

Policy Note

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

SSI 2025/XXX

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 30(2), 41(4)(a), 43(5) and 52 of the Social Security (Scotland) Act 2018. The instrument is subject to affirmative procedure.

Summary Box

This instrument sets out the amended rules and eligibility criteria for Pension Age Winter Heating Payment (PAWHP) from winter 2025/26. PAWHP is a form of assistance to mitigate some of the impact of additional domestic heating costs for those of state pension age, and is currently only available to pensioners who are in receipt of relevant benefits. In winter 2024/25, PAWHP was delivered by the Department for Work and Pensions (DWP) through an agency agreement laid out under a section 93 Scotland Act Order. Following the amendments to the Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024 brought about by these amendment regulations, PAWHP will be delivered from winter 2025/2026 onwards by Social Security Scotland as a universal payment for all pensioner households.

Policy Objectives

Section 30 of the Social Security (Scotland) Act 2018 confers powers on the Scottish Ministers to make regulations prescribing the eligibility rules for assistance provided under section 24 of the 2018 Act to help an individual to meet, or help towards meeting, the individual's heating costs during the winter months.

These amendment regulations will introduce universal eligibility for Pension Age Winter Heating Payment (PAWHP) for winter 2025/2026 onwards.

The key aim of this benefit is to mitigate some of the impact of additional domestic heating costs in winter by providing reliable financial support to all pensioner households, who may struggle to manage increasing energy costs over the winter. With high energy prices continuing to be the single greatest driver of fuel poverty, this support is particularly important given that energy prices remain high, and are higher than pre-Covid-19 levels, amid the cost of living crisis.

For those in receipt of relevant benefits, PAWHP will continue to be a single annual payment of £203.50¹ for those of pension age below the age of 80, and £305.10 for those aged 80 and over. Additionally, these regulations will introduce a universal payment of £100 for every other pensioner household not in receipt of relevant benefits.

The amendment regulations include details of eligibility rules for entitlement to PAWHP and the value of the payment, as well as provisions in relation to exportability, applications and timescales for a client to request a re-determination.

Eligibility Rules

Eligibility for PAWHP continues to be linked to the individuals age and their circumstances during the qualifying week. A person will be eligible if, during the qualifying week (the third full week in September), they are of state pension age.

These amendment regulations will provide the legal mechanism to make payment to those not in receipt of relevant benefits.

Those in receipt of relevant benefits will continue to receive a higher rate payment. The relevant benefits will be:

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

Amount of Payment

For those in receipt of relevant benefits, a single payment is made to an individual or a 'benefit household' (a couple in receipt of a joint claim, or individuals in a polygamous marriage). If the individual, or the oldest individual in the joint claim, are aged 66-79 they will receive a payment of £203.50. If the individual, or the oldest individual in the joint claim, are aged 80+ they will receive a payment of £305.10.

For those not in receipt of relevant benefits, PAWHP will be a payment of £100 per household. Those living alone, or with no other entitled individuals, will receive a single payment of £100. For those living with other entitled individuals, this household payment will be split into an individual shared rate payment of £50. That includes those living in a care home or independent hospital for the entirety of the qualifying week and the 12 weeks prior. This reflects they are likely to be responsible for a share of the heating costs, through their fees.

Exportability

¹ the up-rated values are subject to parliamentary approval of the Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2025

The existing PAWHP includes EEA residency conditions which are due to end from 1 April 2025. This is because the existing payment's income-related conditions would normally mean that it falls outside of the matters covered by EC Regulation 883/2004 and should be payable only in the state of residence.

Universal PAWHP will retain an aspect of means testing to ensure that those in receipt of relevant benefits receive a higher rate of payment, while introducing universal payments to those of pension age who are not in receipt of relevant benefits. With the introduction of this universal eligibility to PAWHP, the Scottish Government considers that the benefit is an 'old age benefit' in the matters covered by EC Regulation 883/2004. As a result, the payment will be exportable indefinitely.

This exportability will only apply to those people who retain protections after EU exit as a result of the various international agreements to which the UK is party.

We intend to continue to use the warmest region of the UK as a temperature link for the relevant EEA countries and Switzerland – limiting export only to those countries which have the same or colder average winter temperature.

Determination by Application

There may be circumstances in which an individual is required to apply for assistance and therefore provision for this by regulation should be made.

An individual may need to claim:

- if they are not in receipt of a DWP-administered benefit (including their State Pension) and have not received PAWHP or WFP before, or have deferred their State Pension since their last PAWHP or WFP;
- if they live abroad, or;
- if they're a mixed aged couple in receipt of Universal Credit.

Application window

This will allow people to apply for assistance until 31 March following the qualifying week. We do not intend to allow retrospective applications for previous winters unless there are exceptional circumstances.

We will regulate for the closure of the application window only, to allow flexibility in when applications open.

