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An t-Ionad Fiosrachaidh

## **Social Justice and Social Security Committee**

### **35<sup>th</sup> Meeting, 2022 (Session 6), Thursday, 15 December**

#### **The Winter Heating Assistance (Low Income) (Scotland) Regulations 2023**

### **Introduction**

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

Last week, the Committee heard from SCoSS and Energy Action Scotland. This paper updates last week's paper with the main themes discussed at that meeting.

This week the Committee will hear from:

- Ben Macpherson, Minister for Local Government and Social Security
- Owen Allen, Winter Heating Benefits Policy Manager, Scottish Government
- Daniel Blaikie, Solicitor, Scottish Government
- Angela Keane, Service Manager, Winter Benefits, Scottish Government

### **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.
- Half (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).

- 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.

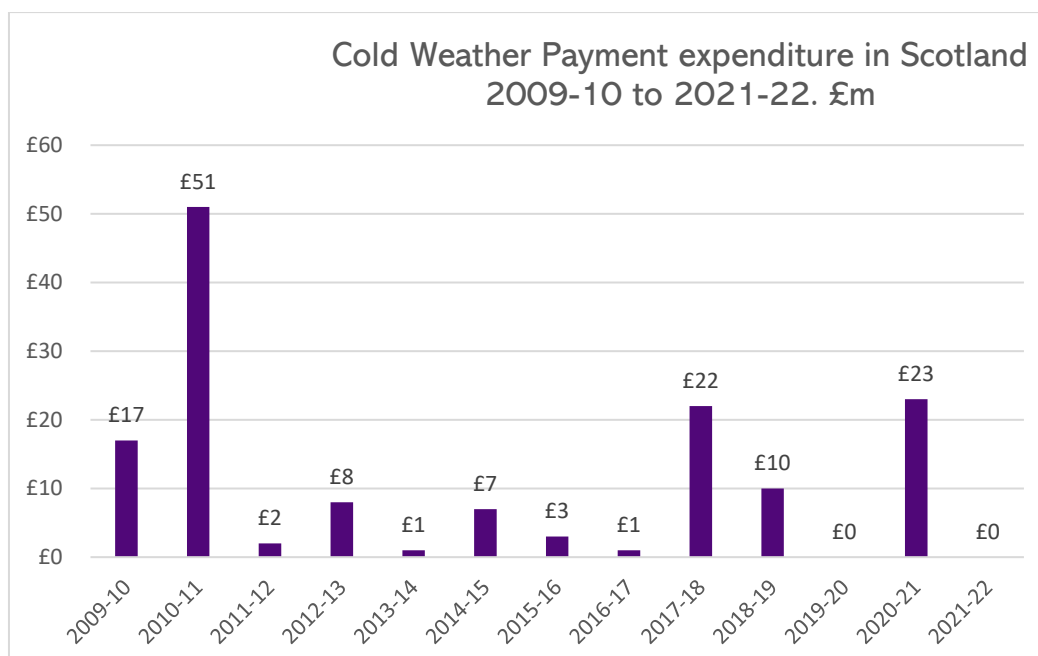
The Scottish Commission on Social Security [reported](#) in August making nine recommendations. The [Scottish Government responded](#) on 18 November accepting six recommendations in full, partially accepted recommendations 3 (backdating) and 9 (eligibility) and rejected recommendation 5 (link to weather). The recommendations and the Scottish Government response are summarised in [last week's paper](#).

## Cost

The Scottish Fiscal Commission have forecast that Winter Heating Payment will cost £20m per year. ([See figure 5.4 - May forecast](#)). This exceeds the amount spent on CWP in eight out of the last ten years. The [news release](#) announcing the February 2023 start date for LIWHA stated that:

“Our £20 million annual investment will be a significant increase in support to around 400,000 households – compared with only £325,000 and 11,000 payments made by the UK Government in Cold Weather Payments in Scotland in winter 21-22.”

The chart below sets out CWP spend to the nearest £1m for Scottish weather stations since 2009-10. This illustrates the volatility of expenditure when related to the weather.



