

Winter Heating Assistance (Low Income) (Scotland) Regulations 2023

**Ministerial - letter responding to SCoSS
recommendations**

November 2022

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16 November 2022

Dear Judith and Mark,

Thank you for your scrutiny report of 29 August 2022 on the Winter Heating Assistance (Low Income) (Scotland) Regulations 2023.

Please find attached a copy of the Scottish Government's response to your report on the proposals for the regulations and recommendations set out in the annex below.

I have accepted or partially accepted all but one of the recommendations you have made, and have noted your observations. I am not able to accept Recommendation 5. As you will know, following the consultation on Low Income Winter Heating Assistance (now known as Winter Heating Payment) I considered a number of options to change aspects of the benefit which were addressed in the Scottish Government's response to the consultation analysis report.

I note in your report in your Recommendation 9 that you refer to a difference in treatment between people in-work in receipt of Universal Credit and those in-work in receipt of legacy benefits, and I would like to provide some context as to why the policy has been developed as it has.

When we committed to introducing our new Winter Heating Payment, it was done on the understanding the eligibility would be based on the same qualifying benefits which are currently used to establish eligibility for Cold Weather Payment. This was to ensure that support is targeted towards low income households that are most vulnerable, who have additional heating expenses because of the age of someone within the household or

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because of having someone disabled within the household. As part of our policy development we did consider extending eligibility to those in receipt of Universal Credit and who are in work. However, following this consideration, I am satisfied that the policy, and its impacts, are proportionate. Furthermore, it would not be possible to deliver any changes to eligibility ahead of launch of the benefit, and change would be unlikely to be possible ahead of legacy benefits being replaced by Universal Credit in 2024.

As we rely on DWP data to then deliver Winter Heating Payment, we are limited to how we identify eligible people; it would not be feasible to separate out in the DWP data the people in-work from out of work legacy benefit recipients, and certainly not before the first payments of Winter Heating Payment in February 2023. A blanket extension to those who are in receipt of Universal Credit and in-work (over and above the entitlement to those who have a disabled child whose Universal Credit award includes an amount under section 10(2) of the Welfare Reform Act 2012) would extend eligibility to people who have not been identified as most vulnerable. Without a cap on the number of hours that someone in receipt of Universal Credit could work, extending to this in-work group in full would create an inequity with those in receipt of legacy benefits. It would also extend the scope of those eligible for support to a group who have a higher level of income, adding to the cost and caseload, and Winter Heating Payment would no longer be targeting those most vulnerable, as is our intention.

Therefore, whilst we have not been able to make changes to extend eligibility to a wider group or increase the value of the payment, we have committed to reviewing the eligibility criteria following the launch of Winter Heating Payment. We have also retained the ability to legislate for additional payments to be made should the need arise and the money be available to do so. I'm sure you will agree that we need to ensure that any money available is provided to those most in need this coming winter, and our new reliable payment provides an excellent mechanism for doing so.

Following further work throughout the summer there are a few additional changes that have been made to the regulations, which I would like to make you aware of. These are set out below.

Qualifying week

As you'll be aware we agreed to move the qualifying week forward from the initial proposed timescale of September to a week in November. We drafted our regulations with the intention of this falling on the week running from the third Monday in November. You will also be aware we have committed to exploring the feasibility of moving the February payment date forward in winter 2023-24, following the delivery of Winter Heating Payment from February 2023, to address some of the concerns raised during our consultation. We now consider the optimal date for the qualifying week to be the week beginning on the first Monday in November. Whilst this does increase the gap between the qualifying week and payment for delivery, it is necessary in order to future proof our regulations for a potentially earlier payment in later years.

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Alternative accommodation

We have made an additional change to the Winter Heating Payment regulations to address a difference in treatment of people residing in alternative accommodation (as set out in the previous draft regulation 4(4)) during the qualifying week, which we believe was incompatible with Article 14 of the European Convention on Human Rights (ECHR). We have removed the exclusions in the initial draft regulations, to ensure that if someone is in alternative accommodation, such as a private hospital or care home, during the qualifying week then they will continue to receive the Winter Heating Payment. This change acknowledges that a person's situation could change during the winter months, resulting in their return home, but also acknowledges that, despite their location during the qualifying week, such persons, who are likely to be very vulnerable, may still be responsible for energy costs and therefore are likely to need additional support.

