

Pension Age Winter Heating Payment (PAWHP)

Draft Regulations 2024

April 2024

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2024 No.

SOCIAL SECURITY

**The Winter Heating Assistance (Pension Age) (Scotland)
Regulations 2024**

<i>Laid before the Scottish Parliament</i>	<i>2024</i>
<i>Coming into force - -</i>	<i>2024</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 30(2), 41(4)(a), 43(5) and 52 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 these Regulations 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 informed the Scottish Commission on Social Security of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

PART 1

Introductory and interpretation

Citation and commencement

1. These Regulations may be cited as the Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024 and they come into force on the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations—

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

“care home” means an establishment which provides a care home service as defined in paragraph 2 of schedule 12 of the Public Services Reform (Scotland) Act 2010(b),

“couple” means two people who are—

(b) 2018 asp 9 (“the 2018 Act”). Schedule 4 of the 2018 Act makes provision about the exercise of powers under section 30. The powers to make these regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.
(a) 2010 asp 8.

- (a) married to, or civil partners of, each other and are members of the same household, or
- (b) not married to, or civil partners of, each other but are living together as if they were a married couple or civil partners,

“determination” means a determination of entitlement within the meaning of section 25 of the 2018 Act,

“income support” means income support under Part VII of the Social Security Contributions and Benefits Act 1992(a),

“income-based job seekers allowance” means income-based jobseeker’s allowance under the Jobseekers Act 1995,

“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare reform Act 2007 (employment and support allowance),

“independent hospital”—

- (a) in England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section,
- (b) in Wales, has the meaning assigned to it by section 2 of the Care Standards Act 2000, and
- (c) in Scotland, means an independent healthcare service as defined in section 10F(1)(a) and (b) of the National Health Service (Scotland) Act 1978,

“mixed age couple” means a couple where one member has reached pensionable age and the other member has not ,

“Pension Age Winter Heating Payment” means winter heating assistance given in accordance with these Regulations,

“pensionable age” has the meaning given by the rules in paragraph 1 of schedule 4 to the Pensions Act 1995(b),

“qualifying week” means the week beginning on the third Monday in September in any year,

“relevant benefit” means—

- (a) state pension credit,
- (b) income-based jobseekers allowance,
- (c) income-related employment and support allowance,
- (d) Income support.

“relevant EU Regulation” means—

- (a) one of the following Regulations—
 - (i) Council Regulation (EC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community,
 - (ii) Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, or
- (b) in relation to an individual to whom the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974 applies, a Regulation mentioned in paragraph (a) of this definition as it forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018,

“state pension credit” has the meaning set out in section 1 of the State Pension Credit Act 2002(c), and

(b) 1992 c. 4.
(c) 1995 c. 26. Paragraph 1 of schedule 4 was amended by paragraph 39 of schedule 2 of the State Pension Credit Act 2002 (c. 16), paragraph 13 of schedule 3 of the Welfare Reform Act 2007 (c. 5), paragraph 4 of schedule 3 of the Pensions Act 2007 (c. 22), section 1 of the Pensions Act 2011 (c. 19) and section 26 and paragraph 30 of schedule 12 of the Pensions Act 2014 (c. 19).
(d) 2002 c. 16.

“winter fuel payment” means a payment under the Social Fund Winter Fuel Payment Regulations 2000(a) or the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000(b).

(2) In these Regulations—

- (a) where an individual lives in a care home or independent hospital, or
- (b) where an individual lives with another person in accommodation they share as a mutual home,

any period of temporary absence is disregarded.

PART 2

Pension Age Winter Heating Payment

Overview

3.—(1) Regulations 4 to 11 provide for eligibility rules for determining entitlement to Pension Age Winter Heating Payment.

(2) Regulations 12 to 17 make provision about matters of procedure for determining entitlement to Pension Age Winter Heating Payment.

(3) Regulations 18 and 19 make provision about the Pension Age Winter Heating Payment that is to be given to individuals who are eligible for assistance.

Entitlement to another benefit

4. An individual is not entitled to Pension Age Winter Heating Payment while they are entitled to a winter fuel payment by virtue of—

- (a) the Social Fund Winter Fuel Payment Regulations 2000(c), or
- (b) the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000(d).

Individuals not entitled to Pension Age Winter Heating Payment

5. An individual is not entitled to Pension Age Winter Heating Payment where they are—

- (a) an individual who is receiving free in-patient treatment in the qualifying week and has been receiving that treatment for more than 52 weeks,
- (b) an individual who is detained in legal custody throughout the qualifying week,
- (c) an individual who—
 - (i) is living in a care home or independent hospital throughout the qualifying week,
 - (ii) has lived in a care home or independent hospital for the 12 weeks immediately preceding the qualifying week, and
 - (iii) receives a relevant benefit,
- (d) not the lead claimant of a relevant benefit, where regulation 9(1)(b) or 10(1)(b) applies.

(b) S.I. 2000/729.
(c) S.R. 2000/91.
(d) S.I. 2000/729.
(a) S.R. 2000/91.

