

THE SOCIAL SECURITY (SPECIAL RULES FOR END OF LIFE) BILL 2022

**Memorandum from the Department for Work and Pensions to the Delegated
Powers and Regulatory Reform Committee**

INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Social Security (Special Rules for End of Life) Bill 2022 (“the Bill”). The Bill will be introduced in the House of Lords on 11 May 2022. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains why the power has been taken and explains the nature of, and the reason for, the procedure selected.

PURPOSE AND EFFECT OF BILL

2. This Bill amends the definition of when a claimant is “terminally ill” for the purposes of Attendance Allowance (AA), Disability Allowance (DLA) and Personal Independence Payment (PIP). At present a person is considered to be terminally ill when they are expected to die, as a result of a progressive disease, within 6 months. This Bill amends this definition by extending the relevant timeframe from 6 months to 12 months within section 66(2)(a) of the Social Security Contributions and Benefits Act 1992 (relating to AA and DLA) and section 82(4) of the Welfare Reform Act 2012 (relating to PIP).
3. The Bill also amends the definition of when a person is ‘terminally ill’ which is contained in Regulation 2 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013/381 (“the 2013 Regulations”). The amendment provides that the 12 month definition of when a person is terminally ill applies to all benefits covered by the 2013 Regulations, thereby bringing the definition which applies in relation to PIP in the 2013 Regulations into line with the amendment made to section 82(4) of the Welfare Reform Act 2012.

4. Similar changes have already been made in secondary legislation in relation to Universal Credit (UC) and Employment and Support Allowance (ESA)¹.
5. The amended definition will allow a larger number of claimants to have administratively fast-tracked access to the relevant benefits; be relieved of the requirement to attend face-to-face assessments or comply with waiting periods; and automatically be entitled to higher rates of the care/daily living component. These processes for the terminally ill are often known as the “Special Rules on Terminal Illness” and will be referred to within this document as the “Special Rules”).
6. The rationale for introducing these changes stems from advances in diagnosis and treatment meaning that people with an end-of-life diagnosis are living longer. In 1990, when the current “6-month” approach was first introduced, many people with an end-of-life diagnosis were unlikely to survive for more than 6 months.
7. An evaluation² into how the benefits system supports people nearing the end of their lives was published alongside the *Shaping Future Support: The Health and Disability Green Paper*³. This evaluation heard views from people at the end of life, their families and friends, the organisations supporting them, and the healthcare professionals involved in their care. The consensus across all such groups was that the 6-month rule should be changed.
8. The aim of the Special Rules process is to enable those nearing the end of their life to receive fast-tracked access to benefits. The NHS considers people to be approaching the end of their life when they are likely to die within the next 12 months. By changing to a 12-month end of life approach, and aligning with the NHS definition, the DWP provision will support the delivery of NHS England’s long-term plan of improved, pro-active, personalised and well-coordinated care for all people in their final year of life.

¹ These changes were made by the Universal Credit and Employment and Support Allowance (Terminal Illness) (Amendment) Regulations 2022/260.

² [Findings from the evaluation of the Special Rules for Terminal Illness process - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/108422/Findings_from_the_evaluation_of_the_Special_Rules_for_Terminal_Illness_process_-_GOV.UK_(www.gov.uk).pdf)

³ [Shaping Future Support - The Health and Disability Green Paper \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/108422/Shaping_Future_Support_-_The_Health_and_Disability_Green_Paper_(publishing.service.gov.uk).pdf)

9. The Government set out in its 2019 manifesto its intention to ‘empower and support disabled people and to be an ally’. The Department is committed to upholding this intention with this Bill, which will benefit a larger number of claimants nearing the end of their lives.

ANALYSIS OF DELEGATED POWERS BY CLAUSE

Clause 2 - Commencement

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: None

Context and Purpose

10. Clause 2(2) provides that clause 1 of the Bill shall come into force on such a day as the Secretary of State may by regulations made by statutory instrument appoint.
11. Clause 2(3) provides that such regulations may contain such transitional, transitory or saving provision as the Secretary of State considers appropriate.
12. Clause 2(4) provides that clause 2 itself shall come into force on the date that the Bill is passed.

Justification for delegation

13. Clause 1 will alter the basis on which individuals are to be treated as terminally ill and it will, therefore, be necessary for the appropriate processes to be in place within DWP to align with the change in the law, prior to clause 1 being commenced. Additionally, clause 1 will involve financial costs and it is important that commencement of that provision aligns with financial approvals given by HM Treasury. Therefore, it is not appropriate for the Bill to commence on the date that Royal Assent is given but rather on a date by which all necessary implementation measures are in place. This power allows commencement to

occur on such a date, which will be specified by the Secretary of State in regulations.

Justification for procedure

14. As is usual with commencement powers, regulations made under this clause are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at the appropriate time.

Department for Work and Pensions

11 May 2022