment \(PAWHP\) \(www.gov.scot\)](https://www.gov.scot), pp. 12-13.

<sup>20</sup> In 2023, the number of people who claimed State Pension between the end of the qualifying week (25 September) and Christmas (data available to 17 December) was 158,803; [HC Deb 8 January 2024; written answer \(parliament.uk\)](#).

<sup>21</sup> [Policy note \(socialsecuritycommission.scot\)](https://socialsecuritycommission.scot)

<sup>22</sup> [The Winter Heating Assistance \(Low Income\) \(Scotland\) Regulations 2023 - Scottish Commission on Social Security \(socialsecuritycommission.scot\)](https://socialsecuritycommission.scot)

<sup>23</sup> [Scrutiny report – Winter Heating Assistance \(Low Income\) \(Scotland\) Regulations 2022 - Scottish Commission on Social Security \(socialsecuritycommission.scot\)](https://socialsecuritycommission.scot)

<sup>24</sup> [Pension Age Winter Heating Payment \(PAWHP\): consultation analysis \(www.gov.scot\)](https://www.gov.scot) Analysis of Consultation responses pages 16-17.

More broadly, the Scottish Fuel Poverty Advisory Panel has recommended consolidating the various winter heating payments in the longer term<sup>25</sup> (also discussed in section 6). This change could be in line with principle (g) (continuous improvement) and principle (h) (efficiency). However, SCoSS also notes that later qualifying weeks may require later payment dates, and that therefore a balance must be struck, as it is important to achieve the earliest possible payment date so that money is available when it is needed for winter fuel bills.

**Observation 1: SCoSS recognises that there may be practical administrative barriers to changing the proposed qualifying week for Pension Age Winter Heating Payment this winter, and we believe that aiming to make payments in time for winter fuel bills is the right priority. However, after this winter, a solution should be sought to align qualifying weeks while not excluding people from help.**

## 2.3 Restrictions

A person may be of pension age during the qualifying week, but not entitled to PAWHP, if they meet the conditions set out in draft regulations 4 and/or 5.

Draft regulation 5 says that an individual is not entitled to PAWHP if they are:

- receiving free in-patient treatment for more than 52 weeks, including “in the qualifying week”
- detained in legal custody “throughout the qualifying week”
- living in a care home or independent hospital throughout the qualifying week and the period of 12 weeks immediately before the qualifying week and are receiving a relevant benefit <sup>26</sup>
- an individual who is not the “lead claimant” when receiving a benefit as a member of a couple is also not entitled to PAWHP

SCoSS notes that what constitutes “free in-patient treatment” is defined in the WFP regulations<sup>27</sup> but not in the draft PAWHP Regulations. It is generally good practice to define such terms in regulations.

**Recommendation 1: The Scottish Government should define in regulations what constitutes “free in-patient treatment”.**

There is ambiguity in the wording of draft regulation 5 (a), which refers to being an in-patient “in” the qualifying week, which is not consistent with the wording of draft regulation 5(b) or (c), which refer to being in custody or a care home “throughout” the qualifying week. The distinction is important to someone who leaves hospital, custody or care in that week. Officials have confirmed that the intention is that regulation 5(a) should be in line with the other provisions.

**Recommendation 2: In regulation 5(a) the Scottish Government should replace the words “in the qualifying week” with the words “throughout the qualifying week”.**

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<sup>25</sup> [Consultation on the Pension Age Winter Heating Payment \(PAWHP\) - Scottish Fuel Poverty Advisory Panel \(fuelpovertypanel.scot\)](https://www.fuelpovertypanel.scot/)

<sup>26</sup> “Relevant benefits” are: state pension credit; income-based jobseekers allowance; income-related employment and support allowance; income support (regulation 2(1) of the draft Regulations).

<sup>27</sup> [The Social Fund Winter Fuel Payment Regulations 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk/)

With regard to the exclusion of people in custody, officials have confirmed that there was a drafting error in draft regulation 5(b), and that the updated regulation will include “under a sentence imposed by a court”. We welcome this clarification which will mirror the provision in WFP.

There is also ambiguity in the wording of draft regulation 5(c)(iii) which excludes from entitlement people living in a care home only if they also receive Pension Credit or another relevant benefit. However, as drafted, it is not clear which weeks of Pension Credit matter – whether just the qualifying week or also the 12 weeks before that. To mirror WFP, it is only receipt of a relevant benefit in respect of the qualifying week that matters. The same drafting as in regulation 5(c)(iii) also appears in regulations 9(2)(c)(ii) and 10(3)(b)(ii).

