



T: 0300 244 4000
E: scottish.ministers@gov.scot

Ed Pybus
Chair
Scottish Commission on Social Security (SCoSS)
Area 1C South
Victoria Quay
EDINBURGH
EH6 6QQ

By email: info@socialsecuritycommission.scot

5 June 2025

Dear Ed,

I would like to thank SCoSS for your scrutiny report of 3 April 2025 on the draft Winter Heating Assistance (Pension Age) (Scotland) Amendment Regulations 2025. I would also like to note my appreciation for SCoSS working with my officials to report on the Amendment Regulations within a shortened scrutiny period, helping to ensure these regulations, and the support that this payment will provide, will be in place for the winter period ahead.

I note the points noted by SCoSS and stakeholders, particularly Age Scotland, whereby concerns have been raised in relation to the lack of consultation on these proposals and I would like to reaffirm my commitment to working with members of the public and stakeholders in the development of policy across Social Security in Scotland.

As you will be aware, the Scottish Government consulted widely on our proposals for Pension Age Winter Heating Payment in winter 2023/24. The UK Government's announcement to cut Winter Fuel Payments last July, which was taken without any due consultation or discussion with Scottish Ministers or officials, had a significant impact on the associated Block Grant Adjustment for delivering our proposed universal replacement of Winter Fuel Payment. This resulted in Scottish Ministers having to take a difficult decision at pace. It was not practicable at that time to consult further on proposals or expand eligibility criteria due to the significant reduction in budget and the pressured timetable for ensuring legislation was in place for winter 2024/25 so that Scottish pensioners would continue to receive support. At that time, I recognised that many pensioners who required support would no longer receive it, and committed to considering how I could improve Pension Age Winter Heating Payment.

Following the UK Government's Autumn budget, and confirmation of associated budget in Scotland, Scottish Ministers worked at pace to consider options for delivery of Pension Age Winter Heating Payment in winter 2025/26, as well as mitigations available for winter 2024/25. Scottish Ministers considered the finance available, and concluded £100 payments to those pensioner households not in receipt of a relevant benefit was affordable, and would go some way to supporting those households towards meeting their heating bills throughout the winter. This approach recognises many people who are not entitled to Pension Credit or other low income benefits also require support.

The consultation undertaken during winter 2023/24 on Pension Age Winter Heating Payment provided Scottish Ministers with an understanding of the views on the previously intended policy of universal eligibility, as proposed, prior to the UK Government decision to restrict Winter Fuel Payment eligibility in July 2024. Whilst the Scottish Government will always endeavour to consult on policy, given the pace at which this had to be considered in order to ensure legislation was in place for the forthcoming winter, it has once again not been possible to consult further on these proposals.

I am pleased to inform you that, as set out in the Annex to this letter, the Government has accepted all of SCoSS's recommendations. I am confident that the changes we have made in response to SCoSS's recommendations helps strengthen our regulations, demonstrates that we are listening and that our decisions are informed by evidence of what is right for older people in Scotland.

As you are aware, following the initial referral of these regulations for scrutiny my officials identified the need to include three updated provisions within the regulations, concerning the 'opt-out' and 'opt-in' mechanism, an aspect relating to residency, and backdated payment awards, as well as recommending the removal of a provision concerning applications. I understand that my officials have already shared these additional draft provisions with you on an informal basis, and I appreciate the consideration you have already given them in that context. However, I am aware that SCoSS has not yet had the opportunity to provide a formal scrutiny report on these particular provisions.

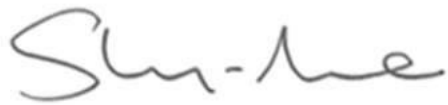
Unfortunately, due to the tight timescales required to ensure delivery of Pension Age Winter Heating Payment within the current legislative and operational timetable, it has not been possible to give you the time you need to thoroughly review the revised regulations and provide us with a scrutiny report 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 regulations, including these additional provisions 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.

I recognise the importance of SCoSS's independent scrutiny in enhancing the quality and transparency of our social security regulations. In this instance, given you have had sight of the additional provisions and have considered them informally, I hope you will understand the need to proceed in the way proposed to avoid any delay to the timely implementation of the payment.