Source: [Government Expenditure by Country and Region in benefit expenditure and caseload tables](#). 2021-22 figure from Scottish Government (actual spend £0.3m)

## Suggested themes for discussion

The following five themes are suggested:

1. **Breaking the link to the weather**
2. **Amount of payment**
3. **Timing of payment**
4. **Three winter payments – eligibility and review**
5. **Fuel poverty**

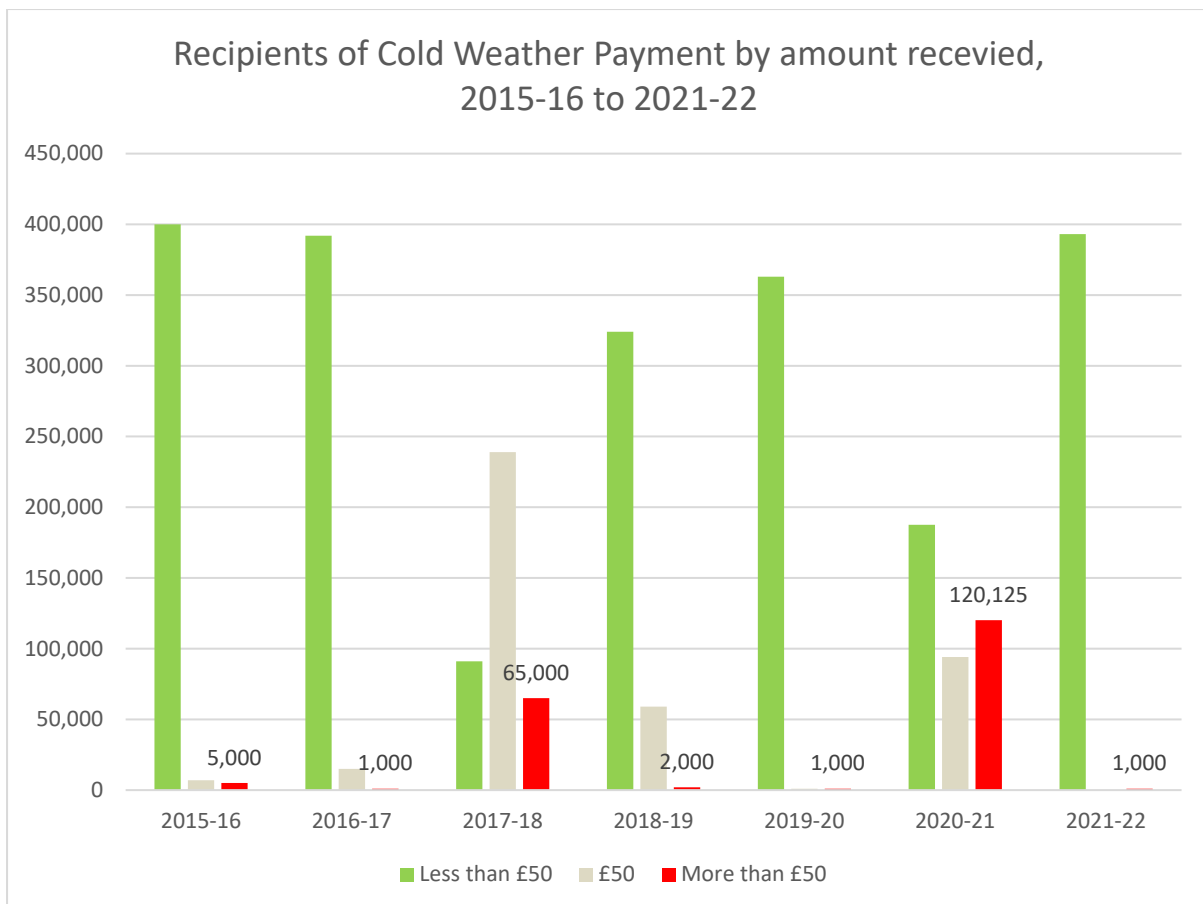
### **THEME 1: Breaking the link to the weather**

As pointed out by SCoSS last week, the Scottish Government initially planned to keep the same benefit design as Cold Weather Payment. The [2019 policy position paper](#) stated:

“No-one will lose out when the Scottish Government takes responsibility for Cold Spell Heating Assistance. The new benefit will be designed and delivered based upon the existing Cold Weather Payment. We have no plans to change the current eligibility for this benefit or to change the amount of benefit paid.”