**Recommendation 3: The Scottish Government should amend regulation 5(c)(iii) to add the words “in respect of the qualifying week” to ensure that getting benefit for an earlier period is ignored in deciding whether someone living in a care home is excluded from Pension Age Winter Heating Payment. Similar amendments should be made to regulations 9(2)(c)(ii) and 10(3)(b)(ii).**

Instead of making two payments of £100 or £150 to couples who get Pension Credit or another ‘relevant benefit’, they get one double payment of PAWHP between them. This works the same way as the DWP’s Winter Fuel Payment. We understand that Social Security Scotland will only get bank details from the Department for Work and Pensions for the person who is the Pension Credit claimant and not for their partner so it is only administratively possible to pay PAWHP to the claimant. The amounts are listed in the table in section 4 below.

Draft regulation 5(d) uses the term “lead claimant” of a relevant benefit to make sure that only the Pension Credit claimant is entitled. This term is also used in draft regulations 9(3), 10(4) and 11(d). However, “lead claimant” is not defined in the draft Regulations. Officials have told us that it refers to the individual who receives the payment within a joint claim for any of the relevant benefits in regulation 2(1) (e.g. Pension Credit) and that they plan to include a definition to that effect. We are pleased that the term will be defined in the regulations, however, technically, these benefits are not claimed jointly by couples.<sup>28</sup> Only one member of the couple can be the claimant and entitled to benefit.<sup>29</sup>

For clarity, lead claimant should be framed in a way that reflects how Pension Credit and other relevant benefit claims operate legally, for example, by referring to the member of the couple who is entitled to benefit. Other less formal terms will be useful when explaining PAWHP in guidance

**Recommendation 4: The Scottish Government should define in regulations what constitutes a “lead claimant” in terms that reflect how Pension Credit and other relevant benefits operate legally.**

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<sup>28</sup> The [State Pension Credit Act 2002 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk) specifically excludes someone from entitlement to Pension Credit if their partner is entitled themselves.

<sup>29</sup> Universal Credit must be claimed jointly by a couple but usually only one of them is paid (see [Universal Credit: further information for couples \(www.gov.uk\)](http://www.gov.uk)) and previously joint claims from some couples were required for income-based Jobseekers Allowance.

Someone in residential care during the qualifying week (and the 12 weeks before that), is not eligible for PAWHP if they receive one of the "relevant benefits" (means-tested benefits including Pension Credit). Those in residential care who do not receive a "relevant benefit" receive half the usual award for their age.

Under the UK WFP scheme, reasons for differentiating between care home residents in this way were:

Residents of care homes who are not in receipt of Pension Credit are entitled to a shared Winter Fuel Payment of either £100 if they are aged 60 to 79 or £150 if they are aged 80 or over. [...] This is because they share the accommodation with other people who are also entitled to the payment and are responsible for a share of the heating costs.

Residents of care homes who are in receipt of Pension Credit are not entitled to a Winter Fuel Payment. This is because historically people living in a care home and in receipt of an income-related benefit have received public funding for their care and accommodation costs including heating. Originally this was through the income-related benefit itself but for many years now has been through funding from the local authority. As this is still the case for the vast majority of people receiving Pension Credit, the Winter Fuel Payment is not payable.<sup>30</sup>

Similarly, the Scottish Government has stated that this is because people living in a care home and getting a low income benefit are likely to receive public funding for their care and accommodation costs including heating, through funding from the local authority.<sup>31</sup> Other care home residents can receive half of the full rate of payment (see table in section 4 below). SCoSS notes that the Scottish Government's analysis of consultation responses indicated that residential care was one of the issues which attracted the least agreement across respondents.<sup>32</sup> The Government is not intending to make changes to the current rules for those in residential care.

