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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 48**

**ENERGY CONSERVATION**

**The Home Energy Assistance  
Scheme (Scotland) Regulations 2009**

*Made* - - - - 12th February 2009  
*Laid before the Scottish  
Parliament* - - - - 13th February 2009  
*Coming into force* - - 6th April 2009

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 15 of the Social Security Act 1990(1) and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Home Energy Assistance Scheme (Scotland) Regulations 2009 and shall come into force on 6th April 2009.

**Interpretation**

2. In these Regulations—

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(2);

“administering agency” means a person or a body of persons appointed under regulation 3(1);

“central heating system” means a system which provides warmth to 2 or more rooms in a dwelling through a series of connected radiators or ducts linked to a central boiler or some other heat source or from a series of electric storage heaters and controlled from one central point;

“dwelling” includes any self contained part of a building which is occupied as a separate dwelling, and includes mobile homes that have been permanently fixed to a site;

“electric storage heater” means—

- (a) a free standing storage heater;
- (b) an electric fan assisted storage warm air system;
- (c) an electric wired underfloor heating system, set in a solid floor or floors; or

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(1) 1990 c. 27; section 15 was amended by section 142 of the Housing Grants, Construction and Regeneration Act 1996 (c. 53). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). The requirement to obtain Treasury consent was removed by section 55 of that Act.

(2) 1992 (c. 4).

(d) an electric ceiling heating system;

“energy inefficient dwelling” means a dwelling which does not attain a Standard Assessment Procedure rating of 39 or above;

“maternity certificate” means a maternity certificate which accords with the requirements of regulation 2(3) of the Social Security (Medical Evidence) Regulations 1976(3) or regulation 2 of the Statutory Maternity Pay (Medical Evidence) Regulations 1987(4);

“network installer” has the meaning given in section 15 of the Social Security Act 1990;

“owner” includes any person who under the Lands Clauses Acts(5) would be enabled to sell and convey land to the promoters of an undertaking;

“partner” means a spouse or civil partner or any person who lives with the applicant as husband or wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex;

“Standard Assessment Procedure” refers to the Government’s Standard Assessment Procedure for Energy Rating of Dwellings, 2005 Edition(6); and

“tenant” includes a sub-tenant and a person who—

(i) occupies a dwelling in terms of a contract of employment;

(ii) has a licence to occupy a dwelling; or

(iii) is a cottar within the meaning of section 12(5) of the Crofters (Scotland) Act 1993(7),

but excludes a tenant of a local authority or a body registered as a social landlord by virtue of section 57 of the Housing (Scotland) Act 2001(8).

### **Administering agencies**

3.—(1) The Scottish Ministers must appoint one or more persons or bodies of persons, known as administering agencies, to perform in an area specified in the appointment such functions as the Scottish Ministers may determine for the purpose of, or otherwise in connection with, the making of grants towards the cost of works specified in regulation 7.

(2) In any period the Scottish Ministers may allocate sums to an administering agency for the purpose of making grants to persons whose applications for grants are eligible to be entertained and may re allocate any sums so allocated.

(3) An appointment made under paragraph (1) may be terminated by the Scottish Ministers.

(4) The appointment of, or the conferring of functions upon, an administering agency may be effected in whole or in part by or under a written contract entered into between the Scottish Ministers and the administering agency.

(5) An administering agency may in accordance with criteria laid down from time to time by the Scottish Ministers select and register network installers.

### **Conditions of grant**

4.—(1) Works for which a grant is made must only be carried out by network installers.

(2) If access is not made available to the dwelling or the applicant for a grant fails to co operate with an administering agency or its agents to allow works to be carried out, a grant may be withdrawn.

(3) S.I.1976/615; regulation 2(3) was amended by S.I. 1987/409 and 2001/2931.

(4) S.I. 1987/235; regulation 2 was amended by S.I. 2001/2931.

(5) Defined in Schedule 1 to the Interpretation Act 1978 (c. 30).

(6) Published by the Building Research Establishment.

(7) 1993 c. 44.

(8) 2001 asp 10.

(3) If the applicant occupies a dwelling as a tenant, the grant may only be made if the landlord consents to the work.

(4) No grant may be made unless the dwelling is suitable for the proposed works.

