



Dr Sally Witcher OBE  
Scottish Commission on Social Security  
c/o Secretariat  
Victoria Quay  
Edinburgh  
EH6 6QQ

[info@socialsecuritycommission.scot](mailto:info@socialsecuritycommission.scot)

27 August 2020

Dear Dr Witcher,

Thank you for your letter of 27 July and accompanying report on the Winter Heating Assistance for Children and Young People (Scotland) Regulations. I am grateful to members of the Scottish Commission on Social Security ('the Commission') for their scrutiny of these regulations during what has been a very challenging number of months.

I welcome the Commission's overall view that that Child Winter Heating Assistance (CWhA) is a vital new form of support to disabled young people and the positive impact it is anticipated to have on young people with disabilities.

I am pleased to confirm that I have accepted the majority of the recommendations in the report. A table of responses to each recommendation is detailed at **Annex A**

## Response to recommendations

**Recommendation 1** sets out the Commission's view that the Scottish Government should consider continuing to produce standalone regulations for provisions such as CWhA and Short-Term Assistance to enable consistency, clarity and in depth scrutiny of each set of regulations. I accept the need to continue to consider the optimal packaging of each set of regulations and, in some instances, the requirement for standalone regulations that relate to other policy areas. My officials will continue to consider the best structure of each set of regulations to provide clarity and consistency.



**Recommendation 2** relates to ensuring that children and young people inform the development of assistance that affects them and that their views inform the future development and evaluation of CWA. The Commission will be aware that a full public consultation was undertaken in 2019, including on proposals for CWA, in addition to engagement with stakeholder organisations. I accept this recommendation and it may be helpful to note that as part of the future policy evaluation process, the views of children, young people and their families will be sought in considering the efficacy both of the benefit and of the service that delivers it.

**Recommendation 3** sets out the Commission's view that further clarification is required on the rationale for providing eligibility only to clients in receipt of the highest rate care component. It also recommends that the Scottish Government sets out its intention to extend eligibility in the future.

The rationale for providing for eligibility to CWA for this group of children and young people is to provide some mitigation for the increased costs these individuals incur including as a result of needing to heat their homes through the night, or periods of the night, because, as a result of their disability or condition, they require another person to provide care and support throughout the night. As the Commission know, the highest rate care component of Disability Living Allowance (DLA) sets out that an individual's needs must be throughout the day and the night.

Neither the other component rates for DLA, nor either component of Personal Independence Payment (PIP) has a requirement for needs to be met through the night. Whilst it might be feasible to develop a more complex and considerate entitlement scheme to include other clients, this would lead to a significant delay in delivery of this assistance and would likely impact on the delivery dates for other forms of assistance including the Child Disability Payment (CDP) and the Scottish Child Payment (SCP). For these reasons I reject **Recommendation 3**.

**Recommendation 4** sets out the Commission's view that the Scottish Government should produce clear, detailed and accessible guidance to ensure clarity about the process when CWA becomes payable due to a retrospective award of DLA. As part of the development and delivery of CWA, it is the intention that detailed guidance will be provided for Social Security Scotland officials administering awards. This guidance will also be publicly available. In addition, guidance for clients will be published by the Scottish Government. I accept **Recommendation 4**.

**Recommendation 5** sets out that as part of the maximisation of take-up amongst 16 to 18 year olds, the Scottish Government should ensure that information on CWA and the interactions with DLA and PIP is clear and reaches young people and those who support them. As part of the design and development of communications products, it is the intention that this information is clearly set out for clients. I accept this recommendation.

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

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



INVESTORS  
IN PEOPLE

Accredited  
Until 2020



The Commission sets out in **Recommendation 6** that, when an opportunity arises, the Scottish Government should consider the feasibility of widening the qualification window for CWA to include children and young people in receipt of DLA throughout any point of the winter period. The Commission will note that extension of the qualification window is likely to significantly increase the complexity of the delivery of this form of assistance, particularly in relation to the payment of clients in receipt of DLA given that it requires a complex data transfer process jointly delivered by the Scottish Government and the DWP.