The change in policy to a flat rate means that, while most will gain, some will lose out. People living in areas with more than two ‘cold spells’ during a winter would have got more money under CWP. People living in areas with fewer than two cold spells will get more under the WHP.

The chart below shows the number of recipients who have received less than £50, £50, or more than £50 in Cold Weather Payments over the last seven years. In most years, only a small number of people received more than £50. The exceptions are 2020-21, when 120,125 people got more than £50 and 2017-18, when 65,000 people did so. Only Braemar (c.1,000 eligible recipients) consistently triggers payments of more than £50.



Source: DWP [Social Fund Cold Weather Payment estimates](#).

SCoSS commented on the shift from a temperature related payment to a flat rate. While recognising that most people would gain, they also state that:

“For people on low incomes in the coldest parts of Scotland, the shift from cold weather contingent payments to a single payment per winter could represent a considerable reduction in support. For a small but significant group of people, therefore, the change from CWP to LIWHA will increase exposure to poverty and cannot be described as an example of continuous improvement in a way that puts the needs of those who require assistance first.”

In their response, the Scottish Government pointed out that 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. 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.”

Last week Mark Simpson, discussed SCoSS’s recommendation that: “The Scottish Government should give further consideration to the retention of temperature-

contingent payments in addition to the envisaged one-off payment” (recommendation 5). He said:

“The Scottish Government’s response to that recommendation seems to indicate that they think that we underestimated the administrative challenges that are associated with retaining a temperature contingent payment and in terms of the relationship between the Met Office and Social Security Scotland that would be required. So that’s a point where the Committee may wish to seek some clarity from the Minister.” (SJSS Committee, 8 December 09.14am)

The [DWP describe the process](#):

“Every day, throughout the Cold Weather Payment season, the Met Office records the average daily temperature from each of the 72 Weather Stations. The Met Office then uses the daily averages from the previous 7 days to produce a single 7 day average covering the last 7 days. They also forecast what the 7 day average will be over the next 7 days.

DWP uses this information to determine whether any weather stations have “triggered” for a Cold Weather Payment. This will be the case if the recorded or forecasted 7 day average temperature is 0°C or below and there are no overlapping periods for which a Cold Weather Payment has already been made.”

**Members may wish to discuss:**

- 1. In 2019 the Scottish Government said that no-one would lose out due to the introduction of Winter Heating Payment. Why did that change?**
- 2. To what extent was the decision to pay a flat rate based on it being easier to administrate? Is it more complicated for Social Security Scotland to administer a temperature related payment than it is for the DWP or Northern Ireland Department of Communities to do so?**
- 3. The level of need will increase if the weather is colder. How does a flat rate payment account for that varying level of need?**
- 4. Will the Scottish Government make additional payments to those living in the coldest areas of Scotland should we have a very severe winter?**

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

The rate paid is based on two weeks of Cold Weather Payment. It is equivalent to around one week’s energy costs under the current energy price guarantee. (£2,500/52 weeks = £48). In the public consultation, around half of respondents (52%) disagreed with the payment amount, suggesting it should be higher.

Last week Frazer Scott (Energy Action Scotland) pointed out that heating requirements varied across the country, saying:

“In some parts of the Highlands and Islands households are consuming double the level of average GB consumption to keep their homes warm – as a consequence of being off gas [...] That’s a flaw in a universal provision.” (SJSS Committee 8 December 09.34am)

Discussing the £50 payment in the context of energy prices, Frazer Scott described it as: “like a finger in a dam” (SJSS Committee 8 December 09.38am).

