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## SCHEDULE 5 **S**

(introduced by section 31)

### DISABILITY ASSISTANCE REGULATIONS

#### PART 1 **S**

#### ELIGIBILITY

#### CHAPTER 1 **S**

#### ELIGIBILITY IS TO DEPEND ON HAVING, OR HAVING HAD, A DISABILITY

- 1 (1) The regulations must be framed so that (subject to any provision of the kind described in paragraph 2) an individual's eligibility in respect of a given period depends on the individual having, during that period—
- (a) a physical or mental impairment that—
    - (i) has a significant and not short-term adverse effect on the individual's ability to carry out normal day-to-day activities, or
    - (ii) otherwise gives rise to a significant and not short-term need, or
  - (b) a terminal illness.
- (2) The regulations must provide that an individual is to be regarded as having a terminal illness for the purpose of determining entitlement to disability assistance if, having had regard to the guidance mentioned in sub-paragraph (3), it is the clinical judgement of [<sup>F1</sup>an appropriate healthcare professional] that the individual has a progressive disease that can reasonably be expected to cause the individual's death.
- [<sup>F2</sup>(2A) The regulations may provide that, in the situation mentioned in sub-paragraph (2B), an individual who is not resident in the United Kingdom is to be regarded as having a terminal illness despite the clinical judgement described in sub-paragraph (2) not having been formed with regard to the guidance mentioned in sub-paragraph (3).
- (2B) The situation referred to in sub-paragraph (2A) is that it would not be reasonable in the circumstances to insist on a clinical judgement being provided that has been formed with regard to the guidance.
- (2C) The regulations are to define “appropriate healthcare professional” for the purpose of determining entitlement to disability assistance on the basis of an individual having a terminal illness.
- (2D) In defining “appropriate healthcare professional” the regulations—
- (a) must provide that being a registered medical practitioner or registered nurse is a requirement for being an appropriate healthcare professional,
  - (b) may provide that being a registered member of a healthcare profession otherwise than as mentioned in paragraph (a) is a requirement for being an appropriate healthcare professional,
  - (c) may include additional requirements that a person must satisfy in order to be an appropriate healthcare professional, including by reference to a person's—
    - (i) skills, training, qualifications and experience,
    - (ii) professional relationship to the individual in question,

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(iii) being authorised to act as an appropriate healthcare professional in relation to the individual in question by—

- (A) a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,
- (B) a Special Health Board constituted under section 2(1)(b) of that Act,
- (C) the Scottish Ministers.

(d) may make different provision about the requirements for being an appropriate healthcare professional for the purposes of determining the entitlement to disability assistance of individuals who are resident in the United Kingdom and those who are not.]

[<sup>F3</sup>(3) The Chief Medical Officer of the Scottish Administration is—

- (a) to prepare and from time to time revise, and
- (b) to make publicly available by such means as the Chief Medical Officer considers appropriate,

guidance that sets out when a progressive disease can reasonably be expected to cause an individual's death for the purpose of determining entitlement to disability assistance.

(4) Before preparing or revising guidance under sub-paragraph (3), the Chief Medical Officer must consult appropriate healthcare professionals (as defined in sub-paragraph (2C)) who are registered in the United Kingdom as members of a healthcare profession.]

#### Textual Amendments

- F1** Words in sch. 5 para. 1(2) substituted (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), **ss. 11(2)(a)(i)**, 18(2)(3); S.S.I. 2021/232, reg. 2(e)
- F2** Sch. 5 para. 1(2A)-(2D) inserted (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), **ss. 11(2)(a)(ii)**, 18(2)(3); S.S.I. 2021/232, reg. 2(e)
- F3** Sch. 5 para. 1(3)(4) substituted for sch. 5 para. 1(3) (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), **ss. 11(2)(a)(iii)**, 18(2)(3); S.S.I. 2021/232, reg. 2(e)

#### Commencement Information

- I1** Sch. 5 para. 1 in force at 8.10.2020 by [S.S.I. 2020/295](#), **reg. 2(c)**

- 2 (1) The regulations may be framed so that, despite the criterion described in paragraph 1(1) not being fulfilled in respect of a given period, an individual may nevertheless be eligible in respect of that period.
- (2) Where the regulations allow an individual to be eligible in respect of a period in relation to which the criterion described in paragraph 1(1) is not fulfilled, they must be framed so that the individual's eligibility depends on the individual having had, during some other period, a physical or mental impairment of the kind described in paragraph 1(1)(a).

#### Commencement Information

- I2** Sch. 5 para. 2 in force at 8.10.2020 by [S.S.I. 2020/295](#), **reg. 2(c)**

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## CHAPTER 2 **S**

### FURTHER CRITERIA

#### *Nature and extent of disability and needs*

3 The regulations may make an individual's eligibility depend on the nature and extent of—

- (a) the individual's impairment,
- (b) the needs of the individual in consequence of the impairment.

