

Changes to legislation: Social Security (Scotland) Act 2018, SCHEDULE 2 is up to date with all changes known to be in force on or before 22 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULE 2

(introduced by section 28)

CARER'S ASSISTANCE REGULATIONS

PART 1

ELIGIBILITY

CHAPTER 1

ELIGIBILITY IS TO DEPEND ON BEING OR HAVING BEEN A CARER

- 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 provided regular and substantial care during that period to another individual to whom a disability benefit is normally payable.
- (2) The regulations—
- (a) are to set out the circumstances in which an individual is to be regarded as having provided regular and substantial care to another individual during a period, and
 - (b) may, in particular, do so by reference to whether or not the number of hours of care provided during the period exceeds (or is deemed to exceed) a threshold specified in the regulations.
- (3) In sub-paragraph (1), “disability benefit” has the meaning given in the interpretation provision in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998.

Commencement Information

- II** Sch. 2 para. 1 in force at 14.10.2019 by [S.S.I. 2019/269](#), [reg. 3](#)

- 2 (1) The regulations may be framed so that, despite the criterion described in paragraph 1(1) not being fulfilled in relation to 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—
- (a) having at some time provided care to another individual who has a disability, and
 - (b) as a result of doing so, having received—
 - (i) carer's assistance,
 - (ii) carer's allowance, or
 - (iii) invalid care allowance.
- (3) In sub-paragraph (2)(b), “carer's allowance” and “invalid care allowance” both mean an allowance payable under section 70 of the Social Security Contributions and Benefits Act 1992.

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Commencement Information

I2 Sch. 2 para. 2 in force at 14.10.2019 by [S.S.I. 2019/269](#), **reg. 3**

CHAPTER 2

FURTHER CRITERIA

Carer's other activities

- 3 The regulations may make an individual's eligibility depend on—
- (a) whether or not the individual is in—
 - (i) employment, or
 - (ii) education,
 - (b) the length of time the individual spends over a given period in—
 - (i) employment, or
 - (ii) education.

Commencement Information

I3 Sch. 2 para. 3 in force at 14.10.2019 by [S.S.I. 2019/269](#), **reg. 3**

Multiple carers

- 4 The regulations may make an individual's eligibility depend on being the individual (or one of the individuals) selected through a process set out in the regulations in a case where more than one individual would otherwise be eligible as a result of providing care to the same cared-for person during a given period.

Commencement Information

I4 Sch. 2 para. 4 in force at 14.10.2019 by [S.S.I. 2019/269](#), **reg. 3**

Residence and presence

- 5 The regulations may make an individual's eligibility depend on either or both—
- (a) the individual, and
 - (b) the cared-for person,
- being resident and present in a particular place.

Commencement Information

I5 Sch. 2 para. 5 in force at 14.10.2019 by [S.S.I. 2019/269](#), **reg. 3**

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Age

- 6 The regulations may make an individual's eligibility depend on the age of either or both—
- (a) the individual, and
 - (b) the cared-for person.

Commencement Information

I6 Sch. 2 para. 6 in force at 14.10.2019 by [S.S.I. 2019/269](#), **reg. 3**

Financial circumstances

- 7 The regulations may make an individual's eligibility depend on the individual's financial circumstances.

Commencement Information

I7 Sch. 2 para. 7 in force at 14.10.2019 by [S.S.I. 2019/269](#), **reg. 3**

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

- 8 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),
 - (b) being, or not being, eligible or entitled to receive such assistance.

Commencement Information

I8 Sch. 2 para. 8 in force at 14.10.2019 by [S.S.I. 2019/269](#), **reg. 3**

Application within specified period

- 9 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 carer's assistance in respect of the period, or
 - (b) the Scottish Ministers have become required to make a determination of the individual's entitlement to carer's assistance in respect of the period by regulations under section 52.

Commencement Information

I9 Sch. 2 para. 9 in force at 14.10.2019 by [S.S.I. 2019/269](#), **reg. 3**

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PART 2

ASSISTANCE TO BE GIVEN

Meeting liabilities

- 10 The regulations may provide for the carer's 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

I10 Sch. 2 para. 10 in force at 14.10.2019 by [S.S.I. 2019/269](#), [reg. 3](#)

Restriction on giving assistance in a form other than money

- 11 (1) The regulations may allow carer's 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 carer's assistance in a form other than money at any time.
- (3) Despite sub-paragraph (1), the regulations may provide for carer's 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

I11 Sch. 2 para. 11 in force at 14.10.2019 by [S.S.I. 2019/269](#), [reg. 3](#)

[^{F1}Power to set value of assistance as nil]

Textual Amendments

F1 Sch. 2 para. 11A inserted (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), [ss. 13\(2\)\(a\)](#), [18\(2\)\(3\)](#); [S.S.I. 2021/232](#), [reg. 2\(g\)](#)

- [^{F1}11A(1) Provision may be made in the regulations for the value of the carer's 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—

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- (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 carer's assistance with a value of £0 in respect of a period rather than not being entitled to carer's 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.]

PART 3

FINAL PROVISIONS

Generality of enabling power unaffected

- 12 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) [F2 paragraphs 11 and 11A] in Part 2.

Textual Amendments

- F2** Words in [sch. 2 para. 12\(b\)](#) substituted (26.7.2021) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\)](#), [ss. 13\(2\)\(b\)](#), [18\(2\)\(3\)](#); [S.S.I. 2021/232](#), [reg. 2\(g\)](#)

Commencement Information

- I12** Sch. 2 para. 12 in force at 14.10.2019 by [S.S.I. 2019/269](#), [reg. 3](#)

Interpretation

- 13 In this schedule—
- “cared-for person” means the individual by providing care to whom the individual whose eligibility is in question has fulfilled the criterion described in paragraph 1(1) or 2(2),
 - “eligibility” means eligibility for carer's assistance and “eligible” means eligible for carer's assistance,
 - “the regulations” means regulations under section 28(2).

Commencement Information

- I13** Sch. 2 para. 13 in force at 14.10.2019 by [S.S.I. 2019/269](#), [reg. 3](#)

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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\(6\)](#)