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By email only

Dear Cabinet Secretary

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

Further to your letter of 6 March 2025, I am pleased to provide a copy of this letter, which we ask you to consider as the Scottish Commission on Social Security's scrutiny report, on the draft Winter Heating Assistance (Pension Age) (Scotland) Amendment Regulations 2025. The draft regulations set out how the Scottish Government intends to expand the provision of Pension Age Winter Heating Payment from Winter 2025/26.

Consultation

During the scrutiny period our engagement with stakeholders has been limited and we would have wished to further engage with stakeholders on the detail of the regulations. We note that officials did have some limited consultation with stakeholders during the development of this set of regulations and they pointed towards the previous consultation process on the development of the initial policy, which had attracted over 900 responses.

In response to the questions we asked of stakeholders, Age Scotland highlighted a concern that the diminished timescale had not enabled the Scottish Government to undertake any further consultation, with particular reference made to the value of the payment, which has changed since the initial consultation.

"It's not clear how the Scottish Government decided upon this figure of £100 for non Pension Credit recipients as it is half or a third of what people will

have previously received. There is a lack of transparency on the evidence behind this. The lack of consultation is worrying.”¹

Complexity of entitlement

Our July 2024 report highlighted the need for clear messaging about the Pension Age Winter Heating Payment (PAWHP). People should know how much they will receive and how their household situation might affect this. Recent policy changes have potentially made this even more confusing. It is important that these changes are clearly explained.

The new payment rates in the draft regulations could add confusion. We note that even within the policy note and the regulation terms are not used consistently. The policy note says the regulations introduce a £100 payment for households not on relevant benefits. But the regulations refer to individuals getting payments, not households.

Social Security Scotland will rely on the Department for Work and Pensions (DWP) to identify eligible individuals. But as we note in our July 2024 report errors have been found in the DWP’s Winter Fuel Payment scheme, where pensioners were wrongly classified, leading to overpayments and underpayments.

These complexities could cause confusion and therefore risk not meeting principles such as putting the needs of those requiring assistance first (principle g(i)) and, if people are not receiving benefit as a result, not contributing to social security as a human right (principle (b)).

Observation 1: We note many of the recommendations and observations from our previous reports are still relevant, specifically Recommendations 5 & 7 in our report on the draft Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024 from July 2024, and Observation 2 from our report on the draft Winter Heating Assistance (Low Income) (Scotland) Regulations 2022 in August 2022.

Recommendation 1: Communications from Scottish Government and Social Security Scotland should clearly state the amounts that individuals can expect to receive, and they should be able to understand how this amount may be affected by household circumstances.

Applications

Some groups of people will have to make an application, such as people who have not received the UK Government’s Winter Fuel Payment or Pension Age Winter Heating Payment before, deferred their state pension, or receive Universal Credit as a ‘mixed age’ couple. In such instances, having clear communications indicating how someone should apply and by when, will be important.

¹ Age Scotland response to SCoSS call for views on the draft regulations, 18 March 2025.

Applications have to be made by the 31 March following the qualifying week, although this deadline can be extended for those with a good cause. There is an assumption in the policy note that if the application window has closed, and the individual has not applied and not already received support via the automated route, that the support is no longer required. However, whether an application has been made depends on factors such as the information people receive about entitlement, their potential eligibility and the ease of the application process. Therefore no assumptions should be made that no application means that Pension Age Winter Heating Payment is not needed.

Recommendation 2: To avoid an assumption that a late application means someone does not require winter heating support guidance, the Scottish Government should make clear the reasons why a person may make a late application.

New timescales for a client to request a re-determination

The existing Pension Age Winter Heating Payment policy which 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. As payments were made by DWP on behalf of Scottish Ministers under agency agreement, these timescales aligned with DWP's rules on mandatory reconsideration.

The draft regulations provide for an extension to 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, aligning the timescales with Social Security Scotland's disability benefit timescales. This is a welcome example of tidying up regulations.

