

## SCHEDULE 5 DISABILITY ASSISTANCE REGULATIONS

### PART 1

#### ELIGIBILITY

#### CHAPTER 1

#### 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 a registered medical practitioner that the individual has a progressive disease that can reasonably be expected to cause the individual's death.
  - (3) The Chief Medical Officer of the Scottish Administration is—
    - (a) following consultation with registered medical practitioners, 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.
- 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).

## CHAPTER 2

### 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.

#### *Residence and presence*

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

#### *Age*

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

#### *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.

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

#### *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.

### CHAPTER 3

#### 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.

##### *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 a registered medical practitioner.

##### *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.

##### *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.