PART 3

Eligibility rules for Pension Age Winter Heating Payment

Eligibility rules

6. An individual is entitled to be paid Pension Age Winter Heating Payment in respect of a qualifying week if the individual meets the age condition in regulation 7 and the residence and presence conditions in regulation 8.

Age restriction

7. An individual has reached pensionable age before or on a day in the qualifying week.

Residence and presence conditions

8.—(1) In respect of any day within the qualifying week—

- (a) the individual is ordinarily resident in Scotland, or
- (b) the individual—
 - (i) is habitually resident in one of the countries listed in the schedule,
 - (ii) is an individual to whom the rules set out in a relevant EU regulation apply by virtue of—
 - (aa) Title III of Part 2 of the EU withdrawal agreement,
 - (bb) Part 3 or Article 23(4) of the Swiss citizens' rights agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020 ("the 2020 Act"),
 - (cc) Title III of the EEA EFTA separation agreement (as defined in section 39(1) of the 2020 Act), or
 - (dd) the agreement constituted by the exchange of letters set out in the schedule of the Social Security (Gibraltar) Order 2024(a),
 - (iii) in respect of whom the United Kingdom is, as a result, competent for payment of sickness benefits in cash, and
 - (iv) has a genuine and sufficient link to Scotland.

(2) The reference in paragraph (1)(b)(iv) to an individual's link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to Pension Age Winter Heating Payment, paragraph (1)(b) would be incompatible with the applicable agreement mentioned in subparagraph (b)(ii) of that paragraph.

(3) An individual to whom a relevant EU Regulation applies is not entitled to Pension Age Winter Heating Payment for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the individual for the purposes of the relevant EU Regulation in question.

PART 4

Amount of Pension Age Winter Heating Payment

Amount of Pension Age Winter Heating Payment - under the age of 80

9.—(1) An individual is entitled to be paid £200 if the individual is under the age of 80 throughout the qualifying week and —

(h) S.I. 2024/149.

- (a) lives alone,
- (b) receives a relevant benefit whether individually or as a member of a couple, or
- (c) lives with no person who meets the eligibility criteria for Pension Age Winter Heating Payment.

(2) An individual is entitled to be paid £100 if the individual is under the age of 80 throughout the qualifying week and lives—

- (a) with a person who is under the age of 80 throughout the qualifying week who meets the eligibility criteria for Pension Age Winter Heating Payment,
- (b) with a person who is aged 80 or older during the qualifying week who meets the eligibility criteria for Pension Age Winter Heating Payment, or
- (c) in a care home or independent hospital—
 - (i) throughout the qualifying week and for the 12 weeks immediately preceding the qualifying week, and
 - (ii) does not receive a relevant benefit.

(3) Where paragraph (1)(b) applies, Pension Age Winter Heating Payment is only paid to the lead claimant of a relevant benefit.

Amount of Pension Age Winter Heating Payment - aged 80 or older

10.—(1) An individual is entitled to be paid £300 if the individual is aged 80 or older during the qualifying week and—

- (a) lives alone,
- (b) receives a relevant benefit whether individually or as a member of a couple, or
- (c) lives with no person who meets the eligibility criteria for Pension Age Winter Heating Payment.

(2) An individual is entitled to be paid £200 if the individual is aged 80 or older during the qualifying week and lives with a person who is under the age of 80 throughout the qualifying week who meets the eligibility criteria for Pension Age Winter Heating Payment.

(3) An individual is entitled to be paid £150 if the individual is aged 80 or older during the qualifying week and lives—

- (a) with a person who is aged 80 or older during the qualifying week who meets the eligibility criteria for Pension Age Winter Heating Payment, or
- (b) in a care home or independent hospital—
 - (i) throughout the qualifying week and for the 12 weeks immediately preceding the qualifying week, and
 - (ii) does not receive a relevant benefit.

(4) Where paragraph (1)(b) applies, Pension Age Winter Heating Payment is only paid to the lead claimant of a relevant benefit.

Amount of Pension Age Winter Heating Payment - where receiving a relevant benefit

11. An individual is entitled to be paid £300 if the individual—

- (a) is under the age of 80 throughout the qualifying week,
- (b) lives with a person who is aged 80 or older during the qualifying week,
- (c) receives a relevant benefit as a couple with the person mentioned in paragraph (b), and
- (d) is the lead claimant for that relevant benefit.

PART 5

Determination of entitlement to Pension Age Winter Heating Payment without application

Determination of entitlement to Pension Age Winter Heating Payment without receiving an application

12. The Scottish Ministers must, without receiving an application, make a determination of an individual's entitlement to Pension Age Winter Heating Payment under section 30 of the 2018 Act where it appears to the Scottish Ministers from information available to them that the individual is likely to meet the eligibility rules in regulations 4 to 11.

