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Thank you for your scrutiny report of 16 September 2021 on the Child Winter Heating Assistance Amendment Regulations 2021, which the Cabinet Secretary has passed to me for response.

I would like to express my sincere thanks to SCoSS for considering these regulations despite the challenging timescales.

I appreciate that SCoSS has been asked to consider a number of instruments concurrently and I am grateful that this has been accommodated. I am sure you will agree that the volume and complexity of work reflects the scale of the changes that we are seeking to deliver as we move forward with delivery of disability assistance.

Please find attached a copy of the Scottish Government's response to your recommendations (set out in the annex). I have issued copies to the Convener of the Social Justice and Social Security Committee.

We have accepted the majority of points made and I am confident that the change we have made in response to your recommendations will clarify our policy intentions. I believe that our commitment to respond to your feedback demonstrates that we are listening and that our decisions are informed by evidence of what is right for clients.

I was not able to accept one of the recommendations pertaining to using a date in the Regulations, although the Scottish Government wholeheartedly shares SCoSS' aim to ensure clients get their payments timeously. I would like to reassure SCoSS that Social Security Scotland intends to make determinations for CWHAs as soon as possible in every case, and it remains our goal to make all determinations by 31 December if possible.

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However in a highly complex programme of work such as that delivered by Social Security Scotland it is essential that we retain flexibility across the benefits, especially as this period coincides with the national launch of Child Disability Payment. Most importantly, removing a specific date enables us to learn from experience when this payment would be most appreciated by clients and change our payment patterns in future years as required. This will form part of our evaluation of CWA.

We have changed the Regulations in accordance with SCoSS' recommendation 2 to prevent young people being inadvertently excluded from CWA throughout a period of inpatient hospitalisation. Further details of this change are noted in the annex.

Thank you again for your continued co-operation and support. I am grateful to SCoSS Members for the helpful and constructive way in which they have engaged with officials, and in helping to scrutinise the amendment regulations.

**BEN MACPHERSON**

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## Response to Scrutiny Report of 16 September 2021

SCoSS recommendation	Accept/ Partially accept/ Decline	SG Response
<p><b>Recommendation 1:</b> Following completion of the transition from DLA and PIP to CDP and ADP, the Scottish Government should review passporting arrangements to CWHA, to ensure consistency and equitable treatment of people with the same relevant needs, including specifically with regard to night-time care needs.</p>	Accept	<p>The Scottish Government will continue to review CWHA as part of the ongoing evaluation process.</p> <p>As part of this process those in receipt of CWHA will be given the opportunity to provide feedback and input. This process will continue in the period following the completion of transition from DLA and PIP to CDP and ADP, to ensure CWHA eligibility continues to meet the needs of those who require it most.</p> <p>This will influence policy development in the future which will include potential changes to the eligibility criteria.</p>
<p><b>Recommendation 2:</b> The Scottish Government should consider whether WHACYP Regulation 4(2) should be amended to ensure young people in hospital are not inadvertently excluded from CWHA.</p>	Accept	<p>The draft regulations originally ensured that young people who are not in receipt of PIP as a result of hospitalisation rules in regulation 29 of the Social Security (Personal Independence Payment) Regulations 2013 would not be excluded from CWHA. However, the Scottish Government agreed that a further amendment was required to WHACYP Regulations to ensure 18 year olds who are not in receipt of DLA as a result of hospitalisation rules in regulation 8 of the Social Security (Disability Living</p>

		<p>Allowance) Regulations 1991 would also not be excluded from CWA. We have therefore included in the draft regulations an amendment to regulation 4(2) in accordance with your recommendation.</p> <p>The Social Security (Disability Living Allowance and Personal Independence Payment) (Amendment) Regulations 2016 ensure that eligibility for DLA and PIP is continuous throughout a hospital stay for those under 18. Therefore a hospital stay has no impact on CWA eligibility for those under 18 and it will have no impact on eligibility for those aged 18 following the amendments.</p>
<p><b>Recommendation 3:</b> The Scottish Government should amend draft Regulation 6 so that WHACYP Regulation 5 requires that determinations of entitlement to CWA be made by 31 December or as soon as reasonably practicable thereafter.</p>	<p>Reject</p>	<p>CWA has been guided by the principles of the Social Security Act (2018) as such we recognise social security is a human right and CWA is key to helping reduce poverty within Scotland.</p> <p>This is why we will, as you have recommended, be aiming to make payment by the 31<sup>st</sup> December. This may however not be possible for a select number of clients and for these clients we will be seeking to make this payment as soon thereafter.</p> <p>The removal of the deadline ensures we are putting our client base at the heart of CWA. The deadline removal will enable us to safely deliver CWA to those who</p>

		<p>need it most and will help us ensure CWA is not impacted by additional workload of delivering Child Disability Payment.</p> <p>Furthermore the 2018 Act ensures we will seek opportunities to continuously improve the Scottish social security system, the removal of the deadline will help us do this by listening to the needs of those who require assistance and determining through time the most appropriate date in which CWA should be paid in the future.</p>
<p><b>Observation 1:</b> SCoSS would welcome an explanation of the rationale for making retrospective awards of CWA to young people who were in receipt of PIP in September 2020.</p>	<p>Accept</p>	<p>The Scottish Government has carefully considered feedback from stakeholders and individuals about the extension of the eligibility criteria to include young people aged 16 to 18 who are entitled to the enhanced rate of the daily living component of PIP. After this consideration, the Scottish Government came to the conclusion that this client group should have been eligible for CWA in the first place. As such, the draft Regulations provide for these clients to be eligible for CWA in respect of the qualifying week in September 2020 in addition to future qualifying weeks.</p> <p>Unlike the highest rate of the care component of DLA or CDP, daily living component of PIP does not explicitly</p>

require needs to be met throughout the night.

Nevertheless, a young person who is entitled to receive payment of the enhanced rate of the daily living component is likely to more generally have higher fuel costs, in the same way that a young person who remains entitled to the highest rate of the care component of DLA does. Due to the similar needs between these two groups the regulations are to be amended to extend eligibility to young people in receipt of the enhanced rate of the daily living component of PIP.