

*Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018 for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2020 No.**

**SOCIAL SECURITY**

**The Winter Heating Assistance for Children  
and Young People (Scotland) Regulations 2020**

*Made* - - - - 2020

*Coming into force* - - 9th November 2020

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<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, a draft of this instrument 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.

The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010<sup>(2)</sup>. These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

**Citation and commencement**

1. These Regulations may be cited as the Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020 and they come into force on 9 November 2020.

**Interpretation**

2. In these Regulations—

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

“backdated award” means an award of assistance for a day, or period that begins on a day, that falls before the day the decision to make an award is taken,

“child” means a person who has not yet reached the age of 16 years,

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(1) 2018 asp 9. Schedule 4 makes provision about the exercise of the power conferred by section 30(2).

(2) 2010 asp 10.

“child winter heating assistance” means winter heating assistance to which a child or young person is entitled,

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

“Disability Living Allowance” means a disability living allowance under section 71 of the Social Security Contributions and Benefits Act 1992(3),

“qualifying week” means the week running from the third Monday in September in any year, and

“young person” means a person who is aged 16, 17 or 18.

## Overview

3.—(1) Regulation 4 provides for eligibility rules for determining entitlement to child winter heating assistance.

(2) Regulations 5 to 9 make provision about matters of procedure for determining entitlement to child winter heating assistance.

(3) Regulations 10 and 11 make provision about the child winter heating assistance that is to be given to individuals who are eligible for assistance.

## Eligibility rules for child winter heating assistance

4.—(1) An individual is entitled to be paid child winter heating assistance in respect of a qualifying week if, in respect of any day within the qualifying week the individual is—

- (a) a child or young person,
- (b) entitled to receive payment of the highest rate of the care component of Disability Living Allowance, and
- (c) either—
  - (i) resident in Scotland, or
  - (ii) habitually resident in an EEA state listed in the schedule and has a genuine and sufficient link to Scotland.

(2) For the purposes of the rule in paragraph (1)(b), an individual is to be treated as being entitled to receive payment even if, throughout the qualifying week, regulation 9 (persons in care homes) of the Social Security (Disability Living Allowance) Regulations 1991(4) applies to the individual.

## Determination of entitlement to child winter heating assistance without application

5. The Scottish Ministers must, without receiving an application, make a determination of an individual’s entitlement to child winter heating assistance under section 30 of the 2018 Act by the end of December in any year where it appears to the Scottish Ministers from information available to them that the individual is likely to meet the eligibility rules in regulation 4(1)(a), (b) and (c)(i).

## Determination following official error – underpayments

6.—(1) The Scottish Ministers must make a determination of an individual’s entitlement to child winter heating assistance without receiving an application where—

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(3) 1992 c.4. Section 71 was amended by section 67(1) of the Welfare Reform and Pensions Act 1999 (c.30).

(4) S.S.I. 1991/2890 as amended by S.I. 2007/2875, S.I. 2013/389, S.I. 2015/643 and S.I. 2019/1027.

- (a) they have previously made a determination of the individual’s entitlement to winter heating assistance, and
- (b) they establish that, due to official error, that determination was incorrect resulting in the individual not being given an award of winter heating assistance 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 official error – overpayments**

7.—(1) The Scottish Ministers must make a determination of an individual’s entitlement to winter heating assistance without receiving an application where—

- (a) they have previously made a determination of the individual’s entitlement to winter heating assistance, and
- (b) they establish that, due to official error, that determination was incorrect resulting in the individual being given an award of winter heating assistance to which they were not entitled.

(2) In this regulation, “official error” means an error made by the Scottish Ministers or a Minister of the Crown that was—

- (a) not materially contributed to by anyone else, or
- (b) made on the basis of—
  - (i) incorrect information, or
  - (ii) an assumption which proves to be wrong.

#### **Determination following backdated award of assistance**

8. The Scottish Ministers must make a determination of an individual’s entitlement to child winter heating assistance without receiving an application where—

- (a) a determination has previously been made that the individual is not entitled to child winter heating assistance, and
- (b) the Scottish Ministers establish that—
  - (i) following an appeal, an award of the highest rate of the care component of Disability Living Allowance is made that is a backdated award, and
  - (ii) had that award been made before the original determination, a determination that the individual is entitled to child winter heating assistance would have been made instead.

#### **Periods for re-determination requests**

9.—(1) The period for requesting a re-determination of entitlement to child winter heating assistance under section 41 of the 2018 Act<sup>(5)</sup> is 42 days beginning with the day that the individual is informed, in accordance with section 40 of that Act, of the right to make the request.

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(5) Section 41 was amended by paragraph 2 of schedule 7 of the Coronavirus (Scotland) Act 2020 (asp 7) (“the 2020 Act”). Paragraph 4 of that schedule inserted section 52A into the Social Security (Scotland) Act 2018 (asp 9) which relaxed the deadlines for re-determinations and appeals to address the effects of coronavirus.

(2) In relation to determining entitlement to child winter heating assistance, the period allowed for re-determination (within the meaning of section 43 of that Act<sup>(6)</sup>) is 16 working days beginning with—

- (a) the day that the request for a re-determination is received by the Scottish Ministers, or
- (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 has a good reason for not requesting the re-determination sooner.

(3) For the purpose of paragraph (2), a “working day” is a day other than—

- (a) a Saturday,
- (b) a Sunday, or
- (c) a bank holiday in Scotland under the Banking and Financial Dealings Act 1971<sup>(7)</sup>.

### **Value and form of child winter heating assistance**

**10.**—(1) The value of child winter heating assistance is £200.

(2) Child winter heating assistance is to be given in the form of money in a single payment.

### **Making payments**

**11.**—(1) Where child winter heating assistance is payable in respect of a young person, the Scottish Ministers may, where they consider it appropriate, make the payment to another person to be used for the benefit of the young person.

(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 young person or another person.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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<sup>(6)</sup> Section 43 was amended by paragraph 5 of schedule 7 of the 2020 Act.

<sup>(7)</sup> 1971 c.80.

## SCHEDULE

Regulation 4

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 make provision about payments of winter heating assistance to children and young people who are in receipt of disability assistance paid in accordance with section 71 of the Social Security Contributions and Benefits Act 1992.

Regulation 4 sets out the eligibility rules. Regulations 5 to 8 provide for determinations without application. Regulation 9 makes provision for procedure in relation to re-determinations. Regulations 10 and 11 provide for payments of child winter heating assistance.