

# Social Justice and Social Security Committee

## Subordinate Legislation Clerks Note

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

**Title of Instrument:** [The Winter Heating Assistance \(Low Income\) \(Scotland\) Regulations 2023](#)

**Laid Date:** 16 November 2022

**Reporting deadline:** 10 January 2023

**Type of instrument:** Affirmative

**Motion to approve:** [S6M-06818](#)

### Parliamentary procedure

1. The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).
2. Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee which examined the Bill for the Act that the SSI is made under or whose remit is most aligned).
3. It is usual practice for the lead committee to take evidence from the relevant Scottish Minister in advance of considering the instrument. The committee can ask the Minister and any officials questions about the SSI.
4. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion.
5. The lead committee must report its recommendation to Parliament within 40 days of the SSI being laid. If the committee agrees the SSI should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

## Background

6. According to the [Policy](#) and Explanatory Notes (available in Annexe A), this instrument sets out the rules and eligibility criteria for the Winter Heating Payment (WHP). This is a new form of social security assistance, replacing the UK Government's Cold Weather Payments (CWP) in Scotland and will be available to individuals in receipt of specified low income benefits.
7. The Scottish Government says that its key policy aim is to mitigate some of the impact of additional domestic heating costs in winter by providing targeted, reliable financial support to those most vulnerable households with low incomes.
8. It adds that it targets the support at particular groups that might need additional help with heating costs including people who are on a low income and who are also:
  - of pension age; or
  - a disabled adult; or
  - a family who have responsibility for either a child under the age of 5 or a disabled child or young person.
9. The assistance will consist of an annual payment of £50 for each eligible person, paid either to the individual or, where appropriate, to their appointee or another person deemed appropriate

## Delegated Powers and Law Reform Committee consideration

10. The DPLR Committee considered the instrument at its [meeting on 29 November 2022](#) and raised no points. Read [the Official report](#) for the meeting.

## Previous consideration by the Social Justice and Social Security Committee

11. At [its meeting on 08 December 2022](#), the Committee heard from Energy Action Scotland and the Scottish Commission on Social Security as part of its scrutiny of the Regulations. You can read the Official Report of the meeting [here](#).

## For decision

12. **The Committee must decide whether or not to agree the motion, and then report to Parliament accordingly, by 10 January 2023.**
13. **The Committee is also invited to delegate responsibility for the drafting and publication of a short, factual report to the Convener and Clerk.**

# ANNEXE A

## POLICY NOTE

### WINTER HEATING ASSISTANCE (LOW INCOME) (SCOTLAND) REGULATIONS 2023

#### SSI 2023/XXX

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by section 30(2) of the Social Security (Scotland) Act 2018 and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

**This instrument sets out the rules and eligibility criteria for Winter Heating Payment (WHP), a form of assistance that provides an annual payment each winter to people in receipt of certain low income benefits and premiums in relation to age and disability who may need additional help with heating costs during the winter months. This new form of social security assistance will replace Cold Weather Payments (CWP) in Scotland.**

#### Policy Objectives

The Winter Heating Assistance (Low Income) (Scotland) Regulations 2023 set out the eligibility rules for Winter Heating Payment (WHP). WHP is a new form of assistance, replacing UK Government's Cold Weather Payment (CWP). It will be paid to people who are living in Scotland and who are in receipt of a qualifying low income benefit and specific premium for at least one day of the qualifying week in November.

The assistance will consist of an annual payment of £50 for each eligible person, paid either to the individual or, where appropriate, to their appointee or another person deemed appropriate. The assistance has been developed on the basis of CWP eligibility rules but removing the requirement for a particular cold spell to trigger a payment. Its key policy aim is to mitigate some of the impact of additional domestic heating costs in winter by providing targeted, reliable financial support to those most vulnerable households with low incomes. It targets the support at particular groups that might need additional help with heating costs including people who are on a low income and who are also:

- of pension age; or
- a disabled adult; or
- a family who have responsibility for either a child under the age of 5 or a disabled child or young person.

