



Scottish
Commission
on Social
Security

Scottish Commission on Social Security

Scrutiny report on draft regulations:

Draft Winter Heating Assistance (Low Income) (Scotland) Regulations 2022

Submitted to the Scottish Government and the Scottish Parliament's Social Justice and Social Security Committee on 29 August 2022.

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Executive summary

The Scottish Commission on Social Security (SCoSS) has completed pre-legislative scrutiny of the draft Winter Heating Assistance (Low Income) (Scotland) Regulations 2022. These create a new form of Scottish social security assistance, Low Income Winter Heating Assistance (LIWHA), which will replace the UK Cold Weather Payment (CWP).

It is the Commission's view that the regulations generally meet the policy intent to mitigate some of the impact of additional domestic heating costs in winter by providing targeted, reliable financial support to households with low incomes that is not dependent on the weather. In doing so, they represent a contribution towards fulfilment of the principle that the Scottish social security system is to contribute to reducing poverty in Scotland. However, LIWHA can only ever represent a contribution to supporting a particular group of people with heating costs. Even since the draft Regulations were referred to SCoSS the scale of increase in heating costs has been significant; consequently, the introduction of LIWHA is even more timely, yet will achieve less of a reduction in fuel poverty than originally envisaged. Further, for people on low incomes in the coldest parts of Scotland, the shift from cold weather contingent payments to a single payment per winter could represent a considerable reduction in support. For a small but significant group of people, therefore, the change from CWP to LIWHA will increase exposure to poverty and cannot be described as an example of continuous improvement in a way that puts the needs of those who require assistance first.

The need to launch LIWHA for winter 2022-23 means there is limited scope for change to the recommendations. However, the commitment to continuous improvement means there is a clear need for a review of how the Scottish social security system provides support with winter energy costs. The recommendations in this report should be given due consideration at that point, if they cannot be implemented for the coming winter.

Summary of recommendations and observations

Recommendation 1: Impact assessments should be produced while policy is under development and sent to SCoSS alongside draft Regulations.

Recommendation 2: The Scottish Government is asked to outline how someone who has become retrospectively eligible for LIWHA will be identified from DWP data.

Recommendation 3: Draft Regulation 6 should be expanded to include circumstances other than an appeal under which an individual may have received a backdated award for a qualifying benefit that confers entitlement to LIWHA.

Recommendation 4: The Scottish Government and Social Security Scotland should ensure that people who think they should have received an award, but did not, can easily find out how to apply for LIWHA.

Recommendation 5: The Scottish Government should give further consideration to the retention of temperature-contingent payments in addition to the envisaged one-off payment, at least when an area experiences a third or subsequent cold week. If this approach is considered to be undesirable, or infeasible in time for winter 2022-23, consideration should be given to increasing the Scottish Welfare Fund budget for local authorities where some residents have received three or more Cold Weather Payments in a recent winter.

Recommendation 6: The Scottish Government should outline the application route for paying to an alternative individual for cases which are not processed automatically.

Recommendation 7: The name of the assistance must reflect the commitments made in the Social Security Charter to use positive words to describe the service and accurately convey who the assistance is for.

Recommendation 8: The review of LIWHA should cover the ongoing need for a qualifying week, its impact on affected individuals and the feasibility of replacing this with an alternative.

Recommendation 9: The commitment to continue to review the eligibility criteria for LIWHA is welcome and this should prioritise consideration of in-work benefits.

Observation 1: It is important that LIWHA is widely understood as a contribution towards winter energy costs, alongside other forms of support, and not as a payment that is intended to meet them.

Observation 2: SCoSS notes that the use of data from the DWP to determine entitlement to LIWHA has potential to greatly reduce administrative complexity, but creates an inherent vulnerability in the event that there are problems with receiving the necessary data.

Observation 3: SCoSS recognises that, due to the tight legislative timetable, it may not be possible to implement all recommendations in this report in time for winter 2022-23. Those that are not feasible at present should receive due consideration in the future review of LIWHA or (following the introduction of the winter heating assistance for people of pensionable age) of the various forms of winter heating assistance.

1. Introduction

SCoSS is pleased to present its report on the draft Winter Heating Assistance (Low Income) (Scotland) Regulations 2022 (the 'draft Regulations') to the Scottish Government and Scottish Parliament. The Regulations will establish Low Income Winter Heating Assistance (Low Income Winter Heating Assistance), a form of winter heating assistance within the scope of section 30 of the Social Security (Scotland) Act 2018.

Low Income Winter Heating Assistance will replace and build on an existing UK benefit, Cold Weather Payment (CWP). The two forms of assistance have the common purpose of providing additional financial support with winter energy costs. However, the Scottish Government's thinking on the devolved replacement for CWP has evolved since a 2019 policy position paper envisaged the creation of a payment called 'Cold Spell Heating Assistance.' This stated; 'The new benefit will be designed and delivered based upon the existing CWP. We have no plans to change the current eligibility for this benefit or to change the amount of benefit paid.'¹ This position had changed by the time a public consultation commenced on the new payment, now labelled LIWHA. The draft Regulations broadly mirror the consultation proposals. They show continuity in the criteria used to determine the groups of people who can qualify for a payment, but there are important differences in the criteria used to determine whether, when and in what amount an award should be made.