However, SCoSS notes that the Scottish Government removed a proposed exclusion from the Winter Heating Payment regulations concerning people in alternative accommodation (such as a care home, hospital or prison) during the qualifying week, recognising that people's situations could change during the winter months but they may still be responsible for energy costs at home.<sup>33</sup>

PAWHP rules mitigate such concerns to some extent by not excluding people who have been in hospital for less than a year or in a care home for less than 3 months. However, someone may convalesce in a care home for a few months and return home to independent living. And just a week in prison in the qualifying week is enough to exclude someone from help with heating bills at home that winter.<sup>34</sup>

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<sup>30</sup> [Winter Fuel Payments: people in residential, House of Commons Library \(parliament.uk\)](#)

<sup>31</sup> [Policy Note \(socialsecuritycommission.scot\)](#)

<sup>32</sup> [The Scottish Government Response to the Consultation on Pension Age Winter Heating Payment \(PAWHP\) \(www.gov.scot\)](#), p. 9.

<sup>33</sup> [Winter Heating Assistance \(Low Income\) \(Scotland\) Regulations 2023 Ministerial - letter responding to SCoSS recommendations \(www.gov.scot\)](#)

<sup>34</sup> The Experience Panel also referred to people undergoing a short-term change in circumstances who could be excluded from PAWHP simply because of their situation during that week; [Social Security Experience Panels: Pension Age Winter Heating Payment \(www.gov.scot\)](#), p. 20.

**Observation 2: SCoSS notes that temporary circumstances such as a short period in legal custody can result in people being excluded from Pension Age Winter Heating Payment. As part of its plans for monitoring and research of Pension Age Winter Heating Payment the Scottish Government could consider the impact on people who are excluded from entitlement due to temporary circumstances.**

## **3. Processes**

### **3.1 Applications**

Generally, an individual would not need to apply for Pension Age Winter Heating Payment (PAWHP) as payment is usually made automatically. Draft regulation 12 stipulates that a determination without application of an individual's entitlement to PAWHP must be made for anyone where there is reason to believe that they would be likely to have entitlement to it.

Where PAWHP has not been paid, an individual can apply. In response to our queries, officials have stated that it is expected that an individual may need to manually apply if they are:

- not receiving a benefit administered by the Department for Work and Pensions (DWP) (including their State Pension) and have not received a Winter Fuel Payment (WFP) before, or
- have deferred their State Pension since their last WFP or PAWHP;
- if they live abroad, even if they do get a DWP-administered benefit; or,
- if they are part of a mixed aged couple in receipt of Universal Credit.<sup>35</sup>

Applications must be made by the end of March after the September qualifying week. Late applications can be accepted where there are sufficient reasons for the individual not having submitted their application by the deadline, or where the decision that an individual was entitled to a relevant benefit in respect of the qualifying week is taken after that week, or where the individual ceases to be excluded (during the qualifying week) from social security payments under immigration rules.<sup>36</sup>

Officials informed us that people will be able to submit an application for PAWHP over the phone, by posting a paper application form or through the Local Delivery service. SCoSS was also told that communications about the manual application routes, processes and deadlines would be made available via online and offline channels aimed at stakeholders and people who might be eligible. This includes mygov.scot webpages, and will be signposted to via a range of outputs including factsheets, news stories, social media and Social Security Scotland's stakeholder newsletter.

In addition, existing forums such as the Older People's Strategic Action Forum and Social Security Scotland's Operational Reference Group, as well as roadshow events, will be used to inform and prepare relevant stakeholders about the manual

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<sup>35</sup> Someone who is over Pension Credit qualifying age can claim Universal Credit if they have a partner who is under that age. Most couples will not be able to qualify for Pension Credit until both partners have reached Pension Credit age. [Mixed age couples: benefit impacts of ending access to Pension Credit and pension age Housing Benefit \(www.gov.uk\)](https://www.gov.uk/mixed-age-couples-benefit-impacts-of-ending-access-to-pension-credit-and-pension-age-housing-benefit).

<sup>36</sup> [Immigration and Asylum Act 1999 \(legislation.gov.uk\)](https://www.legislation.gov.uk/immigration-and-asylum-act-1999)



application process so they can support clients to apply. Key messaging will explain who needs apply, how and by when. Messaging will be regularly repeated across each channel and amplified closer to the deadline and will respond to feedback from ongoing stakeholder engagement to make sure messages are reaching and resonating with clients.