Winter 2022/23 Payment Schedule

As you know It is our intention to commence payments to the 400,000 clients who will be eligible for Winter Heating Payment from February 2023. This will be the largest single payment made to clients by Social Security Scotland to date. In order to manage the volume of payments, Social Security Scotland will make these payments to clients in batches, ensuring that this is done as quickly and safely as possible, however this may take a number of weeks to complete.

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 throughout the process and in helping to scrutinise the regulations.

I have copied this letter to the Social Justice and Social Security Committee and the Delegated Powers and Law Reform Committee.

Yours sincerely,

BEN MACPHERSON

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Response to Scrutiny Report of 29 August 2022

SCoSS recommendation	Accept/ Partially accept/ Decline	SG Response
<p>Recommendation 1: Impact assessments should be produced while policy is under development and sent to SCoSS alongside draft Regulations.</p>	Accept	<p>The Scottish Government acknowledge the importance of completing impact assessments during policy development to ensure issues can be identified and recorded, and reflection can be provided to show how these have shaped decision making.</p> <p>Where we have been unable to provide finalised documentation we have continued to engage with SCoSS, answering relevant questions on the various impacts that the introduction of these regulations might have.</p> <p>We have been gathering evidence to inform the impact assessments for Winter Heating Payment (WHP) while we developed the policy – the consultation responses formed part of that evidence. Some of the questions asked in the consultation were specifically designed to generate views which would inform the impact assessments. We fed the outcome of the consultation into our draft impact assessments.</p> <p>Going forward, we will strive to ensure impact assessments are provided to SCoSS at the earliest opportunity.</p>
<p>Recommendation 2: The Scottish Government is asked to outline how someone who has become retrospectively eligible for LIWHA will be identified from DWP data.</p>	Accept	<p>Clients will have the opportunity to make Social Security Scotland aware if they become retrospectively eligible and therefore did not receive an automatic payment, as they were</p>

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		<p>not included in the data received from DWP.</p> <p>We have worked with DWP to establish an optimal date for receipt of the data to allow clients to be paid WHP from February 2023. As a consequence of the February payment date, many clients who receive a retrospective award on their qualifying benefit, are expected to be captured in the data scan for this year.</p>
<p>Recommendation 3: Draft Regulation 6 should be expanded to include circumstances other than an appeal under which an individual may have received a backdated award for a qualifying benefit that confers entitlement to LIWHA.</p>	<p>Partially Accept</p>	<p>We had previously drafted Regulation 6 to ensure those eligible for a WHP as a result of an appeal would be eligible without the need to make an application. However, on reviewing this provision we now intend to remove Regulation 6. Regulation 5 provides for a determination to be made without an application meaning anyone who receives a backdated award which affects the qualifying week can approach the agency and request a determination.</p> <p>In addition to regulation 5, which already provides for a determination without application (where it appears to the Scottish Ministers from information available to them that the individual is likely to meet the eligibility rules) 37 of the Social Security (Scotland) Act 2018 gives provision for a determination to be provided where the agency do not think a person, based on the information available to them, is entitled. This will ensure anybody who applies will receive a determination and the rights following a determination.</p>

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		<p>Further information on how someone might make the agency aware of their change in entitlement based on a backdated award is laid out below.</p>
<p>Recommendation 4: The Scottish Government and Social Security Scotland should ensure that people who think they should have received an award, but did not, can easily find out how to apply for LIWHA.</p>	<p>Accept</p>	<p>As part of the Service Design of Winter Heating Payment there will be two routes available to clients in the first year – telephony and a paper form. The paper form will be available to download on the MyGov website as well as an editable PDF being available for our Local Delivery colleagues to support clients in the community.</p> <p>Client facing benefit information which includes eligibility and the process through which a client can provide the required additional information which will enabling a determination to be made on their entitlement for WHP will be on MyGov has been User Tested with a range of clients to ensure it is clear and easily understood.</p> <p>Communications will also be made available through existing channels and fact sheets, to enable clients to ‘learn’ about WHP and how to interact with Social Security Scotland if they need to apply.</p>
<p>Recommendation 5: The Scottish Government should give further consideration to the retention of temperature contingent payments in addition to the envisaged one-off payment, at least when an area experiences a third or subsequent cold week. If this approach is considered to be undesirable, or infeasible in time for winter 2022-23,</p>	<p>Decline</p>	<p>The Scottish Government has carefully considered feedback from stakeholders and individuals throughout the development of the policy and consideration has been given to the potential retention of a weather dependent aspect.</p> <p>We moved away from a weather dependent approach as we knew that the difference in weather</p>

