

Winter Heating Assistance (Low Income) (Scotland) Regulations 2023

Business and Regulatory Impact Assessment

November 2022



Business and Regulatory Impact Assessment (BRIA): Winter Heating Assistance (Low Income) (Scotland) Regulations

Purpose and Intended Effect

Background

1. Winter Heating Payment (WHP) (previously named Low Income Winter Heating Assistance) has been introduced in response to the Programme for Government commitment in 2021-22 to replace Cold Weather Payments (CWP), currently delivered by the UK Government, with a new £50 WHP to those low-income households currently eligible for the CWP.
2. The Winter Heating Assistance (Low Income) (Scotland) Regulations ('the regulations') will form the statutory framework for WHP. The policy background to the regulations and further information about the specific provisions are fully set out in the published draft regulations and accompanying policy note¹.
3. This new benefit will provide an annual investment of around £20 million, providing a guaranteed £50 payment to around 400,000 recipients on low incomes each winter.
4. Our key policy aim of this new benefit is to mitigate some of the impact of additional domestic heating costs in winter by providing targeted, reliable financial support to households with low incomes, who have a greater need for heat, including disabled people, older people and young children under five.
5. The introduction of WHP will ensure that everyone who is currently eligible for CWP, will be eligible for a payment to support them with their energy costs during the winter months, without the need for a sustained period of very cold weather to trigger a payment. The regulations provide that an individual within a household will be eligible for WHP if they are in receipt of Universal Credit, Pension Credit, Income-related Employment and Support Allowance, Income-based Jobseekers Allowance, Income Support and support for Mortgage Interest (additional qualifying criteria apply) in respect of any one day during the qualifying week in November.
6. Prior to now, an individual who was in receipt of these qualifying benefits would have received a Cold Weather Payment (CWP) for each cold weather event where the average temperature recorded (or was forecasted to be) was zero degrees or below for seven days in a row.

Rationale for Government Intervention

7. We know that the difference in weather conditions between some areas and the location of the weather stations which would trigger a CWP is a source of frustration to some people. Similarly the exclusive reliance on temperature rather

¹ [Scottish Government response consultation Low Income Winter Heating Assistance \(LIWHA\) documents](#)

than other factors such as wind chill can make some people feel that they are not being treated fairly under the current scheme. A Social Security Experience Panel survey² undertaken in February 2020 showed that many felt that the requirement for seven consecutive days of low temperature was also prohibitive, and left people feeling unable to heat their homes even in very cold weather.

8. CWP offered no certainty to people. In 4 of the last 9 years (between winter 2013/14 and 2021/22), low income households received less than £1 million from CWP to help with their fuel bills. DWP estimates show that in 2021/22, there were only 6 cold weather triggers from 4 of the 27 weather stations in Scotland with a total of £325,000 of support paid out. This resulted in only 11,000 people receiving at least one payment out of the 394,000 eligible recipients³.

9. We now consider that the best way to address these weaknesses is not to add further complexity to the benefit e.g. by creating more weather stations or adding more ways of determining cold weather. Instead we intend to remove the dependence on cold weather altogether and acknowledge that, regardless of temperature it is more likely to be difficult for people on low income benefits to spend more money to heat their homes in the winter. Whether that is because of the weather, the cost of fuel or the efficiency of their heating system or insulation, it will still require them to spend more money.

10. By removing the link between additional support and weather we will provide certainty for low income households about the extra help they will get, regardless of the actual temperature each day. It will also enable us to provide assistance to more households that are at risk of fuel poverty.

11. Although it is difficult to quantify the impact the introduction a new benefit like this would have on reducing the fuel poverty rate in Scottish households, data from the Scottish House Condition Survey 2019 showed that, 37% of households receiving CWP were fuel poor. If the weather dependent criterion is removed this would rise to 45%⁴.

12. The policy aligns closely with the Scottish Government's Wealthier and Fairer Strategic Objectives, but also links with the Scottish Governments priorities to tackle child poverty and the cost of living crisis.

13. The policy will contribute towards the following National Outcomes:

- **Economy: We have a globally competitive, entrepreneurial, inclusive and sustainable economy;** This policy will provide increased investment in financial support for people on low incomes in Scotland.
- **Children and Young People: We grow up loved, safe and respected so that they realise their full potential.** This policy will have a positive impact on disabled children and children under five living in low income households,

² [Social Security Experience Panels - Low Income Winter Heating Assistance: survey findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/social-security-experience-panels-low-income-winter-heating-assistance-survey-findings-2020/pages/1-to-10.aspx)

³ [Cold Weather Payment estimates: 2021 to 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/cold-weather-payment-estimates-2021-to-2022)

⁴ [Scottish house condition survey: 2019 key findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-house-condition-survey-2019-key-findings/pages/1-to-10.aspx)

as well as children living in low income households with a disabled adult responsible for a child or young person. Evidence has shown that living in a cold home can have a negative impact on health, educational attainment, emotional wellbeing and resilience. WHP will provide a financial boost to the family income of the most vulnerable children.

