

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.
- 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.

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.

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.

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.

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.

Financial circumstances

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

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.

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.

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.

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.

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) paragraph 11 in Part 2.

Interpretation

- 13 In this schedule—

Status: *This is the original version (as it was originally enacted).*

“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).