SCoSS also notes that, whilst the assumption is that only a minority will need to make an application, numbers may be fairly high (given the anticipated caseload of PAWHP overall).<sup>37</sup>

**Recommendation 5: Following the launch of Pension Age Winter Heating Payment, the Scottish Government and Social Security Scotland should monitor the numbers and characteristics of people who apply for the benefit and how the application process is working in practice. Data collected should inform work with stakeholder organisations to help people understand whether they can expect to be paid Pension Age Winter Heating Payment automatically, or need to apply.**

### **3.2 Re-determinations**

Requests for re-determinations for WFP must usually be made within one month; the draft Regulations allow people up to 42 days to request a re-determination for PAWHP. This is the same time limit as for re-determination requests for Adult Disability Payment, Carer Support Payment, Child Disability Payment and Child Winter Heating Payment, but longer than for other Scottish Social Security benefits for which the window is only 31 days. For Winter Heating Payment, Social Security Scotland should provide a response to a request for re-determination within 16 working days. Social Security Scotland should provide a response to a request for re-determination of PAWHP within 56 days; this is longer than some other social security payments because of the high caseload anticipated at launch and the complexity of decision making.<sup>38</sup>

SCoSS recognises that it is sensible for the time in which a response to a request for re-determination is required to be matched to the degree of complexity of the assessment Social Security Scotland are required to make for a particular payment. However, it is harder to justify having different periods of time within which a request for re-determination must be made for different payments. It is also likely to be confusing for recipients, who may have the same grounds for requesting a re-determination for two different social security payments and who are told that it is too late to make the request for one of the payments.

**Recommendation 6: The Scottish Government should align the periods of time in which requests for re-determinations for Scottish winter heating payments can be made.**

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<sup>37</sup> One Experience Panel survey found that over one in six respondents receiving the WFP had applied for it, though this only relates to 11 respondents. [Social Security experience panels: cold spell and winter fuel payment – report \(www.gov.scot\)](https://www.gov.scot/publications/social-security-experience-panels-cold-spell-and-winter-fuel-payment-report/pages/10/); further research with a representative sample of WFP recipients may be helpful in this area.

<sup>38</sup> [Policy Note \(socialsecuritycommission.scot\)](https://www.socialsecuritycommission.scot.nhs.uk/policy-note/)

## 4. Payments: amounts and payees

Rules governing the amount paid for Pension Age Winter Heating Payment (PAWHP) are set out in Part 4 of the draft Regulations, draft regulations 9, 10 and 11. These rules are complicated in terms of how much a given individual will receive, but working out a household's total award is relatively straightforward. Generally, a household with individuals who are State Pension age but under 80 will receive £200, and households with one or more individuals over 80 will receive £300. Where the recipient lives in a care home or independent hospital, these amounts are either halved (where they do not get Pension Credit or another means-tested benefit is received) or reduced to £0 (if they do get Pension Credit).

The following table, created in part from tables set out in the Policy Note,<sup>39</sup> summarises some examples of the amounts payable under different scenarios of household circumstances. Please note that this table is a simplification of complex rules and should not be used as an official reference source.

**Table 1: Examples of payment amounts**

Household composition	Individual is State Pension age or older but under 80 during the qualifying week	Individual is 80 or over during the qualifying week
Individual qualifies and lives alone (or none of the people they live with qualifies)	£200	£300
Individual qualifies and lives with someone under 80 who also qualifies	£100	£200
Individual qualifies and lives with someone 80 or over who also qualifies	£100	£150
Individual qualifies and lives in a care home or independent hospital <sup>40</sup> and does not receive a relevant benefit <sup>41</sup>	£100	£150
Individual qualifies and receives a relevant benefit as an individual claim or the lead claimant on a joint claim <sup>42</sup>	£200	£300

<sup>39</sup> [Policy Note \(socialsecuritycommission.scot\)](#)

<sup>40</sup> Throughout the qualifying week and the 12 weeks immediately preceding the qualifying week.

<sup>41</sup> "Relevant benefits" are: state pension credit; income-based jobseekers allowance; income-related employment and support allowance; income support.

<sup>42</sup> As noted in section 2.3, only one member of the couple can be the claimant and entitled to the benefit; we use the language contained in the draft Regulations for consistency.