Technical comments

Draft regulation 5 inserts a new regulation 7A. Regulation 7A(a) refers to an individual being "not entitled to a relevant benefit on a day in the qualifying week". Rather than "a day in the qualifying week" we think this should refer to "any day" in the qualifying week, to avoid someone potentially fulfilling both the relevant benefit condition in regulation 7 and the no relevant benefit condition in regulation 7A in the qualifying week (e.g. if they were to become entitled to Pension Credit part way through the qualifying week). We note that regulation 8(1) goes on to use "any day".

Recommendation 3: The Scottish Government should amend regulation 7A(a) to refer to "any day" in the qualifying week.

There is ambiguity in the wording of regulation 9(1)(c) as amended. People living in a care home who are entitled to Pension Credit or another relevant benefit in the qualifying week do not get a heating payment. However, as drafted, it is not clear whether entitlement to Pension Credit in the 12 weeks before that would also exclude them from a heating payment.

Recommendation 4: For clarity, regulation 9(1)(c) should say 'is entitled to a relevant benefit on a day in the qualifying week' or 'meets the relevant benefit condition'.

The payment for those not on a relevant benefit is £100 if they are the only person in the household due a payment, or £50 if they live with someone else who is due a Pension Age Winter Heating Payment. It may not be clear to people whether it only means a partner or whether it also means a relative or friend.

Recommendation 5: In the absence of a definition of ‘lives with’ in regulation 10, whether this includes living with a relative or friend should be clarified in public communications and guidance.

In regulation 10 (Amount of Pension Age Winter Heating Payment), there appears to be a drafting error in regulation 10(b) which gives £203.40 to those who get a relevant benefit and do not get the higher rate. Presumably this should be drafted as regulation 10(a)(iii).

Recommendation 6: If the rate specified in regulation 10(b) is meant to apply to people on benefit who are under 80, regulation 10(b) should be changed to regulation 10(a)(iii).

Regulation 13A(a) allows someone who should automatically get a Pension Age Winter Heating Payment, but has not been awarded it by determination without application, to make an application. Social Security Scotland has until 1st April to make a determination without application (Reg 11(2)(a)), but the claimant must make an application by 31st March. We are concerned there may be a timing issue affecting the client in these circumstances which could lead them to not being aware that Social Security Scotland are not going to make a determination without application – leading them to not apply within the required timescale.

Recommendation 7: Scottish Government communications should clarify the point at which an applicant would know that Social Security Scotland are not going to complete a determination without application in their case to enable someone to meet the proposed timescale for applying.

Scrutiny timeline

Last July 2024, we reported on draft regulations for the winter heating payments which were to replace the UK Winter Fuel Payment.² In the event, these were superseded for winter 2024/25 following the UK policy change away from universal payments. For 2024/25, in Scotland as in the rest of the UK, payments were restricted to those on Pension Credit and other means-tested benefits.

We did not comment on the regulations which came into force in November 2024 due to the compressed timescale for passing the legislation. However, we are pleased to note that recommendations in our July 2024 report have informed the drafting of subsequent regulations.

² [Scottish Commission on Social Security - Scrutiny report – The Winter Heating Assistance \(Pension Age\) \(Scotland\) Regulations 2024](#)

We note that again the period available for scrutiny has been reduced because of the need to ensure that legislation passes in time for this coming winter. To use the available time and resources most effectively, we have, therefore, not revisited the broader policy issues covered in our July 2024 report. Nor have we engaged further with stakeholders to the extent that we would have liked.

We would be pleased to work further with officials to learn how best to ensure that robust oversight and scrutiny is maintained when there are unusual time pressures on passing legislation.

Conclusion

A copy of this report has been submitted to the Convener of the Social Justice and Social Security Committee and will be published on our website.

We hope you find this report helpful and we welcome your feedback.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ed Pybus', with a stylized, flowing script.

Ed Pybus
Chair
Scottish Commission on Social Security