I do however accept the need to consider the evolution of this form of assistance to best meet the needs of clients and accept **Recommendation 6**. A review of the potential for extending the qualifying window will take place once the case transfer process for DLA to CDP is completed. Only once this process is completed, and CDP cases are delivered by Social Security Scotland, will it be possible to consider a significant restricting of the process for delivering CWA.

**Recommendation 7** sets out the Commission's view that the Scottish Government should extend CWA entitlement to children in residential care so that they are treated in the same way under the eligibility rules as children in hospital. I am grateful to the Commission for flagging the potential behavioural impact of the proposals in the draft regulations – that some clients would be unable to access CWA based on whether or not they had visited their home in the qualifying week. I accept this recommendation and the regulations I lay before Parliament in draft will confer entitlement on children in residential care where they receive the highest rate care component of DLA in the qualifying week.

**Recommendation 8** sets out that the Scottish Government should remove regulation 4(2) regarding a payment condition not being met where the individual has died before the qualifying week. The Commission also recommends that clear, sensitive guidance is put in place concerning the recovery of over-payments. I accept this recommendation and members should note that clear, sensitive guidance will be developed in relation to the recovery of payments.

The Commission sets out in **Recommendation 9** that the Scottish Government should ensure consistency across all types of social security assistance in relation to the test of residency in Scotland. I accept that consistency is desirable however there are practical reasons why consistency cannot be achieved across all forms of assistance. The residency test for each form of assistance may be different because of the nature of eligibility conditions for that benefit.

Where a form of assistance is paid in Scotland based on the individual receiving a 'qualifying benefit' from the DWP, a habitual residence test is not required for the devolved assistance because the individual has already evidenced that they meet these in accessing the DWP qualifying benefit. In these instances, the individual need only evidence that their 'ordinary residence' in Scotland to be deemed eligible for assistance.

In addition, residency criteria will differ in relation to forms of assistance that are covered by EU coordination rules on social security. On some forms of devolved assistance will be covered by these rules and the residency criteria will, therefore, naturally diverge.

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

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



Accredited  
Until 2020



Devolved forms of assistance paid in relation to a data transfer process including CWA and the Carers Allowance Supplement (CAS) require a simpler residency test than, for instance, a new application for CDP. This is required to ensure that payment can be made in relation to a data transfer process and that this is done efficiently and quickly.

I partially accept **Recommendation 9** and accept that it is desirable to ensure consistency in relation to residency tests but note that there must be good policy reasons as to why residency tests for two forms of assistance may diverge.

In relation **Recommendation 10** the Commission set out that the Scottish Government should clarify what will be treated as the day of application. The day of application is not relevant in relation to CWA because the assistance is paid in respect of an 'event' as a one-off annual payment rather than a 'period,' as required by ongoing forms of assistance. The qualifying week is the key to eligibility and, as a result the date of application has no effect on entitlement to assistance. For this reason I reject this recommendation.

**Recommendation 11** sets out that the Scottish Government should develop processes for paying assistance to people other than the individual who is eligible that protect and empower young people. As the Commission know, the Social Security Administration and Tribunals (Scotland) Bill ('SSAT Bill') includes provisions relating to the appointment of individuals to act on behalf of children, where that individual does not have parental rights and responsibilities (PRRs) for the child. Any making of appointments will be done under the provisions currently included in the Bill on the conclusion of its parliamentary passage.

The regulations do allow payment to other third parties where the client is legally regarded as having capacity (and is therefore 16 or older) and requests that their assistance is paid to another person. Guidance will underpin how that regulation operates in relation to the client's ability to voluntarily request their benefit to be paid to another individual eg. a parent.

I accept **Recommendation 11** and note that appointment of appointees will be made under the provisions in the Social Security (Scotland) Act 2018 and, once in force, those provisions as amended by the SSAT Bill.

In relation to **Observation 1** the Commission note that the Scottish Government should make every effort to ensure clarity on all key policy areas and provide impact assessments at the time that regulations are referred to the Commission. Whilst I agree with this observation, the Commission will know that the regulations setting out the rules for CWA in this form were developed as a free-standing set of regulations in less than 4 weeks as part of the replanning process following Covid-19. The impact assessments were provided to the Commission a number of weeks after the regulations due to the limited time that provided to complete the impact assessment process.