Individual lives with someone else, with whom they have a joint claim for a relevant benefit, where they are not the lead claimant <sup>43</sup>	Nil –the lead claimant will get the payment	Nil – the lead claimant will get the payment
Individual lives in a care home or independent hospital <sup>44</sup> and receives a relevant benefit	Nil	Nil
Individual qualifies and lives with someone 80 or over, with whom they have a joint claim for a relevant benefit, where they are the lead claimant for that benefit	£300	£300

The table above highlights that the amounts payable involve both individual and household considerations. Calculating the correct amounts will rely on accurate data about living arrangements and benefit entitlement. We note that under the UK Winter Fuel Payment (WFP) there were errors relating to whether an eligible pensioner lived with another eligible person, leading to both overpayments and underpayments.<sup>45</sup>

To mitigate the risk of similar errors going unnoticed when PAWHP is live, clear and accessible communication would be key. Communications laying out eligibility and amounts payable to people across a range of circumstances would allow people to check for themselves and, where necessary, raise any discrepancies with Social Security Scotland.

**Recommendation 7: The Scottish Government should ensure provision of suitable information materials to allow people to check whether they should have received an award of Pension Age Winter Heating Payment, but did not.**

#### 4.1 Opting out

In line with WFP, the Scottish Government will provide an option for people to opt out of receiving PAWHP if they feel they do not require the additional support. A person who has opted out must opt back in should they wish at a later date to begin receiving PAWHP; once a person has opted out there will be no mechanism that automatically opts them back in. SCoSS notes that the numbers opting out of the WFP to date have tended to be very small;<sup>46</sup> there appear to be no data about numbers opting out in Scotland.

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<sup>43</sup> As noted in section 2.3, only one member of the couple can be the claimant and entitled to the benefit; we use the language contained in the draft Regulations for consistency.

<sup>44</sup> Throughout the qualifying week and the 12 weeks immediately preceding the qualifying week.

<sup>45</sup> [Social Fund Account 2022-2023 \(www.gov.uk\)](https://www.gov.uk), p. 11.

<sup>46</sup> An estimated 186 recipients of WFP in 2021: see [Only 186 pensioners opt out of Winter Fuel Payment in 2021 out of over 11m recipients \(ifamagazine.com\)](https://www.ifamagazine.com).





Age is a prominent protected characteristic in this policy, with 51% of WFP recipients living in Scotland over age 75.<sup>50</sup> Almost a third of recipients living in Scotland are over age 80 (a group which is entitled to higher amounts of PAWHP and which may also have additional needs which intersect with this older age range). Intersections between age and disability would also be relevant. Whilst existing data concerning some protected characteristics (such as sexual orientation/gender reassignment/religion or belief) is likely to be limited, consideration could be given to how these data gaps could be filled.

**Recommendation 9: When revising its equality impact assessment the Scottish Government should give consideration to the aims of the Public Sector Equality Duty and collect further relevant data to inform longer-term development of Pension Age Winter Heating Payment.**

## **5.2 Assessments and winter heating**

The draft Island Communities Impact Assessment (ICIA) highlights evidence that in island and rural communities, fuel poverty rates are higher, the climate is colder and being off gas grid is more likely to be an issue.<sup>51</sup> Additionally remote rural areas have a higher proportion of older people than the rest of Scotland.<sup>52</sup> Despite this the draft ICIA notes that Pension Age Winter Heating Payment (PAWHP) would have a 'neutral' impact<sup>53</sup> and with no evidence that would directly or indirectly discriminate against island residents.<sup>54</sup>

Whilst some respondents to the Scottish Government's consultation suggested that an alternative for some households could be direct payments to energy suppliers, SCoSS notes that this may not be practicable for people whose houses, for example, are heated by oil or coal.<sup>55</sup> The draft Fairer Scotland Duty Assessment (FSD) notes that around 100,000 off-gas-grid households (most of which are in island or rural communities) were in fuel poverty.<sup>56</sup> The draft FSD further states that an automatic payment to off-grid households would require a mechanism to identify such households, which was not considered to be a practicable option.<sup>57</sup> Although considered to have a neutral impact (relative to Winter Fuel Payment (WFP)) these assessments indicate that island and rural communities experience particular difficulties with winter heating, so the design of any financial support will have particular effects on such communities. It is therefore welcome that future developments of PAWHP will consider impacts on rural, island and off-grid communities.<sup>58</sup>

Also, the draft FSD concludes that, overall, replacing WFP with PAWHP is likely to have a 'neutral' impact on reducing inequality and tackling poverty for older people.<sup>59</sup> The emphasis here (as we also discuss in section 1) is that potential PAWHP

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<sup>50</sup> WFP households by region and age group: [Winter Fuel Payment statistics for winter 2022 to 2023 \(www.gov.uk\)](https://www.gov.uk/government/statistics/winter-fuel-payment-statistics-for-winter-2022-to-2023).

