

Scottish Commission on Social Security consultation – The Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020

Response from Citizens Advice Scotland

June 2020

Summary

Citizens Advice Scotland welcomes the moves to extend Winter Heating Assistance in the challenging context of COVID19 which has resulted in delays to wider measures on disability assistance. We recommend the draft regulations are amended to better meet the policy intention and add clarity in a number of areas. In particular, we recommend:

- Young people in Scotland in receipt of the Enhanced Rate of the Daily Living component of PIP between the ages of 16 and 18 should be considered eligible for CWHA on an equal basis as children and young people in receipt of the High Rate Care component of DLA.
- Making the qualifying period 1 October to 31 March, to align it more closely with regulated gas and electricity supply industry initiatives.
- Making the qualifying week the 7 days beginning 1 October each year.
- Stipulating that the payment must be made within a given period of the qualifying date or the first date on which an individual becomes eligible.
- Clarifying who payments should be made to, and providing a mechanism for resolving disputes over whom they should be made to.

Introduction to Citizens Advice Scotland and context of response

Scotland's Citizens Advice network empowers people in every corner of Scotland through our local bureaux and national services by providing free, confidential, and independent advice. We use people's real life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

Citizens Advice Scotland (CAS) welcomes the opportunity to provide comments on the draft Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020 ("the draft Regulations") to the Commission. Advice on disability benefits is among the most common areas of advice provided by Scotland's Citizens Advice Bureau (CAB) network. In 2018-19, Scottish CAB provided advice to clients on 6,065 issues related to the care component and 5,050 to the mobility component of Disability Living Allowance (DLA), which will act as a qualifying benefit for Winter Heating Assistance for disabled people under the age of 18. In addition, 282 advice issues were provided on the reserved Winter Fuel Payment.

CAS welcomes the proposal to extend eligibility for Winter Heating Assistance (WHA) to households in which a severely disabled child or young person resides. This is in keeping with our position on the Fuel Poverty Bill where we have called for more vulnerable people (including households in which a disabled person resides) to be defined as requiring an 'enhanced heating regime', either through their need for increased indoor temperatures or through a requirement for enhanced heating hours¹.

Eligibility for Child Winter Heating Assistance

Citizens Advice Scotland has welcomed both the extension of Winter Heating Assistance to families with severely disabled children, and the extension of Child Disability Payment to young people up to the age of 18. The original policy intention for Child Winter Heating Assistance (CWAHA) was to provide support for severely disabled children in receipt of the Child Disability Payment, which was to end at the age of 18. Due to the Coronavirus outbreak, this Payment has been understandably delayed, and eligibility criteria must therefore be established in the context of the reserved benefits system if the CWAHA is to be made available, as planned, this year.

The draft Regulations make provision for a Child Winter Heating Assistance (CWAHA) payment to be made in respect of children and young people under the age of 18 who receive the highest rate of the care component of Disability Living Allowance (DLA). However, given that new claims for DLA can only be made up to the age of 16, there is a group of young people aged 16 – 18 who instead receive Personal Independence Payment (PIP) and would be ineligible to receive CWAHA, despite being intended to receive Child Disability Payment when it is introduced. According to the latest official statistics, there are 4,250 people aged 16 to 18 in Scotland who receive the Enhanced Daily Living component of PIP. We would like further consideration to how these young people can benefit from the new payment in the period before the devolved Child Disability Payment is introduced. We have not discussed the practicalities of this with Government, but suggest it could be achieved by making provision for young people under the age of 18 who receive the enhanced rate of the Daily Living component of PIP to receive a CWAHA payment.

The qualifying week

As has previously been noted by the Commission², the choice of qualifying week for Winter Fuel Payment is a practical measure designed to ensure in so far as is possible that the DWP has sufficient time to be able to process all eligible payments before Christmas. However, the draft Regulations do not stipulate when CWAHA should normally be paid, and so this time period need not necessarily apply.

¹ https://www.cas.org.uk/system/files/publications/2018-06-12_speaking_up_-_understanding_fuel_poverty_support_needs.pdf

² <https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2020/03/the-disability-assistance-for-children-and-young-people-scotland-regulations-2020-scrutiny-report-on-draft-regulations/documents/the-disability-assistance-for-children-and-young-people-scotland-regulations-2020-scrutiny-report-on-draft-regulations/the-disability-assistance-for-children-and-young-people-scotland-regulations-2020-scrutiny-report-on-draft-regulations/govscot%3Adocument/FINAL%2BSCoSS%2BReport%2Bon%2Bthe%2Bdraft%2BDACYP%2B%2528S%2529%2BREgs%2B2020.pdf>

CAS has previously suggested that it may be more straightforward for people to establish if they are entitled to a WHA payment if a set date (or a series of dates) was used that was more closely associated with the winter months – for example, if the qualifying week was defined as a 7-day period beginning 1 October each year³. While the majority of WHA recipients are likely to receive payment without application, for those who become eligible as a result of the backdating of a qualifying benefit, either in respect of a new claim or through the revision or supersession of an existing claim, clarity of the eligibility criteria and qualifying period for WHA could be important.