#### **Commencement Information**

**I3** Sch. 5 para. 3 in force at 8.10.2020 by [S.S.I. 2020/295](#), **reg. 2(c)**

#### *Residence and presence*

4 The regulations may make an individual's eligibility depend on the individual being resident and present in a particular place.

#### **Commencement Information**

**I4** Sch. 5 para. 4 in force at 8.10.2020 by [S.S.I. 2020/295](#), **reg. 2(c)**

#### *Age*

5 The regulations may make an individual's eligibility depend on the individual's age.

#### **Commencement Information**

**I5** Sch. 5 para. 5 in force at 8.10.2020 by [S.S.I. 2020/295](#), **reg. 2(c)**

#### *Financial circumstances*

6 Subject to paragraph 7, the regulations may not make an individual's eligibility depend on the financial circumstances of either or both—

- (a) the individual, and
- (b) anyone who lives with the individual.

#### **Commencement Information**

**I6** Sch. 5 para. 6 in force at 8.10.2020 by [S.S.I. 2020/295](#), **reg. 2(c)**

#### *Receipt of, or eligibility for, other types of State assistance*

7 The regulations may make an individual's eligibility depend on the individual—

- (a) being, or not being, in receipt of another type of assistance (whether under this Act or another enactment),

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- (b) being, or not being, eligible or entitled to receive such assistance.

**Commencement Information**

**I7** Sch. 5 para. 7 in force at 8.10.2020 by [S.S.I. 2020/295](#), [reg. 2\(c\)](#)

*Application within specified period*

- 8 The regulations may provide that an individual ceases to be eligible in respect of a given period unless, by a deadline specified in the regulations—
- (a) the individual has applied for disability assistance in respect of the period, or
  - (b) the Scottish Ministers have become required to make a determination of the individual's entitlement to disability assistance in respect of the period by regulations under section 52.

**Commencement Information**

**I8** Sch. 5 para. 8 in force at 8.10.2020 by [S.S.I. 2020/295](#), [reg. 2\(c\)](#)

### CHAPTER 3 S

#### SPECIAL RULES FOR TERMINAL ILLNESS CASES

*No minimum period*

- 9 The regulations may not make the eligibility of an individual who has a terminal illness depend on the individual having had the illness for any length of time.

**Commencement Information**

**I9** Sch. 5 para. 9 in force at 8.10.2020 by [S.S.I. 2020/295](#), [reg. 2\(c\)](#)

*No requirement for assessment*

- 10 The regulations may not make the eligibility of an individual who has a terminal illness depend on the individual producing any evidence of that fact beyond a diagnosis by [<sup>F4</sup>an appropriate healthcare professional (see paragraph 1(2C))].

**Textual Amendments**

**F4** Words in [sch. 5 para. 10](#) substituted (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), [ss. 11\(2\)\(b\)](#), [18\(2\)\(3\)](#); [S.S.I. 2021/232](#), [reg. 2\(e\)](#)

**Commencement Information**

**I10** Sch. 5 para. 10 in force at 8.10.2020 by [S.S.I. 2020/295](#), [reg. 2\(c\)](#)

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*Eligibility from date of application*

- 11 The regulations must be framed so that an individual who applies for disability assistance on the basis of having a terminal illness, and does have a terminal illness, is eligible, at the latest, from the day the application is made.

**Commencement Information**

**I11** Sch. 5 para. 11 in force at 8.10.2020 by [S.S.I. 2020/295](#), [reg. 2\(c\)](#)

*Entitlement to maximum amount*

- 12 The regulations must be framed so that an individual who is eligible by reason of having a terminal illness is entitled to the maximum amount of the assistance that the individual is eligible for.

**Commencement Information**

**I12** Sch. 5 para. 12 in force at 8.10.2020 by [S.S.I. 2020/295](#), [reg. 2\(c\)](#)

**PART 2 S**

ASSISTANCE TO BE GIVEN

**CHAPTER 1 S**

VALUE

*Nature and extent of disability*

- 13 The regulations may make the value of the disability assistance that is to be given to an individual depend on the nature and extent of—
- (a) the individual's impairment,
  - (b) the needs of the individual in consequence of the impairment.

**Commencement Information**

**I13** Sch. 5 para. 13 in force at 8.10.2020 by [S.S.I. 2020/295](#), [reg. 2\(c\)](#)

*Age*

- 14 The regulations may make the value of the disability assistance that is to be given to an individual depend on the individual's age.