As you will be aware, minor amendments have been made to the draft regulations, following engagement with SCoSS during the scrutiny period, as well as following identification of areas that would benefit from additional clarity or re-drafting. I have laid these out alongside the Scottish Government's response to your recommendations in the Annex below.

I remain grateful to Members for the constructive engagement with the Scottish Government, the flexibility you have shown in working with officials at reporting at pace, and 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 recommendations.

A handwritten signature in dark ink, appearing to read 'Shirley-Anne', written in a cursive style.

SHIRLEY-ANNE SOMERVILLE

**Scottish Government Response to SCoSS Scrutiny Report on Winter Heating Assistance (Pension Age) (Scotland)
Amendment Regulations 2025**

Responses to Recommendations and Observations

SCoSS Recommendation	Scottish Government Response	Accept/ Partially accept/ Reject
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.	Social Security Scotland will communicate via a range of different channels tailored to the audience. Where possible, Social Security Scotland will include details of the different tiers of payments and eligibility. Where this is not possible e.g. on a poster, the reader will be directed to the mygov website for more information.	Accept
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	As part of the overall communications plan, Social Security Scotland will ensure information in relation to late applications is included.	Accept

SCoSS Recommendation	Scottish Government Response	Accept/ Partially accept/ Reject
<p>Recommendation 3: The Scottish Government should amend regulation 7A(a) to refer to “any day” in the qualifying week.</p>	<p>Since officials shared the draft regulations with SCoSS on 6 March, regulation 7 (relevant benefit condition) in the principal Regulations is now omitted. We are no longer proposing to insert a reg 7A (no relevant benefit condition). These provisions are no longer needed.</p> <p>Instead, regulation 10 in the principal Regulations is amended to provide that the policy for different rates of payment for means tested payments and universal payments is met.</p> <p>Under regulation 10(1)(a), a means tested amount of PAWHP will be paid to those entitled to relevant benefits, or an equivalent benefit where they are part of the protected cohort and resident in a country listed in the schedule, on a day in the qualifying week. The amount will be higher for over 80s than the under 80s.</p> <p>Under regulation 10(1)(b), a universal amount of PAWHP will be paid to those not entitled to relevant or equivalent benefits. Those that do not live with other entitled pensioners in the qualifying week will receive the full £100 universal payment, whereas those that live with other entitled individuals (or if they live in residential care) during the qualifying week will receive a shared rate of £50 each.</p> <p>Finally, regulation 10(1)(c) will provide for the nil-rating policy where an opt-out request is in effect in terms of regulation 9A.</p>	Accept
<p>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’.</p>	<p>Regulation 9(1)(c) has now been updated to reflect SCoSS’s recommendation, ‘(c) <i>an individual who is entitled to a relevant benefit throughout the qualifying week who—</i>’, to ensure there is no ambiguity within this provision.</p>	Accept

SCoSS Recommendation	Scottish Government Response	Accept/ Partially accept/ Reject
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.	Social Security Scotland will communicate via a range of different channels tailored to the audience. Where possible, details of the definition of 'lives with' will be included within communications materials. Where this is not possible, the reader will be directed to the mygov website where further detailed information will be available.	Accept
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).	Following further review of the regulations during the scrutiny period, the error in Regulation 10 has now been amended. The previous draft Regulation 10(b) is now Regulation 10(1)(a)(iii).	Accept
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.	Communications will be issued towards the end of the period where Social Security Scotland have completed the processing of client data and issued payments automatically. Social Security Scotland will highlight the date that the majority of payments are expected to be made by and encourage people to get in touch if they have not received the payment, but think they are eligible.	Accept

SCoSS Recommendation	Scottish Government Response	Accept/ Partially accept/ Reject
<p>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.</p>	<p>The previous recommendations and observations to which SCoSS refer are laid out below. The Scottish Government have re-considered and responses to individual recommendations and observations can be found below.</p> <p>Recommendations and SG response in relation to the draft Winter Heating Assistance (Pension Age) Scotland Regulations 2024:</p> <p><u>Recommendation 5:</u> 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> <p><u>SG response:</u></p> <p>Social Security Scotland 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. 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> <p><u>Recommendation 7:</u> 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>	<p>Noted</p>