At present, people are eligible for a £25 CWP from the UK Government if they are in receipt of certain benefits² and the average temperature in their area is recorded as, or forecast to be, zero degrees Celsius or below over seven consecutive days. A network of 96 weather stations across the UK is used to measure average temperatures. Between 1 November 2021 to 31 March 2022, 13,000 CWPs were made by the Department for Work and Pensions (DWP) and all of these payments were made to people who live in Scotland³.

The introduction of LIWHA will move support from multiple payments under CWP to a one-off payment each winter. The draft Regulations

¹ [Cold Spell and Winter Heating Assistance: policy position paper](#)

² Pension Credit, Income Support, Income-based Jobseeker's Allowance, Income-related Employment and Support Allowance, Universal Credit and Support for Mortgage Interest.

³ [Cold Weather Payment estimates: 2021 to 2022 - GOV.UK \(www.gov.uk\)](#)

provide the legislative basis for the introduction of LIWHA to replace the UK Government's CWP in Scotland, making provision in respect of:

- Eligibility rules for determining entitlement to LIWHA including the use of a qualifying week during which an individual must have been in receipt of a qualifying benefit/premium (detailed in Annex 3) and resident in Scotland (Regulation 4).
- Matters of procedure for determining entitlement to LIWHA including that the Scottish Government must, without receiving an application, make a determination of an individual's entitlement (Regulations 5 to 9).
- The amount of LIWHA that is to be given to individuals who are eligible for assistance which is an annual payment of £50. This can be made to another person where the Scottish Government considers appropriate (Regulations 10 and 11).

In carrying out our scrutiny, we drew on analyses of stakeholder responses to the Scottish Government's consultation on LIWHA⁴, the Scottish Government's response to the consultation⁵ and research carried out to ask members of the Scottish Government's Social Security Experience Panels for their views on the key policy options for the new benefit⁶.

We also carried out some consultation with representative bodies to further consider their views on the draft regulations, particularly given the increasing impact of the cost of living crisis since Scottish Government consultation responses were received, caused in part by significant rises in energy prices. Comments from external stakeholders (Annex 2) have been incorporated throughout the body of this report and SCoSS would like to thank all those who participated for their useful input.

⁴ [Low Income Winter Heating Assistance: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/06/20220622_low-income-winter-heating-assistance-consultation-analysis/)

⁵ [Low Income Winter Heating Assistance consultation: Scottish Government response - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/06/20220622_low-income-winter-heating-assistance-consultation-scottish-government-response/)

⁶ [Social Security Experience Panels - Low Income Winter Heating Assistance: survey findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/06/20220622_social-security-experience-panels-low-income-winter-heating-assistance-survey-findings/)

2. Impact assessments

Impact assessments were not shared with SCoSS alongside the publication of the draft Regulations. At an advanced stage in the preparation of our scrutiny report, SCoSS received draft impact assessments with some limitations placed on our ability to make reference to them.

SCoSS notes the significant equalities and rural/remote impacts of LIWHA. It targets support towards people on low incomes who are of pension age, disabled or families who have responsibility for either a child under the age of 5 or a disabled child, all of which are protected characteristics under the Equality Act 2010. The impact of the introduction of LIWHA will vary considerably according to geography.

Any payment intended to help with energy costs is likely to go further in a city than in a remote, 'off-grid' community. People outside the Scottish Highlands seldom received a CWP and may receive support with winter energy costs for the first time through LIWHA, while those in some parts of the Highlands may get less support than in the past.

Therefore, social security principles, notably principle (e) of the Scottish social security system principles is to contribute to reducing poverty in Scotland and principle (g) (ii); opportunities are to be sought to continuously improve the Scottish social security system in ways which advance equality and non-discrimination, deserve adequate consideration as part of the policy development process.

The purpose of impact assessments is to inform policy development in order to help prevent inequalities from inadvertently arising. They should, therefore, always be undertaken while policy is still under development so that the particular concerns related to groups affected by the policy can be assessed and addressed where possible.

These should be shared with SCoSS for its consideration alongside all Regulations in order to inform our scrutiny of Regulations.

Recommendation 1: Impact assessments should be produced while policy is under development and sent to SCoSS alongside draft Regulations.

Observation 1: It is important that LIWHA is widely understood as a contribution towards winter energy costs, alongside other forms of support, and not as a payment that is intended to meet them.

3.2 Eligibility

Regulation 4 stipulates that an individual's entitlement to LIWHA will be based solely on their entitlement to a qualifying low-income benefit (in most cases including a specified premium) during a defined qualifying week in the autumn. Every individual in this group will receive an award, in contrast to CWP, which is only paid to recipients of a qualifying benefit once the additional requirement of a week-long cold spell (at or below zero degrees Celsius) is fulfilled. The approach adopted for LIWHA is comparable to that taken to identify recipients for the UK Government's Winter Fuel Payment and the Scottish Government's Child Winter Heating Assistance.

