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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2025 No.**

**SOCIAL SECURITY**

**The Winter Heating Assistance (Pension Age) (Scotland)  
Amendment Regulations 2025**

<i>Made</i>	- - - -	2025
<i>Coming into force</i>	- -	2025

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 30(2), 41(4)(a), 43(5) and 52 of the Social Security (Scotland) Act 2018(a) and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

**Citation and commencement**

1. These Regulations may be cited as the Winter Heating Assistance (Pension Age) (Scotland) Amendment Regulations 2025 and come into force on [...] 2025.

**Amendment of the Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024**

2. The Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024(b) are amended in accordance with regulations 3 to 12.

3. In regulation 2 (interpretation), after the definition of “independent hospital” insert—  
““mixed age couple” means a couple where one member has reached pensionable age and the other member has not,”.

4. In regulation 5 (eligibility rules)—  
(a) for paragraph (a)(ii) substitute—

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(a) 2018 asp 9 (“the 2018 Act”). Schedule 4 of the 2018 Act makes provision about the exercise of powers under section 30. Section 41 was amended by paragraph 2 of schedule 7 of the Coronavirus (Scotland) Act 2020 (asp 7). The powers to make these regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.  
(b) S.S.I. 2024/351.

- “(ii) either—
  - (aa) the relevant benefit condition in regulation 7, or
  - (bb) the no relevant benefit condition in regulation 7A, and”,
- (b) after paragraph (a)(iii) insert—
  - “(iv) where regulation 11 (determination of entitlement to Pension Age Winter Heating Payment without receiving an application) does not apply in respect of the individual, the application window condition at regulation 13B(1), and”.

5. For regulation 7 (relevant benefit condition) substitute—

**“Relevant benefit condition**

- 7.—(1) The condition is that the individual is—
- (a) entitled to a relevant benefit on a day in the qualifying week, or
  - (b) able to demonstrate entitlement, in respect of a day in the qualifying week, to a benefit payable in the country in which the person is habitually resident that is equivalent to a relevant benefit, where regulation 8(1)(b) applies.
- (2) The reference in paragraph (1) to being entitled to a relevant benefit, or a benefit that is equivalent to a relevant benefit, includes where the person is a member of a couple or polygamous marriage and the other member of that couple or another member of that marriage is entitled to the benefit.

**No relevant benefit condition**

- 7A. The condition is that the individual is—
- (a) not entitled to a relevant benefit on a day in the qualifying week, or
  - (b) not able to demonstrate entitlement, in respect of a day in the qualifying week, to a benefit payable in the country in which the person is habitually resident that is equivalent to a relevant benefit, where regulation 8(b) applies.”

6. For regulation 8 (residence condition) substitute—

**“Residence condition**

- 8.—(1) The condition is that, in respect of any day falling within the qualifying week—
- (a) the individual is ordinarily resident in Scotland, or
  - (b) the individual—
    - (i) is habitually resident in one of the countries listed in the schedule,
    - (ii) is covered by—
      - (aa) Title III of Part 2 of the EU withdrawal agreement, as set out at Article 30 of that agreement,
      - (bb) 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 1 February 2019 (as modified from time to time in accordance with any provision of it) as set out in Article 2 of that Convention,
      - (cc) Part Three of the Swiss citizens’ rights agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020(1) (“the 2020 Act”) as set out at Article 25 of that agreement, or

- (dd) Title III of Part 2 of the EEA EFTA separation agreement (as defined in section 39(1) of the 2020 Act), as set out at Article 29 of that agreement,
  - (iii) is an individual in respect of whom the United Kingdom is, as a result, competent for payment of old-age benefits, and
  - (iv) has a genuine and sufficient link to Scotland.
- (2) Where an individual—
- (a) was ordinarily resident in Scotland, and
  - (b) becomes ordinarily resident outwith Scotland by the last day of the qualifying week,
- they are not treated as meeting the condition in regulation 8(1)(a).”