(5) No grant may be made in respect of any dwelling for which a grant under these Regulations has been made within the previous 10 years.

(6) All works must comply with such standards as to materials and quality of work as may be laid down from time to time by an administering agency with the consent of the Scottish Ministers.

(7) The offer of a grant may be made conditional on the carrying out of other works.

### **Applications for grant**

5. An application for a grant must be made to an administering agency and must contain such particulars as are required by the administering agency.

### **Person eligible to apply for a grant**

6.—(1) Persons from whom an application for a grant may be entertained must—

- (a) be the owner or tenant of the dwelling to which the application relates, either alone or jointly with others;
- (b) have occupied the dwelling as their only or main residence for at least one year;
- (c) not expect to cease to occupy the dwelling within the period of twelve months beginning with the date on which the works are completed; and
- (d) meet the criteria in all or any of paragraphs (2) to (4).

(2) The criteria are that the person—

- (a) has attained or lives with a partner who has attained the age of 75; and
- (b) lives in an energy inefficient dwelling.

(3) The criteria are that the person—

- (a) has attained or lives with a partner who has attained the age of 60; and
- (b) lives in a dwelling which does not have a central heating system.

(4) The criteria are that the person—

- (a) is or lives with a partner who is in receipt of a benefit listed in paragraph (5);
- (b) lives in an energy inefficient dwelling; and
- (c) either—

- (i) has a child living in the dwelling, or lives with a partner who has a child living in the dwelling, who is either under the age of 5 or who is under the age of 16 and has been awarded a disability living allowance within the meaning of section 71 of the 1992 Act<sup>(9)</sup>; or
- (ii) furnishes a maternity certificate with the application confirming that the applicant or the applicant's partner is pregnant; or
- (iii) has attained or lives with a partner who has attained the age of 60.

(5) This paragraph applies to—

- (a) guarantee credit as mentioned in section 1 of the State Pension Credit Act 2002<sup>(10)</sup>;

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<sup>(9)</sup> Section 71(3) was amended by section 67(1) of the Welfare Reform and Pensions Act 1999 (c. 30).

<sup>(10)</sup> 2002 c. 16. There are amendments not relevant to these Regulations.

- (b) child tax credit or working tax credit under the Tax Credits Act 2002(11) where the relevant income is less than £17,474 and for these purposes “relevant income” has the same meaning as in Part 1 of that Act;
- (c) attendance allowance, that is to say—
- (i) attendance allowance under section 64 of the 1992 Act(12);
  - (ii) an increase of an allowance which is payable in respect of constant attendance under a scheme under, or having effect under, paragraph 4 of Part 1 of Schedule 8 to the 1992 Act(13);
  - (iii) a payment made under article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983(14) or any analogous payment;
  - (iv) any payment based on need for attendance which is paid with a war disablement pension; or
  - (v) any payment intended to compensate for the non payment of a payment, allowance or pension mentioned in any of sub paragraphs (i) to (iv);
- (d) disability living allowance (within the meaning of section 71 of the 1992 Act)(15), council tax benefit, housing benefit and income support (each as provided for in Part VII of the 1992 Act)(16), industrial injuries disablement benefit under sections 103 to 105 of the 1992 Act (where it includes constant attendance allowance) and an income based jobseeker’s allowance (within the meaning of the Jobseekers Act 1995(17));
- (e) a war disablement pension as defined by section 159B(6) of the Social Security Administration Act 1992(18) or a pension for disablement under Part II of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006(19), or any award of war disablement pension which continues to have effect by virtue of Schedule 4, paragraph 8 to that Order, together with—
- (i) a mobility supplement under article 20 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (including such a supplement payable by virtue of the application of that article by any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983 (including that article as applied by article 48A of that Scheme)(20), or a payment intended to compensate for the non payment of such a supplement; or
  - (ii) a payment under regulations made under paragraph 7(2)(b) of Schedule 8 to the 1992 Act (constant attendance allowance); and

(11) 2002 c. 21; section 1 makes provision for child tax credit and working tax credit. There are amendments not relevant to these Regulations.

(12) Section 64 was amended by section 66(1) of the Welfare Reform and Pensions Act 1999 (c. 30).

(13) See section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975 (c. 16) which was repealed, with savings, by the Social Security (Consequential Provisions) Act 1992 (c. 6).

