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25 September 2024

Dear Ed

I would like to thank SCoSS for your scrutiny report of 22 July on the draft Winter Heating Assistance (Pension Age) (Scotland) Regulations.

As outlined in my letter of 16 August, the UK Government announced in July its decision to move away from a universal Winter Fuel Payment and to restrict entitlement to those in receipt of Pension Credit and other means-tested benefits from this winter. This decision was of course taken without consultation or discussion with the Scottish Government and it has had devastating consequences for our planned launch of Pension Age Winter Heating Payment, reducing the Block-Grant Adjustment for our devolved payment by over 80%.

Having carefully considered the options, given the significant impact of this decision, the wider cuts being imposed by the Chancellor of the Exchequer on our budgets and to enable DWP to make payments in Scotland, the UK Government's decision to restrict eligibility for Winter Fuel Payments is extremely disappointing and has left Scottish Ministers with no choice but to mirror this approach in Pension Age Winter Heating Payment, our replacement for Winter Fuel Payment. Given the short notice of the change in policy it is necessary for payments to be made in Scotland this Winter by the Department for Work and Pensions on behalf of the Scottish Government to ensure there is no gap in provision of support for vulnerable pensioners in Scotland this year.

In my previous letter I noted that we intended to defer legislating for Pension Age Winter Heating Payment until 2025, and that the UK Government would instead legislate for and deliver an equivalent payment for pensioners in Scotland this winter. Following further discussion with the UK Government, it became clear that they are unable to progress their original offer to legislate in the UK Parliament. Therefore, the only feasible route to doing so now is under Pension Age Winter Heating Payment (PAWHP) regulations made in the Scottish Parliament.

An Agency Agreement is being prepared specifying the arrangements whereby DWP will make these payments. To enable this agreement an Order under section 93 of the Scotland Act 1998 (an agency arrangements order) is required specifying the functions and associated processes to be exercised by UK Ministers on the Scottish Ministers' behalf. We anticipate this to be laid in both Parliaments in early October.

Under the Pension Age Winter Heating Payment regulations, revised to reflect the changes made to the UK Government's Winter Fuel Payments, a person will be eligible if, during the qualifying week, they are of state pension age, and are receiving one of the following relevant benefits:

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

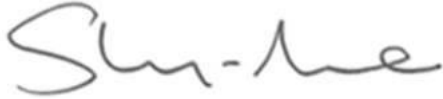
Unfortunately, given the extraordinary circumstances, and facing significant time pressures to pass legislation, due to the decision taken by the UK Government, it has not been possible to give you the time you need to thoroughly review the revised regulations and provide us with a scrutiny report and recommendations before they are laid in Parliament. Nevertheless, before the parliamentary process begins, I would like to provide you with a copy of the updated Pension Age Winter Heating Payment regulations, attached separately, and ask that you to carry out a period of scrutiny as you see fit. I have asked my officials to work closely with the Commission on any recommendations you wish to submit after the regulations have been laid.

We are continuing to take action to support older people and tackle poverty. This includes investment in our Council Tax Reduction Scheme and free bus travel for all older people over the age of 60 in Scotland and delivering our Winter Heating Payment which, in contrast to the UK Governments Cold Weather Payment, guarantees a reliable annual payment of £58.75 to people on low-incomes, including those pensioners in receipt of Pension Credit each winter. We are providing over £2 million from our Equality and Human Rights Fund, supporting older people's organisations to deliver work focused on tackling inequality and enable older people to live independent and fulfilling lives. This is in addition to a wider range of initiatives to mitigate fuel poverty, such as our energy efficiency delivery programmes – Warmer Homes Scotland and Area Based Schemes – which have supported over 150,000 households living in, or at risk of fuel poverty in the past decade, as well as our Islands Cost Crisis Emergency Fund which helps island authorities support their island communities through cost-of-living pressures. The Minister for Climate Action has also secured the agreement of energy suppliers to participate in a working group aimed at co-designing a social tariff.

An overview of the changes made to these regulations since your initial scrutiny is provided in Annex B. I also provide the Scottish Government response to the recommendations and observations of your original scrutiny report which remain applicable to the new revised regulations, outlined in Annex A.

