Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018 for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2022 No.

SOCIAL SECURITY

The Winter Heating Assistance (Low Income) (Scotland) Regulations […]

Made - - - -	***
Coming into force - -	***

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 this instrument 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.

The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010(**b**). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

Citation and commencement

1. These Regulations may be cited as the Winter Heating Assistance (Low Income) (Scotland) Regulations […] and come into force on […].

Interpretation

2. In these Regulations—

"the 2018 Act" means the Social Security (Scotland) Act 2018,

"the 2012 Act" means the Welfare Reform Act 2012(**c**),

"the 2002 Act" means the Tax Credits Act 2002(**d**),

(**a**) 2018 asp 9.
(**b**) 2010 asp 10.
(**c**) 2012 c. 5.
(**d**) 2002 c. 21.

"applicable amount" means—

(a) in the case of income-related employment and support allowance, the claimant's weekly applicable amount under regulations 67 to 70 of the Employment and Support Allowance Regulations 2008(**a**),

(b) in the case of income support, the claimant's weekly applicable amount under regulations 17 to 21AA of the Income Support (General) Regulations 1987(**b**),

(c) in the case of jobseeker's allowance, the claimant's weekly applicable amount under regulations 83 to 86C of the Jobseeker's Allowance Regulations 1996(**c**),

"backdated award" means an award of assistance for a day, or period that begins on a day, that falls before the day the decision to make an award is taken,

"care home" means a care home as defined by paragraph 2 of Schedule 12 of the Public Services Reform (Scotland) Act 2010(**d**),

"child tax credit" means child tax credit under the Tax Credits Act 2002(**e**),

"determination" means a determination of entitlement within the meaning of section 25 of the 2018 Act,

"family" has the meaning given to it in section 137 of the Social Security Contributions and Benefits Act 1992(**f**) and the Income Support (General) Regulations 1987,

"income-based jobseeker's allowance" means income-based jobseeker's allowance under the Jobseekers Act 1995(**g**),

"income-related employment and support allowance" means income-related employment and support allowance under Part 1 of the Welfare Reform Act 2007(**h**),

"income support" means income support under Part VII of the Social Security Contributions and Benefits Act 1992,

"independent healthcare service" has the meaning given by section 10F of the National Health Service (Scotland) Act 1978(**i**),

"low income winter heating assistance" means winter heating assistance for low income individuals given in accordance with these Regulations,

"member of the support group" means a person who has or is treated as having limited capability for work-related activity under Part 6 of the Employment and Support Allowance Regulations 2008,

"member of the work-related activity group" means a person who has or is treated as having limited capability for work under Part 5 of the Employment and Support Allowance Regulations 2008 other than by virtue of regulation 30 of those Regulations,

"owner-occupier loan payments" means loan payments made under the Loans for Mortgage Interest Regulations 2017(**j**),

"universal credit" means universal credit under Part 1 of the Welfare Reform Act 2012,

"qualifying week" means the week running from the third Monday in November in any year,

"state pension credit" has the meaning given by section 1(1) of the State Pension Credit Act 2002(**k**), and

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(**a**) S.I. 2008/794.
(**b**) S.I. 1987/1967.
(**c**) S.I. 1996/207.
(**d**) 2010 asp 8.
(**e**) 2002 c. 21.
(**f**) 1992 c. 4.
(**g**) 1995 c. 18. Repealed by the Welfare Reform Act 2012 c. 5 Schedule 14(1) para. 1.
(**h**) 2007 c. 5.
(**i**) 1978 c. 29.
(**j**) S.I. 2017/725.
(**k**) 2002 c. 16.

a person being "treated as entitled to" a benefit has the meaning given in regulation 2(2)(aa) of the Loans for Mortgage Interest Regulations 2017.

Overview

3.—(1) Regulation 4 makes provision in respect of eligibility rules for determining entitlement to low income winter heating assistance.

(2) Regulations 5 to 9 make provision about matters of procedure for determining entitlement to low income winter heating assistance.

(3) Regulations 10 and 11 make provision about the low income winter heating assistance that is to be given to individuals who are eligible for assistance.

