

SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. [\*]**

**SOCIAL SECURITY**

**The Winter Heating Assistance for Children and Young People (Scotland) Amendment Regulations 2021**

<i>Made</i>	- - - -	***
<i>Laid before the Scottish Parliament</i>		***
<i>Coming into force</i>	- -	***

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 30(2) and 52 of the Social Security (Scotland) Act 2018(a) and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 97(2) of that Act, the Scottish Ministers have consulted the Scottish Commission on Social Security.

**Citation and commencement**

1. These Regulations may be cited as the Winter Heating Assistance for Children and Young People (Scotland) Amendment Regulations 2021 and they come into force on 15 November 2021.

**Meaning of “the principal Regulations”**

2. In these Regulations, “the principal Regulations” means the Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020(b).

**Amendment of the principal Regulations**

3. The principal Regulations are amended in accordance with regulations 4, 5, 6, 7 8 and 9.

4. In regulation 2 (interpretation) in the appropriate places insert the following definitions—  
““the 2013 Regulations” means the Social Security (Personal Independence Payment) Regulations 2013(c),”

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(a) 2018 asp 9.

(b) S.S.I. 2020/352, amended by S.S.I. 2021/73 and S.S.I. 2021/170.

(c) S.I. 2013/377; relevant amending instruments are the Social Services and Well-being (Wales) Act 2014 anaw 4, S.I. 2013/2270, S.I. 2015/643, S.I. 2016/556, S.I. 2017/901 and S.I. 2019/1027.

““the 2016 Regulations” means the Personal Independence Payment Regulations (Northern Ireland) 2016(a),”

““first qualifying week” means the qualifying week in the same calendar year these Regulations came into force,”

““Personal Independence Payment” means personal independence payment under—

(a) Part 4 of the Welfare Reform Act 2012(b), or

(b) article 82 of the Welfare Reform (Northern Ireland) Order 2015(c),”.

**5. Regulation 4 (eligibility rules for child winter heating assistance) is amended as follows—**

(1) For paragraph (1)(b) substitute—

“(b) entitled to receive payment of—

(i) the highest rate of the care component of—

(aa) Disability Living Allowance, or

(bb) Child Disability Payment, or

(ii) the enhanced rate of the daily living component of Personal Independence Payment, and”.

(2) In paragraph (2), for “paragraph (1)(b)(i)” substitute “paragraph (1)(b)(i)(aa)”.

(3) In paragraph (3), for “paragraph (1)(b)(ii)” substitute “paragraph (1)(b)(i)(bb)”.

(4) After paragraph (4) insert—

“(5) For the purposes of the rule in paragraph (1)(b)(ii), an individual is to be treated as being entitled to receive payment even if, throughout the qualifying week—

(a) regulation 28 (care home residents) of either the 2013 Regulations or the 2016 Regulations applies to the individual due to the individual being resident in a care home, or

(b) regulation 29 (hospital in-patients aged 18 or over) of either the 2013 Regulations or the 2016 Regulations applies to the individual due to the individual being an in-patient in hospital.

(6) In paragraph (5)—

(a) “care home” has the meaning given in section 85(3) of the Welfare Reform Act 2012 and article 90(3) of the Welfare Reform Act (Northern Ireland) Order 2015, and

(b) “hospital” has the meaning given in regulation 29 of the 2013 Regulations and regulation 29 of the 2016 Regulations.

(7) An individual is entitled to be paid child winter heating assistance in respect of the first qualifying week if it appears to the Scottish Ministers from information available to them that the individual would have been entitled to be paid child winter heating assistance had the requirement in regulation 4(1)(b)(ii) had effect beginning with the day upon which these Regulations came into force.”

**6. After regulation 5 (determination of entitlement to child winter heating assistance without application) insert—**

**“Determination following amendment of eligibility criteria**

5A The Scottish Ministers must make a determination of an individual’s entitlement to child winter heating assistance without receiving an application where it appears to the Scottish Ministers from information available to them that the individual would have been entitled to be paid child winter heating assistance in respect of the first qualifying week had

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(a) S.I. 2016/217; relevant amending instrument is S.I. 2016/235.

(b) 2012 c.5. Part 4 was relevantly amended by S.I. 2018/1084 and S.I. 2021/804.

(c) S.I. 2015/2006.

the requirement in regulation 4(1)(b)(ii) had effect beginning with the day upon which these Regulations came into force.”

**7.** In regulation 8 (determination following backdated award of assistance), for sub-paragraph (b)(i) substitute—

“(i) following an appeal, an award of—

(aa) the highest rate of the care component of Disability Living Allowance,

(bb) the highest rate of the care component of Child Disability Payment, or

(cc) the enhanced rate of the daily living component of Personal Independence Payment,

is made that is a backdated award, and”.

**8.** Regulation 10 (value and form of child winter heating assistance) is amended as follows—

(1) In paragraph (1), for “The value” substitute “Subject to paragraph (1A), the value”.

(2) After paragraph (1) insert—

“(1A) Where an individual is entitled to be paid child winter heating assistance by virtue of regulation 4(7) or regulation 5A, the value of child winter heating assistance payable is the value specified in paragraph (1) as it had effect on the day these Regulations came into force.”

**9.** In regulation 11 (making payments), in paragraph (1) for “young person” substitute “child or young person”.

*BEN MACPHERSON*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
[Date]

## **EXPLANATORY NOTE**

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

These Regulations amend the Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020 (“the principal Regulations”) which make provision about payments of winter heating assistance (“child winter heating assistance”).

Regulations 2 to 8 make amendments to the principal Regulations in connection with Personal Independence Payment. The amendments ensure that individuals who are entitled to the enhanced rate of the daily living component of Personal Independence Payment have the same entitlements and disregards under the principal Regulations as individuals entitled to the highest rate of the care component of disability living allowance payable under the Social Security Contributions and Benefits Act 1992 and child disability payment payable under the Disability Assistance for Children and Young People (Scotland) Regulations 2021.

Regulation 9 amends the principal Regulations in connection with payments of child winter heating assistance in respect of children. The amendment enables the Scottish Ministers to make a payment of child winter heating assistance to an individual to be used for the benefit of the entitled child where the Scottish Ministers consider it appropriate.

[Details of impact assessments.]