Mark Simpson (SCoSS) suggested that the level of payment had not been calculated based on need:

“I don’t get the sense that this payment has been designed with an eye to what would be “enough.” It’s been informed by the level of two Cold Weather Payments and a political calculation of what can be afforded at present. Its also a small piece of a much bigger jigsaw” (SJSS Committee 8 December 09.42am)

He also stressed that:

“Winter heating payment is a contribution towards energy costs. Its not something that’s intended to or ever could have covered them in full. For many households that’s going to be a contribution they wouldn’t have received under the previous regime.” (SJSS Committee 8 December 09.42am)

The [Scottish Government’s response to the consultation](#) (June 2022) stated that they did not intend to increase the payment above £50 in winter 2022-23:

“Assuming that approximately 400,000 people each year will be eligible to receive the new benefit, increasing its value to £100 would double the forecasted annual expenditure to around £40 million. Such an increase at this time would not be affordable. **We do not, therefore, intend to increase the value of the LIWHA payment for the benefit delivery in winter 2022. However, we will keep this under review.**

We do recognise that the costs associated with heating homes has increased significantly since the initial development of LIWHA policy. This policy aims to mitigate some of the challenges presented by the volatile winter energy costs for vulnerable households and also to help alleviate poverty and inequalities. The current record rise in global gas prices which has seen wholesale prices increasing fourfold in the last year, heightens the risk that despite this financial support, there will be an ongoing need to support those at risk of, or in, crisis.”

The Energy Price Guarantee is currently set at £2,500 for ‘typical use’ following a 27% rise in October 2022. In April 2023 this is due to increase a further 20% to £3,000. These are based on averages – actual usage and actual bills will vary, depending on energy efficiency and local weather. For further detail on UK policy

and UK government support see; [House of Commons Library 'Domestic Energy Prices' \(November 2022\)](#).

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:**

- 5. How did the Scottish Government settle on the amount of £50 for the Winter Heating Payment? Was the cost of energy part of that calculation?**
- 6. Did the Scottish Government consider increasing the payment by energy price inflation – so that the payment would cover a similar proportion of energy costs as it did last year?**
- 7. Will the £50 rate will be updated by general inflation for 2023/24?**

**THEME 3: Qualifying date and payment date**

Last week [Cold Weather Payments were triggered in England, Wales and Northern Ireland](#). They are paid 14 days after a qualifying cold period.

In Scotland Winter Heating Payment will start to be paid in February to people who received qualifying benefits in early November. This may take a few weeks to complete:

“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.”  
(Scottish Government response to SCoSS report).

Last week Frazer Scott (Energy Action Scotland) told the Committee of his concerns about the gap between qualifying date and payment:

“If the existing Cold Weather Payment system can pay out in 14 days then I can’t understand why this would not pay out within 14 days of achieving the qualifying date [...] the household would [then] have that payment more in advance of need [...] rather than receiving it in February where they may have forgone heat and power. [...] If anything could be done now to accelerate that payment to households, I would urge the Committee to recommend that to the Minister.” (SJSS Committee 8 December 09.52am)

Although the Cold Weather Payment would be paid to far fewer than 400,000 people in Scotland at any one time, all those people are getting regular benefits from DWP, so that volume of payment processing isn’t unusual for DWP.



**Members may wish to discuss:**

8. The Committee heard last week that, particularly for those on pre-payment meters, the gap between eligibility and payment could lead to people building up debt or rationing their energy use in cold periods. To what extent did the Scottish Government take this into account when setting the payment date as February?
9. If DWP can pay 14 days after a cold weather trigger, why isn't it possible to pay Winter Heating Payment within a similar timeframe? (Or at least with a smaller gap than November to February). What are the tasks that need to be done that require such a long intervening period?
10. The Scottish Government told SCoSS that it may take a few weeks in February to process the payments. Will all eligible recipients receive their payment before the end of February?

**THEME 4: Three devolved winter benefits – eligibility and review**

By winter 2024 Social Security Scotland will be administering three winter benefits. They are:

- Winter heating payment - £50 annual payment to those on low income benefits and who are of pension age, have a young child or are disabled.
- Child Winter Heating Assistance – £214.10 annual payment for families with children on higher rates of disability benefits.
- [Winter Fuel Payment](#) is due to be devolved – £100 to £300 annual payment of to pensioners, regardless of income. (Not including this year's additional cost of living payments).

