

The Rt Hon Liz Kendall MP  
Secretary of State for Work and Pensions  
Caxton House  
6-12 Tothill Street  
London  
SW1H 9NA

20 September 2024

Dear Secretary of State,

### **The Social Fund Winter Fuel Payments Regulations 2024**

At its meeting on 11 September 2024, the Social Security Advisory Committee undertook its statutory scrutiny of the above regulations which make provision for the means-testing of Winter Fuel Payments in England and Wales from Winter 2024-25, and the European Economic Area and Switzerland for winter 2024-25.

This policy change was announced by the Chancellor of the Exchequer on 29 July, forming part of the [Fixing the foundations: public spending audit 2024-25](#) policy paper which set out the Government's plans to alleviate pressures faced by the public finances this year. The move to restrict Winter Fuel Payments only to pensioners on Pension Credit or other prescribed means-tested benefits<sup>1</sup> would reduce the number of people who receive a Winter Fuel Payment in England and Wales from 10.8 million to 1.5 million, living in 1.3 million households, yielding estimated savings of £1.3 billion for 2024-25 and £1.5 billion in subsequent years.

In delivering this change for the coming Winter, we were advised it would be necessary for the above statutory instrument to come into force by the start of the qualifying week (16 September). In light of this, the Government decided that it would be inexpedient to bring the proposals to this Committee for statutory scrutiny before they were laid on 22 August 2024 and, as a consequence, the urgency provision was invoked.<sup>2</sup>

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<sup>1</sup> Where there is someone over State Pension age and the household is in receipt of Universal Credit, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support or Tax Credits.

<sup>2</sup> The Social Security Administration Act 1992, Section 173(1)(a)

On the point of 'urgency', the Committee accepts that there will be occasions where, due to the urgency of the proposals, it will be inexpedient to consult the Committee in advance of regulations being laid. Indeed, we have supported that approach on a number of occasions where successive governments have been required to respond at pace to emerging crises and risks (for example responding to rapidly emerging challenges from the Covid-19 pandemic, and the need to respond to humanitarian crises). However, as I trust you will agree, there are considerable benefits in draft legislation being presented to us for statutory scrutiny before being laid, and that 'urgency' should be used only in exceptional circumstances. This Committee has a strong track record of supporting successive Secretaries of State respond at pace to emerging crises and risks. We have often arranged additional meetings to enable scrutiny to take place at short notice, in an attempt to avoid the need for invoking the urgency procedure. While this may not always be possible, we remain committed to support you and your ministerial team avoid the need for the 'urgency' provision to be invoked wherever practicable.

Turning to the proposals themselves, I can confirm that following careful consideration of the available evidence, the Committee has decided that, under the powers conferred by Section 173(1)(b) of the Social Security Administration Act 1992, it does not intend to take these regulations on formal reference. Given that the regulations have already been laid, the Committee considered it more expeditious to appraise you of the results of its scrutiny, rather than engage in further enquiries before reverting.

In summary, we consider it essential that the Department takes every reasonable step to ensure that all those eligible for a Winter Fuel Payment are supported in accessing it in a timely manner, and we would welcome your urgent response to our following observations and recommendations.

### **Policy intent**

The Committee's starting point for its scrutiny of all regulations is to assess the extent to which the material impact of regulations delivers against the stated policy intent.

The stated trigger for the change in eligibility for Winter Fuel Payments is to yield savings that would help alleviate substantial pressures faced by the public finances. In the case of these proposals, the direct savings from the significantly reduced eligibility for Winter Fuel Payments are partially offset by the cost of the rise in the number of claims to Pension Credit and the additional resources being deployed to process them. We note that the £1.5bn savings is net of the costs of

an assumed five percentage point increase in Pension Credit take-up from 63 per cent to 68 per cent - representing a little over 100,000 additional households. We have not been presented with any rationale for such a central case estimate (corresponding to a closing by just 14 per cent of eligible non-recipients).<sup>3</sup>

Given the significant effort underway to increase Pension Credit take-up, alongside the media attention that the policy change to Winter Fuel Payments is attracting, the number of additional successful claims could be significantly higher. The Committee would welcome the Government's assessment of the degree to which the proposals are likely to achieve the targeted savings, under different plausible Pension Credit take-up scenarios. We expect that the Office for Budget Responsibility will agree estimates of the fiscal impact at the time of the Budget, but this is no substitute for the Department's timely analysis in support of its own proposals disconnected from the Budget process.