This approach allows applications throughout the winter that the payment is intended to provide support with. The application window as described is appropriate as it intends to provide support over the winter. If the winter has already passed and the individual has not already received automated support and has not applied during the winter period, then we can assume the support is no longer required after 31st March.

Periods in respect of a re-determination request

The regulations provide 42 calendar days for a client to request a re-determination and 56 calendar days for a decision on a re-determination request to be made.

In winter 2024/2025, payments were made by the DWP on behalf of Scottish Ministers under agency agreement, and the timescale for requesting a re-determination was therefore amended to align with DWPs 'mandatory reconsiderations', whereby clients should request a mandatory reconsideration within one month of their decision, to help streamline the process for winter 2024/25.

The previous PAWHP regulations provided 31 days for a client to request a re-determination and 56 days for a decision on a re-determination request to be made.

By providing 42 days for a client to request a re-determination and 56 days for a decision on a re-determination request to be made, these enhanced timescales for re-determinations will align with disability benefit timescales, offering increased time and flexibility for clients to request a re-determination, as well as reflecting the high caseload and potential complexity around household matching as part of Social Security Scotland's delivery of re-determinations.

This approach promotes informed decision making at re-determination stage and is likely to reduce the likelihood of appeals. It is important to note that 56 days would be the upper limit for completing a re-determination.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ("the Act"), the Scottish Ministers certify that, in their view, the Winter Heating Assistance (Pension Age) (Scotland) Amendment Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This legislation is not relevant to the Scottish Government's policy to maintain alignment with the EU, because each EU member state has its own social security laws.

EU rules co-ordinate these separate social security systems between member states (and associated states) to support freedom of movement. This co-ordination continues to apply in respect of the UK for people who fall under the various international agreements to which the UK is party. The Scottish Government considers that Pension Age Winter Heating Payment will fall into the scope of the co-ordination rules and relevant EEA residency and export conditions are included in the regulations.

Scottish Commission on Social Security - scrutiny of the draft Regulations

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

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

Impact Assessments

Draft impact assessments have been provided to SCoSS alongside the draft regulations, and will be published alongside the laying of the regulations.

We have provided the following impact assessments:

- Equalities Impact Assessment
- Fairer Scotland Duty
- Island Communities Impact Assessment
- Business Regulatory Impact Assessment
- Child Rights and Wellbeing Impact Assessment

The impact assessments find that the introduction of universal eligibility to PAWHP will have a positive impact, providing all pensioner households with a payment of at least £100. By maintaining the higher payment rates for those in receipt of relevant benefits, universal PAWHP will continue to protect the incomes of older people on relevant benefits, providing them with the same level of support as is currently available through PAWHP. With high energy prices continuing to be the single greatest driver of fuel poverty, this support is particularly important given the significant increase in energy prices amid the cost of living crisis.

The introduction of universal eligibility to PAWHP is forecast to provide support to 812,000 households in 2025/26, an investment of £101 million. This compares to the 137,000 forecast to receive the payment under the current restricted eligibility in winter 2024/25.

We have also engaged with the Information Commissioner's Office who have confirmed that the Scottish Government has met its obligation to consult the ICO under UK GDPR 36(4). An operational Data Protection Impact Assessment will be produced by Social Security Scotland before the processing of data begins.

The Scottish Government is committed within the 'Fairer Scotland for Older People' strategy to ensure the financial security of older people in Scotland. Additional

support through Winter Heating Payment is available to pensioners in receipt of Pension Credit.

Support in addition to social security payments is available through the Scottish Government's investment in our Council Tax Reduction Scheme and free bus travel for all older people over the age of 60 in Scotland. The Scottish Government has also provided over £2 million from our Equality and Human Rights Fund, supporting older people's organisations to deliver work focused on tackling inequality and enabling older people to live independent and fulfilling lives.

As per the requirements set out in the UNCRC (Incorporation) (Scotland) Act 2024 (UNCRC Act), there is a statutory requirement to complete a full Child Rights and Wellbeing Impact Assessment (CRWIA) when laying legislation. A full CRWIA has therefore been completed, finding an indirect positive impact of PAWHP on the rights and wellbeing of children, for those children who are part of a household in which an individual is entitled to PAWHP.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been published. The Scottish Government does not believe that PAWHP will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world.

The right to appeal to a First-tier Tribunal is provided for in the Social Security (Scotland) Act 2018. Civil legal aid will continue to be available to individuals to appeal an entitlement decision to the Upper Tribunal, Court of Session or Supreme Court. Whilst the change in policy may lead to more people appealing, the Scottish Government does not anticipate significant numbers which would have any adverse impact to the Legal Aid budget as a result of the introduction of PAWHP. Current recipients of WFP are already able to access legal aid to appeal entitlement decisions.

Scottish Government
Social Security Directorate
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