

## POLICY NOTE

### THE WINTER HEATING ASSISTANCE FOR CHILDREN AND YOUNG PEOPLE (SCOTLAND) REGULATIONS 2020

SSI 2020/XXX

The above instrument was made in exercise of the powers conferred by sections 30(2), 41(4)(a), 43(5) and 52 of the Social Security (Scotland) Act 2018 and all other powers enabling them to do so. Some of those powers are subject to affirmative procedure and others to negative procedure. Section 33 of the Interpretation and Legislative Reform (Scotland) Act 2010 permits certain powers to be combined. The instrument is subject to affirmative procedure by virtue of section 33(3) of that Act.

**This instrument sets out the rules and eligibility criteria for the Child Winter Heating Assistance (CWhA), a form of assistance that provides an annual payment each winter to children in receipt of the highest rate care component of Disability Living Allowance.**

#### Policy Objectives

The Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020 set out the eligibility rules for Child Winter Heating Assistance (CWhA). CWhA is a new form of assistance that will be paid to children and young people in receipt of the highest rate care component of Disability Living Allowance (DLA) who receive that component for at least one day of the qualifying week in September.

The assistance will consist of an annual payment of £200 for each eligible child or young person, paid either to the individual or, where appropriate, to their parent or another person with legal authority to act. The assistance has been developed to address the increased costs that disabled children, young people and their families incur as a result of:

- heating their homes to a higher temperature in winter, in line with World Health Organization (WHO) Guidance on room temperatures for vulnerable people;
- the need to heat their homes through the night, or for periods of the night, because another person is required to provide care and support to the child or young person during the night in respect of needs arising from the individual's disability or condition; and
- the need to heat their homes for longer periods through the winter because of the likelihood of most children or young people receiving the highest rate care component of DLA being present in the family home for longer periods of time.

The benefit will commence from winter 2020, making payments to around 16,000 individuals who receive the highest rate care component of DLA who are either resident in Scotland or have a genuine and sufficient link to Scotland while resident in a state in the European Economic Area listed in the schedule of the Regulations. The countries listed in the schedule are those that have a higher average winter temperature than the UK and this approach ensures that these regulations meet the requirements of EU social security coordination rules relating to exportable claims from the EU where clients have a genuine and sufficient link to Scotland.

## Consultation

The Scottish Government carried out a consultation into the policy and proposed delivery models for devolved disability assistance, including the intention to introduce CWHA. The consultation ran from March to June 2019. The Scottish Government's response to the consultation feedback was published in October 2019.

253 respondents answered a question as to whether they supported the Scottish Government's approach to introduce CWHA with a £200 payment made each winter to clients in receipt of the highest rate care component of DLA or, when it is replaced as part of the social security programme, CDP. 153 respondents agreed with the proposal, with 27 respondents disagreeing.

Of respondents who disagreed, this generally related to a view that entitlement should be conferred on individuals who do not receive disability benefits. Consideration as to how the Scottish Ministers will exercise devolved powers relating to winter heating benefits more generally are being undertaken as part of a separate policy development project.

A number of respondents commented that CWHA should be means tested or provided subject to an individual's financial circumstances. However, in line with the values of the social security system in Scotland in relation to disability benefits, CWHA will not be means tested and will be paid to all individuals who receive the highest rate care component of DLA in the qualifying week of September.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website.

To comply with the requirements of section 97 of the Social Security (Scotland) Act 2018, the policy proposals were sent to the Scottish Commission on Social Security (SCoSS) in the form of draft regulations on 15 May 2020. SCoSS submitted their response to these proposals to the Social Security Committee on 27 July 2020. The Scottish Government's response to the recommendations contained in that report is laid before Parliament with this instrument and is available on the Scottish Government's website.

As a result of the recommendations provided by SCoSS a number of changes were made to the Scottish Government's approach to CWHA including:

- revising the entitlement rules to ensure that children and young people in residential care are eligible for the payment in the same way that proposals set out that children and young people in hospital would be; this resolves the issue that a client may have a temporary stay in residential care during the qualifying week preventing them from accessing CWHA whilst spending the majority of the winter at home;
- setting out an intention to review eligibility criteria in 2021 to consider whether extending the entitlement criteria for the assistance to other individuals with disabilities in receipt of different levels or forms of assistance would be feasible; and
- making a commitment to review the qualification window once the case transfer process of cases moving from DLA to the devolved replacement, Child Disability Payment, is completed.

## **Impact Assessments**

An Equalities Impact Assessment (EQIA), Island Communities Impact Assessment (ICIA), Fairer Scotland Duty Impact Assessment and a Children's Rights and Wellbeing Impact Assessment (CRWIA) were finalised in August 2020 and are provided with this instrument. It is anticipated from the analysis in these impact assessments that the commencement of CWHa will have a broadly positive impact on a range of equalities groups, island communities and in relation to the realisation of children's right and improving their wellbeing.

There are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations.

## **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. It is envisaged that as a result of introducing this new form of assistance it may have a broadly positive, though negligible, impact on the energy provider sector. The Scottish Government does not believe that CWHa will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. The benefit 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.

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. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of CWHa. Current recipients are already able to access legal aid to appeal entitlement decisions. Given that the majority of the caseload for this assistance (approximately 16,000 in 2020-21) will be paid automatically, the number of manual applications will be negligible. We do not anticipate high numbers of redetermination or appeal requests due to these factors.

Scottish Government  
Social Security Directorate

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