



# Social Security Administration and Tribunal Membership (Scotland) Act 2020

2020 asp 18

## PART 1

### SOCIAL SECURITY ADMINISTRATION

#### *Diagnosing terminal illness for disability assistance purposes*

#### **11 Persons who can give diagnosis**

- (1) The Social Security (Scotland) Act 2018 is modified as follows.
- (2) In schedule 5—
  - (a) in paragraph 1—
    - (i) in sub-paragraph (2), for “a registered medical practitioner” substitute “an appropriate healthcare professional”,
    - (ii) after sub-paragraph (2) insert—

“(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.

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**Changes to legislation:** There are currently no known outstanding effects for the Social Security Administration and Tribunal Membership (Scotland) Act 2020, Cross Heading: Diagnosing terminal illness for disability assistance purposes. (See end of Document for details)

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(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,
  - (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.”

(iii) for sub-paragraph (3), substitute—

“(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.”

- (b) in paragraph 10 for “a registered medical practitioner” substitute “ an appropriate healthcare professional (see paragraph 1(2C)) ”.

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**Changes to legislation:** There are currently no known outstanding effects for the Social Security Administration and Tribunal Membership (Scotland) Act 2020, Cross Heading: Diagnosing terminal illness for disability assistance purposes. (See end of Document for details)

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#### Commencement Information

**II**    [S. 11](#) in force at 26.7.2021 by [S.S.I. 2021/232](#), **reg. 2(e)**

**Changes to legislation:**

There are currently no known outstanding effects for the Social Security Administration and Tribunal Membership (Scotland) Act 2020, Cross Heading: Diagnosing terminal illness for disability assistance purposes.