

# **Winter Heating Assistance for Children and Young People (Amendment) (Scotland) Regulations 2021**

**Draft Business and Regulatory Impact  
Assessment**

**September 2021**

## **Business and Regulatory Impact Assessment: Winter Heating Assistance for Children and Young People (Scotland) Amendment Regulations**

### **Purpose and Intended Effect**

1. Child Winter Heating Assistance (CWhA) was introduced in response to the commitment in the SNP Manifesto for the Scottish Parliamentary elections in 2016, to extend eligibility for Winter Fuel Payments to children who were entitled to the highest rate of the care component of Disability Living Allowance (DLA).
2. The Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020 ('the 2020 Regulations') introduced the statutory framework for CWhA. The 2020 Regulations provide that a child or young person must be entitled to the highest rate of the care component of DLA or Child Disability Payment (CDP), in respect of any one day during the qualifying week in September (21 to 27 September in 2020).
3. The rationale for providing for eligibility to CWhA 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 day and 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.
4. Prior to 1 September 2020, a child who was entitled to DLA immediately prior to age 16 was required to apply for Personal Independence Payment (PIP) on or after reaching age 16. The Scottish Ministers amended the eligibility criteria for DLA to allow a young person to remain entitled to that benefit, before being required to apply for PIP at age 18 instead.
5. However, young people (aged 16 and over) who apply for a disability benefit for the first time, must continue to apply for PIP. A young person who is terminally ill (within the meaning given in the Welfare Reform Act 2012) and makes an application for PIP will be automatically awarded the enhanced rate of the daily living component.
6. The Scottish Government has carefully considered feedback from stakeholders and individuals about young people aged 16 to 18 who cannot access DLA or CDP because of their age, which excludes them from entitlement to CWhA, despite having broadly similar needs as a result of their disability.
7. Extending eligibility to young people aged 16 to 18 who are entitled to be paid the enhanced rate of the daily living component of PIP is considered to be the most effective way of targeting this form of assistance at young people with the most severe disabilities.
8. The key aim of the CWhA is to provide children, young people and their families with an annual payment during the winter to assist them financially in mitigating the increased costs they incur in heating their homes as a result of being disabled or having a long-term condition.

## **Rationale for Government Intervention**

9. The assistance has been developed to address the increased costs that disabled children, young people and their families incur as a result of:

- heating their homes to a higher temperature in winter, in line with World Health Organization (WHO) Guidance on room temperatures for vulnerable people;
- the need to heat their homes through the night, or for periods of the night, because another person is required to provide care and support to the child or young person during the night in respect of needs arising from the individual's disability or condition; and
- the need to heat their homes for longer periods through the winter because of the likelihood of most children or young people being present in the family home for longer periods of time.

10. A household is in fuel poverty if it needs to spend more than 10 per cent of adjusted net income, i.e. after having paid housing costs, on reasonable fuel needs and is not left with enough money to maintain an acceptable standard of living<sup>1</sup>.

## **Consultation**

11. In July 2016 the Scottish Government launched a public consultation to support the development of a framework that would become the Social Security (Scotland) Bill. Two questions about Winter Fuel and Cold Weather Payments were incorporated into this consultation. We asked 'Do you have any comments about the Scottish Government's proposals for Winter Fuel and Cold Weather Payments?' 164 respondents answered this question (82 individuals and 82 organisations).

12. Overall, a large number of respondents felt that Winter Fuel and Cold Weather Payments were necessary to tackle fuel poverty and inequality and they generally welcomed the approach. Respondents were generally in favour of expanding the eligibility criteria to include families with children receiving the highest rate of DLA and accelerating payments to people off the main gas grid.

13. They were also keen that the Scottish Government should continue to look at expansion of these payments to other groups at risk of fuel poverty that do not qualify for the highest rate of the care component of DLA. Some respondents were concerned about the need to improve fuel efficiency and concerns were raised about promoting awareness of these payments.

14. The 'Disability Assistance in Scotland' Consultation built on the work of the previous consultation and research with more than 2,400 volunteers with experience of the benefits that are being devolved to Scotland (Experience Panels). The consultation was published on 5 March 2019. It sought the views of the people of Scotland on the three proposed disability assistance benefits, and included a question on Winter Heating Assistance for severely disabled children. The

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<sup>1</sup> Fuel Poverty (Targets, Definition and Strategy Act) 2019

consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 were from individuals<sup>2</sup>.

