



# Social Security (Scotland) Act 2018

## 2018 asp 9

### PART 4

#### FURTHER PROVISION IN CONNECTION WITH PARTS 2 AND 3

#### *F1* Appointees

#### Textual Amendments

- F1** S. 85A and cross-heading inserted (11.11.2020) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\), ss. 1\(2\), 18\(1\)](#)

#### **85A Appointment of person to act on behalf of child**

- (1) The Scottish Ministers may appoint a person (an “appointee”) to act on behalf of a child in connection with the determination of the child's entitlement to assistance under section 24 or regulations under section 79.
- (2) An appointment under subsection (1) may, if the Scottish Ministers consider it appropriate, include an appointment of the person to receive such assistance on the child's behalf.
- (3) The Scottish Ministers may only appoint an appointee if it appears to them that there is no person who—
  - (a) has authority to act on behalf of the child,
  - (b) resides with, and has care of, the child, and
  - (c) is willing, and practicably able, to act on the child's behalf in relation to the matter mentioned in subsection (1).
- (4) An individual who is under 16 years may not be appointed as an appointee.
- (5) Where an appointee is appointed under subsection (1) to act on behalf of a child—
  - (a) the appointee can do anything that a person with authority (however arising) to act on behalf of the child in relation to the determination of the child's entitlement to assistance could do in connection with the determination of

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- the child's entitlement to assistance (including making an application for assistance),
  - (b) the Scottish Ministers may request that the appointee provide them with information that the Ministers may otherwise request under section 54 or (as the case may be) the regulations under section 79 (and in the case of section 54, subsections (2) and (3) of that section apply to that request as they apply to a request made to the child),
  - (c) any information that would be given to the child under or by virtue of Part 2 or (as the case may be) the regulations, must be given to the appointee instead.
- (6) The Scottish Ministers may terminate an appointment under subsection (1) at any time.
- (7) In this section, “child” means an individual who is under 16 years.]

**[<sup>F2</sup>85B Appointment of person to act in other circumstances**

- (1) The Scottish Ministers may appoint a person (an “appointee”) to act on behalf of an individual in connection with the determination of the individual's entitlement to assistance under section 24 or regulations under section 79.
- (2) An appointment under subsection (1) may, if the Scottish Ministers consider it appropriate, include an appointment of the person to receive such assistance on the individual's behalf.
- (3) The Scottish Ministers may only appoint an appointee if—
  - (a) the individual is 16 years or over and the conditions in subsection (4) are met, or
  - (b) it appears to them that subsection (6) or (7) applies.
- (4) The conditions are—
  - (a) the individual indicates (in such form as the Scottish Ministers require) that the individual agrees to the appointment, and
  - (b) an appropriate person certifies (in such form as the Scottish Ministers require) that in the person's opinion—
    - (i) the individual is not incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000,
    - (ii) the individual understands the effect of the appointment,
    - (iii) the individual has not been subject to any undue influence in agreeing to the appointment, and
    - (iv) the person proposed to be appointed is suitable to act as the individual's appointee.
- (5) The Scottish Ministers are to make regulations defining “appropriate person” for the purposes of subsection (4)(b).
- (6) This subsection applies if—
  - (a) the individual is deceased, and
  - (b) there is no executor appointed on the individual's estate.
- (7) This subsection applies if, in relation to the matter mentioned in subsection (1)—
  - (a) the individual is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000,
  - (b) there is no guardian acting or appointed under that Act,

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- (c) the individual's estate is not being administered by a judicial factor, and
  - (d) there is no other person who has authority to act on behalf of the individual and is willing to do so.
- (8) An individual who is under 16 years may not be appointed as an appointee.
- (9) Where an appointee is appointed under subsection (1) to act on behalf of an individual—
  - (a) the appointee can do anything that a relevant individual could do in connection with the determination of the individual's entitlement to assistance (including making an application for assistance),
  - (b) the Scottish Ministers may request that the appointee provide them with information that the Ministers may otherwise request under section 54 or (as the case may be) the regulations under section 79 (and in the case of section 54, subsections (2) and (3) of that section apply to that request as they apply to a request made to the individual),
  - (c) any information that would be given to the individual under or by virtue of Part 2 or (as the case may be) the regulations, must be given to the appointee instead.
- (10) In subsection (9)(a), “relevant individual” means—
  - (a) in the case of an appointment by virtue of subsection (3)(a), the individual in relation to whom the appointment is made,
  - (b) in the case of an appointment by virtue of subsection (6), an executor appointed on the individual's estate,
  - (c) in the case of an appointment by virtue of subsection (7), a person with authority (however arising) to act on behalf of the individual in relation to the determination of the individual's entitlement to assistance.
- (11) The Scottish Ministers may terminate an appointment under subsection (1) at any time.
- (12) The Scottish Ministers must—
  - (a) terminate an appointment made by virtue of subsection (3)(a) if the individual withdraws agreement to it,
  - (b) consider whether to terminate an appointment made by virtue of subsection (3) (a) if requested to do so by anyone who appears to the Ministers to have an interest in the welfare or financial affairs of the individual.
- (13) The Scottish Ministers must consider whether to terminate an appointment made by virtue of subsection (6) if requested to do so by anyone who appears to the Ministers to have an interest in the financial affairs of the individual.
- (14) The Scottish Ministers must consider whether to make an appointment by virtue of subsection (7), or to terminate such an appointment, if requested to do so by—
  - (a) the individual, or
  - (b) anyone else who appears to the Ministers to—
    - (i) have authority to act on behalf of the individual, or
    - (ii) have an interest in the welfare or financial affairs of the individual.
- (15) Subsection (16) applies where the Scottish Ministers are deciding whether to make an appointment by virtue of subsection (7) or to terminate such an appointment.

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- (16) In making the decision, the Scottish Ministers must, insofar as practicable, have regard to—
- (a) the wishes and feelings of the individual, and
  - (b) the views of anyone else who appears to the Ministers to have an interest in the welfare or financial affairs of the individual.]

**Textual Amendments**

- F2** S. 85B inserted (23.12.2020 for specified purposes, 24.1.2022 for specified purposes) by [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(asp 18\), ss. 2\(4\), 18\(2\)\(3\)](#); S.S.I. 2020/422, regs. 2(b), 3

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