3.2.1 Qualifying benefits and premia

Draft Regulation 4 provides that a person will be eligible if, during the qualifying week, they are in receipt of a qualifying benefit and premium and resident in Scotland. The qualifying benefits and premia are set out in Annex 3.

Establishing eligibility is somewhat complex as recipients of working-age low-income benefits, such as Universal Credit, Income Support or Employment and Support Allowance, are not usually automatically entitled to LIWHA (pension credit is treated differently). Rather, the individual must receive the qualifying benefit with an appropriate premium, or in conjunction with certain household circumstances.

Essentially, LIWHA is payable to households on a low-income benefit if they include a person over pensionable age, a child under five or a disabled person/someone with limited capability for work. Individuals in residential care are ineligible unless they have a child under five or a disabled child, while in-work Universal Credit claimants are ineligible unless they have a disabled child. This complexity limits the number of eligible households, but should not act as a barrier to take-up given that awards are to be made automatically, based on information that Social Security Scotland receives from the DWP.

Half of the Scottish Government's consultation respondents (50%) agreed with the Scottish Government's proposal to keep the current qualifying benefits to determine eligibility for LIWHA.

SCoSS notes the major advantage of this approach is that the information Social Security Scotland will require from the DWP in order to determine eligibility is information that the DWP already needs to collect for its own purposes. Even if DWP ends up making no award of CWP in a given year, the Department still needs to know who is in scope should the necessary cold spell happen. It would undoubtedly be challenging – if not impossible – to launch LIWHA for winter 2022-23 if significant changes to these criteria were made at the point of transfer of responsibility from the UK to Scottish Government.

Keeping this transition straightforward, while leaving open the possibility of future change, is in keeping with the commitment to efficiency in the devolved social security system (principle h) and should contribute to fulfilment of the Charter commitment to ensure payments are made on time and in the right amount (Our Charter: A people's service).

That is not to say there is room for complacency. There are inherent risks in any benefit which depends on the transfer of data on claimants of qualifying UK benefits from the DWP to Social Security Scotland.

Determinations of entitlement to Scottish Child Payment also depend on the transfer of data on claimants of qualifying UK benefits from the DWP to Social Security Scotland. Payments on behalf of children aged six to 15 are to commence by the end of 2022, almost two years after the launch of the payment, due to difficulties in obtaining the necessary data.⁹ Considering that there are more complex eligibility criteria involved for LIWHA, SCoSS believe there may be a higher risk of error than in determining eligibility of Scottish Child Payment. The level of complexity would become still more problematic should the exclusive reliance on a qualifying week be abandoned in the future in favour of any model that spanned a longer period.

Observation 2: SCoSS notes that the use of data from the DWP to determine entitlement to LIWHA has potential to greatly reduce administrative complexity, but creates an inherent vulnerability in the event that there are problems with receiving the necessary data.

⁹ [House of Commons Scottish Affairs Committee - Welfare policy in Scotland](#)

Consultation respondents and experience panel members have both noted their concern that some low-income households will be ruled out as a result of the eligibility criteria and have highlighted this will particularly affect in-work households¹⁰. In response to our call for evidence, stakeholders particularly noted the exclusion of in-work Universal Credit claimants and households in receipt of a disability benefit/disability assistance but not a low-income benefit.

The blanket exclusion of in-work Universal Credit claimants from entitlement to LIWHA (unless they have a disabled child) creates a very clear inequality between them and recipients of the legacy low-income benefits – Jobseeker’s Allowance, Income Support and Employment and Support Allowance – who can take on very limited hours of paid work and still qualify for LIWHA. One stakeholder questioned the Scottish Government’s assertion that the criteria ensure payments are targeted to those “most in need.”¹¹

“It is clear that this only helps some low income households, and it would be useful to understand what analysis has been done to show the extent to which it reaches those most in need of support... In the legacy benefit system a family with young children, for example, could be getting an unemployment benefit despite working a small number of hours. Because they were getting a qualifying benefit they would be entitled to a cold weather payment. Under the current regulations, if the same family were getting universal credit they would count as being employed and therefore not entitled to a payment. This may also affect families who have zero hour’s contracts and some self-employed workers.”

Child Poverty Action Group

Other stakeholders called for an extension of eligibility (or an equivalent winter top-up to disability assistance) to cover all households in receipt of a disability benefit, whether or not they receive a low-income benefit. Inclusion Scotland argue that, on average, households containing a disabled person use more energy, mainly because disabled people typically spend more time at home, but have received less assistance through the UK Government’s response to ‘cost of living crisis’ than those in receipt of means tested benefits.

¹⁰ [Low Income Winter Heating Assistance: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2023/04/230423_low-income-winter-heating-assistance-consultation-analysis.pdf)

¹¹ As above.

They estimate that extending a payment equivalent to the LIWHA to all in receipt of a disability benefit would increase the budget by almost £20m (to around double the forecast expenditure) but argues that “this additional expenditure is required to reduce poverty, prevent unnecessary ill health, consequent costs to health services and to save lives.” The Poverty and Inequality Commission also advocated the extension of LIWHA to recipients of disability benefits, but targeting those who have not received ‘cost of living’ support from UK Government through the low-income or pensioner gateways.