The time to complete this activity was limited by necessity as a result of the global pandemic however I agree that every effort should continue to be made to finalise policy and complete impact assessments at the point that regulations are sent to the Commission.

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

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



INVESTORS  
IN PEOPLE

Accredited  
Until 2020

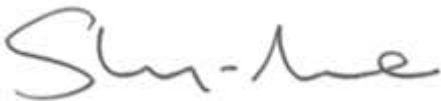


Turning to **Observation 2**, I can confirm that the regulations have been redrafted to make clearer that anyone who applies for CWA has the right to a determination. In relation to appeals, the 2018 Act makes explicit provision for appeals resulting from a determination, and our overall approach in making regulations for all forms of assistance under Chapter 2 of the Act has been to retain the rules relating to appeals in primary legislation. I believe this achieves consistency in terms of substance and presentation. However, in all communications with clients who receive a determination, and with stakeholders, the Scottish Government will make clear the individual's right to a re-determination and appeal to avoid any ambiguity.

**Observation 3** sets out the Commission's view that further clarity about the potential implications of the necessary DWP data not being made available when expected would be helpful. If the data is not provided when expected, it will likely delay the making of CWA payments to clients. Clearly this would depend on how much later than anticipated the data was provided. However, the Commission should note that all indications from both the DWP and the Scottish Government's Social Security Programme are that there is not anticipated to be a delay or an issue with the provision of this data.

Once again, I am grateful to members of the Commission for undertaking the scrutiny process of these regulations at relatively short notice, due to the Covid-19 situation. The recommendations and feedback given provide valuable and vital insight into how CWA can best meet what I'm sure the Commission view as a shared objective with the Scottish Government: ensuring that devolved assistance best meets the needs of the people of Scotland it is designed to support.

Yours sincerely,



**SHIRLEY ANNE-SOMERVILLE**

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

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



INVESTORS  
IN PEOPLE

Accredited  
Until 2020



## Summary Table of the Scottish Government's Response to recommendations

SCoSS recommendation	Accept/ Partially accept/ Decline	SG Response
<b>Recommendation 1:</b> The Scottish Government should consider continuing to produce standalone regulations for provisions like CWA and Short Term Assistance to enable consistency, clarity and in-depth scrutiny, and thereby better outcomes.	Accept	The Scottish Government will continue to consider, in light of feedback from SCoSS, the appropriate packaging for regulations relating to types of assistance that are made under several regulation making powers in the Social Security (Scotland) Act 2018.
<b>Recommendation 2:</b> The Scottish Government should ensure that the voices of children and young people inform the development of assistance that affects them and that their views inform the future implementation and evaluation of the CWA.	Accept	<p>The public consultation on Disability Assistance, of which Child Winter Heating Assistance was included, took place in 2019. As part of this consultation, specific engagement was undertaken with relevant stakeholder groups and people with lived experience of disability and other benefits.</p> <p>The ongoing policy evaluation process that will be commenced after the launch of Child Winter Heating Assistance will include qualitative evaluation of both client experience and client perception of the impact of the benefit on their day to day life. As part of this process, children and young people who receive Child Winter Heating Assistance will be given the opportunity to provide feedback and views. This will influence any future policy development relating to this form of assistance.</p>
<b>Recommendation 3:</b> The Scottish Government should clarify further the rationale for targeting CWA only on the highest rate care component and whether it intends to extend eligibility in the future.	Reject	As set out in the position paper provided to SCoSS and to the Social Security Committee, the rationale for paying Child Winter Heating Assistance to children and young people in receipt of the highest rate care component is twofold:

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

		<ul style="list-style-type: none"> <li>• to mitigate the increased costs that individuals and their families incur as a result of having to heat their home to a higher temperature, and for long periods, throughout the day; and</li> <li>• to mitigate the increased costs that individuals and their families incur as a result of having to heat their home through the night because care and support is required throughout the night.</li> </ul> <p>It is not clear how the second of these objectives could be met by conferring entitlement in relation to clients who receive different components or other forms of assistance that do not require them to evidence their needs throughout the night. In addition, the increased administrative complexity of delivering a change to the eligibility criteria here would prevent delivery of CWHHA in Winter 2020.</p>
<p><b>Recommendation 4:</b> The Scottish Government should produce clear, detailed, accessible guidance to ensure clarity about the process when CWHHA becomes payable due to a retrospective award of DLA.</p>	<p>Accept</p>	<p>The Scottish Government is in the process of designing and drafting clear, detailed and accessible guidance for clients and for officials in Social Security Scotland who will be administering Child Winter Heating Assistance.</p> <p>This guidance will include guidance on the process for the retrospective payment of Child Winter Heating Assistance where a client receives a retrospective award of the high rate care component of Disability Living Allowance dating back to the qualifying week in September.</p>

