

## Social Justice and Social Security Committee

### 34<sup>th</sup> Meeting, 2022 (Session 6), Thursday, 8 December

## Winter Heating Payment

### Introduction

The [Winter Heating Assistance \(Low Income\) \(Scotland\) Regulations 2023](#) were laid on 16 November along with a [policy note](#) and [impact assessments](#).

The Scottish Government [consulted on the Winter Heating Payment](#) in December 2021 and published a [response](#) and draft regulations on 6 June 2022.

The Scottish Commission on Social Security (SCoSS) [reported on the draft regulations](#) in August and the [Scottish Government responded](#) to their recommendations on 18 November. The Committee will hear from the Minister for Social Security and Local Government on 15 December.

This week, the Committee will hear from:

- [Dr Mark Simpson](#), Acting Co-chair, [Scottish Commission on Social Security](#)
- [Frazer Scott, Chief Executive Officer, Energy Action Scotland](#)

### Background

These regulations create the Winter Heating Payment (WHP) - a £50 flat rate annual payment paid to people getting particular elements of low-income benefits. The first payments are expected in February 2023.

It replaces the DWP Cold Weather Payment (CWP). CWP has the same qualifying benefits but is paid when the local temperature falls below zero for seven consecutive days. CWP pays £25 for each cold spell (for a history of CWP see the House of Commons Library paper from 2010 '[Cold Weather Payments](#)').

### What the regulations do

The main provisions are summarised below.

## Amount and eligibility

Winter Heating Payment is £50 paid annually (**regulation 9**) to those receiving a qualifying benefit in the first week of November (**regulation 4**).

## Qualifying benefits

Qualifying benefits (**regulation 3**) are focused on those on a low income in old age, with young children and/or disability. They are:

- a) **Pension Credit** or support for mortgage interest under Pension Credit;
- b) **Child under five** and family get a low-income benefit (income support, income-based Job Seekers Allowance, income-related Employment and Support Allowance, Universal Credit (if out of work), support for mortgage interest;
- c) Premiums related to **old age or disability** within the following benefits: income support, ib-JSA, Child Tax Credit, ir-ESA or owner occupier loan payments;
- d) Universal Credit due to Limited Capability for Work or Limited Capability for Work-Related Activity or gets income-related ESA and is in the work-related activity group or the support group (i.e. has been assessed as **unfit for work**);
- e) Universal Credit with a **disabled child** premium.

## Making payments

Payments are made automatically (**regulation 5**). Where a decision (determination) is made not to award WHP, and this is wrong, then Ministers must make a further determination (**regulation 6**). Similarly, where WHP is awarded in error, then a further determination can be made (**regulation 7**).

Payments can be made to a third party 'where appropriate' (**regulation 10**).

## Redetermination

Clients have 31 days to request a redetermination starting from the day they are informed of the right to make that request. Late requests can be considered with good reason. Ministers must complete that redetermination within 16 working days (**regulation 8**) (Appeal rights are included in the Social Security (Scotland) Act 2018).

## Consultation

A public consultation ran from December 2021 to February 2022 attracting 119 responses (36 from organisations). An [analysis of responses](#) reported that:

- Around half (52%) disagreed with the payment amount, saying it was not enough. There was also concern for those in colder areas. Despite this, most (76%) agreed with breaking the link to cold weather.

- Around half (52%) disagreed with making the payments in February, saying it should be earlier in the winter.
- 50% agreed with keeping the same qualifying benefits. 28% disagreed. Of those that disagreed, the most common view was to add disability benefits.
- 41% agreed with the proposed qualifying week. 34% disagreed, mainly on the grounds that people would miss out if they start receiving benefit just after the qualifying week.

## SCoSS report and Scottish Government Response

The [SCoSS report](#) was published on 29 August. The Scottish Government responded on 18 November shortly after the regulations were laid and accepted six of the nine recommendations in full. The Scottish Government partially accepted recommendation 3 (backdating) and 9 (eligibility) and rejected recommendation 5 (link to weather).

