

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

23 July 2025

Dear Secretary of State,

The Social Fund Winter Fuel Payment Regulations 2025

The Social Security Advisory Committee undertook its statutory scrutiny of the above Regulations at its meeting on 16 July. I would like to thank Andrew Latto and his team for providing us with a pre-briefing and for ensuring good representation from HM Revenue and Customs (HMRC) and HM Treasury (HMT) at our scrutiny session.

These Regulations on entitlement to the Winter Fuel Payment extend eligibility to all at State Pension age and above. For those with taxable income over £35,000 and who are not in receipt of Pension Credit or certain other means-tested benefits, the full Winter Fuel Payment will be recovered via the personal income tax system.¹ The combination of these two measures will extend eligibility to an estimated extra 7.4 million pensioners this winter.² Our statutory remit involves scrutinising draft Regulations by way of consideration of the plans for the delivery of any such proposals to ensure that the policy intent and its practical implementation will be achieved. Therefore in this case, much of the Committee's scrutiny considered the interaction of these Regulations with the proposed policy of means-testing for those on taxable income over £35,000, and the mechanism for recovery through the tax system. While these overall proposals can be seen as beneficial to claimants, it is still necessary to ensure that they are well grounded and do not have any unintended consequences contrary to the policy intent.

Following careful consideration of both the draft proposals and the accompanying supporting evidence, the Committee has identified several areas that it believes would benefit from being addressed. First is the clarity and specificity of the underlying policy intent for the Winter Fuel Payment (and how that flows through to the recovery through the tax system); second is the complexity caused by interactions between the opt out and recovery processes; third is the rigour and specificity of the Equality Impact Assessment. The Committee also identified some issues about the underlying Winter Fuel Payment policy especially regarding pensioners living in different forms of residential care, which have been brought into sharper relief because of the recent policy changes.

¹ The provision for recovery of the Winter Fuel Payment through the personal tax system will be introduced as part of the Finance Bill in the Autumn 2025.

² A total of nine million pensioners will receive a Winter Fuel Payment this winter.

In undertaking our scrutiny, we were mindful that the qualifying week for the Winter Fuel Payment is almost upon us,³ and also of the accelerated timetable to which the Department is working to deliver the legislation. The decision on whether to take these Regulations on formal reference was finely balanced as there were a number of issues that we consider merited further examination by the Committee; however, we have concluded that it would not be right to cause any possible delay in those payments reaching pensioners who may be relying on them to assist with winter energy costs. I can therefore confirm that the Committee has decided that it does not intend to take these Regulations on formal reference.⁴ However, for the purposes of transparency, I am writing to you to set out the areas of concern that would have formed the focus of our further examination had we decided to do so in fulfilment of our statutory role to provide advice to yourself as the Secretary of State for Work and Pensions, and we trust therefore that you will agree to engaging on these points and providing a timely response.

The nature of the Winter Fuel Payment proposals, and the means by which the means-testing element will be delivered, has meant that some of the issues we examined during our scrutiny extend beyond the specific regulations presented to this Committee.⁵ However, this was necessary in ensuring that the proposals, and plan for their operational delivery, effectively achieve the Government's policy intent. Our advice below covers some of these wider points as we have taken the view that it would be helpful to you to provide holistic and cohesive advice on this issue.⁶

1. Policy Intent

The Committee's scrutiny of all regulations begins with a fundamental question: does the material impact align with the stated policy intent? This principle, which was emphasised in my letter regarding last year's Winter Fuel Payment Regulations,⁷ remains our starting point. Our assessment of the current regulations reveals significant disconnects between the Government's objectives and their implementation, raising serious concerns about fairness, administrative efficiency, and the underlying purpose of the Winter Fuel Payment.

Introduced in 1997, the Winter Fuel Payment aimed to ensure that those over state pension age received assistance with their energy costs through the winter months.⁸ The original design provided support to all pensioners, ensuring simplicity and broad coverage. This approach changed significantly in 2024-25, when eligibility was restricted to pensioners in receipt of Pension Credit (PC) or other qualifying means-tested benefits within the qualifying week.⁹

³ The qualify week for Winter Fuel Payment qualifying week commences on 15 September, the day that the above regulations are scheduled to come into force.

⁴ Under the powers conferred by Section 173(1)(b) of the Social Security Administration Act 1992.