***We recommend that the DWP publishes the value of the direct savings from the reduction in eligibility of Winter Fuel Payments and separately the offsetting cost of different levels of additional Pension Credit take-up. This would provide a better explanation of how the costs and savings balance out and enable a clearer assessment of whether the stated policy intent is likely to be achieved.***

### **Pension Credit: take-up campaign**

We welcome the proactive take-up campaign being undertaken by your Department, and note that recent data published by your Department indicates a more than doubling of the number of weekly Pension Credit claims (an increase of around 115%) following the Chancellor of the Exchequer's announcement in July.<sup>4</sup> However, it is not clear how the tension between the two goals of fiscal savings and increased take-up of Pension Credit is resolved within the plans for these regulations.

### *Capacity to process claims*

We also welcome your announcement to Parliament on 10 September 2024 to commit an additional 450 staff to processing Pension Credit claims.<sup>5</sup>

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<sup>3</sup> SSAC analysis: The increase in eligible Pension Credit recipients from 63% to 68% represents a 14% reduction in the gap towards full take-up. This is calculated by dividing the 5 percentage point increase by the remaining population of eligible non-recipients, i.e.  $5/(100-63) = 14\%$ .

<sup>4</sup> [Weekly Pension Credit claims received from 1 April 2024 to 1 September 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>5</sup> [Social Security - Hansard - UK Parliament](#)

The additional staff recruited to this role will need to undertake the appropriate training before managing live caseloads (a process that we understand takes around two months), therefore we remain concerned about the capacity of the Department to process Pension Credit claims in a timely way, ensuring that not only are people able to establish entitlement to Winter Fuel Payments, but also that they can be paid this Winter – at the point at which they are needed most.

***We would welcome urgent reassurance that sufficient resources are being put in place to ensure that the average processing time for successful claims will not increase this autumn.***

#### *Pensioners in receipt of Child Tax Credit*

Pensioners currently in receipt of Child Tax Credit would lose their entitlement to transitional protection should they migrate to Pension Credit before they receive a formal migration notice from the Department. In the absence of any tailored communications for this group during the current take-up campaign, the Committee is concerned about the potential for confusion about what this group should do. In particular, there is a potential risk that some people may take steps to move onto Pension Credit in the belief that this would be beneficial, but ultimately be financially disadvantaged.

***If it is not possible to expediate the migration of the 5,000 pensioners in receipt of Child Tax Credits across to Pension Credit, we recommend that you consider ameliorating this concern by introducing an urgent amendment to these regulations providing protection for any pensioners who inadvertently find themselves disadvantaged by responding to the current take-up campaign.***

#### *Disability impact*

Latest information published by DWP indicates that, as at May 2023, 53 percent of the Pension Credit caseload was also in receipt of Attendance Allowance, Disability Living Allowance and/or Personal Independence Payment. While taking a view that those with a disability will be disproportionately likely to retain the Winter Fuel Payment, the Department estimates that around 71 per cent (1.6 million) of people with a disability will lose entitlement.<sup>6</sup>

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<sup>6</sup> [FOI2024 65546 13 09 24 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/FOI2024-65546-13-09-24)

***We consider it essential that the Department urgently reviews its current Pension Credit take-up campaign to ensure those receiving Attendance Allowance, Disability Living Allowance and Personal Independence Payment are sufficiently engaged and aware of the options available to them.***

## **Pensioner Housing Benefit in payment**

The regulations for Winter Fuel Payments do not include Housing Benefit as a qualifying benefit, despite it being a means tested benefit received by many pensioners. We understand that around 1 million low income pensioners get Housing Benefit and no other means tested social security benefit. The exclusion of Housing Benefit has a particularly marked effect on pensioners getting Housing Benefit only, but with an underlying entitlement to Pension Credit which they are not taking up. The Committee understands that take-up of pensioner Housing Benefit is higher than for Pension Credit and that around 120,000 pensioners on HB only might qualify for Pension Credit if they claimed it.