<sup>51</sup> Draft ICIA, paras 22-24.

<sup>52</sup> Draft ICIA, para 38.

<sup>53</sup> Draft ICIA, para 21.

<sup>54</sup> Draft ICIA, para 54.

<sup>55</sup> [Independent Age response - PAWHP consultation \(www.independentage.org\)](https://www.independentage.org/), p. 3.

<sup>56</sup> Draft FSD, p. 9.

<sup>57</sup> Draft FSD, p. 9.

<sup>58</sup> Draft ICIA, para 58.

<sup>59</sup> Draft FSD, p. 12.

impacts are considered relative to the WFP, not that PAWHP or WFP in themselves have no impact on individuals.

Both the draft Business and Regulatory Impact Assessment (BRIA) and the draft FSD highlights that one option considered by the Government included a scheme targeted on those experiencing fuel poverty.<sup>60</sup> The draft BRIA further notes that, as PAWHP is being introduced under section 30 of the Social Security (Scotland) Act 2018, there is no provision to enable entitlement based on financial circumstances and that a more targeted approach may not align with the commitment to financial security for older people.<sup>61</sup> However, enabling people to opt out of receiving PAWHP may help to reduce numbers of people on higher incomes receiving it.<sup>62</sup> We consider longer-term directions through the lens of the social security principles in section 6 below.

The draft BRIA also indicates that demands on third sector organisations to provide advice and support on PAWHP may change slightly but given the like-for-like approach and automation, should not require provision of complex advice.<sup>63</sup> However, if significant numbers of people do apply, the impact on the advice sector may be greater than anticipated. SCoSS believes that the impact of PAWHP on advice agencies, especially where an application has to be made, should remain under review.

SCoSS also welcomes statements in the draft BRIA and the draft FSD that PAWHP monitoring will be a continuous process,<sup>64</sup> and that evaluation will take place.<sup>65</sup>

## **6. Longer-term reforms**

As a scrutiny body concerned with social security, SCoSS's role is to consider developments through the lens of human rights instruments and social security principles. The Scottish Government has stated that it will be considering reforms to Pension Age Winter Heating Payment (PAWHP) in the longer term but at this stage have not set out any specific proposals. SCoSS understands from officials that changes are only likely to be possible during the next Parliamentary term.

In this section we highlight relevant social security principles which the Scottish Government may wish to consider when developing specific options.

SCoSS considers that there are two broad areas of potential longer-term reforms:

- Whether to retain the various winter heating payments as separate benefits or to integrate them into a single scheme;
- Whether to retain current eligibility or to replace it by a more targeted benefit.

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<sup>60</sup> Draft FSD, p. 6; Draft BRIA, paras 25-30.

<sup>61</sup> Draft BRIA, para 26.

<sup>62</sup> Draft BRIA, para 29.

<sup>63</sup> Draft BRIA, para 35.

<sup>64</sup> Draft BRIA, para 43.

<sup>65</sup> Draft BRIA, para 47.

## 6.1 Separate or single schemes

SCoSS has considered other forms of winter heating payments in previous scrutiny reports.<sup>66</sup> Our experience indicates that one direction of longer-term reform would be to consider whether to retain distinct winter heating payments, as now, or whether to consolidate them into a single scheme, even if each component has different criteria. Responses to the Scottish Government's PAWHP consultation included a recommendation to consolidate PAWHP with other winter heating payments.<sup>67</sup>

Aligning the three schemes could include common rules about qualifying weeks and payments dates whilst retaining distinct eligibility criteria (such as receipt of different benefits). The consolidation approach might also involve reviewing whether it remains appropriate to make more than one payment per household.

As noted in section 1, currently there are three schemes, one focussing on disabled children and young people (the Child Winter Heating Payment), one aimed at households receiving one of the means-tested benefits (Winter Heating Payment) and PAWHP, targeted at people over State Pension age. Some households could be eligible for more than one payment, such as people receiving Pension Credit who could be entitled to PAWHP and the Winter Heating Payment; if they have responsibility for a disabled child or young person they could also qualify for Child Winter Heating Assistance. However, the amounts payable, the time when they are paid and the qualifying week differ across the schemes. In the longer term such rules could be aligned but schemes kept separate, or the three schemes could be integrated into one single scheme.