15. We asked 'Do you agree or disagree with the proposal to make a £200 Winter Heating Assistance payment to families in receipt of the highest rate care component of Disability Assistance for Children and Young People? If you disagreed, please could you explain why'. An analysis of the consultation responses indicated that a large majority of respondents were supportive of the proposal. There were some suggestions that this payment should be available to all people receiving any form of social security benefits or Disability Assistance<sup>3</sup>.

## Options

16. We understand that some individuals would like to see us extend the eligibility criteria more widely. However, any further changes would need more detailed service design and delivery alterations (requiring technical system changes and further testing which would require diversion of resources currently dedicated to extension of the Scottish Child Payment (SCP), CDP and Adult Disability Payment (ADP)). In order to avoid considerable risks and delays to the launch of these other forms of assistance, Ministers have decided that on balance it is better to deliver the extended CWA payment safely and securely now. This will ensure that a large number of young people can benefit from this support at a time when economic recovery will be of paramount importance.

17. The Scottish Government considered a number of options as part of the extension of the eligibility criteria of CWA in light of stakeholder feedback. Rather than more generally extending entitlement to assistance to any child or young person in receipt of any rate of a disability benefit, both individual and stakeholder feedback has focused primarily on young people aged 16 to 18. This is because some of those young people will not have received DLA or CDP prior to turning 16, therefore excluding them from entitlement to CWA.

18. A number of options were therefore considered for the extension of eligibility to meet the needs of this group:

- **Option 1:** Extending eligibility for CWA to all young people who are aged 16 to 18, but do not receive DLA, and require them to meet a new substantive eligibility requirement relating to day and night-time care needs;
- **Option 2:** Extending eligibility to all young people who are aged 16 to 18 and entitled to the enhanced rate of the daily living component of PIP in the qualifying week in September and meet a substantive eligibility requirement relating to night-time care needs;
- **Option 3:** Extending eligibility to all young people who are aged 16 to 18 and entitled to the enhanced rate of the daily living component of PIP in the qualifying week in September.

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<sup>2</sup> <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/>

<sup>3</sup> <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/>

19. **Option 1** would replicate the same application process as that used for both DLA and CDP. It would also potentially require clients within the extended eligibility group to re-apply in future years, as further confirmation that they continue to have both day and night-time needs would need to be established.
20. This would involve considerably more effort on the part of clients to complete an application form, as well as potentially supplying or signposting supporting information from a health or social care professional that confirms that the individual has the relevant needs. Such an experience could potentially discourage clients from applying for CWHA, as it would essentially require the collection of detailed information about the impact of a client's disability.
21. This option would have a considerable impact upon Social Security Scotland's ability to deliver other forms of assistance, as it would require a full application and decision-making framework that does not currently exist. This would be delivered at the same time that Social Security Scotland will be delivering CDP across Scotland from November 2021, impacting upon the Scottish Government's ability to deliver a safe and secure transition for clients.
22. It is expected that there will be a need to transfer the payments of more than 55,000 clients from DWP to Social Security Scotland, whilst also developing the necessary systems and infrastructure to support delivery of ADP from 2022.
23. **Option 2** would require development of an application form and manual assessment of eligibility but only in respect of the individual's night-time care needs. The enhanced rate of the daily living component may be considered a reasonable proxy for having the highest level of daytime care needs.
24. This option would take considerable time to implement the necessary design and development work, with a considerable impact as described in Option 1. This would affect Social Security Scotland's ability to deliver other forms of assistance this year, whilst also delivering a safe and secure transition from DLA to CDP at the same time.
25. **Option 3** as with Option 2, the receipt of the enhanced rate of the daily living component may be considered a reasonable proxy for having the highest level of day-time care needs and therefore the requirement for heating the home during the day.
26. In Scotland, 68% of children in receipt of the highest rate of the care component of DLA, were awarded the enhanced rate of the daily living component of PIP, 9% were awarded the standard rate of the daily living component, and 15% had no entitlement to the daily living component.
27. It is inherent in the social security system that is currently in operation that certain individuals in the relevant age group will receive PIP as the ultimate replacement for DLA, and that benefit does not differentiate between day and night time care needs. Against that background it would be disproportionate to require evidence of night-time care needs from individuals who are assessed, for the purposes of the benefit available to them, to have the highest level of need.

28. Nonetheless, someone who is in receipt of PIP at the enhanced rate of the daily living component is likely to indicate higher disability-related costs in the same way that a child in receipt of higher-rate DLA will.