Eligibility rules for low income winter heating assistance

4.—(1) An individual is entitled to be paid low income winter heating assistance if the individual satisfies in respect of a qualifying week the conditions specified in paragraphs (2) to (7) of this regulation.

(2) The first condition is that, in respect of any day within the qualifying week the individual—

(a) has been awarded—

(i) state pension credit,

(ii) income support,

(iii) an income-based jobseeker's allowance,

(iv) an income-related employment and support allowance,

(v) universal credit,

(vi) owner-occupier loan payments and is treated as entitled to a benefit specified in heads (ii) to (iv), or

(vii) owner-occupier loan payments and is treated as entitled to state pension credit, and

(b) is resident in Scotland.

(3) The second condition (which applies only if the individual falls within paragraph 2(a)(ii), (iii), (iv), (v), or (vi) is that, in respect of the day to which paragraph (2) relates—

(a) the individual's family includes a member aged less than 5,

(b) where the individual has been awarded income support, the individual's applicable amount includes one or more of the premiums specified in paragraphs 9 to 14 of Part 3 (premiums) of schedule 2 of the Income Support (General) Regulations 1987,

(c) where the individual has been awarded income-based jobseeker's allowance, the individual's applicable amount includes one or more of the premiums specified in paragraphs 10 to 16 of Part 3 (premiums) of schedule 1 of the Jobseeker's Allowance Regulations 1996,

(d) the individual's child tax credit includes a disability element within the meaning of section 9(3) of the 2002 Act,

(e) where the individual has been awarded income-related employment and support allowance—

(i) the individual's applicable amount includes one or more of the premiums specified in paragraphs 5 to 7 of Part 2 (premiums) of schedule 4 of the Employment and Support Allowance Regulations 2008, or

(ii) the individual is a member of the work-related activity group or is a member of the support group,

(f) where the individual has been awarded universal credit—

(i) the individual's universal credit award includes an amount under section 10(2) of the 2012 Act (child or qualifying young person who is disabled), or

(ii) the individual is determined as having limited capability for work or limited capability for work and work-related activity as construed in accordance with regulations 39 and 40 of the Universal Credit Regulations 2013(**a**), or

(g) where the individual has been awarded owner-occupier loan payments, the individual's applicable amount, if the individual were entitled to a benefit specified in paragraph (2)(a)(ii) to (iv), would include one or more of the premiums specified in—

(i) where the individual is treated as entitled to income support, paragraphs 9 to 14 of Part 3 of schedule 2 of the Income Support (General) Regulations 1987,

(ii) where the individual is treated as entitled to jobseeker's allowance, paragraphs 10 to 16 of Part 3 of schedule 1 of the Jobseeker's Allowance Regulations 1996,

(iii) where the individual is treated as entitled to employment and support allowance, paragraphs 5 to 7 of schedule 4 of the Employment and Support Allowance Regulations 2008.

(4) The third condition, which does not apply to an individual who comes within paragraph 3(a) or (d), is that the person does not reside in—

(a) a care home,

(b) an independent healthcare service,

(c) an establishment run by the Abbeyfield Society or by a body affiliated to that Society, or

(d) accommodation provided under section 3(1) of, and Part 2 of the Schedule to, the Polish Resettlement Act 1947(**b**) (provision by the Secretary of State of accommodation in camps).

(5) In relation to an individual who has been awarded universal credit, the third condition applies as if paragraph (4)(d) were omitted.

(6) The fourth condition, which applies only where the individual has been awarded universal credit and their award of universal credit does not include an amount under section 10(2) of the 2012 Act (child or qualifying young person who is disabled) is that the person is not in employment or gainful self-employment on any day during the qualifying week.

(7) In paragraph (6)—

(a) "*employment*" means employment under a contract of service, or in an office, including an elective office,

(b) a person is in "*gainful self-employment*" where—

(i) they are carrying on a trade, profession or vocation as their main employment,

(ii) their earnings from that trade, profession or vocation are treated as self-employed earnings for the purpose of regulations made under section 8(3) of the 2012 Act, and

(iii) the trade, profession or vocation is organised, developed, regular and carried on in expectation of profit.