We welcome the Government's intention to align the administration of these benefits which is expected to increase Pension Credit take-up for those who have entitlement but are currently only claiming only pensioner Housing Benefit. In the meantime, we understand DWP's take-up campaign will target this group. We also understand that the Department may be able to identify those pensioners who are in receipt of the full rate of pensioner Housing Benefit, and hence would almost certainly have entitlement to Pension Credit.<sup>7</sup>

***We recommend that you consider bringing forward an urgent amendment to these regulations which would – for this year only – passport those in receipt of the full rate of pensioner Housing Benefit onto Winter Fuel Payment. In doing so, the Department can emphasise the need to claim Pension Credit to qualify for next year's payment and encourage them to do so.***

Furthermore, we were told that those on Housing Benefit only, and not eligible for Pension Credit, will be excluded from Winter Fuel Payments partly because of the cost, and partly on grounds of equity: as homeowners cannot qualify for housing benefit. This equity argument might well be valid if the comparison between renters and homeowners is made before housing costs are taken into account, but it would not be so strong if the comparison is made of incomes net of housing costs. Two pensioners on the same income will be in very different financial circumstances if one is a homeowner with no mortgage, and the other is a renter with a high rent.

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<sup>7</sup> Note that this move alone would exceed the assumed take-up increase in the determination of the fiscal savings.

***We would encourage the government to assess the equity of excluding housing benefit as a qualifying benefit on the basis of incomes after housing costs, rather than on the basis of gross incomes.***

### ***Impact Assessment***

We were disappointed that an assessment of impact was not presented to the Committee alongside the regulations on 11 September 2024. It has subsequently been confirmed that a full assessment of impact does not exist, with the Prime Minister commenting that it was not legally necessary and that “*The impact will be mitigated by pension credit, by the housing benefit*”.<sup>8</sup>

Given the scale of pensioners who will be affected by this change, and the speed at which it is being introduced, we are not similarly reassured that this will be the case and are of the firm view that a more detailed assessment is urgently required, in particular, on the potential poverty impact.

For instance, the Committee considers it particularly important to have a clear understanding of those pensioners who may fall into poverty, and what percentage of these are in older households – in particular those who reached state pension age prior to 2016 and therefore are unable to receive the new state pension. We would welcome confirmation on the extent to which evidence is already held in this respect, including the degree to which there is an understanding of:

- whether there is a disparity across any data held on protected characteristics - beyond the greater financial impact for older pensioners – of the forthcoming change. One example of where this might arise is where there is differential take-up of Pension Credit among those who are eligible for it; and,
- how many pensioners already in poverty would find themselves in deeper poverty – especially among the entitled but not in receipt of Pension Credit. For example, we understand that the ethnicity profile has not been considered.

If specific administrative data does not exist, a first principles consideration of the issue would be welcome.

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<sup>8</sup> The Department published its High Level Equality Analysis on 13 September in response to a Freedom of Information request: [FOI2024 65546 13 09 24.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/2024/09/13/foi-2024-65546-13-09-24.pdf)

We also consider it important that the Public Sector Equality Duty analysis is followed through. Having identified any disparities in impact across protected groups, we would like to have a greater understanding of how this evidence has influenced, and been reflected in, the regulations. For example, what anticipatory actions have been taken; and what types of disparity are considered a necessary consequence of the policy intent?

We would welcome an early response to our recommendations and request for further information. I would be pleased to discuss any of the issues raised in this letter with you in more detail if that would be helpful.

In closing, I would like to thank Andrew Latto and his extended team for presenting the regulations to us, and for answering the Committee's many questions, at our meeting on 11 September 2024.

A copy of this letter goes to the Minister for Social Security and Disability, Baroness Sherlock, Katie Farrington and Andrew Latto.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Stephen Brien'.

Dr Stephen Brien  
Committee Chair