(14) S.I. 1983/686; articles 14, 15 and 16 were amended by S.I. 2001/420 and article 16 by S.I. 1984/1675.

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

(16) Section 124, which deals with income support, was amended by Schedule 2, paragraph 30 to the Jobseekers Act 1995 (c. 18) and by section 70 of and Schedule 8, paragraph 28 to the Welfare Reform and Pensions Act 1999 (c. 30) and by Schedule 3, paragraph 9 to the Welfare Reform Act 2007 (c. 5). Section 130, which deals with housing benefit, was amended by Schedule 9 to the Local Government Finance Act 1992 (c. 14) and Schedule 13, paragraph 174 to the Local Government etc. (Scotland) Act 1994 (c. 39). Section 130 was repealed in part by Schedule 19, Part VI of the Housing Act 1996 (c. 52) and by Schedule 8, paragraph 1 to the Welfare Reform Act 2007 (c. 5). Section 131, which deals with council tax benefit, was substituted by Schedule 9 to the Local Government Finance Act 1992 (c. 14).

(17) 1995 c. 18. There are amendments not relevant to these Regulations.

(18) 1992 c. 5. Section 159B was added by Schedule 2, paragraph 17 to the State Pension Credit Act 2002 (c. 16). It was amended by Schedule 6, paragraph 188 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

(19) S.I. 2006/606, amended by S.I. 2006/1455.

(20) S.I. 1983/686; article 25A was added by S.I. 1983/1164 and amended by S.I. 1983/1540, 1986/628, 1990/1300, 1991/708, 1992/702, 1995/445 and 2001/420. Article 48A was added by S.I. 1984/1289. There are other amendments to S.I. 1983/686 not relevant to these Regulations.

- (f) employment and support allowance within the meaning of Part 1 of the Welfare Reform Act 2007<sup>(21)</sup>.

### **Works for which a grant may be made**

7.—(1) A grant may be made towards the cost of carrying out work to improve the thermal insulation and the energy efficiency of a dwelling and providing advice to reduce or prevent the wastage of energy in a dwelling, including, but not limited to—

- (a) the installation or renewal of a central heating system;
- (b) the replacement of a boiler;
- (c) draughtproofing together with provision of additional means of ventilation, if necessary;
- (d) internal and external wall insulation;
- (e) insulation in any accessible roof space in the dwelling, including the insulation of the cold water tank and any water supply, overflow and expansion pipes in such a space;
- (f) insulation between the internal and external leaves of cavity walls of the dwelling;
- (g) insulation to a water heating system or part of such system.

### **Amount of grant**

8. The maximum amount of grant awarded by the administering agency in respect of an application is £4,000, unless the dwelling cannot be improved to a Standard Assessment Procedure rating of 39 or above within this limit, in which case the maximum amount of grant is £6,500.

### **Revocations and transitional provisions**

9.—(1) Subject to paragraph (2), the Home Energy Efficiency Scheme (Scotland) Regulations 2006<sup>(22)</sup> are revoked.

(2) Those Regulations shall continue to apply in any case where an application for a grant was made under those Regulations on or before 5th April 2009.

St Andrew's House,  
Edinburgh  
12th February 2009

*NICOLA STURGEON*  
A member of the Scottish Executive

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<sup>(21)</sup> 2007 (c. 5).

<sup>(22)</sup> S.S.I. 2006/570.

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## EXPLANATORY NOTE

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

These Regulations make provision for the making of grants to improve the thermal insulation and energy efficiency of dwellings and to provide advice to reduce or prevent the wastage of energy in a dwelling.

Regulation 3 provides that the Scottish Ministers may appoint persons or bodies as administering agencies for the grants.

Regulation 4 lists the conditions of grant and regulation 5 provides that application for grant must be made to an administering agency.

Regulation 6 provides a description of persons from whom an application for grant may be entertained. These are owners or tenants who meet certain conditions described in regulation 6(1). Applicants must satisfy the criteria in paragraphs 6(2), 6(3) or 6(4) before an application can be considered.

Regulation 7 describes the types of work for which grants may be made.

Regulation 8 provides for a maximum amount of grant of £4,000 and £6,500 in particular cases.

Regulations which make provision for similar grants are revoked by regulation 9 with a saving provision for applications already made.