I remain grateful to Members for the constructive engagement with the Scottish Government, for your previous report, and for your significant contribution to the development of these regulations.

I have also written to the Convener of the Social Justice and Social Security Committee detailing our response to the prior recommendations.

A handwritten signature in black ink, appearing to read "Shirley-Anne". The signature is written in a cursive, flowing style.

**SHIRLEY-ANNE SOMERVILLE**

Scottish Government Response to SCoSS Scrutiny Report on Winter Heating Assistance (Pension Age) (Scotland) Regulations (2024)

Responses to Recommendations and Observations

SCoSS Recommendation	Scottish Government Response	Accept/ Partially accept/ Reject
<p>1. The Scottish Government should define in regulations what constitutes “free in-patient treatment”.</p>	<p>Following engagement with SCoSS and further review of the regulations during the scrutiny process, Regulation 2 has been updated to include a definition of a “free in-patient treatment”, reflecting the provision within the Social Fund Winter Fuel Payment Regulations 2024.</p>	<p>Accept</p>
<p>2. In regulation 5(a) the Scottish Government should replace the words “in the qualifying week” with the words “throughout the qualifying week”.</p>	<p>Following engagement with SCoSS and further review of the regulations during the scrutiny process, Regulation 5 (a) has been updated to clarify that an individual will not be entitled to Pension Age Winter Heating Payment if they are receiving free in-patient treatment <b>throughout</b> the qualifying week and the 52 weeks prior.</p>	<p>Accept</p>
<p>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).</p>	<p>This recommendation is no longer applicable as the benefit is now only payable to those in receipt of relevant benefits.</p>	<p>N/A</p>

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<b>SCoSS Recommendation</b>	<b>Scottish Government Response</b>	<b>Accept/ Partially accept/ Reject</b>
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.	<p>Following engagement with SCoSS and further review of the regulations during the scrutiny process, Regulation 2 has been updated to include a definition of a ‘lead claimant’ of a relevant benefit.</p> <p>Payment to the ‘lead claimant’ only reflects operationally how this policy will be delivered, based on the data available to Social Security Scotland, and ensures one payment is provided to a couple.</p>	Accept
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.	<p>For winter 2024/2025, Pension Age Winter Heating Payment will be delivered by DWP under an agency agreement with Social Security Scotland. DWP have indicated that they do not intend to have a publicly available application but that queries to them in relation to an individual’s entitlement will result in a determination being made</p> <p>However, for benefits delivered by Social Security Scotland, the agency collects data on protected characteristics through equalities surveys, which clients complete alongside their application. This data is then used to monitor the characteristics of those applying for Social Security Scotland benefits, and to identify trends within application data. In future, under delivery by Social Security Scotland, an equalities survey will be in place as part of the Pension Age Winter Heating Payment application, in order to capture this information for data monitoring. The questions within this survey provide the option ‘Prefer not to say’ and therefore any information supplied is voluntary. Equalities information gathered from applications will be released as part of routine statistical publications.</p>	Accept

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<b>SCoSS Recommendation</b>	<b>Scottish Government Response</b>	<b>Accept/ Partially accept/ Reject</b>
6. The Scottish Government should align the periods of time in which requests for re-determinations for Scottish winter heating payments can be made.	<p>Deadlines for requesting a re-determination have been set for various reasons, including consultation with clients with lived experience of the UK benefits system and the complexity of gathering information relevant to an individual’s application. For example, Winter Heating Payment has a shorter timescale to request a re-determination as supporting information is easier to obtain. However, some benefits, including Child Winter Heating Payment and Pension Age Winter Heating Payment, have a longer deadline for clients to request a re-determination. These enhanced timescales reflect the complexity of the benefit and allow more time for clients and third parties to collect any further information which could lead to a change in award.</p> <p>To ensure that clients are aware of timescales for the relevant benefit, all re-determination deadlines are clearly communicated to clients when they receive their initial determination letter. It is also important to note that if a client misses the deadline to request a re-determination, Social Security Scotland will consider a late request for a re-determination within a year of the original determination if the client provides a reason for lateness.</p> <p>While we are not currently considering aligning re-determination timescales for Winter Heating Benefits, we will continue to seek feedback on the re-determination process and will monitor whether differing timescales become a barrier to clients bringing a challenge.</p>	Reject
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.	<p>For winter 2024/2025, PAWHP will be delivered by DWP under agency agreement with Social Security Scotland.</p> <p>However, we will continue to work closely with Social Security Scotland, ensuring all communication and engagement activity to support take-up of Scottish benefits including Pension Age Winter</p>	Accept

