

POLICY NOTE

THE HOME ENERGY ASSISTANCE SCHEME (SCOTLAND) REGULATIONS 2013

SSI 2013/148

Powers under which Instrument is made

1. The Home Energy Assistance Scheme (Scotland) Regulations 2013 (“the 2013 Regulations”) are made by the Scottish Ministers in exercise of powers conferred by section 15 of the Social Security Act 1990.

Parliamentary Procedure

2. This Scottish Statutory Instrument is subject to the negative Parliamentary procedure.

Summary of Policy Proposals

The Energy Assistance Scheme

3. Until 31 March 2013, the Scottish Government’s flagship programme to address fuel poverty was the Energy Assistance Package. A person is defined to be living in fuel poverty if, to heat their home to a satisfactory standard, they would need to spend more than 10% of their household income on fuel. Under the stage 4 of the Energy Assistance Package, individuals could apply for grant to have installation measures installed and/or their central heating system repaired or replaced. The level of grant and eligibility for grant is set out in the Home Energy Assistance Scheme (Scotland) Regulations 2009 (SSI 2009/48) (“the 2009 Regulations”) as amended and still in force.
4. However, changes to the UK Government’s schemes, moving from CERT and CESP to Green Deal and the Energy Companies Obligation, meant that the Scottish Government needed to review its fuel poverty and energy efficiency programmes. The Fuel Poverty Forum was asked to conduct a review of Scottish fuel poverty strategy and the Scottish Government accepted the recommendations in their interim report published on 6 June 2012 leading to the development and delivery of the Home Energy Efficiency Programmes for Scotland. In line with the Fuel Poverty Forum’s recommendations, the focus and budget has shifted towards area-based delivery.
5. From 1 April 2013, the Scottish Government has been rolling out these Programmes with the aim of upgrading Scotland’s housing stock, tackling fuel poverty and reducing carbon emissions. There are three strands:
 - (a.) The Area Based Schemes which are delivered by local authorities and prioritising fuel poor areas, aiming to cover the whole of Scotland in around 10 years. The Scottish Government has made available funding of £60 million for 2013-14 which is designed to lever in complementary funding from other sources, including the Energy

- Companies Obligation¹, to fund a range of measures including solid wall insulation, cavity wall insulation and heating systems.
- (b.) The Affordable Warmth Scheme which is delivered nationally and targeted at private tenure households who are vulnerable to fuel poverty as defined by the UK Government's affordable warmth group². Eligibility is based on the Home Heating Cost Reduction Obligation of the Energy Companies Obligation.
 - (c.) The Energy Assistance Scheme ("the Scheme") which is an extension of stage 4 of the Energy Assistance Package focusing assistance on the most vulnerable and poor households which were previously eligible for heating and insulation measures but who would otherwise miss out under the Affordable Warmth Scheme. The Scottish Government has made available funding £16 million for 2013-14.
6. Additionally, a further £3 million has been allocated to the Energy Saving Trust and others to help support the Home Energy Scotland Hotline and advice centres to provide advice and guidance to people about the energy efficiency of their homes and identify the support for which they may be eligible.
7. The 2013 Regulations make provision for the Scheme, consolidating with amendments the 2009 Regulations to reflect the change in eligibility in moving from stage 4 of the Energy Assistance Package to the Scheme and also to update references to the Disability Living Allowance to reflect the rollout of the Personal Independence Payments and the introduction of Armed Forces Independence Payments by the UK Government.

Consolidation

8. The 2009 Regulations have been amended by five Scottish Statutory Instruments (2009/392, 2010/110, 2011/56, 2011/350, 2012/34) and modified by a sixth SSI (2012/38). The 2013 Regulations consolidate these changes.

Changes to eligibility criteria

9. Eligibility for the Scheme is narrower than for stage 4 of the Energy Assistance Package and these changes have been applied administratively from 1 April 2013. (The 2009 Regulations provide a power for the Scottish Ministers to give grant, but not an obligation.) This is because the main focus will now be on the Area Based Schemes and the energy supplier-funded heating and insulation services available under the Affordable Warmth Scheme. The Scheme is now intended only to provide for the smaller number of potential customers who would otherwise lose out. Overall, a greater number of total households in Scotland will be eligible for assistance. The budget for the Scheme for 2013-14 is around half that for 2012-13.

¹ See the *Energy Companies Obligation (ECO) Guidance for Suppliers* published by Ofgem on 13 March 2013: www.ofgem.gov.uk/Sustainability/Environment/ECO/Pages/index.aspx

² See article 2 of, and schedule 1 to, the Electricity and Gas (Energy Companies Obligation) Order 2012 (SI 2012/3018).

10. Regulation 6 of the both the 2009 and 2013 Regulations defines the persons eligible to apply for grant. There are two significant restrictions which have been applied administratively from 1 April 2013 and are now reflected in the 2013 Regulations.