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<p>consideration should be given to increasing the Scottish Welfare Fund budget for local authorities where some residents have received three or more Cold Weather Payments in a recent winter.</p>		<p>conditions between some areas and the location of the weather stations which would trigger a Cold Weather Payment (CWP) has been a source of frustration to people previously. The exclusive reliance on temperature rather than other factors such as wind chill has also made some people feel that they were not being treated fairly. We know that despite temperatures feeling cold because of factors such as wind chill and driving rain, island communities have historically had very few CWPs. The weather dependency made support unreliable and did not support people within marginally warmer climates with their increased heating costs over the winter.</p> <p>Our approach acknowledges that, regardless of temperature it is more likely to be difficult for people on low income benefits to spend more money to heat their homes in the winter.</p> <p>Retaining any weather dependency aspect when introducing WHP would require a new agreement to be reached with the DWP and the Met Office and would be much more technically complex to develop and test and would be a more administratively burdensome scheme for Social Security Scotland to deliver. Making more than a single payment each winter would increase the complexity and cost of delivering the benefit. We do not therefore intend to change our proposed approach. We have, however, retained the ability to legislate for additional payments to be made should the need arise and the funding be made available. By</p>
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		<p>adopting this approach it means that everyone entitled to WHP will receive additional support should additional money become available.</p> <p>As noted in the report, the WHP is a contribution towards winter energy costs alongside other forms of support and is not a payment that is intended to meet energy costs. The Scottish Welfare Fund (SWF) is a discretionary fund that can provide support to people during a crisis or to support someone so that they can continue to live independently. Whilst the Fund may be able to support people who are unable to meet unexpected costs such as particularly high fuel bills, it cannot be relied upon to provide regular support or to top up income. Awards from the Fund are made at the discretion of each local authority and decisions will be made taking into account a range of considerations including the individuals circumstances. In addition, the distribution of budget is currently set out at the beginning of the financial year and is distributed using the agreed methodology of the Scottish Index of Multiple Deprivation. Changing local authority SWF budgets in response to specific weather events in previous years would not provide any additional reliable support to those on low incomes.</p> <p>The Fund is currently under review and as part of this we are examining a wide range of issues including accessibility, funding levels, promotion, administration and guidance. The final report of the research project is due to be</p>
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		completed by the end of 2022/early 2023 and we will draw on the findings from the review to inform any future policy improvements.
Recommendation 6: The Scottish Government should outline the application route for paying to an alternative individual for cases which are not processed automatically.	Accept	<p>Where a person applies for a Winter Heating Payment on an individual's behalf because they are regarded as incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000, Social Security Scotland's standard processes would apply;</p> <ul style="list-style-type: none"> • If the person was exercising authority granted under the 2000 Act (i.e Continuing Power of Attorney or a Guardianship order) or an international measure for the first time, it would require sight of the documents granting that authority. • Where no-one else already had authority to act for the individual in relation to their benefits, processes (set out in the statutory guidelines) would be set in motion to consider whether it was appropriate to appoint that person under sections 85B(1) and (7) of the Social Security (Scotland) Act 2018. <p>Where the individual themselves applies, they can request a payment be made to another appropriate person should they wish to do so.</p>
Recommendation 7: The name of the assistance must reflect the commitments made in the Social Security Charter to use positive words to describe the service and accurately convey who the assistance is for.	Accept	<p>During the Consultation on Low Income Winter Heating Assistance we asked respondents whether they agreed with the proposed name of the new benefit. Just under half of the respondents (47%) agreed with the proposed name. However, concerns were expressed around</p>