- **Communities: We live in communities that are inclusive, empowered, resilient and safe.** This additional support will help towards ensuring those most in need are living in a warm home.
- **Health: We are healthy and active.** The policy may reassure vulnerable people that they can afford to maintain a safe temperature at home during the winter, reducing the health risks due to living in cold environments).
- **Human Rights: We respect, protect and fulfil human rights and live free from discrimination.** Social Security is a human right and through provision of a new benefit we help progress the support that is available.
- **Poverty: We tackle poverty by sharing opportunities, wealth and power more equally.** The policy intention of WHP is to provide financial support to eligible individuals who have a greater need for heat during the winter months. WHP in particular specifically targets low-income households who, due to their specific circumstances may be at higher risk of fuel poverty and of being in poverty, providing a £50 payment to 400,000 households annually.

Consultation

14. The public consultation⁵ on LIWHA (now named WHP) took place between 1 December 2021 and 25 February 2022. It provided an overview of the new payment's aim, its key eligibility criteria and its format. It set out how we intend to deliver this new benefit through Social Security Scotland to provide help towards meeting heating costs in winter. The consultation asked specific questions on whether the policy intention will best meet the needs of those it aims to help including whether the requirement for a period of cold weather to trigger a payment should be removed, whether different qualifying benefits should confer eligibility and whether those receiving such benefits should be identified during an annual qualifying week. We also asked about the value, format and timing of the payment itself. A report⁶ summarising the independent analysis of the 119 consultation responses has been published on the Scottish Government website.

15. The Winter Heating Benefits Stakeholder Reference Group was set up in October 2020 to ensure that stakeholder views were understood and properly considered prior to and during the roll out of WHP. The group has provided a forum for dialogue between the Scottish Government and the key stakeholders with interests in WHP. Membership of the group includes key stakeholders representing poverty, equality and advice and energy support organisations, as well as national

⁵ [Consultation on Low Income Winter Heating Assistance](#)

⁶ <http://www.gov.scot/ISBN/9781804355244>

public bodies such as COSLA and NHS Scotland. As part of the engagement process the Scottish Government also ran an extended workshop with the Stakeholder Reference Group in January 2022, engaging with a number of additional stakeholders to seek comprehensive feedback on the consultation questions.

16. The responses to the consultation provided us with a range of proposed changes. In general respondents agreed with the removal of weather dependence but wanted the value of the payment to be higher. They also wanted 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.

17. Alongside the consultation, we asked members of our Social Security Experience Panels for their views on the key policy options for this new benefit. In total, 288 members chose to complete our survey exploring this topic⁷. Of those Panel members that responded;

- 82% agreed with the plan to replace Cold Weather Payment with a new benefit in Scotland;
- 87% agreed that a new benefit replacing Cold Weather Payment is a good way to help towards winter heating costs for people on low incomes;
- 90% agreed with the plan to remove the need for a 'cold spell', a component of the eligibility for Cold Weather Payment, in order for people to receive the new benefit.

18. Respondents to the consultation raised concerns in some areas, including:

- Value of payment
- Potential for people in historically colder areas to receive less support
- Use of a qualifying week resulting in some people missing out
- The time between assessing entitlement (qualifying week) and making a payment was considered too long

Options

19. As part of our policy development we have considered these issues and alternative options alongside their affordability and feasibility for delivery in winter 2022-23. These considerations are set out below:

Value of the Payment

20. The consultation proposed a single annual payment of £50, equivalent to the value of two CWPs. Many consultation respondents thought this should be higher, particularly in light of the cost of living crisis and rising energy prices. Some respondents felt the level of payment should more accurately reflect specific circumstances such as the higher cost of fuel in rural or off-grid areas and the

⁷ [Social Security experience panels Low Income Winter Heating Assistance](#)

greater need to invest in energy efficiency in some housing stock. Other respondents raised the issue of the payment level in response to the removal of weather dependency and made reference to how some recipients may lose out due to living in locations that traditionally experience sustained periods of extremely cold weather.

21. The policy intention of WHP is to mitigate some of the challenges presented by the volatile winter energy costs for vulnerable households and also to help alleviate poverty and inequalities. However, we recognise that the current record rise in global gas prices, heightens the risk that despite this financial support, there will be an ongoing need to support those at risk of, or in crisis. WHP will offer the equivalent of two CWPs, which for the majority of people will provide the same, or a greater, level of support than was provided on average previously through the DWP benefit.