Determination following official error – underpayments

13.—(1) The Scottish Ministers must make a determination of an individual's entitlement to Pension Age Winter Heating Payment without receiving an application where—

- (a) they have previously made a determination of the individual's entitlement to Pension Age Winter Heating Payment, and
- (b) they establish that, due to official error, that determination was incorrect resulting in the individual not being given an award of Pension Age Winter Heating Payment to which they were entitled.

(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.

Determination following error – overpayments

14.—(1) The Scottish Ministers must make a determination of an individual's entitlement to Pension Age Winter Heating Payment without receiving an application where—

- (a) they have previously made a determination of the individual's entitlement to Pension Age Winter Heating Payment, and
- (b) they establish that, due to an error, that determination was incorrect resulting in the individual being given an award of Pension Age Winter Heating Payment to which they were not entitled.

(2) In this regulation, reference to an “error” is to—

- (a) an error in the performance of a function conferred by these Regulations or the 2018 Act, including a determination being made—
 - (i) wrongly, or
 - (ii) correctly, but on the basis of
 - (aa) incorrect information, or
 - (bb) an assumption which proves to be wrong, or
- (b) a new determination not being made after an assumption on the basis of which an earlier determination was made has proved to be wrong.

PART 6

Applications and application window

Applications

15. An individual who—

- (a) has not received a notice of determination under paragraph 12,

- (b) is not in receipt of a benefit from the Department for Work and Pensions and has not received winter fuel payment or Pension Age Winter Heating Payment,
 - (c) has deferred their state pension since last receiving winter fuel payment or Pension Age Winter Heating Payment,
 - (d) lives in one of the countries set out in the schedule, or
 - (e) is part of a mixed age couple in receipt of universal credit,
- may make an application for Pension Age Winter Heating Payment.

Application window

16.—(1) An individual is only entitled to Pension Age Winter Heating Payment where they have made an application for Pension Age Winter Heating Payment on or before 31 March following the qualifying week in respect of the winter following that week.

(2) The Scottish Ministers may treat an application received after the date mentioned in paragraph (1) as received by that date where they consider that the individual has a good reason for not submitting the application by that date.

(3) Paragraph (1) does not apply where—

- (a) regulation 12 (determination of entitlement to Pension Age Winter Heating Payment without receiving an application) applies, or
- (b) an individual becomes entitled to income support, state pension credit or an income -related employment and support allowance in respect of the qualifying week by virtue of a decision made after that week or that section 115 of the Immigration and Asylum Act 1997 (exclusions) ceases to apply to that individual.

PART 7

Periods in respect of a re-determination request

Periods in respect of a re-determination request

17.—(1) The period for requesting a re-determination of entitlement to Pension Age Winter Heating Payment under section 41 of the 2018 act (right to request re-determination) is 42 days beginning with the day that the individual is informed, in accordance with section 40 of the 2018 Act (notice of determination), of the right to make the request.

(2) In relation to determining entitlement to Pension Age Winter Heating Payment, the period allowed for re-determination (within the meaning of section 43 of the 2018 Act (duty to re-determine)) is 56 days beginning with—

- (a) the day that the request for a re-determination is received by the Scottish Ministers,
- (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 individual in question has a good reason for not requesting the re-determination sooner, or
- (c) where the Scottish Ministers have informed the individual of their decision that the request for re-determination was not made in such form as the Scottish Ministers require, the day on which it is subsequently decided by the First-tier Tribunal for Scotland that the individual in question has made the request in such form as the Scottish Ministers require.

PART 8

Payments

Form of Pension Age Winter Heating Payment

18. Pension Age Winter Heating Payment is to be given in the form of money in a single payment in respect of the winter following the qualifying week.

Making payments

19.—(1) Where Pension Age Winter Heating Payment is payable in respect of an individual, the Scottish Ministers may, where they consider appropriate, make the payment to another person to be used for the benefit of the individual.

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

Name

A member of the Scottish Government

St Andrew's House,
Edinburgh
Date

SCHEDULE

Regulation 6

Countries

Republic of Austria
Kingdom of Belgium
Republic of Bulgaria
Republic of Croatia
Czech Republic
Kingdom of Denmark
Republic of Estonia
Republic of Finland
Federal Republic of Germany
Republic of Hungary
Republic of Iceland
Republic of Ireland
Republic of Italy
Republic of Latvia
Principality of Liechtenstein
Republic of Lithuania
Grand Duchy of Luxembourg
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 provide for winter heating assistance for individuals who have reached state pension age.

Part 2 provides an overview of entitlement to Pension Age Winter Heating Payment and makes provision for individuals who are not entitled by virtue of receiving other benefits or other circumstances.

Part 3 provides for the eligibility rules in relation to age and residence and presence.

Part 4 provides for the amount of Pension Age Winter Heating Payment depending on the age of the individual, where they live and who they live with and whether or not they are in receipt of particular benefits.

Part 5 provides for making determinations of entitlement without receiving an application and for determinations in respect of underpayments and overpayments.

Part 6 makes provision in respect of making applications and the application window.

Part 7 provides for the period for making a re-determination request and carrying out the re-determination.

Part 8 provides for the form of payment and payment to appropriate persons.



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