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		<p>the use of the term ‘low income’ and the stigma and potentially derogatory nature of it. These views were also reflected in the work undertaken with people with lived experience of benefits, through the Social Security Experience Panels.</p> <p>We also undertook user research sessions with clients where the following key considerations were taken into account.</p> <ul style="list-style-type: none"> • The need/importance attributed to a consistent naming convention and alignment across all Social Security benefits. • A clear preference amongst clients for the use of ‘payment’ over ‘assistance’ • A strong view that the use of the term ‘Low Income’ was viewed amongst most clients as demeaning <p>As a result ‘Winter Heating Payment’ was chosen as the preferred name for the assistance.</p>
<p>Recommendation 8: The review of LIWHA should cover the ongoing need for a qualifying week, its impact on affected individuals and the feasibility of replacing this with an alternative.</p>	<p>Accept</p>	<p>Following the Consultation on Low Income Winter Heating Assistance, the Scottish Government considered a number of options in relation to the qualifying week, including adding multiple qualifying weeks or extending this to a qualifying period to cover the whole of the winter. However, given the reliance on DWP for the relevant data, it would add significant complexity to the delivery of the benefit. No change in this was possible ahead of delivery in February 2023. The current approach to use a single qualifying week reflects that of</p>

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		<p>Winter Fuel Payment (WFP) and Child Winter Heating Assistance (CWA).</p> <p>The Scottish Government will continue to review WHP as part of the ongoing evaluation process and as part of this we will consider the impact that the qualifying week is having on individuals and the feasibility of an alternative approach.</p>
<p>Recommendation 9: The commitment to continue to review the eligibility criteria for LIWHA is welcome and this should prioritise consideration of in-work benefits.</p>	<p>Partially Accept</p>	<p>In the Scottish Government's response to the Consultation on Low Income Winter Heating Assistance analysis report, we committed to continuing to review the eligibility following the launch of WHP, this will be part of our ongoing evaluation process of Social Security benefits. Following the consultation, we considered extending eligibility to other groups who are considered most at risk of the increases in energy prices and the overall cost of living, including carers and people receiving disability benefits. We also considered removing the premiums relating to disabilities and children, as well as including in-work UC claimants, and also extending to individuals on low incomes who do not receive any benefits. However, any addition of further qualifying benefits or extension to a broader group would significantly increase caseload, cost and complexity. Due to the overlap between the current eligibility for CWP and those households who have need for an enhanced heating regime, it is considered that the present proposals are appropriate to ensure that the new payment is targeted to individuals who are most in need.</p>

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		We will, however, consider the eligibility criteria and the impact this is having as part of the review.
Observation 1: 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.	Noted	<p>We will ensure messaging is consistent and clear that WHP will be a contribution towards energy costs during the winter period.</p> <p>We will raise awareness of the benefit through press releases, social support on Social Security Scotland channels, print and radio marketing and will engage with stakeholders, providing them with relevant materials to use such as stakeholder toolkits.</p>
Observation 2: SCoSS notes that the use of data from the DWP to determine entitlement to LIWHA has potential to greatly reduce administrative complexity, but creates an inherent vulnerability in the event that there are problems with receiving the necessary data.	Noted	<p>We have engaged regularly with DWP officials throughout the development of this benefit to ensure we have a common understanding of data requirements.</p> <p>The safe and secure transfer of data and subsequent processing of cases by Social Security Scotland will follow tried and tested processes utilised successfully in other devolved benefits. Solutions have been designed and are being tested to minimise unnecessary activity by Social Security Scotland. Whilst the ability to deliver effectively depends on the provision of accurate data from DWP within agreed timescales, the vulnerability is somewhat lessened due to the seasonal nature of the payment and the frequency of data transfers. High levels of re-use, mirroring of eligibility criteria, effective stakeholder engagement and robust planning and governance arrangements are expected to</p>

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		mitigate the associated risks. The risk management framework also ensures active management and provides defined escalation routes.
<p>Observation 3: SCoSS recognises that, due to the tight legislative timetable, it may not be possible to implement all recommendations in this report in time for winter 2022-23. Those that are not feasible at present should receive due consideration in the future review of LIWHA or (following the introduction of the winter heating assistance for people of pensionable age) of the various forms of winter heating assistance.</p>	Noted	The Scottish Government has considered and responded to the recommendations and observations laid out above and will consider suggested changes as part of the ongoing evaluation of WHP and the Winter Heating Assurances in general going forward.

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