

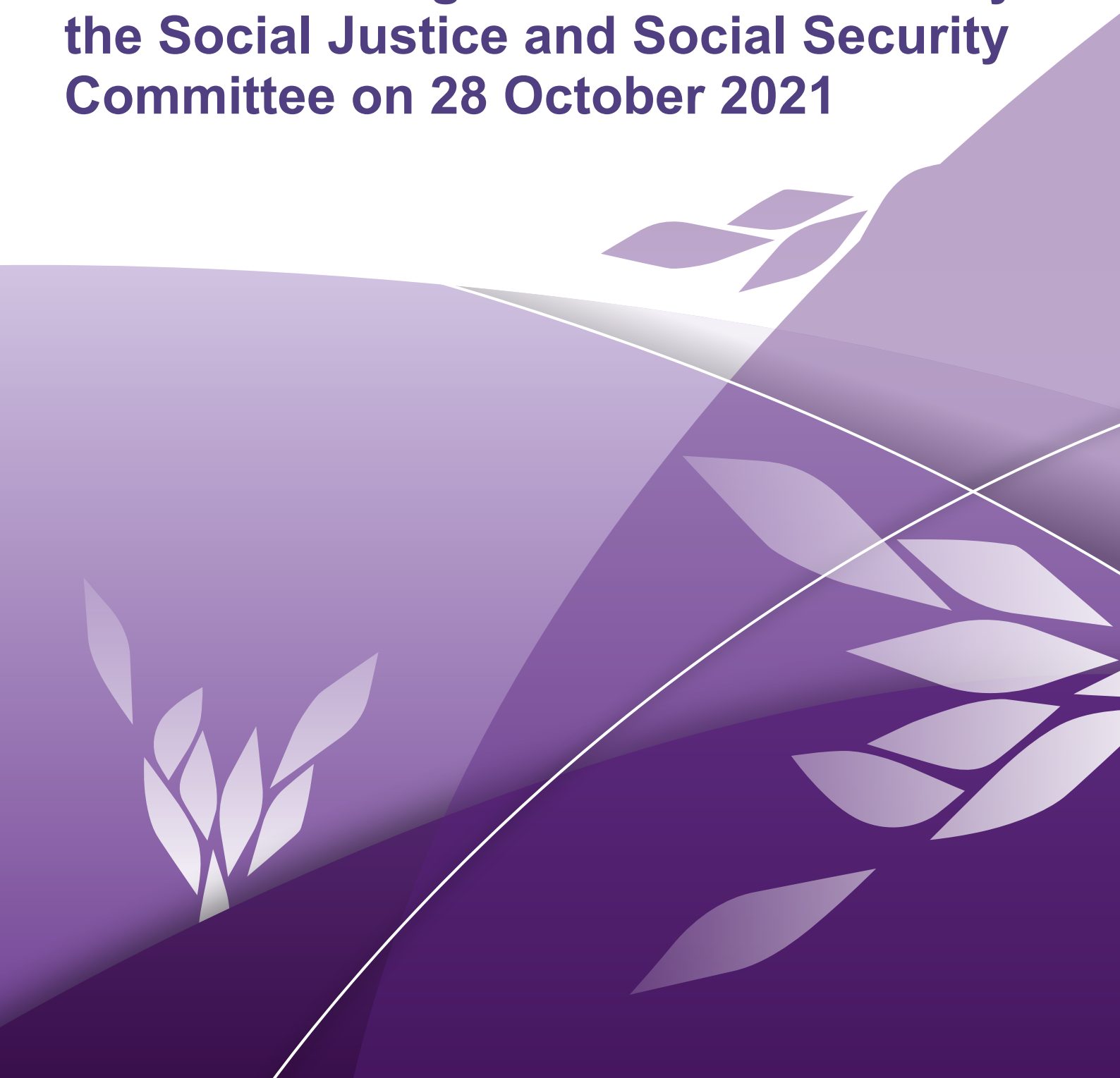


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Social Justice and Social Security Committee

Subordinate legislation considered by the Social Justice and Social Security Committee on 28 October 2021



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Social Justice and Social Security Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Social Justice, Housing and Local Government, excluding matters relating to local government, housing and planning.



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Introduction

1. This report sets out the Social Justice and Social Security Committee's consideration of Scottish Statutory Instruments at its meeting on 28 October 2021 (8th meeting, 2021)ⁱ. The [minutes](#) of the meeting have been published on the Committee's webpages. The [Official Report](#) of the meeting will be published on the Committee's webpages in due course.