SCoSS Recommendation	Scottish Government Response	Accept/ Partially accept/ Reject
	<p><u>SG response:</u> Social Security Scotland will ensure all communication and engagement activity to support take-up of Scottish benefits including Pension Age Winter 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. Information on eligibility and payment amounts will also be available online on the mygov.scot website.</p> <p>Towards the end of the payment window, Social Security Scotland will highlight the date that the majority of payments are expected to be made by and encourage people to get in touch if they have not received the payment, but think they are eligible.</p> <p>By providing clear and accessible information across a range of offline and online channels, people can access information regarding eligibility and payments for Pension Age Winter Heating Payment.</p> <p>Observation and SG response in relation to the draft Winter Heating Assistance (Low Income) Scotland Regulations 2023:</p>	

SCoSS Recommendation	Scottish Government Response	Accept/ Partially accept/ Reject
	<p><u>Observation 1</u>: It is important that LIWHA is widely understood as a contribution towards winter energy costs, alongside other forms of support, and not as a payment that is intended to meet them.</p> <p><u>SG response</u>: Noted.</p>	

Draft Regulation Amendments

Regulation in SCoSS Scrutiny proposals	How the regulations differ from the proposals
Regulation 3 amending regulation 2 of the principal Regulations (interpretation)	This provision to add a definition of “mixed age couple” was removed as not needed
Regulation 4 amending regulation 5 of the principal Regulations (eligibility rules)	This provision is now numbered regulation 3 and the references to the relevant benefit condition and the no relevant benefit condition have been removed
Regulation 5 substituting regulation 7 of the principal Regulations (relevant benefit condition)	This provision is now numbered regulation 4 which omits regulation 7 of the principal Regulations (relevant benefit condition)
Regulation 6 substituting regulation 8 of the principal Regulations (residence condition)	This provision is now numbered regulation 5. The regulation clarifies that the residence condition of being ordinarily resident in Scotland and not being a person subject to immigration control needs to be met on one day in the qualifying week. New provisions were added to clarify that an individual is not treated as meeting the condition of being habitually resident in one of the countries listed in the schedule if this is not met by the last day of the qualifying week and an individual is not treated as being not a person subject to immigration control when they are subject to immigration control on the last day of the qualifying week.

Regulation 7 amending regulation 9 of the principal Regulations (exclusions)	This provision is still numbered regulation 7. A new exclusion provision has been added where an individual was entitled to PAWHP payable at the rate for an individual who is not entitled to a relevant benefit and their partner becomes entitled to a relevant benefit in respect of the qualifying week as a result of a backdated decision in respect of the relevant benefit.
	Regulation 8 inserts new regulations 9A and 9B which permit individuals to opt out of receiving payment of PAWHP and permit individuals to opt in to receive payment of PAWHP if they have previously opted out.
Regulation 8 substituting regulation 10 of the principal Regulations (amount of PAWHP)	This provision is now numbered regulation 9 and includes new provisions defining what is meant by equivalent benefits for individuals who are habitually resident in one of the countries in the schedule and how the provision applies to members of couples and polygamous marriages
	Regulation 10 inserts new regulation 11A which provides for a determination without application where an individual has been awarded PAWHP at the rate for an individual who is not entitled to a relevant benefit but later is awarded a relevant benefit in respect of the qualifying week as a result of a backdated decision. A determination made under this provision then allows for the payment of PAWHP to offset any payment already made in respect of that qualifying week.
	Regulation 11 inserts new regulation 13A which provides for a determination without application when an individual wishes to opt in to payment of PAWHP where they had previously opted out
Regulation 9 inserting new Part 5 re applications	This provision is now numbered regulation 6.
Regulation 10 amending regulation 14 of the principal Regulations (periods for re-determinations)	This provision is now numbered regulation 12
Regulation 11 omitting part 8 of the principal Regulations (expiry)	This provision is now numbered regulation 13
Regulation 12 inserting schedule (countries)	This provision is now numbered regulation 14

	Regulation 15 makes a saving provision to save the principal Regulations as they were before these Regulations amended them in respect of any determination made in respect of the qualifying week in 2024 and any requests for re-determinations relative to that qualifying week
--	--