The Scottish Government has indicated that the eligibility criteria will remain under review and a recommendation for consideration in this review is included in the below section on the review of LIWHA.

3.2.2 Qualifying week

In the public consultation on LIWHA, the Scottish Government proposed that the qualifying week be in the third week of September. Draft Regulation 2 now defines the qualifying week as the week beginning with the third Monday in November. In their policy note, the Scottish Government explains that this change aims to address concerns about the length of time between the proposed qualifying week and the date of payment. This is a welcome change and will be to the advantage of individuals who start a claim for a qualifying benefit between September and November.

A majority of respondents to the Scottish Government’s consultation¹² (52%) disagreed with the proposal to make LIWHA payments in February each year, with some stakeholders feeling that a payment date in February is too late in the winter to support people with their energy costs. The Scottish Government has told SCoSS that Social Security Scotland does not currently have capacity to deliver earlier payments in winter 2022-23, but that it will consider the feasibility of an earlier payment date for future years. SCoSS agrees that many recipients would likely welcome an earlier payment date, but SCoSS feels that on balance the advantages of a November qualifying week for the coming Winter outweigh the disadvantages of a February payment date.

In common with our scrutiny report on the draft Winter Heating Assistance for Children and Young People (Scotland) Regulations

¹² As above.

2020¹³, SCoSS questions whether, in the longer term, there is a need to restrict eligibility to a qualifying week at all. Stakeholders have expressed some reservation about the use of a qualifying week, though noting it may be necessary.

“The need for a qualifying date... appears to be driven by a need to create budget certainty for Government rather than being driven by the needs of those it is intended to support.”

Energy Action Scotland

“The use of the qualifying week approach alone will deprive some of those with fluctuating earnings and/or in insecure employment (such as part-time agency workers or those on “zero hours” contracts) of any support because their earnings may take them out of entitlement in the qualifying week... Although the Commission accepts that some cut-off date(s) will be operationally necessary, our Panel members with lived experience of poverty have raised questions on the fairness of the intended approach for people who will fall outside of eligibility due to fluctuating incomes.”

Poverty and Inequality Commission

“The eligibility period could be extended, potentially to include anyone who receives a qualifying benefit at any point during the winter; this would be in line with the policy intent and ensure that more households would benefit from the support.”

Child Poverty Action Group

Extending the qualifying period throughout the winter would undoubtedly increase administrative complexity. There would be a need to repeatedly seek updates from the DWP on the Scottish residents in receipt of a qualifying benefit and premium (which the DWP might or might not be prepared to provide), or to require applications.

LIWHA’s potential to reduce poverty would increase, in keeping with principle (e), but administrative costs would increase and efficiency would arguably be reduced, in tension with principle (h) and there would be greater risk of people missing out on their entitlement because they did not submit an application.

¹³ [Scrutiny report – DWHA - Scottish Commission on Social Security \(socialsecuritycommission.scot\)](https://www.socialsecuritycommission.scot.nhs.uk/scrutiny-report-dwha)

In its evidence to SCoSS, the Poverty and Inequality Commission suggested a partial solution to these problems, involving automatic awards to people who fulfil the criteria during a defined qualifying week, plus a longer period (perhaps extending throughout the winter) in which people who come to fulfil the criteria at a later date can submit an application.

A further challenge associated with the use of a qualifying week concerns the entitlement to LIWHA of individuals who receive a retrospective award of a qualifying benefit that covers that week. Examples include people who receive an award following an appeal, mandatory reconsideration or simply because it takes a long time for an initial award to be made, or who later tell the DWP they moved to Scotland or had a child during or just before the qualifying week.

For example, Universal Credit or Employment and Support Allowance for those with limited capability for work are qualifying criteria for LIWHA. However, an individual may have to wait months for an assessment to determine whether they have limited capability for work. Given the complexity of these situations it is likely that some people would not proactively report their eligibility for LIWHA to Social Security Scotland. Checks should be in place to enable automatic awards where possible.

The Scottish Government has told SCoSS that officials are currently exploring the feasibility of receiving a follow up data file from DWP that would allow Social Security Scotland to identify individuals in this kind of situation, minimising the need for manual applications. SCoSS would welcome further clarity on the processes that will allow for people to automatically access LIWHA in these circumstances.

In addition, we are concerned that the Regulations as currently framed may not, in fact, allow Social Security Scotland to make an automatic award in the majority of the circumstances outlined above. This is because draft Regulation 6, only provides for a determination without application to be made in favour of an individual who receives a backdated award of a qualifying benefit following an appeal.¹⁴

Recommendation 2: The Scottish Government is asked to outline how someone who has become retrospectively eligible for LIWHA

¹⁴ In addition, draft Regulations 7 and 8 provide for a determination without application if it becomes apparent that an individual was incorrectly awarded, or not awarded, LIWHA due to an error on the part of Social Security Scotland.

will be identified from DWP data.