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<b>SCoSS Recommendation</b>	<b>Scottish Government Response</b>	<b>Accept/ Partially accept/ Reject</b>
	<p>Heating Payment is inclusive, accessible and available across a range of online and offline channels.</p> <p>This will include producing a range of materials including posters, factsheets and social media as well as adverts for local press and radio. Factsheets will be proactively translated into different community languages as well as British Sign Language and Easy Read. In addition, insight shows that older people expect to access information in places and services they are interacting with. Therefore, Social Security Scotland will work with stakeholders to make sure they have information they need to support older people via a series of stakeholder engagement events. Resources such as posters and factsheets will be shared with relevant stakeholders and community organisations, including GP surgeries and libraries, encouraging them to display information.</p> <p>Information on eligibility and payment amounts will also be available online via MyGov.Scot. This will provide information on the range of 'single' and 'shared payment' rates.</p> <p>By providing clear and accessible information across a range of offline and online channels, people can access information regarding eligibility for Pension Age Winter Heating Payment.</p>	
<p>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.</p>	<p>Under the revised regulations there is no longer the option for clients to opt-out. However, an individual cannot be required to accept assistance, and everyone has the right under the 2018 Act to ask that a determination of entitlement is cancelled.</p>	<p>No longer applicable</p>

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<b>SCoSS Recommendation</b>	<b>Scottish Government Response</b>	<b>Accept/ Partially accept/ Reject</b>
<p>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.</p>	<p>The PAWHP Equalities Impact Assessment (EQIA) was drafted to consider the equalities impact of a like-for-like, universal replacement of Winter Fuel Payment with Pension Age Winter Heating Payment. These have since been updated to reflect the impact of our revised eligibility criteria. Our current EQIA has focused on the three aims of the Public Sector Equality Duty (to give due regard to the need to eliminate discrimination, to advance equality, and to foster good relations) within the context of a like-for-like transfer. Given this focus on reflecting current WFP eligibility criteria to ensure that eligible pensioners receive a payment this winter, the current draft of the EQIA largely focused on the neutral impact of the introduction of PAWHP when compared with the support otherwise available through WFP.</p> <p>Work is currently ongoing to consider the longer-term development of the benefit post-launch. As part of the statutory duty on public bodies to report on equalities progress under the Public Sector Equality Duty, outlined in the Equalities Act 2010, we will continue to consider the impacts of the current benefit and any future developments, on a broad range of groups, such as rural and island communities and those with protected characteristics. The three aims of the Public Sector Equality Duty will continue to inform our ongoing evaluation of the impact of the benefit.</p>	<p>Accept</p>
<p>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</p>	<p>During the course of development of each of the Winter Benefits consideration has been given to the timing of the Qualifying Week, and has been tested through public consultation and work with people with lived experience through our Social Security Experience Panels. The qualifying week for Child Winter Heating Payment and Pension Age Winter Heating Payment remain aligned, with the qualifying week beginning on the third Monday in September. For delivery of Pension</p>	

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<b>SCoSS Recommendation</b>	<b>Scottish Government Response</b>	<b>Accept/ Partially accept/ Reject</b>
<p>should be sought to align qualifying weeks while not excluding people from help.</p>	<p>Age Winter Heating Payment this is, importantly, aligned with the qualifying week for Winter Fuel Payments.</p> <p>The qualifying week for Winter Heating Payment was initially proposed to align with the other Winter Benefits. However, feedback from the consultation and from the Experience Panel survey suggested the qualifying week should be as close to the timing of payment as possible, and therefore a decision was taken to move this forward to the week beginning with the first Monday in November. During the consultation on Winter Heating Payment (previously known as Low Income Winter Heating Assistance), we asked about the preferred timing of payments. The most common suggestion indicated a preference for payments to be made in December and January, and last winter (2023/24) we moved payments forward to align with this. Whilst it may be preferable to have consistency across the qualifying weeks for all benefits, we believe the current qualifying weeks continue to be appropriate and meet the needs of those entitled.</p>	
<p>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.</p>	<p>For delivery of Pension Age Winter Heating Payment we have committed to mirror the current eligibility criteria of Winter Fuel Payment, to ensure that eligible pensioners receive a payment in winter 2024/25 following the UK Government’s announcement to restrict Winter Fuel Payments to those in receipt of relevant benefits.</p> <p>We will continue to consider the impact and any unintended consequences of the current policy alongside the longer term development of this benefit.</p>	