ⁱ Evelyn Tweed MSP attended as Committee substitute for Natalie Don MSP at this meeting

Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021

2. The [Disability Assistance for Children and Young People \(Scotland\) Amendment Regulations 2021](#) were laid on 10 September 2021. The instrument was made in exercise of the powers conferred by sections 31(2), 36(2), 41(4)(a), 43(5), 51(1), 52(1) and (2) and 95 of the Social Security (Scotland) Act 2018. Some of those powers are subject to negative procedure and others to affirmative procedure. The powers are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 and section 33(3) of that Act makes the instrument subject to the affirmative procedure. This means it is for the Committee to recommend to the Parliament whether the draft regulations be approved.
3. According to the Scottish Government's [Policy Note](#), the instrument sets out the rules and eligibility criteria for Child Disability Payment (CDP), a form of assistance to support children and young people who have a physical or mental disability, or who have a terminal illness. This new form of social security assistance will replace Disability Living Allowance for children (DLAC) in Scotland.
4. The Delegated Powers and Law Reform Committee considered the instrument at its [meeting on 21 September 2021](#), and made no recommendations in relation to this instrument.
5. During the evidence session Committee members raised several points regarding the regulations. Members discussed stakeholder consultation and changes to the definition of 'throughout the night' care. Members were interested in the eligibility criteria for Child Disability Payment (CDP) in relation to Adult Disability Payment (ADP), as well as the availability of short term assistance and transfer from CDP to ADP. Members also noted wider concerns about the resource available to the Scottish Commission on Social Security (SCoSS) and timescales for both SCoSS and the Parliament to consider regulations, as well as overall delivery timescales of the Social Security Programme.
6. The Minister committed to providing further information on several points in writing.
7. Following the evidence session, the Minister for Social Security and Local Government moved motion [S6M-01183](#) in his name—

That the Social Justice and Social Security Committee recommends that the Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 be approved.

8. The motion was agreed to without division.
9. The Social Justice and Social Security Committee recommends to the Scottish Parliament that the Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021 be approved.

Winter Heating Assistance for Children and Young People (Scotland) Amendment Regulations 2021 [draft]

10. The [Winter Heating Assistance for Children and Young People \(Scotland\) Amendment Regulations 2021 \[draft\]](#) were laid on 21 September 2021. The instrument was made in exercise of the power conferred by sections 30(2) and 52 of the Social Security (Scotland) Act 2018. The instrument is subject to affirmative procedure. As required by section 97(2) of the 2018 Act, the Scottish Ministers have consulted the Scottish Commission on Social Security (SCoSS). The [Commission's report](#) and the [Scottish Government's response](#) to it have also been published.
11. According to the [Policy Note](#),
 - ” this instrument extends eligibility for Child Winter Heating Assistance (CWHa) to young people who are entitled to be paid the enhanced rate of the daily living component of Personal Independence Payment (PIP) during the qualifying week (beginning with the third Monday in September of each year). The eligibility criteria are also amended with retrospective effect.

The instrument also extends eligibility for CWHa to those in receipt of the highest rate of the care component of Disability Living Allowance or the enhanced rate of PIP and undergoing period of inpatient hospitalisation and care home stay.

The Regulations further amend regulation 8 to enable the Scottish Ministers to make a determination of an individual's entitlement to CWHa following a backdated award of the enhanced rate of the daily living component of PIP, as a result of an appeal.

The Regulations also amend regulation 11 of the principal regulations to permit Scottish Ministers to pay CWHa to a person to be used for the benefit of a child.

The regulations also amend regulation 5 to remove the 31st December deadline for making determination of individual entitlement without application.
12. The Delegated Powers and Law Reform Committee considered the instrument at its [meeting on 5 October 2021](#) , and made no recommendations in relation to this instrument.
13. During the Social Justice and Social Security Committee's consideration of the regulations several points were discussed including eligibility, the removal of the December payment deadline, the impact of the payment on poverty and benefit uptake.
14. Following the evidence session, the Minister for Social Security and Local Government moved motion [S6M-01319](#) in his name—

That the Social Justice and Social Security Committee recommends that the Winter

Heating Assistance for Children and Young People (Scotland) Amendment
Regulations 2021 [draft].

15. The motion was agreed to without division.

16. The Social Justice and Social Security Committee recommends to the Scottish Parliament that the Winter Heating Assistance for Children and Young People (Scotland) Amendment Regulations 2021 [draft] be approved.