<p><b>Recommendation 5:</b> To maximise take-up amongst 16 to 18-year-olds, the Scottish Government should ensure that information on CWA and interactions with DLA and Personal Independence Payment is clear and reaches young people and those who support them.</p>	<p>Accept</p>	<p>External communications products are in development that will ensure that 16 to 18 year olds in Scotland, and their families, can access information on eligibility that sets out clearly the eligibility rules for Child Winter Heating Assistance.</p> <p>The strategy for communications planning will also include consideration of how best to provide information to relevant stakeholder organisations across the EU to ensure that children and young people who may be eligible under social security coordination are, as far as possible, made aware of the eligibility rules for the benefit.</p>
<p><b>Recommendation 6:</b> As soon as an opportunity arises to review CWA, the Scottish Government should consider the feasibility of widening the qualification window to include children and young people in receipt of DLA at any point through the winter months.</p>	<p>Accept</p>	<p>The proposed delivery model for Child Winter Heating Assistance relies on data from DWP for the Disability Living Allowance for Children caseload during a prescribed week in September. Diverging from this model of entitlement and administration would significantly increase complexity of the delivery and design of Child Winter Heating Assistance and would have certainly prevented the benefit from being delivered in Winter 2020.</p> <p>As part of the ongoing delivery and development of devolved social security, the Scottish Government will consider the feasibility of widening the qualification window for Child Winter Heating Assistance. The first available opportunity to consider this will be after the case transfer process for CDP has concluded.</p>
<p><b>Recommendation 7:</b> The Scottish Government should extend CWA entitlement to children in residential care so that they are treated the same as children in hospital.</p>	<p>Accept</p>	<p>The draft regulations sent to SCoSS have been revised to ensure that children and young people resident in residential care situations will be eligible to receive Child Winter Heating Assistance, if they meet the other eligibility criteria for the assistance.</p>

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



		This policy change means that any child resident in hospital or residential care will be entitled to Child Winter Heating Assistance in the same way as if they were resident at home.
<b>Recommendation 8:</b> The Scottish Government should remove regulation 4 (2), regarding a payment condition not being met where the individual has died before the qualifying week, and ensure there is clear, sensitive guidance in place concerning the recovery of payments.	Accept	The Scottish Government has revised the draft regulations to reflect this recommendation and regulation 4(2) has been removed. As with all social security benefits, clear and person-centred guidance will be published that set out the considerations in relation to the recovery of payments.
<b>Recommendation 9:</b> The Scottish Government should ensure consistency across all types of social security assistance regarding the test of residency in Scotland.	Partially Accept	The Scottish Government accepts the need for consistency in residency criteria across different forms of devolved social security, where practicable. However, where there is good policy rationale for benefit specific residency criteria, there will be divergence between different forms of social security assistance.
<b>Recommendation 10:</b> The Scottish Government should clarify what will be treated as the day of application.	Reject	CWHA is a form of assistance paid in respect of an event (the qualifying week) rather than a period, as for ongoing forms of assistance. For this reason, it is the individual's entitlement during the qualifying week that is relevant and the date of application has no effect on this entitlement.
<b>Recommendation 11:</b> The Scottish Government should develop processes for paying assistance to others that both protect and empower young people; and provide clarification that regulations are not required for appointees to act for children and young people in relation to applications, awards and payments.	Accept	There is no requirement for regulations to set out that people with parental rights and responsibilities (PRRs) may act on behalf of a child for whom they have legal authority to act. The Social Security Administration and Tribunal (Scotland) Bill includes provisions that will set out that an adult who does not have PRRs may be appointed, where appropriate, to act on behalf of a child. It is anticipated that this will be on the face of that Bill and that regulations will not be required to set this out.

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