The use of the word “Winter” when naming WHA explicitly links it with the period in which the majority of a typical households’ space heating costs are incurred. CAS therefore believes it may be helpful if the Scottish Government were to align the qualifying period more closely with regulated gas and electricity supply industry initiatives with a Winter focus such as the Warm Home Discount Scheme and protections against disconnection for vulnerable consumers, both of which are effective between 1 October and 31 March each year. The qualifying period for Cold Weather Payments could also be extended to match this time period when they are devolved (as Cold Spell Heating Assistance) in 2021.

The qualifying period

CAS is also concerned that the Scottish Government’s decision to determine eligibility for CWHHA on the basis of entitlement to a qualifying disability benefit during a 1-week period in autumn may present an unfairly narrow window of time in which a severely disabled child or young person can be considered eligible for Assistance. By comparison, for the Winter Fuel Payment, a qualifying older person simply has to be present in the UK, or resident in Switzerland or the EEA⁴, for 1 day during week beginning with the 3rd Monday in September to meet the qualifying week condition; the date of birth which dictates who counts as a qualifying older person is unrelated to the qualifying week, and varies from year to year.

The draft Regulations conflate the devolved equivalent of the presence requirements of the Winter Fuel Payment qualifying week condition with the other qualifying conditions for CWHHA, which departs from the way in which eligibility for Winter Fuel Payment is established. From an operational perspective this might have merit were no application route for CWHHA to be provided for as an open-ended or long duration data matching exercise with DWP is unlikely to prove sustainable. However, the draft Regulations explicitly provide for eligibility for CWHHA to be determined both with and without an application having been made. This therefore raises the question of whether a greater level of fairness could be achieved via the use of an alternative period of entitlement to a qualifying disability benefit (a “qualifying period”)

To align the Scottish social security system’s support for household fuel costs more closely with that provided by regulated gas and electricity suppliers, the adoption of a qualifying period could result in eligibility for CWHHA being bestowed upon a severely disabled child or young person who was entitled to

³ https://www.cas.org.uk/system/files/publications/cas_response_-_dacyp_regulations.pdf

⁴ Cyprus, France, Gibraltar, Greece, Malta, Portugal and Spain excepted. Those resident in the Switzerland or a relevant EEA country must also be able to demonstrate “a genuine and sufficient link” to the UK.

a relevant disability benefit on any date between 1 October and 31 March. The week beginning with the 3rd Monday in September (or, as we propose, the 7 days beginning 1 October each year) could then remain as the qualifying week for the purposes of demonstrating a genuine and sufficient link to Scotland, and could also be used as the period in which data matching would afford entitlement without application. Those who become eligible after the qualifying week could then apply for CWA via the provisions in Regulation 7.

Payment of Child Winter Heating Assistance

The draft Regulations do not prescribe when a CWA payment should be made and the accompanying Policy Note simply suggests that “The data will be processed by Social Security Scotland and payments made to each of these individuals in the course of the Winter.”⁵

To avoid any excessive delays to the receipt of a CWA payment and ensure CWA monies are available when they will be of greatest benefit, the Regulations could stipulate that the payment must be made within a given period of the qualifying date or the first date on which the individual becomes eligible. This would be of particular benefit to consumers whose eligibility for CWA can be established via data matching without application and who pay in advance for their energy supplies, either through the use of a prepayment meter or because their unregulated heating fuel must be bought in bulk ahead of need.

Making payments

The draft Regulations provide for the Scottish Ministers to make payment to another person to be used for the benefit of the young person; or if they consider for any reason that it is no longer appropriate to pay it to that person, to cease making the payment and pay it to another person instead. No further detail is provided on who the payment is to be made to, or under what circumstances the Scottish Ministers can decide to pay it to someone else.

This mirrors a number of issues raised at Stage 1 consideration of the Social Security Administration and Tribunal Membership (Scotland) Bill⁶, which was in progress at the time of writing. For clarity, and to protect the rights of people receiving CWA, the Regulations could set out:

- That for children under 16, the payment would normally be made to a person with parental responsibility for them.
- How it could be ensured that the payment goes to the primary carer for the child, or in the case of Child Winter Heating Assistance, to the person who pays the household energy bills.
- That young people aged 16 – 18 could take responsibility for receiving their own CWA payment, and under what circumstances.

⁵ Child Winter Heating Assistance Policy Note – Scottish Government

⁶ https://www.parliament.scot/S5_Social_Security/General%20Documents/SSCS520ATM07_Citizens_Advice_Scotland.pdf



Providing for a resolution mechanism for disputes over whom the payment is to be made to, between appointees, or if the relationship between the individual and their appointee breaks down, including a right of independent review.