⁵ In accordance with Section 172(1) of the Social Security Administration Act 1992.

⁶ Advice provided under the powers conferred "*to give (whether in pursuance of a reference under this Act or otherwise) advice and assistance to the Secretary of State in connection with the discharge of his functions under the relevant enactments*", Section 170(1)(a) of the Social Security Administration Act 1992.

⁷ [The Social Fund Winter Fuel Payments Regulations 2024: letter to the Secretary of State for Work and Pensions - GOV.UK](#)

⁸ On 25 November 1997 the then Chancellor of the Exchequer, Gordon Brown [stated](#) that the Government was "...*simply not prepared to allow another winter to go by when pensioners are fearful of turning up their heating, even on the coldest winter days, because they do not know whether they will have the help they need for their fuel bills.*"

⁹ [Changes to the Winter Fuel Payment Eligibility Rules](#): House of Commons Library (7 March 2025)

The objective of the new policy was presented to the Committee as: *“to expand the eligibility for Winter Fuel Payment, whilst retaining a means-test so that support continues to be targeted, in a way that is deliverable for Winter 2025/26, and minimises the number of individuals who must make a claim.”*¹⁰

To deliver this intent, the Government proposes a hybrid model: reinstating universal benefit eligibility while recovering payments from those with taxable income above £35,000 who don't receive qualifying benefits. The original scheme was simple and very likely to get to all pensioners who needed it because it was universal. Last year's scheme was narrowly targeted but still simple. But the current proposal is only approximately targeted and creates complexities which seem disproportionate to the sums involved.¹¹ It appears to prioritise administrative convenience over minimising burden on claimants. Rather than creating a fair and simple system, the regulations introduce new complexities and inequities.

The following sections detail specific aspects of the regulations that illustrate these contradictions.

Inconsistent Treatment of Vulnerable Groups

The Government automatically exempts Pension Credit recipients from the income threshold, recognising their financial vulnerability.¹² However, it does not extend similar automatic protection to other vulnerable groups receiving means-tested benefits, such as pension-age Housing Benefit, or disability benefits such as Personal Independence Payment, Disability Living Allowance or Attendance Allowance. These pensioners often face higher energy costs due to low quality rental housing or health conditions requiring increased heating, yet they are subject to the same £35,000 taxable income threshold as others.¹³

By requiring pensioners not in receipt of Pension Credit or other qualifying benefits to navigate the tax system to repay the Winter Fuel Payment, the policy increases administrative complexity for some individuals whose pension income is not subject to PAYE. This contradicts the stated objective of minimising the number of pensioners who must engage in complex claiming processes.

If the Government can automatically identify and protect Pension Credit recipients, it is unclear why similar mechanisms cannot be extended to other social security benefit recipients, such as those on Attendance Allowance, Personal Independence Payment, Disability Living Allowance or pension-age Housing Benefit.¹⁴

¹⁰ Taken from the supporting paperwork (paragraph 8 of the SSAC Memorandum) presented to the Committee during its statutory scrutiny of these regulations.

¹¹ The statement *“Today we are expanding Winter Fuel Payments to benefit nine million pensioners this winter. It is right that we continue to means-test this payment so that it is targeted and fair. That's why we have acted to expand eligibility so no pensioner on a lower income will miss out”* was posted on X by Chancellor Rachel Reeves on June 9, 2025

¹² It also exempts pensioners in mixed-age benefit units who are in receipt of Universal Credit.

¹³ The committee was informed that (a) these groups had been considered for inclusion in last year's regulations, but rejected, and (b) these groups were not considered for inclusion in this year's regulations.

¹⁴ The arguments presented at last year's scrutiny that there was not time to address processing complexities is less relevant on this occasion, given the greater lead-in time.

RECOMMENDATION 1

We recommend that further consideration be given to whether additional benefits, for example Attendance Allowance (and comparable disability benefits) and pension-age Housing Benefit, should be added to the list of relevant benefits which secures access to a Winter Fuel Payment.