### **Sectors and groups affected**

29. Young people who meet the eligibility criteria and their families will be directly affected. Welfare rights and income maximisation services may be indirectly affected as a result of young people seeking advice and signposting for this new form of assistance. However, as no application will be required in most cases, any impact is anticipated to be strictly limited.

### **Costs**

30. CWHA is an increased investment in support for young people in Scotland. As a benefit which does not currently exist in the UK Government's social security provision there will be no budget transfer from the UK Government to support the extension of the eligibility criteria. Through this widening of financial support to young people, the Scottish Government expects to invest around an extra £1.5 million into the Scottish economy this year as CWHA is expected to be used to meet ease the financial pressures of winter fuel bills. This sum represents a retrospective extension of the eligibility criteria.

### **Competition Assessment**

31. The Scottish Government does not believe that CWHA will have an adverse impact on the competitiveness of businesses or the third sector in Scotland, the UK, Europe or the rest of the world. CWHA does not directly or indirectly limit the number of suppliers, nor does it limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously. Additionally the Scottish Government does not expect there to be any significant impact on the operational business of local authorities or health boards as a result of introducing this provision.

32. There may be some impact on businesses and third sector organisations operating in Scotland in relation to the way the new Social Security Scotland agency delivers the devolved benefits compared to DWP. In addition, the demands placed on third sector organisations to provide advice and support for people receiving and enquiring about social security payments may change.

#### *Competition Assessment Questions*

1) Will the measure directly or indirectly limit the number or range of suppliers?

No

2) Will the measure limit the ability of suppliers to compete?

No

3) Will the measure limit suppliers' incentives to compete vigorously?

No

4) Will the measure limit the choices and information available to consumers?  
No

### **Consumer Assessment**

33. The Scottish Government does not believe that CWHA will have an adverse impact on either eligible young people or any other consumer either within Scotland, the UK, or elsewhere in Europe or the rest of the world. CWHA does not directly or indirectly limit the choices of consumers, nor does it limit the ability of consumers to compare the quality, availability or price of goods or services in a market. Furthermore, CWHA will not impact a consumer's ability to understand their rights.

#### *Consumer Assessment Questions*

1) Does the policy affect the quality, availability or price of any goods or services in a market?

No

2) Does the policy affect the essential services market, such as energy or water?

No

3) Does the policy involve storage or increased use of consumer data?

No

4) Does the policy increase opportunities for unscrupulous suppliers to target consumers?

No

5) Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

No

6) Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

No

### **Test run of business forms**

34. We foresee no need for new business forms as a result of this policy.

### **Legal Aid Impact Test**

35. The right to appeal to a First-tier Tribunal is provided for in the Social Security (Scotland) Act 2018. Legal Assistance will continue to be available to individuals to appeal an entitlement decision to the Upper Tribunal, Court of Appeal or Supreme Court.

36. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of CWHA. Current recipients are already able to access legal aid to appeal entitlement decisions. Given that the majority of

the caseload for this assistance will be paid automatically, the number of manual applications will be negligible. We do not anticipate high numbers of re-determination or appeal requests due to these factors.

### **Enforcement, sanctions and monitoring**

37. The Scottish Government has established the Scottish Commission on Social Security, an independent expert body that will scrutinise the Scottish social security system (including benefit regulations) and hold Scottish Ministers to account. As part of their function, they will examine the regulations required for the administration of CWA and produce a report setting out their observations and recommendations in relation to the proposals. This report will be submitted to Scottish Ministers, the Scottish Parliament and made available to the wider public as required by the duty conferred on Scottish Ministers by section 97 of the Social Security (Scotland) Act 2018.

38. The Social Security (Scotland) Act 2018 places a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social security system, including in relation to CWA. On-going engagement with key stakeholders will also provide the Scottish Government with an opportunity to monitor the impact of the policy. Audit Scotland will monitor and report on the delivery of the social security system, including Social Security Scotland.

### **Declaration and publication**

39. I have read the Business and Regulatory Impact Assessment and I am satisfied that:

- (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and
- (b) that the benefits justify the costs.

I am satisfied that business impact has been assessed with the support of businesses in Scotland.

### **Signed on the original**

**Date:** July 2021

**Minister's name:** Ben Macpherson

**Minister's title:** Minister for Social Security and Local Government

### **Scottish Government Contact point:**

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