Determination of entitlement to low income winter heating assistance without application

5. The Scottish Ministers must, without receiving an application, make a determination of an individual's entitlement to low income winter heating assistance under section 30 of the 2018 Act where it appears to the Scottish Ministers from information available to them that the individual is likely to meet the eligibility rules in regulation 4.

(**a**) S.I. 2013/376.
(**b**) 1947 c. 19.

Determination following backdated award of assistance

6. The Scottish Ministers must make a determination of an individual's entitlement to low income winter heating assistance without receiving an application where it appears to the Scottish Ministers from information available to them that—

(a) following an appeal, an award of one or more of the forms of assistance specified at regulation 4(2)(a) is made that is a backdated award, and

(b) that award covers a period which includes at least one day within the qualifying week.

Determination following official error – underpayments

7.—(1) The Scottish Ministers must make a determination of an individual's entitlement to low income winter heating assistance without receiving an application where—

(a) they have previously made a determination of the individual's entitlement to low income winter heating assistance, and

(b) they establish that, due to official error, that determination was incorrect resulting in the individual not being given an award of low income winter heating assistance to which they were entitled.

(2) In this regulation, "official error" means an error made by the Scottish Ministers or a Minister of the Crown that was not materially contributed to by anyone else.

Determination following error – overpayments

8.—(1) The Scottish Ministers must make a determination of an individual's entitlement to low income winter heating assistance without receiving an application where—

(a) they have previously made a determination of the individual's entitlement to low income winter heating assistance, and

(b) they establish that, due to an error, that determination was incorrect resulting in the individual being given an award of low income winter heating assistance to which they were not entitled.

(2) In this regulation, references to an "error" are to—

(a) an error in the performance of a function conferred by these Regulations or the 2018 Act, including a determination being made—

(i) wrongly, or

(ii) correctly but on the basis of—

(aa) incorrect information, or

(bb) an assumption which proves to be wrong, or

(b) a new determination not being made after an assumption on the basis of which an earlier determination was made has proved to be wrong.

Periods for re-determination requests

9.—(1) The period for requesting a re-determination of entitlement to low income winter heating assistance under section 41 of the 2018 Act is 31 days beginning with the day that the individual is informed, in accordance with section 40 of that Act, of the right to make the request.

(2) In relation to determining entitlement to low income winter heating assistance, the period allowed for re-determination (within the meaning of section 43 of that Act) is 16 working days beginning with—

(a) the day that the request for a re-determination is received by Scottish Ministers,

(b) where the request for a re-determination is received by the Scottish Ministers later than the period prescribed by paragraph (1), the day on which the Scottish Ministers, or, on

appeal, the First-tier Tribunal for Scotland, decide that the individual has a good reason for not requesting the re-determination sooner, or

(c) in a case where the Scottish Ministers have informed the individual of their decision that the request for a re-determination was not made in such form as the Scottish Ministers require, the day on which it is subsequently decided by the First-Tier Tribunal for Scotland that the individual in question has made the request in such form as the Scottish Ministers require.

(3) For the purpose of paragraph (2), a "*working day*" is a day other than—

(a) a Saturday,

(b) a Sunday, or

(c) a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(**a**).

Value and form of low income winter heating assistance

10.—(1) The value of low income winter heating assistance is £50.

(2) Low income winter heating assistance is to be given in the form of money in a single payment.

Making payments

11.—(1) Where low income winter heating assistance is payable in respect of an individual, the Scottish Ministers may, where they consider it appropriate, make the payment to another person to be used for the benefit of the individual.

(2) Where the Scottish Ministers consider, for any reason, that it is no longer appropriate for a particular person who falls within paragraph (1) to continue to receive the payment, they may cease making payment to that person and pay it instead to the individual who is entitled to the payment or another person.

Name
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

(**a**) 1971 c. 80.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about payments of low income winter heating assistance to certain individuals who are in receipt of specified low income benefits. Regulation 4 sets out the eligibility rules for low income winter heating assistance. Regulations 5 to 9 make provision about matters of procedure for determining entitlement to low income winter heating assistance. Regulations 10 and 11 provide for payments of low income winter heating assistance.