Use of Taxable Income as a Strict Means-Test

We acknowledge that restricting Winter Fuel Payments to those with taxable incomes below or equal to £35,000 effectively significantly raises the threshold for means-testing compared to last year. The decision to implement means testing of the benefit by recovering payments from individuals with taxable income above £35,000 appears driven by administrative convenience rather than a coherent rationale linked to targeting and fairness.¹⁵ The £35,000 threshold, described as broadly aligned with average earnings, does not account for the unique financial pressures faced by some pensioners, particularly those with high care costs.

For example, there may be pensioners who are over the threshold but with very high care costs, in some cases in the region of tens of thousands of pounds, and who consequently have minimal disposable income to cover their energy costs which may also be considerably higher because of the nature of the condition for which care is provided.

Unlike working-age populations, pensioners often face systemic issues in the care system, including significant out-of-pocket expenses for care that can deplete disposable income. Using taxable income as the sole measure of means-testing is ill-suited to these circumstances, as it fails to consider:

- High care costs that reduce available income for essentials like heating.
- Higher energy needs due to health conditions, particularly for those receiving disability benefits. Our recommendation above would help deal with this as many of these individuals will be in receipt of AA/PIP.

At our meeting on 16 July, the Department asserted that pensioners with incomes above £35,000 are less likely to face fuel poverty. However, the Department has neither made any assessment of the numbers of people with incomes over £35,000 who are in fuel poverty, nor considered cases where pensioners with high care costs or marginal incomes above the threshold may not qualify for such benefits, leaving them vulnerable.

This selective approach creates unfairness by treating pensioners with significant care and support needs in similar circumstances differently, simply because of how that care and support is funded. For example:

- A pensioner with significant care costs (e.g., tens of thousands of pounds annually) may exceed the £35,000 threshold but have minimal disposable income for energy costs.

¹⁵ The Committee recognises that definition of taxable income is a matter for HMRC. The scrutiny of these regulations addressed the question of its suitability as the primary basis for means-testing a DWP pensioner benefit.

- Conversely, a pensioner receiving substantial non-taxable support, such as NHS Continuing Healthcare funding,¹⁶ may remain eligible for a Winter Fuel Payment despite having sufficient resources, simply because this funding is not classified as taxable income.

Such disparities undermine the policy's fairness and fail to address specific risks of fuel poverty among vulnerable pensioners.

RECOMMENDATION 2

We recommend that the Department examines the rationale for the use of taxable income as a strict means-testing threshold, and the impact of its lack of responsiveness to specific risks associated with pensioner costs.

2. Complexity of administration

The implementation of means-testing for Winter Fuel Payments through the tax system represents a significant shift in how this benefit is delivered, introducing multiple layers of administrative complexity that could challenge both the systems designed to deliver them and the pensioners they are meant to serve. This proposal goes beyond making Winter Fuel Payments a taxable benefit to creating a means-testing process of a DWP benefit implemented by HMRC.¹⁷

What was once a straightforward universal payment now requires coordination between multiple government departments, imposes new tax obligations for pensioners, and creates a web of processes that some elderly recipients may struggle to understand and to navigate. The transformation of a simple benefit into a complex administrative mechanism raises fundamental questions about whether the operational costs and burdens outweigh the intended policy benefits.

The Committee would welcome early reassurance about the degree to which consideration has been given to the administrative processes that are required to deliver these proposals. We have several concerns about the level of complexity and the potential impact that complexity may have both on those required to deliver the proposals and to pensioners themselves. These are set out below.

Opting out

Pensioners who do not wish to receive an automatic Winter Fuel Payment may use the existing opt-out provisions either by contacting the Winter Fuel Payment Centre helpline or by completing an online form on GOV.UK. While this opt-out option has existed for years, the introduction of tax recovery transforms what was once a simple choice into a complex administrative burden with significant complications.

The core issue lies in the timing mismatch between HMRC's tax system and the Winter Fuel Payment process. HMRC sets tax codes at the beginning of the tax year based on projected income, initially assuming pensioners will receive their Winter Fuel Payment. However, pensioners can opt out as late as mid-September (during the qualifying week), and the Department only notifies HMRC after payments are

¹⁶ [National Health Service Continuing HealthCare](#)

¹⁷ Unlike Child Benefit which is administered and paid by HMRC

actually made. This creates a fundamental disconnect: tax codes are forward-looking projections, while Winter Fuel Payment data is backward-looking confirmation.