22. Alternative suggestions of payment level put forward by consultation respondents tended to range between £75 and £100. However, this would increase the forecasted annual expenditure from £20 million to between £30 million and £40 million, assuming the same number of recipients of qualifying benefits.

23. Any increase in value of the payment would affect the annual expenditure and such an increase at this time would not be affordable. We have therefore not made any changes to the value of the payment. This approach was developed with careful consideration to both affordability and value for money. It supports the Scottish Government's intent to simplify the benefit in order to deliver it quickly and will ensure that those who would have previously been eligible for a CWP (had there been an extreme cold weather event in their location) receive a payment regardless of locality, temperature or weather conditions throughout the winter.

Single Payment

22. Respondents' views were mixed on the proposal for a single annual payment. Some suggested payments be split to ensure coverage across the winter and increase the chance of coinciding with cold weather spells. Others suggested additional payments targeted to areas that have historically seen more frequent cold weather events.

23. Similar to increasing the payment, making more than a single payment each winter would increase the complexity and cost of delivering the benefit, risking the safe and secure delivery of WHP in 2023 and we have therefore decided not to split payments at this stage. However, we retain in the underpinning legislation the ability to legislate for additional payments to be made should the need arise and the funding be made available.

Qualifying Week

24. Removing the need for a period of cold weather to trigger a payment requires us to specify the point or points in time at which eligibility will be determined. We have proposed establishing a 'qualifying week' for which we would receive data from DWP identifying households in receipt of the specified qualifying benefits. A

qualifying week is a way of identifying eligible clients in a proportionate way taking into consideration our understanding that the group eligible for WHP can fluctuate across periods of time. Some respondents suggested a longer qualifying period or multiple periods in which to identify eligible clients throughout the winter.

25. Changes in the qualifying week, including the introduction of multiple qualifying weeks or a longer period for assessing eligibility would involve greater complexity to the current design of the service and would not be able to be delivered by launch in winter 2022-23.

Timing of a Qualifying Week

26. We consulted on a proposed single qualifying week in September. Concerns were raised that this was too early in the year when considering the payment wasn't due until February. We now propose to change that to early November which will bring it closer to the payment date in February 2023. This will address some of the concerns raised by respondents about the length of time between assessing entitlement and making payments.

Payment in February

27. Most consultation respondents consider that a payment in February would be too late. A payment before February 2023 would add risk to the proposed delivery of other benefits being delivered through Social Security Scotland. Social Security Scotland also need to ensure there is capacity to process the 400,000 WHP cases requiring payment and essential system testing being completed prior to commencing payments. 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.

28. We have published the independent analysis⁸ of our consultation, along with the Scottish Government's response to the consultation and the draft regulations which will be scrutinised by the Scottish Commission on Social Security.

Sectors and groups affected

29. In consulting on the proposed introduction of LIWHA the following question was specifically posed to respondents and participants at the large stakeholder event: *'Please set out any information you wish to share on the impact of LIWHA on businesses'*

30. A total of 11 respondents provided an answer to this question, 7 of which provided further comment. Key themes in these responses in regards to business-specific impacts were the effect the introduction might have on advice services, including community-based organisations and charities. However, as no application will be required in most cases, any impact is anticipated to be strictly limited.

⁸ [Low Income Winter Heating Assistance \(LIWHA\): Analysis of Consultation Responses: Final Report \(www.gov.scot\)](http://www.gov.scot)

31. The introduction of WHP could affect any individual living in Scotland who has previously received a CWP from DWP or would have likely received a CWP if the weather conditions were met because they met all the other eligibility conditions. This will also affect anyone who may become eligible through qualifying benefits in the future. This includes households who are in receipt of low income benefits, including those with a disabled adult or child, a family with a child under the age of 5 or a person of pension age.

Costs

32. WHP is an increased investment in financial support for people on low incomes in Scotland. As a benefit which is being devolved from the UK Government's social security provision there will be some budget transfer from the UK Government to support the costs associated with this benefit.

33. The Scottish Government expects the new benefit will exceed the budget provided for CWP as part of the annual Block Grant Adjustment, unless there are prolonged periods of very cold weather in future winters. The Scottish Government expects payments will amount to around £20 million per year and this will have to be met internally. Through this widening of financial support to people on low incomes, the Scottish Government expects to invest around £20 million into the Scottish economy each year as WHP is expected to be used to ease the financial pressures of increased winter heating bills.

Scottish Firms Impact Test

34. A stakeholder event was also run during the consultation on WHP in January 2022 to raise the profile of the consultation and to enable as many people as possible to contribute their views.