Recommendation 3: Draft Regulation 6 should be expanded to include circumstances other than an appeal under which an individual may have received a backdated award for a qualifying benefit that confers entitlement to LIWHA.

3.2.3 Determining entitlement

The regulations stipulate that the Scottish Government must, without receiving an application, make a determination of an individual's entitlement. This aims to ensure take-up levels are high and reduce the burden on the people who are in need of the support.

DWP will provide Social Security Scotland with the data required to make payments for all clients who were in receipt of one of the qualifying benefits (including a premium) for at least one day of the qualifying week and who are resident in Scotland. This data will be processed by Social Security Scotland and payments made to each of these individuals in February.

Whilst the Scottish Government expects the vast majority of clients will be paid LIWHA automatically, there may be some instances in which a client may need to make an application. Unless Regulation 6 is re-worded, this may include many people who become retrospectively entitled to LIWHA, but even if this is addressed there may be individuals who believe they are eligible to receive payment but have not received one. The Scottish Government would be under a duty to make a determination of an applicant's entitlement on receiving an application.

There is no specific provision for application for LIWHA in the draft Regulations as this falls within the scope of sections 37 and 38 of the Social Security (Scotland) Act 2018. However, the Regulations do provide details of the procedure by which an individual should request a redetermination, if he or she is not satisfied with the original determination.

Child Poverty Action Group noted, in response to our call for evidence, that there is a significant erosion in the timescale to request a redetermination (31 days compared with 13 months to request a Mandatory Reconsideration under CWP). However, the number of individuals affected by this change is likely to be very small. It is unlikely that individuals receiving a payment of £50 would request a

redetermination, given that they have already been determined to be entitled to the only level of assistance provided for under LIWHA.

The Scottish Government's response to the consultation¹⁵ states that 'people who do not receive a LIWHA payment, but who consider that they should have, will have 31 days after being notified of the original determination, to request a re-determination.' But generally speaking people will only receive a determination if they are deemed entitled. Those not entitled will have no determination, therefore they will have no right to request a redetermination. This right would only come into existence after the individual had submitted an application and received a determination. In this instance, then, the window for a redetermination request is arguably less important than ensuring people who feel they have been wrongly overlooked for a LIWHA award are able to apply.

Recommendation 4: The Scottish Government and Social Security Scotland should ensure that people who think they should have received an award, but did not, can easily find out how to apply for LIWHA.

3.3 Payment of the entitlement and approach

3.3.1 One off payment each winter

The introduction of LIWHA will move support from multiple payments under CWPs to a one-off payment each winter. This will remove what some experience panel members regarded as unpredictable and unfair experiences of the CWP system, under which a cold spell can last only six days and a CWP will not be received¹⁶.

For the most part the switch from CWPs to LIWHA will enhance the contribution of the devolved social security system to the alleviation of poverty (principle e) and the progressive realisation of the rights to social security and an adequate standard of living (principle b). This is because most people in Scotland will go from receiving no CWP in a typical winter to receiving £50 of LIWHA.

The Scottish Government notes in its Island Communities Impact Assessment that they anticipate that LIWHA will have a positive impact

¹⁵ [Low Income Winter Heating Assistance consultation: Scottish Government response - gov.scot \(www.gov.scot\)](http://www.gov.scot)

¹⁶ [Social Security Experience Panels - Low Income Winter Heating Assistance: survey findings - gov.scot \(www.gov.scot\)](http://www.gov.scot)

as “extreme fuel poverty can be particularly difficult to eliminate in island communities where building types are harder to improve to the required energy efficiency standard and opportunities to reduce fuel costs are more limited. In addition, traditionally constructed buildings and energy efficiency challenges can vary between the islands.” There is little prospect of islanders receiving a Cold Weather Payments, however, none of the three island weather stations has triggered a CWP in any year since 2015.

We are concerned, however, that there may be a significant number of people who are negatively impacted by the change and for whom these principles are not achieved – particularly in the north of Scotland where receipt of three or more CWPs (that is, at least £75) in a calendar year is not uncommon.

As Highland Council noted in response to our call for evidence “specific and different responses are needed for rural communities as they generally have more extreme weather conditions coupled with higher utility costs.”

In Braemar, Aberdeenshire, 1,000 people received three or more CWPs every winter from 2015 to 2022. Aviemore in Highland (1,000 people), Loch Glascarnoch in Highland (1,000 people) and Tulloch Bridge in Perth and Kinross (2,000 people) also saw three or more CWP in at least three of the last seven winters. Braemar, Loch Glascarnoch and Tulloch Bridge have seen up to seven in a single winter (£175 in total). Whilst the numbers affected may be relatively small, people could end up significantly worse off at a time when energy costs are particularly high and rising. The reduction of support to these households also directly contradicts the commitment in the 2019 policy position paper that ‘no-one will lose out when the Scottish Government takes responsibility for Cold Spell Heating Assistance’, as the devolved replacement for CWP was then referred to.¹⁷

70% of consultation respondents agreed with abolition of the cold weather contingency, however 22% disagreed and their concerns need to be taken seriously. This change creates a potential retrogression in the human right to social security and to an adequate standard of living for the affected individuals. UN guidance states that such retrogression should only occur if there is good reason and in the context of overall progress towards the realisation of the rights set out in the International

¹⁷ [Cold Spell and Winter Heating Assistance: policy position paper](#)

Covenant on Economic, Social and Cultural Rights. Administrative expediency is a possible benefit of the change, but the criteria remain fairly complex and, notably, mechanisms for determining whether the temperature-contingency rules are met already exist and could presumably be carried over to LIWHA.