The system breaks down further when pensioners change their minds between tax years. Consider this scenario: a pensioner receives the payment in Year 1, so HMRC adjusts their Year two tax code to recover any overpayment. But if that pensioner opts out in Year two, HMRC never learns about it—the Department reports only actual payments made, not opt-outs. The pensioner's tax code continues recovering money for a payment they never received, with no mechanism to correct this error until after the payment confirmation records have been sent from DWP to HMRC and then subsequently incorporated into an updated tax code. Following scrutiny, it remains unclear to us how this would operate in practice.

RECOMMENDATION 3

Given the substantial resources required to manage this process—and the relatively small amounts being recovered through tax codes—we strongly encourage the Department to reconsider whether this option is cost-effective or necessary.

Self-assessment

Pensioners with taxable incomes above £35,000 who receive Winter Fuel Payments will have the benefit recovered through the tax system. For some, this means filing a self-assessment tax return. This additional requirement of recording receipt of a Winter Fuel Payment could pose challenges for those with cognitive conditions such as dementia, who may find the prospect of tax forms overwhelming.

Clear communication is essential. Given that the means-testing of Winter Fuel Payments is relying on pre-existing HMRC processes, the Department must ensure its claimants are supported in undertaking their new obligations. This means providing to claimants an adequate explanation of precisely who needs to file self-assessment returns, when they must do so, and where to find help. A critical issue has already emerged: the online self-assessment form automatically includes Winter Fuel Payment details, but the paper version—likely to be used by many elderly pensioners—does not. This inconsistency creates a potential trap: pensioners who omit their Winter Fuel Payment from paper forms could face tax penalties for incomplete returns.

RECOMMENDATION 4

Given these risks, comprehensive guidance for paper form completion is not merely helpful—it is essential to prevent vulnerable pensioners from inadvertently breaking tax rules.

Tax compliance: lack of discretion inconsistent with other benefits

When a pensioner's taxable income exceeds the threshold, their Winter Fuel Payments become tax liabilities collected by HMRC, rather than benefit overpayments managed by the Department. This shift has serious implications: in certain circumstances, pensioners could face automatic tax penalties for non-

compliance, even if they played no active role in creating an overpayment. Unlike standard benefit overpayments—where the Department can exercise discretion based on individual circumstances—HMRC's tax recovery system offers no flexibility or hardship provisions. Despite raising this concern during the scrutiny process, we received no assurances that pensioners would be protected from tax penalties arising from Winter Fuel Payment overpayments.

RECOMMENDATION 5

The Committee is of the strong view that this inconsistency—where identical overpayments are treated differently depending on which Department recovers them—requires urgent resolution.

3. Equality Impact Assessment

The Committee found significant weaknesses in the Equality Impact Assessment accompanying these regulations.

This weakness represents a recurring pattern: following our scrutiny last year of *the Social Fund Winter Fuel Payment Regulations 2024*, I wrote to you raising similar concerns and emphasising that if specific administrative data does not exist, officials should provide a first principles consideration of the issue.¹⁸ This is not primarily an issue of detail or precision, rather one of underlying logic and specificity.

We were therefore disappointed that the current assessment remains narrowly analytical and data-driven, failing to address broader risks to those with protected characteristics. The following examples illustrate where more thorough consideration was needed:

- The assessment claims that “...*the Department does not envisage the need for policy mitigations since all of those eligible with an annual income of £35,000 or less will receive a Winter Fuel Payment.*” This is not accurate, as those with deferred pensions must actively claim and will not receive automatic payments despite being eligible.
- Regarding age discrimination, the assessment overlooks an obvious point requiring no data analysis: this measure inherently benefits over-65s more than younger adults.
- Regarding disability, the assessment does not refer to the definition of disability under the Equality Act 2010. While the use of proxy data was informative, it has not been properly contextualised.
- For pregnancy, the assessment states: “*DWP does not hold information on pregnancy or maternity on our systems as it is not required for the administration of Winter Fuel Payment or Pension Credit and no appropriate survey data exists. However, we do not expect there to be a disproportionate impact on this characteristic.*” This conclusion defies logic—given that only one woman aged 66 has been recorded nationally as giving birth,¹⁹ so it is safe to assume these measures clearly do very little to benefit pregnant women.²⁰

¹⁸ [The Social Fund Winter Fuel Payments Regulations 2024: letter to the Secretary of State for Work and Pensions - GOV.UK](#)

¹⁹ A quick google search by a Committee member during the scrutiny session confirmed this fact.