The recommendations are summarised below together with the Scottish Government's response.

### Breaking the temperature link

Noting the likelihood that a small number of people would be worse off than under Cold Weather Payments, SCoSS emphasised the importance of preparing **impact assessments** while policy is being developed and sharing these with SCoSS (**recommendation 1**). Accepting this recommendation, the Scottish Government noted that evidence continued to be gathered as policy developed.

SCoSS recommended that, in addition to making a one-off annual payment, the Scottish Government should consider **retaining payments linked to temperature** or, for this winter, increase the Scottish Welfare Fund budget in areas that recently had three or more weeks of cold weather payment (**Recommendation 5**). The Scottish Government **rejected** this recommendation, stating that:

“weather-dependency made support unreliable and did not support people within marginally warmer climates with their increased heating costs over winter.”

Retaining the link to weather would have required a new agreement with Met Office and “be administratively burdensome”. Instead, the Scottish Government has “retained the ability to legislate for additional payments should the need arise and the funding be made available.”

### Reviewing the benefit

SCoSS emphasised the need to review the rules once the regulations are passed:

“The need to launch LIWHA for winter 2022-23 means there is limited scope for change to the recommendations. However, the commitment to continuous

improvement means there is a clear need for a review of how the Scottish social security system provides support with winter energy costs.”

SCoSS made a number of suggestions for consideration when reviewing the benefit:

- 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 (**recommendation 5**);
- whether a **qualifying week** is needed (**recommendation 8**);
- review of eligibility criteria should prioritise **in-work benefits** (**recommendation 9**).

In reply, the Scottish Government stated that the impact of the qualifying week and the eligibility criteria will be considered as part of on-going evaluation work.

Extension of qualifying benefits 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 the new payment is targeted to individuals who are most in need.”

### **Making payments and correcting errors**

Other recommendations focused on those people whose payments would not be processed automatically; for example, if someone gets a backdated award of a qualifying benefit.

SCoSS recommended that it should be easy for people to find out how to get a payment if they think they’ve been missed in error (**recommendation 4**) and make clear how to **pay to an appointee** for cases that are not processed automatically (**recommendation 6**).

SCoSS recommended that it should be possible to apply for WHP whenever a client gets a **backdated award of a qualifying benefit**. As initially drafted, the regulations only allowed this if the backdated award is the result of an appeal (**recommendations 2 and 3**). The regulations as laid remove this provision. As a result, there is no mechanism to make an application for WHP.

In accepting recommendations 2, 4 and 6 and partially accepted recommendation 3, the Scottish Government explained that **instead of applying for WHP, people can inform Social Security Scotland of possible errors**. There will be a downloadable form on the MyGov website and a phone number for anyone who thinks they should have got a payment but didn’t receive one, including clients who become eligible because of a retrospective award of a qualifying benefit. Social Security Scotland will make a ‘determination without application’ to see if WHP should have been paid.

SCoSS also recommended that the **name of the benefit** be more positive (**recommendation 7**). Since then, the name has changed from Low Income Winter Heating Assistance to Winter Heating Payment.

## Energy Action Scotland

Energy Action Scotland is a Scottish charity which aims to end fuel poverty. Their [submission to SCoSS](#) made a number of criticisms of the Winter Heating Payment. In particular:

- WHP “fails to support the Scottish Government achieve its statutory targets for reducing fuel poverty to no more than 5% of households by 2040.”
- Payment should be made earlier than February
- The introduction of a qualifying week “appears to be driven by the need for budget certainty”
- A cold winter would result in “potentially catastrophic detriment” in colder areas of Scotland.
- The amount paid should reflect increased prices. “A benefit wholly aimed at enabling households to achieve heat and power during the winter should be index linked to the change being experienced in capped standard variable rate tariffs or similar measure.”