Relevant social security principles to consider include continuous improvement (putting the needs of those requiring assistance first and non-discrimination (principles g(i) and g(ii)); and efficiency/value for money (principle h). Charter expectations also relevant in this context are to 'make communications, processes and systems as simple and clear as possible by testing them with the people who will use them'.

## 6.2 'Universal' or targeted benefit

The Scottish Government's draft 'Fairer Scotland Duty' (FSD) Impact Assessment described the options considered by the Government as either mirroring Winter Fuel Payment (WFP) rules or taking a more targeted approach.

Responses to the Scottish Government's PAWHP consultation reflected a range of views supporting either universal or targeted approaches.

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<sup>66</sup> [The Winter Heating Assistance for Children and Young People \(Scotland\) Regulations 2020 - Scottish Commission on Social Security \(socialsecuritycommission.scot\)](#); [The Winter Heating Assistance for Children and Young People \(Scotland\) Regulations 2020 - Scottish Commission on Social Security \(socialsecuritycommission.scot\)](#); [The Winter Heating Assistance \(Low Income\) \(Scotland\) Regulations 2023 - Scottish Commission on Social Security \(socialsecuritycommission.scot\)](#).

<sup>67</sup> E.g. [Consultation on the Pension Age Winter Heating Payment \(PAWHP\) - Scottish Fuel Poverty Advisory Panel \(fuelpovertypanel.scot\)](#), [Pension Age Winter Heating Payment consultation response from the Poverty and Inequality Commission \(povertyinequality.scot\)](#).

- Many individuals supported keeping the benefit universal given concerns that means-testing could disadvantage those just over the threshold for support, be costly to administer<sup>68</sup> and reduce take-up.<sup>69</sup>
- Some organisations preferred targeting PAWHP to people on a low income or those more likely to be in fuel poverty, especially in the light of fuel poverty targets.<sup>70</sup> This was mainly concerned with allocating payment to those considered more in need, with others suggesting that PAWHP could be extended to disabled people, carers, or considering the needs of people living in remote, rural or off-grid locations.

Retaining a 'universal' approach could support principles such as an investment in the people of Scotland (a). It can also contribute to the poverty principle (e) if, following WFP, it remains largely automatic with high take-up, which can help to prevent poverty. Being largely automatic can also support principle (d) (dignity of individuals).

Targeted payments may also contribute to the poverty principle (e) but in a different way, and only for those who are in the target group. Targeting is also likely to involve some administrative complexity and application process, thus consideration of efficiency and value for money (principle h) will also be important.

Mixed views about the best direction for the longer term may make it more difficult to meet principle (f) (design with the people of Scotland), though this could be balanced by appraising specific policy options against value for money/efficiency considerations (principle h).

### 6.3 Concluding points on longer-term reforms

When developing longer-term reform, whether as a separate or consolidated scheme, or universal or targeted payment, a key principle to consider is the dignity of individuals (principle (d)). In this respect SCoSS notes that many responses to the Scottish Government's PAWHP consultation supported a 'cash-first' approach,<sup>71</sup> as did a majority of Experience Panel members.<sup>72</sup> This was also related to payments being made automatically to those qualifying. Payment to individuals is more likely to enable the dignity principle to be met (compared to, for example, direct payment to energy suppliers).<sup>73</sup> Longer-term reform is also likely to require a balance between different principles. For example, there may also be trade-offs between the range of issues encompassed within principle (g) and principle (h) (value for money).

Overall, longer-term developments invoke the principle of continuous improvement (g). Putting the needs of those who require assistance first (principle g(i)) and

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<sup>68</sup> [The Scottish Government Response to the Consultation on Pension Age Winter Heating Payment \(PAWHP\) \(www.gov.scot\)](http://www.gov.scot), p. 6.

<sup>69</sup> The Independent Age response noted that Pension Credit take-up was 63% compared with 96% for the WFP.

<sup>70</sup> Such as the Scottish Fuel Poverty Advisory Panel.

<sup>71</sup> E.g. paid to the individual via their bank account: individual responses and some organisations such as [Independent Age response - PAWHP consultation \(www.independentage.org\)](http://www.independentage.org), p. 8.

<sup>72</sup> [Social Security Experience Panels: Pension Age Winter Heating Payment \(www.gov.scot\)](http://www.gov.scot), p. 26.