**Commencement Information**

**I14** Sch. 5 para. 14 in force at 8.10.2020 by [S.S.I. 2020/295](#), [reg. 2\(c\)](#)

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*f<sup>5</sup>Power to set value of assistance as nil*

**Textual Amendments**

**F5** Sch. 5 para. 14A inserted (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), **ss. 13(3)(a)**, 18(2)(3); [S.S.I. 2021/232](#), **reg. 2(g)**

- 14A (1) Provision may be made in the regulations for the value of the disability assistance that is to be given to an individual in respect of a period to be £0, but—
- (a) such provision must be framed so as to apply by reference to at least one of the following matters—
    - (i) the individual being resident and present in a particular place during the period,
    - (ii) the individual being in receipt of another type of assistance (whether under this Act or another enactment) during the period, and
  - (b) the Scottish Ministers may only make such provision where they consider that it would be in the interests of the individuals to whom it applies to be entitled to disability assistance with a value of £0 in respect of a period rather than not being entitled to disability assistance at all.
- (2) Nothing in sub-paragraph (1)(a) is to be taken to preclude provision being framed so as to apply by reference to further matters in addition to those mentioned there.]

**CHAPTER 2 S**

FORM

*Meeting liabilities*

- 15 The regulations may provide for the disability assistance that is to be given to an individual to be given (in whole or in part) by way of—
- (a) payment to another person in order to meet, or contribute towards meeting, any liability the individual has to that person,
  - (b) deduction from any liability the individual has to the Scottish Ministers under section 63.

**Commencement Information**

**I15** Sch. 5 para. 15 in force at 8.10.2020 by [S.S.I. 2020/295](#), **reg. 2(e)**

*Payment to someone else*

- 16 The regulations may provide that, if the Scottish Ministers consider it appropriate in the circumstances, the disability assistance that is to be given to an individual may be given (in whole or in part) by way of payment to another person who is to use the payment to benefit the individual entitled to the assistance.

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#### Commencement Information

**I16** Sch. 5 para. 16 in force at 8.10.2020 by [S.S.I. 2020/295](#), [reg. 2\(c\)](#)

#### *Restriction on giving assistance in a form other than money*

- 17 (1) The regulations may allow disability assistance to be given to an individual in a form other than money only if the individual (or a person acting on the individual's behalf) has agreed to the assistance being given in that form.
- (2) If the regulations include provision of the kind mentioned in sub-paragraph (1), they must allow an individual (or a person acting on the individual's behalf) to withdraw agreement to being given disability assistance in a form other than money at any time.
- (3) Despite sub-paragraph (1), the regulations may provide for disability assistance to be given (in whole or in part) by way of deduction, at a reasonable level, from any liability the individual has to the Scottish Ministers under section 63 if the individual has unreasonably refused to agree to the assistance being given in that form.
- (4) For the purpose of sub-paragraph (3), “reasonable level” means a level that is reasonable having regard to the financial circumstances of the individual.

#### Commencement Information

**I17** Sch. 5 para. 17 in force at 8.10.2020 by [S.S.I. 2020/295](#), [reg. 2\(c\)](#)

#### *Restriction on lump sums*

- 18 The regulations may not provide for the disability assistance that is to be given to an individual to be given by way of a lump-sum payment where the individual's entitlement arises on account of the individual having, or having had—
- (a) pneumoconiosis,
  - (b) byssinosis,
  - (c) diffuse mesothelioma,
  - (d) bilateral diffuse pleural thickening, or
  - (e) primary carcinoma of the lung where there is accompanying evidence of—
    - (i) asbestosis,
    - (ii) bilateral diffuse pleural thickening, or
    - (iii) both.

#### Commencement Information

**I18** Sch. 5 para. 18 in force at 8.10.2020 by [S.S.I. 2020/295](#), [reg. 2\(c\)](#)

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## PART 3 S

### FINAL PROVISIONS

#### *Generality of enabling power unaffected*

- 19 Nothing in this schedule, apart from the following provisions, is to be taken to limit what may be prescribed in the regulations—
- (a) Chapter 1 of Part 1,
  - (b) paragraph 6 in Chapter 2 of Part 1,
  - (c) Chapter 3 of Part 1,
  - [<sup>F6</sup>(ca) paragraph 14A in Chapter 1 of Part 2,]
  - (d) paragraphs 17 and 18 in Chapter 2 of Part 2.

#### **Textual Amendments**

- F6** Sch. 5 para. 19(ca) inserted (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), **ss. 13(3)(b)**, 18(2)(3); [S.S.I. 2021/232](#), **reg. 2(g)**

#### **Commencement Information**

- I19** Sch. 5 para. 19 in force at 8.10.2020 by [S.S.I. 2020/295](#), **reg. 2(c)**

#### *Interpretation*

- 20 In this schedule—
- “eligibility” means eligibility for disability assistance and “eligible” means eligible for disability assistance,
  - “the regulations” means regulations under section 31(2).

#### **Commencement Information**

- I20** Sch. 5 para. 20 in force at 8.10.2020 by [S.S.I. 2020/295](#), **reg. 2(c)**



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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 81(4C) inserted by [2021 asp 20 s. 2\(a\)](#)
- s. 85D inserted by [2020 asp 18 s. 2\(6\)](#)