7. In regulation 9(1)(c) (individuals not entitled to Pension Age Winter Heating Payment) after “an individual who” insert “is entitled to a relevant benefit who”.

8. For regulation 10 (amount of Pension Age Winter Heating Payment) substitute—

**“Amount of Pension Age Winter Heating Payment**

10. The amount of Pension Age Winter Heating Payment is as follows—
- (a) if the individual meets the relevant benefit condition and—
    - (i) if the individual has reached the age of 80 in or before the qualifying week, £305.10,
    - (ii) if—
      - (aa) the individual has not reached the age of 80 in or before the qualifying week,
      - (bb) the same individual is a member of a couple or a polygamous marriage, and
      - (cc) the other member of the couple or another member of that marriage has reached that age in or before that week, £305.10, or
  - (b) in any other case, £203.40,
  - (c) if the individual meets the no relevant benefit condition—
    - (i) £100 if, throughout the qualifying week, they do not live with any other individuals who are entitled to Pension Age Winter Heating Payment, or,
    - (ii) £50 if, throughout the qualifying week, they either—
      - (aa) live with any other individuals who are entitled to Pension Age Winter Heating Payment, or
      - (bb) live in a care home or independent hospital.”.

9. After Part 5 insert—

**“Part 5A**  
**Applications**

**Applications**

- 13A. An individual who—
- (a) has not received a notice of determination pursuant to section 40 of the 2018 Act following a determination without application in accordance with paragraph 11,

- (b) is not in receipt of a benefit from the Department for Work and Pensions and has not received winter fuel payment or Pension Age Winter Heating Payment,
- (c) has deferred their state pension since last receiving winter fuel payment or Pension Age Winter Heating Payment,
- (d) lives in one of the countries set out in the schedule, or
- (e) is part of a mixed age couple in receipt of universal credit,

may make an application for Pension Age Winter Heating Payment in accordance with section 38 of the 2018 Act.

### **Application window**

**13B.**—(1) An individual is only entitled to Pension Age Winter Heating Payment where they have made an application for Pension Age Winter Heating Payment on or before 31 March following the qualifying week in respect of the winter following that week.

(2) The Scottish Ministers may treat an application received after the date mentioned in paragraph (1) as received by that date where they consider that the individual has a good reason for not submitting the application by that date.

(3) Paragraph (1) does not apply where—

- (a) regulation 11 (determination of entitlement to Pension Age Winter Heating Payment without receiving an application) applies in respect of the individual,
- (b) an individual becomes entitled to state pension credit or universal credit in respect of the qualifying week by virtue of a decision made after that week, or
- (c) section 115 of the Immigration and Asylum Act 1999 (exclusions from benefits) ceases to apply to that individual.”

**10.** In regulation 14 (periods in respect of a re-determination request), in paragraph (1) for “31” substitute “42”.

**11.** Omit Part 8 (expiry).

**12.** Insert as the schedule to the Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024, the schedule set out in the schedule to these Regulations.

*Name*

A member of the Scottish Government

St Andrew’s House,  
Edinburgh  
Date

## SCHEDULE

Regulation 12

## “SCHEDULE

### Countries

Regulation 8(1)(b)(i)

Republic of Austria  
Kingdom of Belgium  
Republic of Bulgaria  
Republic of Croatia  
Czech Republic  
Kingdom of Denmark  
Republic of Estonia  
Republic of Finland  
Federal Republic of Germany  
Hungary  
Iceland  
Republic of Ireland  
Italian Republic  
Republic of Latvia  
The Principality of Liechtenstein  
Republic of Lithuania  
Grand Duchy of Luxembourg  
Kingdom of the Netherlands  
Kingdom of Norway  
Republic of Poland  
Romania  
Slovak Republic  
Republic of Slovenia  
Kingdom of Sweden

Swiss Confederation”.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make amendments to the Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024 ('the principal Regulations').