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Draft regulation amendments

Area of change	Reason
<b>Eligibility Criteria</b>	<p>Eligibility for PAWHP is linked to the individual’s age (reaching state pension age) and their circumstances, including receipt of a relevant benefit, during the qualifying week.</p> <p>To reflect the changes made to the UK Government’s Winter Fuel Payments, regulation 8 has been updated to specify that “An individual is entitled to a relevant benefit on a day in the qualifying week”. The relevant benefits are outlined in regulation 2(1), and are as follows:</p> <ul style="list-style-type: none"> <li>(a) state pension credit,</li> <li>(b) income-based jobseekers allowance,</li> <li>(c) income-related employment and support allowance,</li> <li>(d) income support,</li> <li>(e) universal credit,</li> <li>(f) child tax credit or working tax credit (where the award is not less than £26 in respect of the tax year 2024 to 2025).</li> </ul>
<b>Residency</b>	<p>Individuals must be Ordinarily Resident in Scotland or habitually resident in any of the countries listed in the schedule on or before the qualifying week.</p> <p>To be eligible for PAWHP someone must:</p> <ol style="list-style-type: none"> <li>1. live (is ordinarily resident) in Scotland for at least one day in the qualifying week: or</li> <li>2. live within an EEA country or Switzerland (in at least one day during the qualifying week) and has a genuine and sufficient link to Scotland.</li> <li>3. Receive a relevant benefit (or are able to demonstrate entitlement to a benefit payable in the country in which the person is habitually resident that is equivalent to a relevant benefit)</li> </ol>
<b>Exportability</b>	<p>The exportability provisions expire on 1 April 2025 to mirror the UK winter fuel payment provisions.</p>
<b>Payment Value</b>	<p>The following payment values are based on age and entitlement to other reserved benefits.</p>

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	<p><u>Payment value</u></p> <p>Relevant benefits are set out below:</p> <ul style="list-style-type: none"><li>• Pension Credit</li><li>• Income-based Jobseeker’s Allowance (JSA)</li><li>• Income-related Employment and Support Allowance (ESA)</li><li>• Income Support</li><li>• Universal Credit</li><li>• Child Tax Credits and Working Tax Credits (where the award is not less than £26 in respect of the tax year 2024-25)</li></ul> <p>A payment is made to an individual or a ‘benefit household’ i.e. a couple in receipt of a joint claim, or are individuals in a polygamous marriage. One payment is made of either £200 or £300 regardless of whether it is an individual, a couple or number of people in a polygamous marriage.</p> <p>If the lead claimant is under 80 but an individual within the joint claim is over 80 then a payment of £300 will be made.</p>
<p><b>Exclusions</b></p>	<p>We intend to reflect the current exclusions to entitlement that DWP currently practice in WFP policy: (regulation 4 ‘Persons not entitled to a winter fuel payment’ in Social Fund WFP regs)</p> <p>We intend to regulate for the exclusion for those who are throughout the qualifying week:</p> <ul style="list-style-type: none"><li>a) receiving free in-patient treatment and has been receiving free in-patient treatment for a period of at least 52 weeks ending immediately before the qualifying week;</li><li>b) detained in custody (during the entirety of the qualifying week) under a sentence imposed by a court.</li><li>c) living in residential care (a care home or an independent hospital) throughout the qualifying week and the 12 weeks immediately prior to the qualifying week</li><li>d) one member of a couple where the Secretary of State (on behalf of Scottish Ministers) has made a payment in respect of the qualifying week to the other member of that couple;</li></ul>

