

Social Justice and Social Security Committee
Thursday 31 October 2024
28th Meeting, 2024 (Session 6)



Pension Age Winter Heating Payment

Introduction

The draft [Pension Age Winter Heating Payment \(Scotland\) Regulations](#) were laid in the Parliament on 25 September accompanied by:

- Child Rights and Wellbeing impact Assessment
- Fairer Scotland Duty Assessment
- Island Communities Impact Assessment
- Equality Impact Assessment
- Business and Regulatory Impact Assessment

The regulations introduce a means-tested payment on the same basis as the UK-wide Winter Fuel Payment.

This paper provides background and suggested themes for discussion with the Cabinet Secretary.

Background

Scottish Regulations

The regulations create Pension Age Winter Heating Payment as a form of winter heating assistance under the Social Security (Scotland) Act 2018.

Without these regulations there is no legal basis for making a winter heating payment at all. The [Westminster regulations](#) abolished the existing scheme across the UK, but only put in place a replacement for England and Wales.

Consultation

The normal scrutiny by the Scottish Commission on Social Security (SCoSS) has not taken place. SCoSS reported on the original, universal, policy but not on the revised, means-tested policy. The [Cabinet Secretary wrote to SCoSS](#) when the draft regulations were laid explaining that:

“Unfortunately, given the extraordinary circumstances, and facing significant time pressures to pass legislation, due to the decision taken by the UK Government, it has not been possible to give you the time you need to thoroughly review the revised regulations and provide us with a scrutiny report and recommendations before they are laid in Parliament, given the extraordinary circumstances and the need to lay legislation on September 25 in order for payments to be made this winter. Nevertheless, before they begin their parliamentary process, I would like to provide you with a copy of the updated Pension Age Winter Heating Payment regulations, attached separately, and ask that you to carry out a period of scrutiny as you see fit.”

There has been no public consultation on the revised policy. The Business and Regulatory Impact Assessment states:

“Given the manner of the UK Government’s announcement, with no prior consultation, and urgency in laying of these regulations, to ensure payments are made to pensioners in Scotland this winter, it has not been possible to consult further on the revised policy.” (BRIA para 21)

Delivery

For this winter only, there will be an agency agreement for the Department of Work and Pensions (DWP) to deliver Winter Fuel Payment on behalf of the Scottish Government. A [‘section.93 Order’ was laid on 4 October](#) to enable this to happen. This is subject to the negative procedure in both Westminster and Scottish Parliaments.

Winter Fuel Payment

The WFP was paid as a tax-free lump sum between November and December of each year. The payment was £20 (or £50 for those in receipt of means-tested benefits) when it was first introduced in the 1997-8 winter. It increased to £100 in 1999-2000 and then to £200 in 2000-1. An additional £100 for households with a member aged 80 or older was introduced in 2003-4.

Previous Policy

The Scottish Government had intended introducing a universal Pension Age Winter Heating Payment this winter administered by Social Security Scotland. The Scottish Government [consulted on their policy in October 2023](#), and the Scottish Commission on Social Security (SCOSS) [reported on draft regulations](#) on 22 July 2024.

In anticipation of the payments starting this winter, the relevant part of the Scotland Act was commenced in April and £178 million in funding was added to the 2024-25 Scottish Budget through the Block Grant Adjustment for Winter Fuel Payment.

Policy Change

In July, the UK Government announced that the benefit would be means tested in England and Wales and this reduced the funding for Scotland by around £150 million. Under the [fiscal framework](#), the UK Government provides enough funding to

follow UK policy. If the Scottish Government wants to make different policy choices it must fund them itself.

The Scottish Government is therefore, reluctantly, following the UK Government and restricting eligibility to pensioners getting means tested benefits - primarily Pension Credit. A small number of pension age people will qualify via other means tested benefits – Universal Credit, income support, income-based Job Seekers Allowance, income-related Employment and Support Allowance and tax credits. These are primarily for working age people. The [DWP has said](#) that people on these working age benefits make up less than 5% of the total post-policy Winter Fuel Payment caseload.

Caseload and costings

The Scottish Fiscal Commission has forecast that around 137,000 households will receive Pension Age Winter Heating Payment in 2024-25 at a cost of around £32 million.

Timing

Payments normally start being made by the DWP at the end of November. The draft regulations, if passed, will come into force on 20 November.