²⁰ [Pregnant woman, 66, set to be oldest woman to give birth in Britain | UK news | The Guardian](#)

RECOMMENDATION 6

In advance of the laying of these specific regulations, the Department should produce a revised Equality Impact Assessment that corrects the identified factual errors, takes a logic-driven approach where administrative data are weak, and acknowledges where measures cannot benefit certain protected groups.

The Committee has previously raised concerns about the quality of the Department's equality impact assessments. This not an isolated incident, and I intend to discuss our concerns directly with the responsible Minister, Baroness Sherlock. I understand that Catherine Hutchinson, the Department's Chief Scientific Adviser, has been working with her leadership team to try and strengthen the quality of these assessments, and I plan also to discuss the Committee's ongoing concerns with her.

4. Residential Care

During our scrutiny of these regulations, the Committee identified serious issues with how the underlying Winter Fuel Payment policy treats pensioners in residential care. While these problems predate the new regulations, they warrant attention. The policy rests on an inaccurate premise: that local authorities fully fund heating costs for all care home residents who receive means-tested benefits. This assumption ignores two critical realities—the widespread practice of families paying top-up fees for care, and the diverse range of residential settings that cannot be neatly categorised as either "own home" or "care home." The result is a discriminatory system that disadvantages some of society's most vulnerable members based solely on where they receive care. These are not minor technical details, but inequities embedded in the policy's design.

The policy states that pensioners who have lived in a care home for 13 weeks or *more by the end of the qualifying week* and receive means-tested benefits like Pension Credit are not entitled to Winter Fuel Payments, "*because people receiving a means-tested benefit are assumed to have their care and accommodation costs met by the local authority.*" In many cases this is not factually accurate, with many local authorities not having adequate resources or with fees having to be topped up through a pensioner's own savings, through family or by charities. The Committee is concerned that this inaccurate assumption creates an iniquitous paradox: the very pensioners who Pension Credit identifies as most financially vulnerable lose their Winter Fuel Payment entitlement, potentially pushing them into fuel poverty.²¹

The policy also creates arbitrary distinctions between different care settings. Whether pensioners live independently, in retirement villages, in care homes (as defined by the Care Standards Act 2000), or in shared accommodation (under Regulation 15 of the Health and Social Care Act 2008), all must pay heating costs. Yet their Winter Fuel Payment entitlements vary dramatically. Most puzzling is why couples sharing a care room receive less support than couples in their own homes, despite potentially facing higher heating costs. This penalises pensioners for their living arrangements, regardless of whether they chose those arrangements or had no alternative

²¹ Not least because receipt of Pension Credit is now used otherwise more generally as a guarantee of entitlement to Winter Fuel Payments.

This will affect certain groups of pensioners, for example:

- Sharing with husband/wife/partner in the same room.
- Two or three pensioners in a shared room or flat receiving personal care.
- A ward with high dependency personal care, such as a hospice type setting, or dementia care.
- Chelsea pensioners, who all live on a ward.

RECOMMENDATION 7

We recommend that the relationship between Winter Fuel Payments and care home residents be further considered.

Conclusion

The Winter Fuel Payment regulations for 2025-26 and associated plans for recovery through the tax system fall short in terms of delivering on the Government's objectives of fairness, administrative simplicity, and targeted support for pensioners fuel costs during winter. The selective exemption of Pension Credit recipients, reliance on a rigid taxable income threshold, and increased administrative complexity for vulnerable pensioners all work against the policy's stated aims; and for this year's payment and recovery it requires enhanced communication to ensure clarity and avoid any unnecessary anxiety or confusion among recipients.

RECOMMENDATION 8

We therefore recommend that the Government clarifies the policy intent for Winter Fuel Payments well before the qualifying week for next winter's payment. A thorough review, incorporating our recommendations, would better align the payment with its original purpose of supporting pensioners in need, while ensuring the system operates fairly and efficiently.

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.

A copy of this letter goes to the Minister for Pensions, the Baroness Sherlock OBE, Katherine Green, Hilda Massey, Bill Thorpe, Andrew Latto and Catherine Hutchinson.

Yours sincerely,



Dr Stephen Brien
Chair