<sup>73</sup> Suggested by some consultation responses, although this may not be practicable for people whose houses, for example, are heated by oil or coal.

advancing equality and non-discrimination (principle g(ii)) mean that alternative proposals should be assessed for impacts on individuals, households, locations and particularly on those with protected characteristics.

Such considerations are likely to require additional data and assessment against the three aims of the Public Sector Equality Duty (see section 5 above) and further stakeholder engagement.

## 7. Approach to scrutiny

This report has been completed in accordance with the Commission's pre-legislative scrutiny function, set out in sections 22 and 97 of the Social Security (Scotland) Act 2018<sup>74</sup>. Section 97 states that the Commission must report on draft Regulations proposed to be made under any section in Chapter 2 of Part 2 or Section 79 of the Act.<sup>75</sup> The draft Regulations are made under powers conferred by sections within this part and chapter.

This report provides commentary in connection with human rights and the social security principles set out in Section 1 of the Social Security (Scotland) Act 2018, as operationalised via Our Charter.<sup>76</sup>

The Cabinet Secretary for Social Justice referred the draft regulations to SCoSS,<sup>77</sup> along with the Policy Note,<sup>78</sup> on 29 April 2024. We were given a deadline for reporting of 22 July 2024.

Given the Scottish Government's research<sup>79</sup> and engagement of stakeholders on Pension Age Winter Heating Payment, including its recent public consultation<sup>80</sup> SCoSS has not undertaken its own stakeholder engagement activity on the draft regulations, but instead has considered the consultation responses within its scrutiny.

We are grateful for the efforts made by officials to keep us apprised of developments.

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<sup>74</sup> [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>75</sup> Other than in relation to regulations made only for the purpose of the consolidation of earlier regulations (section 97(11)).

<sup>76</sup> [Social Security Scotland - Our Charter](#)

<sup>77</sup> [Letter from Cabinet Secretary for Social Justice \(socialsecuritycommission.scot\)](https://socialsecuritycommission.scot)

<sup>78</sup> [Policy Note \(socialsecuritycommission.scot\)](https://socialsecuritycommission.scot)

<sup>79</sup> [Social Security Experience Panels: Pension Age Winter Heating Payment \(www.gov.scot\)](https://www.gov.scot) & [Social Security experience panels: cold spell and winter fuel payment – report \(www.gov.scot\)](https://www.gov.scot)

<sup>80</sup> [Pension Age Winter Heating Payment \(PAWHP\): consultation response \(www.gov.scot\)](https://www.gov.scot)



## **Annexe A: About the Scottish Commission on Social Security**

The Scottish Commission on Social Security (SCoSS) plays an essential role in the development and delivery of a Scottish Social Security system based on fairness, dignity and respect.

We provide independent scrutiny of the Scottish social security system and our full functions are set out in section 22 of the Social Security (Scotland) Act 2018.<sup>81</sup>

We provide detailed analysis of proposed social security regulations which are referred to us by Ministers, making recommendations for improvement where necessary.

Our role is also to scrutinise the Scottish Government's delivery of the commitments set out in the Social Security Charter.<sup>82</sup>

We are separate from the Scottish Government, and we carry out our work independently of both Scottish Ministers and the Scottish Parliament.

### **The Scottish social security principles**

SCoSS takes the Scottish social security principles, as laid out in the Social Security (Scotland) Act 2018, into consideration when scrutinising proposed social security legislation and regulations. The Scottish social security principles are:

- (a) social security is an investment in the people of Scotland,
- (b) social security is itself a human right and essential to the realisation of other human rights,
- (c) the delivery of social security is a public service,
- (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system,
- (e) the Scottish social security system is to contribute to reducing poverty in Scotland,
- (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,
- (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which—
  - (i) put the needs of those who require assistance first, and
  - (ii) advance equality and non-discrimination,
- (h) the Scottish social security system is to be efficient and deliver value for money.

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<sup>81</sup> [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>82</sup> [Social Security Scotland - Our Charter](#)

## Annexe B: Scrutiny timeline

25 April 2024	SCoSS Board attended by Social Security officials for preliminary discussion on the draft regulations.
29 April 2024	Draft Regulations formally referred to SCoSS by the Cabinet Secretary for Social Justice.
30 May 2024	Line by line and principle by principle scrutiny undertaken at Board meeting.
27 June 2024	Board meeting to discuss report.
11 July 2024	Ad hoc Board meeting to discuss report
22 July 2024	SCoSS report signed off and laid.