The Scottish Government believes that this would be technically complex to achieve with the requirement of further agreements with DWP and the Met Office, further design work and a system that would allow for weekly updates from DWP on the affected postcodes and the transfer of client data for those specific areas. It is also the case that the devolution of social security in the round has brought a number of advances in social rights in Scotland. However, it remains the inescapable conclusion that the ongoing cost of living crisis means this is a bad time to be taking payments specifically intended to assist with energy costs away from low income households in the absence of alternative measures such as targeted support with home insulation, which would take time to deliver and is not a social security function.

Some stakeholder submissions to SCoSS suggested possible alternative approaches:

“A policy that would enable LIWHA payments to fluctuate according to the prevailing economic and meteorological circumstances each year may provide adaptable mitigation.”

Highland Council

“The Commission would encourage the Scottish Government to assess whether aspects of the current Cold Weather Payment rules could be retained but only come into effect once the area covered by a weather station has experienced its third continuous seven day period when average day time temperatures were zero degrees centigrade or below. At that point a further, extended cold weather period, supplement could be paid... This would be a blended approach making sure all eligible households received some support whilst guaranteeing that households located in colder areas did not lose out.”

Poverty & Inequality Commission

SCoSS also notes the suggestion from an experience panel member that more significant departures from the CWP model could be considered, for example a lower payment than the current £25 triggered by a shorter cold spell.

As a minimum, the Scottish Government must anticipate that some affected households will be forced to resort to the Scottish Welfare Fund (SWF) for emergency assistance if this is a cold winter and satisfy itself that local authorities in colder areas have adequate SWF budgets.

“Consideration could also be given to making increased provision via the Scottish Welfare Fund for those who may receive fewer payments with an identified need for additional support.”

Highland Council

SCoSS notes the commitment given by the Scottish Government to ‘consider’ any social security-related recommendations made by the Fuel Poverty Advisory Panel¹⁸, but does not believe this removes the need to consider some form of targeted support for low-income households in colder areas in Winter 2022-23.

The Scottish Government’s response to the LIWHA consultation states that its approach “means that we will ensure that all households who have been identified as requiring additional support with their winter heating bills will receive it, regardless of weather, temperature or where they live.”

While we agree that any low income household will welcome support with winter energy costs and that more such households will now receive it, this downplays the fact that weather, temperature and location can make a great deal of difference to how much additional support a low-income household requires to achieve a given temperature in the home. If temperatures in winter 2022-23 are similar to those in 2021-22, a Braemar resident who receives £50 in LIWHA instead of £175 in CWP is unlikely to feel that he or she is receiving the level of support ‘required’.

Recommendation 5: The Scottish Government should give further consideration to the retention of temperature-contingent payments in addition to the envisaged one-off payment, at least when an area experiences a third or subsequent cold week. If this approach is considered to be undesirable, or infeasible in time for winter 2022-23, consideration should be given to increasing the Scottish Welfare Fund budget for local authorities where some residents have received three or more Cold Weather Payments in a recent winter.

¹⁸ [Low Income Winter Heating Assistance consultation: Scottish Government response - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultations-petitions/response/1000/)

3.3.2 Payment amount and uprating

The value of Low Income Winter Heating that is to be given to individuals who are eligible for assistance is a single payment of £50, the equivalent of two CWPs at their current rate. 62% of respondents to the consultation disagreed that the proposed rate of LIWHA was appropriate, with many noting that rising energy costs and differences in the cost of heating depending on your location were significant factors. Most consultation respondents who expressed a view supported an increase to £100, while other recommendations ranged from £75 to £200 annually.

In our call for evidence we asked participants to comment on the adequacy of the payment given rising energy costs since the formulation of the policy. Most noted that the value of payment was now likely to have significantly less impact than it would have done.

“The proposals [for LIWHA] focussed on the certainty of receiving a £50 payment each year as opposed to the uncertainty that resulted in the majority of households eligible for Cold Weather Payments getting no help at all in most winters. However, the value of the proposed £50 LIWHA has now fallen in relation to the actual cost of fuel, and will fall further going into the winter... energy costs post-October could be more than double what they were a year ago... [T]he Commission would urge that the value of the LIWHA is increased in line with the rise in energy prices.”

Poverty and Inequality Commission

“In October 2022 it is likely that a £50 payment will provide only 6 days of heat and power at the projected level of capped Standard Variable Tariff due to be announced during 26 August 2022. This could be further reduced by any further revisions ahead which may be introduced for January 2023 ahead of the payment date in February... A benefit wholly aimed at enabling households to achieve heat and power during the winter should be index linked to the change being experienced in capped standard variable rate tariffs or similar measure with increases being paid for from general taxation. This would ensure that the payment is more likely to retain its value to eligible households.”