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	<p>e) a member of a polygamous marriage where the Secretary of State (on behalf of Scottish Ministers) has made a payment in respect of the qualifying week to another member of that marriage;</p> <p>f) someone who has not made a claim for a payment prior to 31 March following the qualifying week (unless that is based on a person becoming entitled to a relevant benefit in respect of any day during the qualifying week i.e. backdated payment of Pension Credit, Universal Credit, Child Tax Credit or Working Tax Credit)</p> <p>We do not intend to regulate for the exclusion of people in accommodation provided under the Polish Resettlement Act 1947. There are no longer homes in Scotland covered by this and therefore this is not relevant for our policy.</p>
<p><b>Determination of Entitlement</b></p>	<p><u>Determination without application</u></p> <p>Our intention is for a determination to be made without the need for an application for the vast majority of clients.</p> <p>Scottish Ministers (DWP on Scottish Ministers behalf) are to determine someone's entitlement without an application, through use of official records held by the Secretary of State (including data shared by HMRC on tax credit entitlement), in respect of an individual's age and entitlement to a relevant benefit during the qualifying week.</p> <p>DWP have indicated weekly scans will take place to identify people who have a decision made on a qualifying benefit which results in their back-dated entitlement to a qualifying benefit during the qualifying week. These people will therefore be paid automatically.</p> <p>Scottish Ministers may, on or before the 31 March following the qualifying week, make a payment in respect of the winter following the qualifying week to a person who appears to be entitled to a payment.</p> <p>Where a person becomes entitled to one of the relevant benefits in respect of any day falling within the qualifying week by virtue of a decision made after that week, Scottish Ministers may make a payment to that person in respect of the winter following the qualifying week if it appears that person is entitled.</p>

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	<p><u>Determination by application</u></p> <p>There may be circumstances in which an individual wishes to apply for assistance or query their entitlement. DWP have indicated that they do not intend to have a publicly available application but that queries to them in relation to an individual's entitlement will result in a determination being made, which therefore provides relevant challenge rights. We do not therefore intend to regulate for determination by application specifically as the 'determination without application' provision should capture this group (based on info available to Ministers).</p>
<p><b>Period for requesting a re-determination</b></p>	<p>We are proposing that a re-determination request relating to PAWHP should be made within a calendar month of being notified of the determination.</p> <p>This aligns with DWPs timescales and should streamline the process whilst they deliver on behalf of Scottish Ministers</p> <p>If a request is not made within a calendar month, a request for a re-determination can still be considered at any point up to a year after being notified of the original determination, if there is a good reason for the request being made late. DWP will decide whether the reason provided is acceptable.</p> <p>We propose that, on validation of a request for a re-determination of entitlement to PAWHP, DWP should have 56 working days, beginning with the day DWP validates the request, to make the fresh determination. This period is to be counted from the next working day after DWP receives a re-determination request in the format required. If there is a failure to make the re-determination within the 56 day period, the individual will be informed that they have a right to appeal to the First-tier Tribunal against the original determination.</p>
<p><b>Residence in Care Homes and Independent Hospitals</b></p>	<p>An addition to regulation 2 (specifically regulation 2(3)) has been made to clarify the position of those temporarily staying in a care home or independent hospital. The regulations now state that an individual is only treated as living in a care home or independent hospital where they live there throughout the qualifying week and for the 12 weeks immediately preceding the qualifying week. This does not mark a change in the policy, but is solely included to clarify the definition of living in a care home or independent hospital.</p>

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	Similarly, we have also updated the definition of 'independent hospital' within Regulation 2 to remove reference to the English and Welsh definitions
<b>Irish Reciprocal Agreement</b>	Regulation 9(1)(b)(ii) has been updated to include the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1st February 2019, within the listed international residency agreements. This does not mark a change in residency policy, but rather amends the previous error in the omission of this agreement.
<b>Gibraltar Agreement</b>	Regulation 9(1) (b) (ii) has been updated to remove the provision (ee) 'the agreement constituted by the exchange of letters set out in the schedule of the Social Security (Gibraltar) Order 2024 (a). This was included in error and is being removed to align with the WFP residency provisions for those living abroad.
<b>Exclusions for those in custody during the qualifying week</b>	Following identification of a drafting error during SCoSS scrutiny, regulation 5(b) has been updated to align with the policy intent.