

*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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**2021 No.**

**SOCIAL SECURITY**

**The Winter Heating Assistance for Children and Young  
People (Scotland) Amendment Regulations 2021**

*Made* - - - - 2021

*Coming into force* - - 16th November 2021

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 30(2), 52 and 95 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.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Winter Heating Assistance for Children and Young People (Scotland) Amendment Regulations 2021 and come into force on 16 November 2021.

(2) In these Regulations, “the principal Regulations” means the Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020<sup>(2)</sup>.

**Amendment of the principal Regulations**

2.—(1) The principal Regulations are amended in accordance with the following paragraphs.

(2) In regulation 2 (interpretation) in the appropriate places insert—

““the 2013 Regulations” means the Social Security (Personal Independence Payment) Regulations 2013<sup>(3)</sup>,”

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

(2) S.S.I. 2020/352, amended by S.S.I. 2021/73 and S.S.I. 2021/170.

(3) S.I. 2013/377, relevantly amended by S.I. 2013/2270, S.I. 2015/643, S.I. 2016/556, S.I. 2017/901 and S.I. 2019/1027.

““the 2016 Regulations” means the Personal Independence Payment Regulations (Northern Ireland) 2016(4),”

““first qualifying week” means the qualifying week in the same calendar year these Regulations came into force,”

““Personal Independence Payment” means personal independence payment under—

- (a) Part 4 of the Welfare Reform Act 2012(5), or
- (b) article 82 of the Welfare Reform (Northern Ireland) Order 2015(6),”.

(3) Regulation 4 (eligibility rules for child winter heating assistance) is amended as follows—

(a) for paragraph (1)(b) substitute—

“(b) entitled to receive payment of—

(i) the highest rate of the care component of—

- (aa) Disability Living Allowance, or
- (bb) Child Disability Payment, or

(ii) the enhanced rate of the daily living component of Personal Independence Payment, and”.

(b) in paragraph (2)—

(i) for “paragraph (1)(b)(i)” substitute “paragraph (1)(b)(i)(aa)”; and

(ii) after “week, ” insert “regulation 8 (Hospitalisation of persons aged 18 or over), or”.

(c) in paragraph (3), for “paragraph (1)(b)(ii)” substitute “paragraph (1)(b)(i)(bb)”.

(d) after paragraph (4) insert—

“(5) For the purposes of the rule in paragraph (1)(b)(ii), an individual is to be treated as being entitled to receive payment even if, throughout the qualifying week—

- (a) regulation 28 (care home residents) of either the 2013 Regulations or the 2016 Regulations applies to the individual due to the individual being resident in a care home, or
- (b) regulation 29 (hospital in-patients aged 18 or over) of either the 2013 Regulations or the 2016 Regulations applies to the individual due to the individual being an in-patient in hospital.

(6) In paragraph (5)—

- (a) “care home” has the meaning given in section 85(3) of the Welfare Reform Act 2012 or article 90(3) of the Welfare Reform Act (Northern Ireland) Order 2015, and
- (b) “hospital” has the meaning given in regulation 29 of the 2013 Regulations or regulation 29 of the 2016 Regulations.

(7) An individual is entitled to be paid child winter heating assistance in respect of the first qualifying week if it appears to the Scottish Ministers from information available to them that the individual would have been entitled to be paid child winter heating assistance had the requirement in regulation 4(1)(b)(ii) had effect beginning with the day upon which these Regulations came into force.”

(4) In regulation 5 (determination of entitlement to child winter heating assistance without application), omit “by the end of December in any year”.

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(4) S.I. 2016/217, relevantly amended by S.I. 2016/235.

(5) 2012 c. 5. Part 4 was relevantly amended by S.I. 2018/1084 and S.I. 2021/804.

(6) S.I. 2015/2006.

(5) In regulation 8 (determination following backdated award of assistance), for sub-paragraph (b)(i) substitute—

“(i) following an appeal, an award of—

(aa) the highest rate of the care component of Disability Living Allowance,

(bb) the highest rate of the care component of Child Disability Payment, or

(cc) the enhanced rate of the daily living component of Personal Independence Payment,

is made that is a backdated award, and”.

(6) Regulation 10 (value and form of child winter heating assistance) is amended as follows—

(a) in paragraph (1), for “The value” substitute “Subject to paragraph (1A), the value”.

(b) after paragraph (1) insert—

“(1A) Where an individual is entitled to be paid child winter heating assistance by virtue of regulation 4(7), the value of child winter heating assistance payable is the value specified in paragraph (1) as it had effect on the day these Regulations came into force.”.

(7) In regulation 11 (making payments), in paragraph (1) in each place where it occurs for “young person” substitute “child or young person”.

St Andrew’s House,  
Edinburgh

Date

*Name*

Authorised to sign by the Scottish Ministers

## EXPLANATORY NOTE

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

These Regulations amend the Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020 (“the principal Regulations”) which make provision about payments of winter heating assistance (“child winter heating assistance”).

Regulation 2(3) extends eligibility criteria to individuals entitled to the enhanced rate of the daily living component of Personal Independence Payment during the qualifying week. The amendments ensure that individuals who are entitled to the enhanced rate of the daily living component of Personal Independence Payment have the same entitlements and disregards as individuals entitled to the highest rate of the care component of Disability Living Allowance and Child Disability Payment care component. Regulation 2(3)(b) and 3(d) deal with the effect on entitlement to the care component of Disability Living Allowance and daily living component of Personal Independence Payment when an individual is in a hospital, to ensure those who are 18 are not excluded from eligibility for child winter heating assistance. Regulation 2(3)(d) also deals with the effect on entitlement to the daily living component of Personal Independence Payment when an individual is in a care home, to ensure those who are 18 are not excluded from eligibility for child winter heating assistance.

Regulation 2(4) removes the deadline to make determinations without application under regulation 5 of the principal Regulations.

Regulation 2(5) amends the principal Regulations to include provision for Scottish Ministers to make a determination of entitlement following an appeal that results in a backdated award for someone on the enhanced rate of daily living component of Personal Independence Payment.

Regulation 2(3)(d) and (6) allow Scottish Ministers to make a determination of entitlement for individuals to now apply for the periods for which they would have been eligible for child winter heating assistance had the benefit been capable of being claimed at the same time the principal Regulations came into force.

Regulation 2(7) amends the principal Regulations in connection with payments of child winter heating assistance in respect of children. Regulation 11(1) of the principal Regulations allows Scottish Ministers to make payment of a young person’s child winter heating assistance to another person to be used for the benefit of the young person, where Scottish Ministers consider it appropriate. The amendment made by regulation 2(7) enables Scottish Ministers to do the same in respect of child winter heating assistance for a child.