
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

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

Eligibility rules for winter heating payment

4.—(1) An individual is entitled to be paid winter heating payment if the individual satisfies, in respect of a qualifying week, the conditions specified in paragraphs (2) to (4).

(2) The first condition is that, in respect of any day within the qualifying week, the individual—

(a) has been awarded any of the following—

- (i) state pension credit,
- (ii) income support,
- (iii) an income-based jobseeker's allowance,
- (iv) an income-related employment and support allowance,
- (v) universal credit,
- (vi) owner-occupier loan payments and is treated as entitled to a benefit specified in heads (ii) to (iv),
- (vii) owner-occupier loan payments and is treated as entitled to state pension credit, and

(b) is resident in Scotland.

(3) The second condition (which applies only if the individual falls within paragraph (2)(a)(ii), (iii), (iv), (v), or (vi)) is that, in respect of the day to which paragraph (2) relates—

- (a) the individual's family includes a member aged younger than 5 years old,
- (b) where the individual has been awarded income support, the individual's applicable amount includes one or more of the premiums specified in paragraphs 9 to 14 of Part 3 (premiums) of schedule 2 of the Income Support (General) Regulations 1987(1),
- (c) where the individual has been awarded income-based jobseeker's allowance, the individual's applicable amount includes one or more of the premiums specified in paragraphs 10 to 16 of Part 3 (premiums) of schedule 1 of the Jobseeker's Allowance Regulations 1996(2),
- (d) the individual's child tax credit includes a disability element within the meaning of section 9(3) (maximum rate) of the Tax Credits Act 2002(3),

(1) S.I. 1987/1967; relevant amending instruments are S.I. 1988/663, S.I. 1989/1678, S.I. 1991/2742, S.I. 1993/1150, S.I. 1993/2119, S.I. 1994/2139, S.I. 1994/3061, S.I. 1995/482, S.I. 1998/2231, S.I. 2000/681, S.I. 2000/724, S.I. 2000/2629, S.I. 2002/490, S.I. 2002/2497, S.I. 2002/3019, S.I. 2003/455, S.I. 2003/1589, S.I. 2003/2379, S.I. 2004/1141, S.I. 2006/2378, S.I. 2007/719, S.I. 2009/1488, S.I. 2010/1160, S.I. 2010/1907, S.I. 2011/674, S.I. 2011/2425, S.I. 2013/388, S.I. 2013/591, S.I. 2014/591, S.I. 2014/2888, S.I. 2015/1754, S.I. 2015/1985, S.I. 2021/786, S.I. 2022/177, and S.I. 2022/530.

(2) S.I. 1996/207; relevantly amended by S.I. 1996/1516, S.I. 1996/2538, S.I. 1998/2231, S.I. 2000/681, S.I. 2000/724, S.I. 2000/2629, S.I. 2002/490, S.I. 2003/455, S.I. 2003/511, S.I. 2006/2378, S.I. 2007/719, S.I. 2009/1488, S.I. 2010/1160, S.I. 2011/674, S.I. 2011/2425, S.I. 2013/388, S.I. 2013/591, S.I. 2014/2888, S.I. 2015/1754, S.I. 2018/1129, S.I. 2021/786, and S.I. 2022/177.

(3) 2002 c. 21; section 9(3) was amended by section 13(3) of the Welfare Reform and Work Act 2016 (2016 c. 7).

