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Sally Witcher
Chair of the Scottish Commission on Social
Security
By email: info@socialsecuritycommission.scot

14 May 2020

Dear Sally,

As you know, although there has regrettably been some changes to the social security programme due to Covid-19, I am determined to proceed with the delivery of Child Winter Heating Assistance (CWhA) in Winter 2020. I am pleased to provide a copy of the draft Winter Heating Assistance for Children and Young People Regulations that are issued to SCoSS for formal scrutiny as required by section 97 of the Social Security (Scotland) Act 2018.

In light of the replanning of social security in relation to Covid-19, these regulations separate out provisions relating to CWhA from the Disability Assistance for Children and Young People Regulations that were previously provided in draft to the Commission on 7 February.

I am proud to mark this milestone and to set out how, despite the challenging circumstances presented by Covid-19, we can offer additional support to disabled children and young people in Scotland through the social security system. It should be noted, however, that our ability to deliver this benefit in Winter 2020 is dependent on DWP providing the necessary data. Although joint work on this is progressing well, I am acutely aware of the operational pressures that the Department and its staff are under, as a result of the Covid-19 situation.

These regulations set out the detail of how CWhA will deliver an additional £200 payment to children and young people in receipt of the highest rate care component of Disability Living Allowance (DLA) each Winter. We know that these disabled children and young people, and their families, incur increased winter fuel costs for a number of reasons including a requirement to keep the home at a higher average temperature and to provide support and care through the night.

SCoSS' scrutiny report relating to the Disability Assistance for Children and Young People Regulations provided a number of recommendations relating to provisions contained within those regulations that related to payment of Winter Heating Assistance. A number of revisions have been made to take account of those recommendations including:

- clarification of the residency rules for entitlement to Child Winter Heating Assistance;
- revision to the entitlement rules to ensure that clients awarded DLA retrospectively for the qualifying week as a result of, for instance, an appeal, can access Child Winter Heating Assistance; and

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

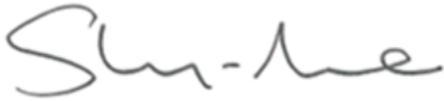


- clarification that the payment is made on a 'per individual' basis rather than 'per household.'

I would ask that SCoSS provide their scrutiny report on these regulations by 14 July 2020 to ensure that any recommendations provided can be considered before the regulations are laid shortly after Summer recess.

As ever, I am grateful for your continued work in ensuring that devolved social security delivers a system that meets the needs of the people of Scotland.

Yours sincerely,



SHIRLEY-ANNE SOMERVILLE

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DRAFT

Draft Order 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

2020 No.

SOCIAL SECURITY

**The Winter Heating Assistance for Children and Young People
(Scotland) Regulations 2020**

Made - - - - 2020

Coming into force - - 9 November 2020

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 30(2) and schedule 4 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 consulted the Scottish Commission on Social Security.

Citation and commencement

1. These Regulations may be cited as the Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020 and they come into force on 9 November 2020.

Interpretation

2. In these Regulations—

“the 2018 Act” means the Social Security (Scotland) Act 2018,

“child” means a person who has not yet reached the age of 16 years,

“determination” means a determination of an individual’s entitlement to assistance under section 37 of the 2018 Act,

“Disability Living Allowance” means the disability benefit paid in accordance with section 71 of the Social Security Contributions and Benefits Act 1992(b),

“Personal Independence Payment” means an allowance paid in accordance with section 77 of the Welfare Reform Act 2012(c),

(a) 2018 asp 9.

(b) 1992 c.4. Section 71 was amended by section 67(1) of the Welfare Reform and Pensions Act 1999 (c.30).

(c) 2012 c.5.

“qualifying week” means the week running from the third Monday in September in any year, and

“young person” means a person who—

- (a) is aged 16 or 17, or
- (b) has attained the age of 18 on or before the last day of the qualifying week and awaits completion of transfer to Personal Independence Payment.

Overview

3.—(1) An individual is entitled to receive winter heating assistance if they meet the conditions prescribed in these Regulations.

- (2) Regulation 4 provides for eligibility rules.
- (3) Regulations 5 and 6 provide for determinations with and without application.
- (4) Regulations 7 to 11 make provision for procedure in relation to applications and re-determinations.
- (5) Regulations 12 and 13 provide for payments.