Energy Action Scotland

The Scottish Government notes that while LIWHA aims to mitigate some of the challenges presented by the volatile winter energy costs for

Recommendation 6: The Scottish Government should outline the application route for paying to an alternative individual for cases which are not processed automatically.

3.3.4 Name of payment

The proposed name of the benefit ‘Low Income Winter Heating Assistance’ proved controversial in Scottish Government consultation responses²¹. While just under half of respondents (48%) agreed, a significant minority (39%) disagreed with the name, notably because it was perceived that the term ‘low income’ could stigmatise recipients. It could also be misleading as many low-income households will not qualify. Some may be in receipt of a low income benefit, but not one of the required premia, while others may have earnings that take them out of qualification during the qualifying week but have a lower income over most of the winter.

“Describing a benefit as being a ‘low income’ assistance is inconsistent with the wider Social Security Scotland messaging. We are not aware of any other benefits being described as ‘low income’ and doing so could be a barrier to take up. It also may cause confusion, as it is not available to many groups of people on a low income.”

Child Poverty Action Group

This would be of concern in light of the commitments contained in the social security principles and Charter to respect the dignity of individuals (principle d) and to promote a positive view of social security (Our Charter: A better future)²².

Various alternative names have been suggested by stakeholders. We welcome the Scottish Government’s commitment to undertake further user research for a potential name to be announced before its launch and note that this approach is in keeping with principle (f) that the Scottish social security system is to be designed with the people of Scotland on the basis of evidence. In response to questions from the Commission, the Scottish Government noted that “winter heating assistance” could be considered. However, SCoSS is of the view that the adoption of this name could create confusion, as winter heating assistance is the generic name used for several different payments (Child Winter Heating Assistance is already in payment). Similarly,

²¹ [Low Income Winter Heating Assistance: consultation analysis - gov.scot \(www.gov.scot\)](http://www.gov.scot/resources/documents/2016/06/Low_Income_Winter_Heating_Assistance_consultation_analysis_-_gov.scot)

²² [A better future - Social Security Scotland: our charter - gov.scot \(www.gov.scot\)](http://www.gov.scot/resources/documents/2016/06/A_better_future_-_Social_Security_Scotland_our_charter_-_gov.scot)

retention of the name 'Cold Weather Payment', another suggestion from the consultation responses, would be confusing as the new payment differs in important respects to the UK Government's CWP.

Recommendation 7: The name of the assistance must reflect the commitments made in the Social Security Charter to use positive words to describe the service and accurately convey who the assistance is for.

4. Review of Winter Heating Assistance

Principle (g) requires that “opportunities are to be sought to continuously improve the Scottish social security system in ways which— (i) put the needs of those who require assistance first, and (ii) advance equality and non-discrimination.” The current proposal is to reform support with winter heating costs in a way that unquestionably improves provision from the perspective of those who are not deemed to require support under the DWP’s CWP criteria, but that represents a diminution of support from the point of view of at least some of those who are.

The Scottish Government has made clear that some issues remain too complex to resolve in time for ensuring the newly devolved benefit is in place for winter 2022/23. In response to questions from the Commission, the Scottish Government has noted that its initial priority for LIWHA is to ensure safe and secure delivery of the replacement of CWPs in 2022, however any potential improvements, for example, through alignment of eligibility criteria, may be considered once the new benefit is being delivered and its initial evaluation completed.

In correspondence with SCoSS, the Scottish Government noted that “major development work... could not be carried out in time to launch the benefit in 2022/23 and would require capacity to be diverted from other areas risking the commitments made with regards the delivery of other benefits this year.”

SCoSS accepts that there is a justification for acting at pace, considering the dramatic increase in heating costs being experienced by people across Scotland. We note, however, that this limits the Government’s ability to resolve issues that, in the medium term, should be addressed.

In this respect, SCoSS has a number of recommendations that are specific to LIWHA. However, it may also be desirable to undertake a broader review of how the Scottish social security system supports winter energy costs once all three forms of winter heating assistance – targeting disabled children, low income households and pensioner households – have been launched. As currently envisaged, a single household could receive multiple forms of winter heating assistance – all three in the case of a family including someone in receipt of pension credit and a disabled child – and there may be scope for administrative streamlining.

Observation 3: SCoSS recognises that, due to the tight legislative timetable, it may not be possible to implement all recommendations in this report in time for winter 2022-23. Those that are not feasible at present should receive due consideration in the future review of LIWHA or (following the introduction of the winter heating assistance for people of pensionable age) of the various forms of winter heating assistance.

In response to the SCoSS scrutiny report on Child Winter Heating Assistance, the Scottish Government noted that removing the qualifying week would greatly increase complexity but said this was something that would be considered in a future review of the benefit.²³ In response to further questions from SCoSS, the Scottish Government noted that this increased complexity would include “a significant review of the technical solution that has been designed and agreed with DWP, alongside the operational approach being implemented by Social Security Scotland to ensure appropriate resources are available and trained to support Scottish clients.”