Pension Credit income thresholds

The basic income thresholds this year (2024-25) for Pension Credit guarantee element are:

- £218.15 per week for a single person (£11,344 per year)
- £332.95 per week for a couple (£17,313 per year)

It is possible to get higher Pension Credit if you are a carer, if you are disabled, have dependent children or certain kinds of housing costs. Those who reached pension age before April 2016 can also get an additional 'savings credit' if their income is above these thresholds.

Pensioner Poverty

Around 15% of pensioners – around 150,000 people, were in poverty in Scotland in 2022-23. For comparison [child poverty is around 24% and working age poverty is 21%](#). SPICe analysis using UK-MOD suggests that, at current take-up rates, means-testing WFP could increase pensioner poverty by 0.5 percentage points.

Impact Assessment

The draft regulations were accompanied by impact assessments. The Equality Impact Assessment stated that:

“The change in eligibility is also likely to impact up on those pensioners who are not eligible for Pension Credit, but still face financial difficulties. Given the late decision taken by the UK Government, and the lack of prior consultation with the Scottish Government, it would not be practicable to consider

alternative eligibility criteria which might address these risks and ensure that payments are made this winter. (EQIA para 34).

Judicial Review

On 25 September a pensioner couple, supported by Govan Law Centre, lodged a judicial review against both the UK and Scottish Governments against the means testing of winter fuel payments. On [25 October the court gave permission](#) for the Judicial Review to proceed. A hearing is scheduled for 15 January.

Other winter heating assistance

Pension Age Winter Heating Payment will be the third form of winter heating assistance introduced by the Scottish Government. The other two are:

- [Child Winter Heating Payment](#) – an annual payment of £251.50 to families in receipt of a highest rate care component of Child Disability Payment.
- [Winter Heating Payment](#) – an annual payment of £58.75 to those on Pension Credit and others in receipt of means tested benefits with a focus on disabled people and young children. 30% of recipients qualified via Pension Credit.

Themes for discussion

Theme 1: Scottish Government budget

The change in UK Government policy results in £150 million being removed from the Block Grant Adjustment for winter heating payment. This could be removed from the 2024-25 budget in-year or could be delayed until later.

The money isn't 'ring-fenced' for winter heating payments – its just added to the Scottish Government's budget as a whole. However, the Scottish Government has been clear that finances are very tight, with £500m in-year budget savings having been [announced in September](#).

Members may wish to discuss:

1. **Why does the Cabinet Secretary feel she has no choice but to follow UK Government policy on this matter?**

Theme 2: Pension Credit take-up

The UK Government estimates that, [in 2021-22, 63% of those eligible](#) for Pension Credit actually applied for and received it. In the eight weeks following the announcement on Winter Fuel Payment [applications to Pension Credit increased by 150%](#) compared to the eight weeks prior to the announcement. Not all applications will be successful, but this is likely to result in higher take-up of Pension Credit this year.

Payments will start being made from late November to those who were getting Pension Credit during the week beginning 16 September. Importantly Pension Credit can be backdated by up to three months, so [anyone who applies for Pension Credit before 21 December and is then awarded it can qualify for the Pension Age Winter Heating Payment this winter](#). (Assuming they met the Pension Credit criteria throughout those three months).

The UK Government has been encouraging people to apply for Pension Credit by, for example, a '[Pension Credit Week of Action](#)' in September.

A few years ago there was concern that a Scottish Government take-up campaign on Pension Credit could result in money being recouped under the 'policy spillover' provisions in the fiscal framework. However, it has since been agreed that this would not happen. The 2020 Annual report on the Scotland Act referred to an agreement to this effect:

8.2.1 Through correspondence exchanged in February 2020, the Scottish and UK Governments have agreed that an increase in take-up of reserved benefits to which an individual is already entitled is outside the scope of the spillover provisions and the DWP will not seek to raise a spillover claim in this

scenario Scottish Government (2020) [Fourth Annual Report on the Implementation of the Scotland Act 2016](#).