- (e) where the individual has been awarded income-related employment and support allowance—
 - (i) the individual’s applicable amount includes one or more of the premiums specified in paragraphs 5 to 7 of Part 2 (premiums) of schedule 4 of the Employment and Support Allowance Regulations 2008(4), or
 - (ii) the individual is a member of the work-related activity group or is a member of the support group,
 - (f) where the individual has been awarded universal credit—
 - (i) the individual’s universal credit award includes an amount under section 10(2) of the 2012 Act (child or qualifying young person who is disabled)(5), or
 - (ii) the individual is determined as having limited capability for work or limited capability for work and work-related activity as construed in accordance with regulations 39 and 40 of the Universal Credit Regulations 2013(6), or
 - (g) where the individual has been awarded owner-occupier loan payments, the individual’s applicable amount, if the individual were entitled to a benefit specified in paragraph (2) (a)(ii) to (iv), would include one or more of the premiums specified in—
 - (i) where the individual is treated as entitled to income support, paragraphs 9 to 14 of Part 3 of schedule 2 of the Income Support (General) Regulations 1987,
 - (ii) where the individual is treated as entitled to jobseeker’s allowance, paragraphs 10 to 16 of Part 3 of schedule 1 of the Jobseeker’s Allowance Regulations 1996,
 - (iii) where the individual is treated as entitled to employment and support allowance, paragraphs 5 to 7 of Part 2 of schedule 4 of the Employment and Support Allowance Regulations 2008.
- (4) The third condition, which applies only where the individual has been awarded universal credit and their award of universal credit does not include an amount under section 10(2) of the 2012 Act, is that the person is not in employment or gainful self-employment on any day during the qualifying week.
- (5) In this regulation—
- (a) “employment” means employment under a contract of service, or in an office, including an elective office,
 - (b) “family” has the meaning given to it in section 137 of the Social Security Contributions and Benefits Act 1992(7) and the Income Support (General) Regulations 1987,
 - (c) a person is in “gainful self-employment” where—
 - (i) they are carrying on a trade, profession or vocation as their main employment,
 - (ii) their earnings from that trade, profession or vocation are treated as self-employed earnings for the purpose of regulations made under section 8(3) of the 2012 Act, and
 - (iii) the trade, profession or vocation is organised, developed, regular and carried on in expectation of profit,
 - (d) “income-based jobseeker’s allowance” means income-based jobseeker’s allowance under the Jobseekers Act 1995(8),

(4) S.I. 2008/794; relevantly amended by S.I. 2010/1160, S.I. 2011/2425, S.I. 2011/2428, S.I. 2013/388, S.I. 2013/591, S.I. 2015/1754, and S.I. 2022/177.

(5) 2012 c. 5; section 10(2) was amended by section 14(3)(a) and (b) of the Welfare Reform and Work Act 2016 (2016 c. 7).

(6) S.I. 2013/376; relevantly amended by S.I. 2014/597.

(7) 1992 c. 4; the meaning of “family” at section 137 was amended by paragraph 46(2) of Part 3 of Schedule 24 of the Civil Partnership Act 2004 (2004 c. 33).

(8) 1995 c. 18.

- (e) “member of the support group” means a person who has or is treated as having limited capability for work-related activity under Part 6 of the Employment and Support Allowance Regulations 2008⁽⁹⁾,
- (f) “member of the work-related activity group” means a person who has or is treated as having limited capability for work under Part 5 of the Employment and Support Allowance Regulations 2008 other than by virtue of regulation 30 of those Regulations⁽¹⁰⁾,
- (g) “owner-occupier loan payments” means loan payments made under the Loans for Mortgage Interest Regulations 2017⁽¹¹⁾,
- (h) “state pension credit” has the meaning given by section 1(1) of the State Pension Credit Act 2002⁽¹²⁾,
- (i) “treated as entitled to” a benefit, in respect of a person, has the meaning given in regulation 2(2)(aa) of the Loans for Mortgage Interest Regulations 2017⁽¹³⁾,
- (j) “universal credit” means universal credit under Part 1 of the 2012 Act.

⁽⁹⁾ S.I. 2008/794; relevantly amended by S.I. 2011/2425, S.I. 2012/919, S.I. 2012/3096, S.I. 2013/2536, and S.I. 2021/230.

⁽¹⁰⁾ S.I. 2008/794; relevantly amended by S.I. 2008/2428, S.I. 2010/840, S.I. 2010/1907, S.I. 2011/674, S.I. 2011/2425, S.I. 2012/3096, S.I. 2013/2536, S.I. 2014/884, S.I. 2015/437, S.I. 2021/230 and S.I. 2022/630.

⁽¹¹⁾ S.I. 2017/725.

⁽¹²⁾ 2002 c. 16.

⁽¹³⁾ S.I. 2017/725; relevantly amended by S.I. 2018/307.