35. Participants who attended this event included Child Poverty Action Group in Scotland, Citizens Advice Scotland, One Parent Families Scotland, Age Scotland, Energy Action Scotland, The Poverty Inclusion Scotland Scottish Women's Convention, Energy Saving Trust, COSLA, Outside the Box, Scottish Pensioners Forum, NHS Scotland, Glasgow Disability Alliance, Minority Ethnic Carers Older People Project (MECCOP) and Tighean Innse Gall – Housing and Energy agency for Outer Hebrides.

36. There may be some impact on businesses and third sector organisations operating in Scotland in relation to the way the Social Security Scotland agency delivers the devolved benefits compared to DWP. For WHP, the demands placed on third sector organisations to provide advice and support for people receiving and enquiring this new payment may change slightly. However, given the simplified approach and the automated nature of the benefit, this should not require provision of complex advice.

37. The Scottish Government will continue to engage with the advice services sector as the new WHP is implemented and will monitor the impact through engaging with the membership of the Winter Heating Benefits Stakeholder Reference Group membership.

Competition Assessment

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

Competition Assessment Questions

1) Will the measure directly or indirectly limit the number or range of suppliers?

No

2) Will the measure limit the ability of suppliers to compete?

No

3) Will the measure limit suppliers' incentives to compete vigorously?

No

4) Will the measure limit the choices and information available to consumers?

No

Consumer Assessment

39. The Scottish Government does not believe that WHP will have an adverse impact on either eligible individuals or any other consumer either within Scotland, the UK, or elsewhere in Europe or the rest of the world. WHP does not directly or indirectly limit the choices of consumers, nor does it limit the ability of consumers to compare the quality, availability or price of goods or services in a market. Furthermore, WHP will not impact a consumer's ability to understand their rights.

Consumer Assessment Questions

1) Does the policy affect the quality, availability or price of any goods or services in a market?

No

2) Does the policy affect the essential services market, such as energy or water?

No

3) Does the policy involve storage or increased use of consumer data?

No

4) Does the policy increase opportunities for unscrupulous suppliers to target consumers?

No

5) Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

No

6) Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

No

Test run of business forms

40. We foresee no need for new business forms as a result of this policy.

Legal Aid Impact Test

41. 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.

42. The Scottish Government expects the impact on the Legal Aid budget to be minimal as a result of the introduction of WHP. Current recipients are already able to access legal aid to appeal entitlement decisions and the circumstances in which somebody could make an appeal are rare. Given that the majority of the caseload for this assistance will be paid automatically, the number of manual applications is expected to be very low. We do not anticipate high numbers of re-determination or appeal requests due to these factors.

Enforcement, sanctions and monitoring

43. The Scottish Government has established the Scottish Commission on Social Security (SCoSS), an independent expert body that will scrutinise the Scottish social security system (including benefit regulations) and hold Scottish Ministers to account. As part of their function, they will examine the regulations required for the administration of WHP and will produce reports setting out their observations and recommendations in relation to the proposals. These reports will be submitted to Scottish Ministers, the Scottish Parliament and made available to the wider public as required by the duty conferred on Scottish Ministers by section 97 of the Social Security (Scotland) Act 2018.

44. The Social Security (Scotland) Act 2018 places a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social

security system during the previous financial year. The report is to describe what the Scottish Ministers have done in that year to meet the expectations on them set out in the charter and will include information on the impact on protected characteristics.

45. The Scottish Government has put in place a monitoring and evaluation plan for WHP which takes account of the issues identified within this impact assessment. As part of the monitoring and evaluation we will review the eligibility criteria for WHP following the launch of the benefit. Monitoring the impact of the WHP will be a continuous process and where any unintended consequences are identified, we will consider what steps can be made to minimise any negative impact.

46. The Winter Benefits Stakeholder Reference Group will continue to play a vital role in the development of WHP policy and practice. The group membership is comprised of key stakeholders supporting and representing the needs of WHP recipients. The group will provide a forum for dialogue and will monitor the implementation of the benefit, raising any issues voiced by eligible recipients and organisations.

47. We will collate management information to monitor the characteristics of recipients and will undertake qualitative research to test whether WHP is meeting its policy intentions. This will inform any future consideration of variations to policy or delivery arrangements.

Implementation and delivery plan

48. A communications strategy will be developed in advance of the launch of WHP, which will aim to ensure that individuals, the third sector, local government, health sector and advice providers are aware of the introduction of WHP, and understand the eligibility criteria, as well as understanding how and when recipients will receive the payment.

49. The WHP regulations will be laid in November 2022, with the regulations coming into force in January 2023. The first WHP payments will be made in February 2023.

Declaration and publication

50. I have read the Business and Regulatory Impact Assessment and I am satisfied that:

- (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and
- (b) that the benefits justify the costs.

I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed on the original

Date: 10 November 2022

Minister's name: Ben Macpherson

Minister's title: Minister for Social Security and Local Government

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