## Suggested themes for discussion

The following five themes are suggested:

1. **Breaking the link to the weather**
2. **Level of payment**
3. **Eligibility criteria**
4. **Qualifying week**
5. **Tackling fuel poverty- other supports**

### **THEME 1: Breaking the link to the weather**

SCoSS commented on the shift from a temperature related payment to a flat rate, saying:

“This change creates a potential retrogression in the human right to social security and to an adequate standard of living for the affected individuals. [...] it remains the inescapable conclusion that the ongoing cost of living crisis means this is a bad time to be taking payments specifically intended to assist

with energy costs away from low-income households in the absence of alternative measures such as targeted support with home insulation, which would take time to deliver and is not a social security function”

Energy Action Scotland comment that:

“It is inconceivable that Scottish Government would continue without providing guarantees to those communities where a detriment is entirely predictable.”

The Scottish Government considers that:

“The weather dependency made support unreliable and did not support people with marginally warmer climates with their increased heating costs over winter.”

Retaining the link to weather would have required a new agreement with Met Office and “be administratively burdensome”. Instead, the Scottish Government has:

“retained the ability to legislate for additional payments should the need arise, and the funding be made available.”

The Scottish Government’s response to SCoSS also discussed the use of the Scottish Welfare Fund but noted that it is discretionary and “cannot be relied upon to provide regular support or to top up income”. The Scottish Welfare Fund is under review with a final report of the research project due in late 2022/early 2023.

**Members may wish to discuss:**

- 1. Does breaking the link with weather align with the statutory Social Security Principles?**
- 2. The Scottish Government argues that most people will gain under these proposals, that recipients have certainty about the payment and that weather in previous years is not necessarily predictive of future years. Do witnesses agree?**
- 3. What are witnesses’ views of the likely effect of not making additional payments to areas that experience more than three weeks below freezing temperatures?**

## **THEME 2: Amount of Payment**

In the public consultation, respondents were fairly evenly split on the payment amount with 52% suggesting it should be higher. The CRWIA states that:

“any increase in value of the payment would significantly increase the budget required and an increase to WHP would not be affordable at this time.”

The rate paid is based on two weeks of Cold Weather Payment. In 2008, the Cold Weather Payment was increased from £8.50 to £25 per week in response to rising energy prices ([House of Commons Library \(2010\)](#)). Since then the price of heating

has risen. In 2008 the average dual fuel bill was reported as £1,317 ([The Guardian 30 July 2008](#)). The current Energy Price Guarantee is set until April 2023 at £2,500 a year for typical levels of consumption.

The £50 payment is equivalent to around one week's energy costs under the current energy price guarantee. (£2,500/52 weeks = £48).

In its [pre-budget report](#), the Committee said:

“We ask the Scottish Government to think carefully about whether this is an adequate level of payment in light of current energy costs. We will consider this further when the regulations are laid.”

#### **Members may wish to discuss:**

- 4. Is the £50 rate adequate given the current cost of energy and in the context of other UK and Scottish government support?**
- 5. Do witnesses wish to comment on the Scottish Government's view that increasing WHP is not affordable at the moment?**
- 6. Should WHP be increased by inflation in 2023-24 along with other benefits (i.e 10.1%)?**

#### **THEME 3: Qualifying Benefits**

The WHP has the same qualifying benefits as the Cold Weather Payments. While these are complex, payments are made automatically so that complexity doesn't affect take-up. The qualifying benefits target support on those on low-income benefits who also are:

- of pension age,
- a disabled adult or disabled child, or
- families with a child under 5

In the consultation, 50% agreed with keeping the same qualifying benefits. 28% disagreed. Of those that disagreed, the most common view was to add disability benefits (PIP, DLA etc). The qualifying criteria already recognise disability to a certain extent – but a family still need to be on a low income.

Child Winter Heating Assistance is available to families with children who get the higher rates of disability benefits. CWHA is an annual grant of £214.10 paid out to around 20,000 households.