In a [recent PQ](#), the Scottish Government has said that:

“We have also offered to work with the DWP to improve take-up rates. This will include working with stakeholders across Scotland to increase awareness of Pension Credit and the link to eligibility for Pension Age Winter Heating Payment.” (S6W-29489, answered 10 September 2024)

In a Parliamentary debate on 8 October the First Minister said:

“I have written to councils and the Convention of Scottish Local Authorities to seek their urgent assistance in promoting the take-up of pension credit, as that is the main qualifying benefit by which our older people receive a pension age winter heating payment. Scottish Government officials have been attending events across the country to raise awareness of the connection between pension credit and the pension age winter heating payment, as well as to provide advice and support.” ([Official Report, 8 October 2024, col 12](#))

Members may wish to discuss:

- 2. What is the Scottish Government doing to encourage take-up of Pension Credit?**

Theme 3: Other mitigations for this winter

The Scottish Government has been clear that it cannot afford to fund a universal winter heating payment for pensioners. Other help for winter heating includes:

- Social Security Scotland £58.75 annual [low income winter heating payment](#) for those in receipt of Pension Credit and some others on low income benefits.
- [Scottish Welfare Fund crisis grant](#) can now be made for heating payments. Those on low-income benefits such as Pension Credit are more likely to be considered for a grant, but this is not a requirement.
- Local authority [Discretionary Housing Payments](#) can be paid for those struggling to meet housing costs. They are available to those claiming help with rent through housing benefit or Universal Credit. The majority of this budget goes to mitigate the under-occupancy charge in social housing.
- [Warm Home Discount £150](#) one-off payment. Paid automatically to those getting Pension Credit and by application to those on certain low income benefits whose suppliers are part of the scheme.

The Scottish Government’s Fuel Insecurity Fund is not running this year. In [2023-24 £30m was allocated to this fund](#).

In a [letter to the UK Government, dated 21 September](#), the Cabinet Secretary for Social Justice pointed out existing mitigation spending by the Scottish Government, saying:

“This year alone, we are spending £134 million on activities to mitigate UK Government policies through schemes such as Discretionary Housing Payments and the Scottish Welfare Fund, which provide vital support to households struggling to meet their housing and energy costs. However, we cannot continue to mitigate UK austerity policy decisions. What is really needed is reform of the UK energy markets to address the root causes of fuel poverty in Scotland, such as high fuel prices.”

In answer to a [PQ on 16 September](#) the Minister for Communities in Northern Ireland said he was exploring options for ‘one-off hardship payments’ with the DWP:

“Given the Barnett consequential arising from the announcement on Monday 2 September 2024 by Work and Pensions Secretary, Liz Kendall MP, to extend the Household Support Fund in GB, my Department will be seeking funding to help struggling households with bills and essential costs over winter.

I want to ensure that any additional money allocated to the NI Block will be used to ensure that vulnerable older people in Northern Ireland receive assistance with essential costs this winter.

I am keen to explore, along with Executive colleagues, the option (with the help of DWP) of issuing a one-off hardship payment to those in receipt of state pension who will lose out on the Winter Fuel Payment this winter.

My officials are currently working with DWP counterparts to consider the legislative and operational implications of this approach.”

Members may wish to discuss:

- 3. What is the Scottish Government doing this winter to assist pensioners struggling to pay for heating?**

Theme 4: Next winter

The agency agreement with DWP is intended to be for this winter only, and next winter the payment will be delivered by Social Security Scotland. This shift in delivery agency raises the issue of whether eligibility could be further refined in response to suggestions of some stakeholders about using a different mechanism to target support.

Both the Poverty and Inequality Commission and the Fuel Poverty Advisory Panel have suggested that winter fuel payment could be better targeted. In their [response to the consultation on the then proposal for a universal payment](#), PIC said:

“An effective social security intervention needs to address both the fact that some households with older adults are in fuel poverty, but also that overall poverty amongst pensioners is lower than for some other household types. [...]

The transfer of the Winter Fuel Payment offers the opportunity to align funding to deliver on the Scottish Government’s commitments to tackle poverty and fuel poverty.”

The [Scottish Fuel Poverty Advisory Panel, in response to the same consultation](#) said:

“The Scottish Government should replace the WFP with a progressive benefit aimed at all households experiencing fuel poverty. However, if this is not currently possible due to restrictions imposed by the Social Security Scotland Act, then the Scottish Government should consider doing the following:

- PAWHP should be targeted at those on Pension Credit
- PAWHP should be aligned with the Winter Heating Payment
- PAWHP should be treated as taxable income”

(The [Winter Heating Payment](#) is the Scottish replacement for the Cold Weather Payment and is a £58.75 annual payment to those on Pension Credit and some other groups in receipt of means tested benefits, including families with young children and disabled people.)

Members may wish to discuss:

- 4. What work will the Scottish Government undertake to refine their policy on Pension Age Winter Heating Payment ahead of Social Security Scotland taking over delivery of it next year?**

**Camilla Kidner
SPICe
25 October 2024**