SCoSS notes this, and recommends, for consistency that a similar approach be adopted for the LIWHA.

Recommendation 8: The review of LIWHA should cover the ongoing need for a qualifying week, its impact on affected individuals and the feasibility of replacing this with an alternative.

The prospect of a review of eligibility criteria is to be welcomed. It is desirable for the Scottish Government to reach its own view on how payments should be targeted and not simply retain by default the eligibility criteria inherited from the DWP. More specifically, the criteria as currently drawn excludes large numbers of people in receipt of low-income benefits, notably in-work claimants of Universal Credit. There is no obvious, objective justification for excluding (most of) the working poor from support and there is a risk that doing so could fuel negative perceptions of LIWHA and stigmatise its recipients – something the Scottish Government aims to avoid.²⁴ SCoSS acknowledges that the Scottish Government is committed to running the devolved social security system in a way that offers value for money (principle h), but there may be ways of delivering a modest extension of eligibility while continuing to control costs.

²³ [Draft Winter Heating Assistance regulations: Scottish Government response to SCoSS](#)

²⁴ [A better future - Social Security Scotland: our charter - gov.scot \(www.gov.scot\)](#)

Recommendation 9: The commitment to continue to review the eligibility criteria for LIWHA is welcome and this should prioritise consideration of in-work benefits.

5. Approach to scrutiny

This report has been completed in accordance with SCoSS's pre-legislative scrutiny function, conferred by sections 22(1)(a) and 97 of the Social Security (Scotland) Act 2018. Section 97 states that the Commission must report on draft Regulations proposed to be made under any section in Chapter 2 of Part 2 of the Act.

It is within SCoSS's remit to scrutinise any regulations made under specific provisions that are subject to the affirmative procedure contained within the Social Security (Scotland) Act 2018. SCoSS carries out its scrutiny role having regard to the Scottish social security principles, any relevant provisions of human rights law, and with reference to our scrutiny framework.

The draft Regulations were formally submitted to SCoSS on 7 June 2022 by the Minister for Social Security and Local Government, Ben Macpherson MSP²⁵. As part of the scrutiny process, we were able to seek further information and clarification from officials on various points, which has helped us prepare our scrutiny report and also, we hope, helped the Scottish Government in its evolving policy and legislation development.

Our timeline for scrutiny is in Annex 1.

²⁵ [Draft Winter Heating Assistance \(Low Income\) \(Scotland\) Regulations - Referral to SCoSS](#)

Annex 1 – Scrutiny timeline

7 June 2022	Draft Regulations formally referred to SCoSS by the Minister for Social Security and Local Government.
10 June 2022	Scrutiny approach shared for consideration by the Board.
15 June 2022	Secretariat met with Scottish Government officials to discuss the scrutiny checklist.
15 June 2022	Initial questions sent to Scottish Government officials.
27 June 2022	Answers received to initial questions sent to Scottish Government officials.
27 June 2022	Ad hoc Board meeting on the Regulations.
6 July 2022	Agreement of questions for stakeholders.
6 July 2022	External stakeholders consultation began.
27 July 2022	External stakeholders responses received.
4 August 2022	SCoSS board meeting discussed draft report.
8 August 2022	Further questions sent to Social Government officials.
23 August 2022	Ad hoc meeting to discuss final report, observations and recommendations.
29 August 2022	SCoSS report signed off and laid.
29 August 2022	SCoSS website publication of report.
29 August 2022	Feedback to stakeholders on their input.
November 2022 (tbc)	Regulations laid in Parliament.
TBC	Social Justice and Social Security Committee reviews and makes recommendation to Parliament.
TBC	SCoSS reviews impact of report and learning points.

Annex 2 – External stakeholders

Age Scotland

Child Poverty Action Group in Scotland

Energy Action Scotland

Energy Saving Trust

Highland Council

Inclusion Scotland

One Parent Families Scotland

Poverty Alliance

The Poverty and Inequality Commission

Annex 3 – Qualifying benefits

Household type	Qualifying benefit	Additional requirements
Pensionable age	State pension credit	None
Working age with a child under five years old	Universal credit, income support, income-based jobseeker's allowance or income-related employment and support allowance	Universal credit includes a disabled child addition or the individual is not employed or self-employed
Working age, no child under five	Universal credit	Limited capability for work or limited capability for work related activity and not employed or self-employed; receipt of a disabled child addition
	Income support	Receipt of disability premium, severe disability premium, enhanced disability premium, disabled child premium or child tax credit disability element
	Income-based jobseeker's allowance	Receipt of disability premium, severe disability premium, enhanced disability premium, disabled child premium or child tax credit disability element
	Income-related employment and support allowance	Membership of work-related activity group or support group; receipt of severe disability premium, enhanced disability premium or child tax credit disability element
Mixed working age and pensionable age	Income support, income-based jobseeker's allowance, income-related employment and support allowance	Receipt of pensioner premium or higher pensioner premium
Any	Owner-occupier loan payments	Treated as entitled to state pension credit, UC, IS, IJSA or IRESA and meets any additional requirements set out above