

SOCIAL SECURITY (SCOTLAND) ACT 2018

EXPLANATORY NOTES

OVERVIEW

Part 2 (Giving of Assistance by Scottish Ministers)

Chapter 1 (Assistance to be given according to determination of entitlement)

Ongoing entitlement

43. The purpose of allowing regulations under section 51 to provide for entitlement to be determined on an ongoing basis in certain circumstances is to remove the need for someone to apply repeatedly for the same type of assistance every few weeks or months. If, for example, it is clear that there is going to be no short to medium-term improvement in the physical condition of someone who is entitled to disability assistance in respect of the previous month, it is sensible to decide that that person will continue to be entitled to disability assistance for at least a certain number of months or years into the future.
44. Regulations under section 51 will set out the types of assistance in relation to which entitlement will be determined on an ongoing basis; while ongoing entitlement makes sense for disability assistance, it would not make sense for funeral expense assistance, for example, as that will be provided one funeral at a time. The regulations may also set out exceptions to the circumstances in which a determination of entitlement to a particular type of assistance will be made on an ongoing basis; for example, if someone applies for disability assistance for a past period and indicates in the application form that their mental condition has since improved so that they no longer have a disability, it would make no sense to nevertheless determine their entitlement to disability assistance on an ongoing basis.
45. Subsection (2)(a) of section 51 provides for regulations under that section to make provision about when someone is to become entitled to be given assistance under section 24 in respect of what is a future period at the time the determination of entitlement is made. The point is that if it is decided that a person is likely to continue to be entitled to a given type of assistance for the next 6 months, the person will not necessarily be given the value of 6 months' worth of assistance immediately as a lump sum. If the type of assistance in question is normally payable on a monthly basis, for example, the regulations under section 51 may provide for the individual to be given one month's worth of assistance at the end of each month over the 6 month period. Of course the frequency with which different types of assistance will be given may vary from one type of assistance to another and may also vary over time and in relation to different circumstances. Accordingly, these are matters left to regulations.
46. Subsection (2)(b) of section 51 allows regulations under that section to specify assumptions on the basis of which future eligibility is to be decided. One can of course only speculate about whether someone will remain eligible for a given type of assistance into the future. Therefore, a decision about ongoing entitlement will necessarily be made on the basis of certain assumptions (for example, in the case of carer's assistance, that the person will continue to provide care to someone else and that someone else

*These notes relate to the Social Security (Scotland) Act
2018 (asp 9) which received Royal Assent on 1 June 2018*

will continue to be entitled to a disability benefit). In relation to what happens if those assumptions prove wrong, see below the discussion of Chapter 5 of Part 2.