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.”

Last week Mark Simpson (SCoSS), discussed how prioritising safe and secure transition limits the initial scope for redesign of benefits noting the:

“need to be mindful that what is inherited just becomes the default and that there is an open mind in future reviews when the time is right.” (SJSS Committee, 8 December 09.51am).

In particular, SCoSS recommended that the Scottish Government consider extending eligibility for Winter Heating Payment to those on Universal Credit in low paid work. Mark Simpson explained that:

“There are low earners out there who will face essentially the same cost of living challenges as people on out of work benefits. They may have a higher

income, but some of that will be taken up with the costs they face because they are in employment.” (SJSS Committee 8 December 09.48am)

If it was not desirable to extend to all those on in-work benefits, one option might be an income threshold. There is already a Social Security Scotland benefit that uses an income threshold. Best Start Foods is paid to those getting low-income benefits who also have earnings under a certain threshold. For example, Universal Credit with household earnings below £660 per month.

In response to SCoSS, the Scottish Government stated that extending eligibility to those on in-work benefits would:

“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.”

[...]

“we have committed to reviewing the eligibility criteria following the launch of Winter Heating Payment.”

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

- 11. Families getting Universal Credit can qualify if they are not working and have a child under five. Working families with young children only qualify if their child is disabled. What is the Scottish Government response to the view that there are low earners who will “face essentially the same cost of living challenges as people on out of work benefits”?**
- 12. What is the Scottish Government’s view on extending Child Winter Heating Assistance to include disabled adults?**
- 13. Does the current cost of living, and cost of energy create any urgency to reviewing Social Security Scotland benefits?**
- 14. Given that we know winter fuel payment is due to be devolved soon, is there merit in starting to consider how all three benefits might evolve in future?**

#### **Theme 5: Fuel Poverty**

This payment is one of a number of measures aimed at addressing fuel poverty. Last week the Committee discussed some of the other policies that impact on fuel poverty, in particular housing quality and levels of insulation.

Frazer Scott stated that:

“there should be a right to have affordable energy [...] we should have a right to live in a home which is of a good standard, which we don’t have. [...] When people’s incomes are too low even if energy was cheaper but people still lived in inefficient homes they would struggle to heat those homes and that would

be detrimental to their health and well-being.” (SJSS Committee 8 December 10.14am).

In December 2021 the Scottish Government published its [Fuel Poverty Strategy](#). Actions include:

- Research and consultation
- Advice and support – eg. through funding Home Energy Scotland
- Continue to invest in Warmer Homes Scotland and Area Based Schemes to increase the energy efficiency of homes.
- Ensure that the replacement for Warmer Homes Scotland continues to provide support to those fuel poor households who face the greatest health risks of staying in a cold home
- Regulate for all buildings to achieve good energy efficiency by 2033.
- Deliver 110,000 energy efficient affordable homes by 2032.
- Urge the UK Government to take action on various issues (eg. Universal Credit, levy funding for Energy Company Obligations and Warm Homes Discount)
- Various measures not directly related to energy use but which do reduce households costs – e.g. free school meals, free youth bus travel, mitigate the bedroom tax.

In the [emergency budget review 2022-23](#) the Scottish Government:

- Doubled the fuel insecurity fund to £20m in 2022-23
- Provided flexibility for local authorities to use DHPs for energy bills

In addition to various cost of living payments and discounts on bills, in November, the UK Government announced a new ECO+ scheme which applies across Great Britain. It “aims to make homes more energy efficient and bring down people’s energy bills by helping them to insulate their homes.” (For further detail see [Energy Saving Trust](#))

**Members may wish to discuss:**

- 15. What part does the Winter Heating Payment play in the range of Scottish Government policy to address fuel poverty?**
- 16. How is the Minister involved in action across government to tackle fuel poverty?**

Camilla Kidner  
SPICe  
12 December 2022