Energy Action Scotland state that:

“Older residents and those with disabilities or essential medical requirements are likely to require an enhanced heating regime, as identified in the Fuel Poverty Act (2019), which will increase their costs. LIWHA makes no attempt to recognise this.”

The Scottish Government considered extending the qualifying criteria (e.g. to in-work benefits and disability benefits, carers and others on low incomes), but:

“We concluded that 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 proposed benefit is appropriate to ensure that the new payment is targeted to individuals who are most in need. However, we will continue to review the eligibility criteria for WHP after the launch of the benefit.” ([Fairer Scotland Impact Assessment](#))

There will eventually be three forms of winter heating payment in the Scottish system: Child Winter Heating Assistance, Winter Heating Payment in these regulations and the replacement for Winter Fuel Payment expected in winter 2024/25.

The SCoSS report notes that:

“it may also be desirable to undertake a broader review of how the Scottish social security system supports winter energy costs once all three forms of winter heating assistance – targeting disabled children, low income households and pensioner households – have been launched.”

#### **Members may wish to discuss:**

- 7. How well do the eligibility criteria target those most in need of extra help with heating costs?**
- 8. Does there need to be additional support for disabled people? If so, would this be better considered in terms of expanding Child Winter Heating Assistance or expanding Winter Heating Payment?**
- 9. SCoSS suggested that further consideration be given to expanding qualifying benefits to include in-work benefits (recommendation 9). Can they explain why this is needed?**

#### **THEME 4: Qualifying Week and Payment Date**

Removing the cold weather trigger means that the Scottish Government had to introduce another way to trigger payment. To receive the payment, the client must be in receipt of the qualifying benefit on a certain date. Carer’s Allowance Supplement and Child Winter Heating Assistance work in the same way.

Initially the qualifying week was September, but it has been moved to early November – closer to the proposed payment date of February. The BRIA stated that:

“Whilst we are unable to change the payment date ahead of launch, we will explore the feasibility of bringing forward payment date in future years.”

SCoSS asked how someone would qualify for WHP if they got a retrospective award of a qualifying benefit (recommendations 2 and 3). In their response, the Scottish



Government explained that such clients will not make an application but can tell Social Security Scotland that they think they are entitled.

**Members may wish to discuss:**

- 10. The Scottish Government will consider whether, for future years, February is the best time of year to make payments. When should WHP payments be made?**
- 11. It will not be possible to make an application for WHP, but people can inform Social Security Scotland if they think they should have received a payment but did not get one. What is the practical effect of this?**

**THEME 5: Tackling fuel poverty**

The WHP and Child Winter Heating Assistance are the main Scottish Government payments for energy costs. The [Fairer Scotland Impact Assessment](#) discusses other action to tackle fuel poverty including:

- [Heat in Buildings Strategy](#) (2021) to improve energy efficiency – providing “more whole house retrofits and a wider range of support for fuel poor households in rural areas”
- [Warmer Homes Scotland](#) £55m this year: home improvements for those over 75 or under 75 and on qualifying benefits (disability, carer and low income benefits)
- [Local authority 'Area Based Schemes](#) - £64m funding.
- Expanding Home Energy Scotland Advice service to an additional 12,000 households to receive free, impartial advice

The UK Government is providing an energy price guarantee until April 2023, and £400 off energy bills through the Energy Bills Support Scheme. (For details see [Energy bills support factsheet](#)). There are also [cost of living payments](#) for those on means tested benefits, disability benefits and pensioners. The [Winter Fuel Payment](#) for pensioners is [due to be replaced](#) by a Social Security Scotland benefit in winter 2024-25 but is currently still reserved and being paid by DWP.

**Members may wish to discuss:**

- 12. (For Energy Action Scotland) What other support should the Scottish Government provide to those struggling with the cost of energy?**
- 13. How important is Scottish social security amongst the broad range of measures aimed at tackling fuel poverty?**

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29 November 2022