Exclusion of the affordable warmth group

11. The Affordable Warmth Scheme offers heating and insulation measures to eligible households through the Home Heating Cost Reduction Obligation. Regulation 4(5) excludes those households eligible for the Affordable Warmth Scheme from being eligible for support under the Scheme. This is done by reference to dwellings eligible to receive any qualifying actions for the Home Heating Cost Reduction Obligation under article 15 of the Electricity and Gas (Energy Companies Obligation) Order 2012 (SI 2012/3018) as it may be not be the potential applicant for the Scheme who meets the criteria for the Affordable Warmth Scheme.

Changes to eligibility for persons aged 75+

12. Restriction of eligibility for households with persons aged 75+ such that those who will continue to qualify for assistance are only those:
 - (a.) in receipt of qualifying benefits, as defined by regulation 6(9); or
 - (b.) without a central heating system.
13. Under the 2013 Regulations, households with individuals aged 75+ are to be subject to the same qualifying criteria as previously applied to households with individuals aged 60-74. This is achieved by the deletion of regulation 6(2) in the 2009 Regulations. Provision at regulation 6(3) and regulation 6(5)(c)(iii) in the 2013 Regulations which apply to households with individuals aged 60+, by default, also apply to households with individuals aged 75+.

Personal Independence Payments

14. The Scottish Government is committed to ensuring that eligibility for assistance under these Regulations will not be adversely impacted by the welfare reform programme being taken forward by the UK Government under the Welfare Reform Act 2012. The 2013 Regulations recognise equivalent new benefits provided to individuals with disabilities whilst preserving eligibility under existing benefits.
15. As part of the welfare reform programme, the Disability Living Allowance (“DLA”) is being gradually replaced by Personal Independence Payment (“PIP”) in a two-stage process where PIP will become available for all new claims from April 2013 (although DLA will continue for existing claimants). Existing DLA recipients will be migrated to PIP from October 2013 onwards.
16. Regulation 6(4A) of the 2009 Regulations made provision for individuals (or their partners) who receive DLA at the highest rate of the care component or the higher rate of the mobility component to qualify for assistance, provided

they meet other qualifying criteria. Regulation 6(6)(a)(i) of the 2013 Regulations replicates the effect of this provision.

17. Regulation 6(6)(a)(ii) of the 2013 Regulations preserves existing eligibility by adding references to equivalent levels of PIP support alongside references to DLA. The enhanced rate of the daily living component of a PIP is equivalent to the highest rate of the care component of DLA and the enhanced rate of a mobility component of a PIP is equivalent to the higher rate of the mobility component of DLA.

Armed Forces Independence Payments

18. The Armed Forces Compensation Scheme (AFCS), which has operated since April 2005, allows individuals with injuries sustained in service to claim DLA. However, AFCS is not compatible with PIP. To prevent injured service personnel being disadvantaged as a result of reforms to DLA and the introduction PIP, the UK Government is introducing a new Armed Forces Independence Payment (AFIP). This benefit is payable at a single rate. Regulations 6(6)(a)(iii) and 6(9)(d) make provision for AFIP to be treated in the same way as those in receipt of DLA or PIP equivalents.

Applications made before 1 July 2013

19. Regulation 9 makes saving provision to ensure that applications made before 1 July 2013, and still in progress, continue to be effective.

Consultation

20. We have not undertaken a full public consultation exercise on the 2013 Regulations but the Fuel Poverty Forum was closely engaged in the changes to eligibility. The additional provision for PIP and AFIP is a continuation of current policy through changes imposed by the UK Government's welfare reform programme and it was not appropriate to consult on these.

Financial Effect and Business and Regulatory Impact Assessment

Changes to eligibility criteria

21. The Scottish Government estimates that around 300,000 households in Scotland should be eligible for some form of support under the Affordable Warmth Scheme and the Scheme combined, more than twice the number of households previously eligible under stage 4 of the Energy Assistance Package (estimated at approximately 140,000). Broadly the split is expected to be 240,000 for the Affordable Warmth Scheme and 70,000 for the Scheme. This is in line with a Scottish Government budget of £16 million for the Scheme for 2013-14. The Affordable Warmth Scheme is funded by energy suppliers under the Energy Companies Obligation.
22. The organisations affected by this change are Scottish Gas, their subcontractors, the Energy Saving Trust and energy suppliers providing the

Affordable Warmth Scheme. The Scottish Government has made appropriate contractual, financial and procedural arrangements with Scottish Gas and the Energy Saving Trust to service the Scheme. The Energy Saving Trust and energy suppliers have been consulted on the development of the Affordable Warmth Scheme. These parties are content with the new arrangements. Scottish Gas subcontractors will face a reduction in installation volumes once the legacy cases from 2012-13 are completed but new opportunities will be created by the Affordable Warmth Scheme and Area Based Schemes.

Personal Independence Payment and Armed Forces Independence Payment

23. The provision to recognise PIP and AFIP merely preserves eligibility for individuals who would have qualified had they received equivalent benefits under DLA. There is no financial effect for the Scottish Government or any business or other body resulting from this change.
24. Given the restricted impact of the changes and the engagement of relevant parties with the Scottish Government, a full Business and Regulatory Impact Assessment has not been completed for this instrument.

Scottish Government
Directorate for Housing, Regeneration and Welfare.