The policy acknowledges that despite where they live, or the specific weather conditions, these groups are likely to require additional heat in the home due to age or disability and being less active whilst at home, and are also less likely able to afford the additional heating costs throughout the winter.

## Consultation

The Scottish Government carried out a [public consultation](#) between 1 December 2021 and 25 February 2022 on the proposed policy for WHP: replacing occasional, weather-dependent payments of £25 to recipients of certain low income benefits with annual payments of £50 to the same people regardless of weather.

In general respondents showed broad support for the introduction of WHP and the majority of respondents agreed with the proposal to remove the cold spell requirement, but wanted the value of the payment to be higher. They also sought to retain some of the current responsiveness of CWP to additional need in some circumstances, or at least to provide flexibility throughout the winter period either through multiple assessments of eligibility and/or multiple or additional payments.

The [Scottish Government's response](#) to the consultation was published on 7 June 2022. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website.

To comply with the requirements of section 97(2) of the Social Security (Scotland) Act 2018, the policy proposals were sent to the Scottish Commission on Social Security (SCoSS) in the form of draft regulations on 7 June 2022. SCoSS submitted their response to these proposals to the Social Security Committee on 29 August 2022. The Scottish Government's response to the recommendations contained in that report is laid before Parliament with this instrument and is available on the Scottish Government's website.

In line with the recommendations provided by SCoSS the following changes were made to the Scottish Government's approach to WHP including:

- *Name change*
- *Qualifying week*

## Impact Assessments

An [Equalities Impact Assessment](#) (EQIA), [Island Communities Impact Assessment](#) (ICIA), [Fairer Scotland Duty Impact Assessment](#) and a [Children's Rights and Wellbeing Impact Assessment](#) (CRWIA) were carried out during the policy development and are provided with this instrument. It is anticipated from the analysis in these impact assessments that the commencement of WHP will have a broadly positive impact on a range of equalities groups, island communities and in relation to the realisation of children's right and improving their wellbeing.

There are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations.

## Financial Effects

A [Business and Regulatory Impact Assessment](#) (BRIA) has been completed and is attached. It is anticipated the people who meet the eligibility criteria and their families will be directly affected. Any impact on welfare rights and income maximisation services due to people seeking advice will be strictly limited. Through this widening of financial support to this group of people on low incomes, the Scottish Government expects to invest around an extra £21.4 million into the Scottish economy this year as WHP is expected to be used to meet ease the financial pressures of winter fuel bills.

The Scottish Government does not believe that WHP will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. The benefit 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.

The Scottish Fiscal Commission (SFC) is responsible for providing independent forecasts of social security payments and producing a costing to accompany legislation. The Commission considers that the overall cost of these changes is expected to be below their £5 million materiality threshold for small measures. The Commission may judge a costing of the policy produced at a previous fiscal event is appropriate to be used to accompany the legislation or the Commission may consider a change to have a negligible effect on revenue or spending.

The Commission would not publish a supplementary costing for a negligible policy or where a previous costing is deemed appropriate (see Paragraph 59: [Scottish-Fiscal-Commission-Protocol-Version-4.0-September-2020.pdf \(fiscalcommission.scot\)](#)). A supplementary costing has therefore not been prepared to accompany these regulations. The Commission will consider additional spending as a result of these regulations in its next forecasts published in December 2022.

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.

The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of WHP. Given that the majority of the caseload for this assistance will be paid automatically, the number of manual applications are expected to be very small. We do not anticipate high numbers of redetermination or appeal requests due to these factors.

Owen Allen  
Scottish Government  
Social Security Directorate

16 November 2022

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision about payments of winter heating payment to certain individuals who are in receipt of specified low income benefits. Regulation 4 sets out the eligibility rules for winter heating payment. Regulations 5 to 8 make provision about matters of procedure for determining entitlement to winter heating payment. Regulations 9 and 10 provide for payments of winter heating payment. A Business Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Social Security Directorate, Scottish Government, Area 1B South, Victoria Quay, Edinburgh EH6 6QQ, and online at [www.legislation.gov.uk](http://www.legislation.gov.uk).