

SOCIAL SECURITY ADMINISTRATION AND TRIBUNAL MEMBERSHIP (SCOTLAND) ACT 2020

EXPLANATORY NOTES

OVERVIEW

Part 1: Social Security Administration

Section 11: Persons who can give diagnosis - Diagnosing terminal illness for disability assistance purposes

65. Section 11 of the Act modifies schedule 5 of the 2018 Act which makes provision about regulations under section 31 of that Act in relation to disability assistance to enable diagnosis of terminal illness given by appropriate healthcare professionals (including but not limited to registered medical practitioners) to be accepted as evidence of terminal illness for the purposes of disability assistance.
66. Paragraph 1(2) of schedule 5 sets out that regulations under section 31 of the 2018 Act must provide that an individual is to be regarded as terminally ill for the purposes of entitlement to disability assistance if that is the clinical judgement of a registered medical practitioner, having had regard to guidance issued by the Chief Medical Officer of the Scottish Administration. Section 11 (2)(a)(i) allows the classes of healthcare professionals whose diagnosis will be accepted as evidence of terminal illness to be extended, by amending paragraph 1(2) of schedule 5 to replace the reference to a ‘registered medical practitioner’ with a reference to an ‘appropriate healthcare professional’.
67. Section 11(2)(a)(ii) inserts new sub-paragraphs (2A), (2B), (2C), (2D) and (4) into paragraph 1 of schedule 5 to the 2018 Act and replaces sub-paragraph (3). New sub-paragraph (2C) provides that regulations are to define what ‘appropriate healthcare professional’ means for the purpose of determining entitlement to disability assistance on the basis of an individual having a terminal illness, and new sub-paragraph (2D) makes provision about the exercise of that power.
68. New sub-paragraph (2A) provides that the Scottish Ministers may provide in regulations that, in the situation in sub-paragraph (2B), an individual who is not resident in the UK is to be regarded as having a terminal illness despite the appropriate healthcare professional not having regard to the CMO guidance before diagnosing the individual as having a terminal illness. The situation in sub-paragraph (2B) 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 CMO guidance.
69. New sub-paragraph (2D)(a) provides that the regulations defining ‘appropriate healthcare professional’ must include both registered medical practitioners and registered nurses as appropriate healthcare professionals.

70. New sub-paragraph (2D)(b) provides that registered members of other healthcare professions may be included in the definition, and new sub-paragraph (2D)(c) allows the introduction of additional requirements that an individual must satisfy in order to be an appropriate healthcare professional.
71. In particular, the regulations may: specify any requirements relating to qualifications, skills, experience and training that the appropriate healthcare professional must have in order to exercise the function; include requirements about the person's professional relationship with the individual; specify that the appropriate healthcare professional is authorised to act as such by a Health Board, Special Health Board or the Scottish Ministers.
72. New sub-paragraph (2D)(d) provides that Ministers can make different provision in regulations about the requirements for being an appropriate healthcare professional depending on whether the individual whose entitlement to assistance is being determined is resident outside of the UK or not. Section 11(2)(a)(iii) substitutes sub-paragraph (3) of paragraph 1 of schedule 5 and inserts a new sub-paragraph (4) into that paragraph, so that the Chief Medical Officer is required to prepare, revise and publish guidance that sets out when a progressive disease can be reasonably expected to cause an individual's death for the purpose of determining entitlement to assistance, and to consult appropriate healthcare professionals who are registered in the United Kingdom before preparing or revising that guidance.
73. Subsection (2)(b) makes a consequential amendment to schedule 5 of the 2018 Act, to replace a reference to a "registered medical practitioner" with a reference to an "appropriate healthcare professional".