Regulation 3 amends regulation 2 (interpretation) of the principal Regulations to insert a definition of a "mixed age couple" which inserted regulation 13A (applications) provides is one of the groups who, when in receipt of universal credit, may make an application for Pension Age Winter Heating Payment ("PAWHP") in accordance with section 38 of the 2018 Act.

Regulation 4 amends regulation 5 (eligibility rules) of the principal Regulations to reflect the expanded eligibility rules for pensioners who are not entitled to a relevant benefit on a day in the qualifying week in accordance with inserted regulation 7A (no relevant benefit condition).

Regulation 5 inserts regulation 7A (no relevant benefit condition) as a new eligibility rule for determining entitlement to PAWHP for pensioners who are not entitled to a relevant benefit on a day in the qualifying week. It also inserts regulation 7 afresh so that it continues include the expired regulation 7(b) (which expired on 1 April 2025 by operation of regulation 17 (expiry) of the principal Regulations). The expired regulation 7(b) will now be in the new regulation 7(1)(b) and will continue to ensure that pensioners who are habitually resident in one of the countries in the schedule to whom regulation 8(b) applies, and who can demonstrate entitlement on a day in the qualifying week to an equivalent benefit to the relevant benefits, can also be entitled to payment of PAWHP and may export PAWHP to their country of habitual residence.

Regulation 6 expands the residence conditions at regulation 8 (residence condition) to clarify that the United Kingdom must be the competent state for the payment of old-age benefits, which includes PAWHP, in order that pensioners who are habitually resident in one of the countries in the schedule and who are covered by at least one of the agreements or conventions at regulation 8(1)(b)(ii), can export PAWHP. Regulation 6 also amends regulation 8 (residence condition) of the principal Regulations so that pensioners who were resident in Scotland on the first day of the qualifying week but, by the last day of the qualifying week, are resident outwith Scotland, are treated as not meeting the ordinary residence test condition at regulation 8(1)(a).

Regulation 7 amends regulation 9(1)(c) (individuals not entitled to Pension Age Winter Heating Payment) of the principal Regulations to ensure that the existing exclusion to PAWHP entitlement in respect of pensioners who are entitled to relevant benefits and living in a care home or independent hospital both for the 12 weeks leading up to, and throughout, the qualifying week, is not extended to pensioners who are not on relevant benefits who are more likely to be self-funding.

Regulation 8 amends regulation 10 (amount of Pension Age Winter Heating Payment) of the principal Regulations so that in addition to the rules providing for the amount of PAWHP which depends on entitlement to a relevant benefit, the age of the individual and who they live with, there are added rules which provide a universal PAWHP payment to pensioners not entitled to relevant benefit on a day in the qualifying week.

Regulation 9 inserts a new Part 5A (applications) comprised of regulation 13A (applications) and regulation 13B (application window). The inserted regulation 13A (applications) allows individuals in a variety of circumstances to submit an application in accordance with section 38 of the Social Security (Scotland) Act 2018. The inserted regulation 13B (application window) limits the window for applications until the 31 March following the qualifying week, unless the Scottish Ministers consider a late applicant has a good reason for submitting their application after 31 March. Regulation 13B also provides that this application window of 31 March does not apply where the Scottish Ministers are under a duty to carry out a determination without application in accordance with regulation 11 (determination of entitlement to Pension Age Winter Heating Payment without receiving an application) of the principal Regulations nor where a late applicant becomes entitled to either pension credit or universal credit retrospectively to include the qualifying week or where the exclusions from benefits at section 115 of Immigration and Asylum Act 1999 cease to apply to the individual with effect from a day in the qualifying week.

Regulation 10 amends regulation 14 (periods in respect of a re-determination request) to increase the period for requesting a re-determination of entitlement to Pension Age Winter Heating Payment under section 41 of the 2018 Act (right to request re-determination) from 31 days to 42 days, aligning it with all other forms of assistance provided for under the Social Security (Scotland) Act 2018.

Regulation 11 omits Part 8 (expiry).

Regulation 12 inserts as the schedule to the Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024 a schedule of countries for the purpose of regulation 8(1)(b)(i).