Eligibility rules for winter heating assistance

4.—(1) An individual is entitled to be paid winter heating assistance if—

- (a) they are a child or young person,
- (b) in respect of any day within the qualifying week, they are entitled to receive payment of the highest rate of the care component of Disability Living Allowance, and
- (c) they are—
 - (i) resident in Scotland, or
 - (ii) habitually resident in a country listed in the schedule and have a genuine and sufficient link to Scotland.

(2) The condition in paragraph (1)(b) is not met where the individual has died before the qualifying week.

Determination of entitlement to winter heating assistance without application

5. The Scottish Ministers must make a determination, where practicable, of entitlement to winter heating assistance under section 30 of the 2018 Act, without an application, in respect of an individual who meets the eligibility rules in regulation 4(a), (b) and (c)(i).

Determination of entitlement to winter heating assistance with an application

6. The Scottish Ministers must make a determination of entitlement to winter heating assistance under section 30 of the 2018 Act, after receiving an application from an individual—

- (a) who meets the eligibility rules in regulation 4(a), (b) and (c)(ii), or
- (b) who meets the eligibility rules in regulation 4(a), (b) and (c)(i), but for whom a determination without application has not been made under regulation 4.

Applications

7. An application is to be treated as made on the day—

- (a) it is received by the Scottish Ministers, or
- (b) when the Scottish Ministers receive evidence of a genuine and sufficient link to Scotland.

Determination following official error

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

- (a) they have previously made a determination of the individual’s entitlement to winter heating assistance,
- (b) they establish that, due to official error, that determination was incorrect resulting in the individual—
 - (i) not being given an award of winter heating assistance to which they were entitled, or
 - (ii) being given an award of winter heating assistance to which they were not entitled,
- (c) there has been no request for re-determination of the individual’s entitlement to winter heating assistance, and
- (d) no appeal has been brought in relation to that determination.

(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.

Other situations requiring a determination without an application

9. The Scottish Ministers must make a determination of an individual’s entitlement to winter heating assistance without receiving an application where—

- (a) winter heating assistance has been paid in relation to an individual where the Disability Living Allowance payment made during the qualifying week is considered to have been made as a result of—
 - (i) fraud, or
 - (ii) an error made,by the individual,
- (b) an amount of winter heating assistance was paid to an individual in excess of the amount in the determination, or
- (c) winter heating assistance was paid to an individual who made a fraudulent application for winter heating assistance.

When changes of entitlement take effect

10. Where, as a result of a determination without an application, an individual’s entitlement to winter heating assistance is changed with the effect that the individual is —

- (a) entitled to winter heating allowance, or
- (b) is not entitled to winter heating assistance,

the changed entitlement takes effect on the date of the earlier determination.

Periods for re-determination requests

11.—(1) The period for requesting a re-determination of entitlement to winter heating assistance under section 41 of the Social Security (Scotland) Act 2018, is 42 days beginning with the day that the applicant is informed, in accordance with section 40 of that Act, of the right to make the request.

(2) 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 the Scottish Ministers, or
- (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 applicant has a good reason for not requesting the re-determination sooner.

- (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).

Payment of winter heating assistance

12.—(1) Where a determination is made that an individual is entitled to winter heating assistance, the Scottish Ministers will pay to the individual a single payment of £200.

(2) The payment mentioned in paragraph (1) will be paid regardless of any sums owed by the individual in relation to an overpayment of Disability Living Allowance.

Making payments

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

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

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
Date

(a) 1971.

SCHEDULE

Regulation 3

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Republic of Croatia
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Republic of Estonia
Republic of Finland
Federal Republic of Germany
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Republic of Iceland
Republic of Ireland
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Principality of Liechtenstein
Republic of Lithuania
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Kingdom of the Netherlands
Kingdom of Norway
Republic of Poland
Republic of Romania
Slovak Republic
Republic of Slovenia
Kingdom of Sweden
Swiss Confederation

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about payments of winter heating assistance to children and young people who are in receipt of disability assistance paid in accordance with section 71 of the Social Security Contributions and Benefits Act 1992 .

Regulation 4 set out the eligibility rules. Regulations 5 and 6 provide for determinations with and without application. Regulations 7 to 11 make provision for procedure in relation to applications and re-determinations. Regulations 12 and 13 provide for payments of winter heating assistance.