



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

2020 asp 18

## PART 1

### SOCIAL SECURITY ADMINISTRATION

#### *Appointees*

#### **1 Appointment of person to act on behalf of child**

- (1) The Social Security (Scotland) Act 2018 is modified as follows.
- (2) After section 85 insert—

#### *“Appointees*

#### **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 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.”.

## 2 **Appointment of person to act on behalf of individual**

- (1) The Social Security (Scotland) Act 2018 is modified as follows.
- (2) Section 58 is repealed.
- (3) In section 85A (as inserted by section 1), after subsection (5) insert—
- “(5A) The Scottish Ministers must consider whether to make an appointment under subsection (1), or to terminate such an appointment, if requested to do so by—
- (a) the child, or
  - (b) anyone else who appears to the Ministers to—
    - (i) have authority to act on behalf of the child,
    - (ii) reside with, and have care of, the child, or
    - (iii) have an interest in the welfare or financial affairs of the child.
- (5B) Subsection (5C) applies where the Scottish Ministers are deciding whether to make or terminate an appointment under subsection (1).
- (5C) In making the decision the Scottish Ministers must, insofar as practicable, have regard to the views of—
- (a) the child,
  - (b) anyone who is a relevant person in relation to the child within the meaning of section 200 of the Children’s Hearings (Scotland) Act 2011, and
  - (c) anyone else who appears to the Ministers to have an interest in the welfare or financial affairs of the child.”.

(4) After section 85A insert—

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*Status: This is the original version (as it was originally enacted).*

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### **“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,
  - (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),

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*Status: This is the original version (as it was originally enacted).*

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- (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.
- (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.”.

(5) After section 85B (as inserted by subsection (4)) insert—

**“85C Guidelines for decisions about appointees**

- (1) The Scottish Ministers—
  - (a) must prepare guidelines governing their decisions in connection with appointments under sections 85A and 85B,
  - (b) may revise the guidelines,
  - (c) must make the latest version of the guidelines publicly available by such means as they consider appropriate.
- (2) The guidelines must, in particular, set out—
  - (a) the steps that the Scottish Ministers will take to determine that a person is suitable for appointment,
  - (b) how a request that an appointment be made or terminated may be made and how it will be handled,
  - (c) the process by which persons with an interest in the making or termination of an appointment will be involved in those decisions,
  - (d) the steps that the Scottish Ministers will take to review appointments periodically (being in any case no more than 5 years) and the process by which that will occur,
  - (e) how concerns about the acts, or omissions, of an appointee may be raised and how any concerns raised will be handled.
- (3) In preparing or revising the guidelines, the Scottish Ministers must have regard (among other things) to the following considerations—
  - (a) that an appointment in the case of a living individual should be made only if it appears to secure a benefit in respect of the individual that cannot reasonably be achieved without the appointment,
  - (b) that such an appointment should last for only so long as it continues to secure that benefit,
  - (c) that, so far as reasonably practicable, before decisions are made—
    - (i) persons who may be affected are consulted, and
    - (ii) due account is taken of their views (or, if they are incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000, their wishes and feelings),
  - (d) that decisions should be made on the basis of good information,
  - (e) that decision-making processes should, so far as reasonably practicable, take account of the circumstances of individual cases,
  - (f) that persons who may be affected by decisions are given adequate information and support in relation to their involvement in the decision-making process.
- (4) In preparing or revising the guidelines, the Scottish Ministers must consult—
  - (a) the Commissioner for Children and Young People in Scotland,
  - (b) the Mental Welfare Commission for Scotland,
  - (c) the Public Guardian (established by section 6 of the Adults with Incapacity (Scotland) Act 2000), and
  - (d) local authorities.”.

(6) After section 85C (as inserted by subsection (5)) insert—

**“85D Right to apply to First-tier Tribunal for review of certain decisions**

- (1) A qualifying person may apply to the First-tier Tribunal for Scotland for a review of—
  - (a) a decision under section 85A made following a request under subsection (5A) of that section,
  - (b) a decision under section 85B made following a request under subsection (12)(b), (13) or (14) of that section.
- (2) For the purposes of subsection (1), the following are qualifying persons—
  - (a) the person who made the request, and
  - (b) any other person entitled to make the same request.
- (3) An application under subsection (1)—
  - (a) may be made without the First-tier Tribunal’s permission if the application is made within 31 days beginning with the day on which the decision concerned was made,
  - (b) may be made only with the First-tier Tribunal’s permission if the application is made after the period mentioned in paragraph (a),
  - (c) may not be made after the period of one year beginning with the day on which the decision concerned was made.
- (4) The First-tier Tribunal may give permission under subsection (3)(b) for an application to be made only if satisfied that there is a good reason for the application not having been made sooner.
- (5) On application under subsection (1), the First-tier Tribunal is to review the decision concerned and may in consequence—
  - (a) uphold the decision, or
  - (b) set the decision aside.
- (6) Where a decision is set aside by the First-tier Tribunal, it may (as it considers appropriate)—
  - (a) reach its own view on what the decision should be and order the Scottish Ministers to make the decision accordingly, or
  - (b) order the Scottish Ministers to make the decision afresh.
- (7) In reaching its own view on what a decision should be by virtue of subsection (6)(a), the First-tier Tribunal may reach such findings in fact as it considers appropriate.
- (8) In ordering the Scottish Ministers to make a decision afresh by virtue of subsection (6)(b), the First-tier Tribunal may give the Ministers such directions as it considers appropriate.
- (9) A decision by the First-tier Tribunal about—
  - (a) the outcome of an application under subsection (1), or
  - (b) whether to give permission under subsection (3)(b) for an application to be made,

is final.

(10) Accordingly (and without prejudice to the generality of subsection (9)), any such decision by the First-tier Tribunal may be neither—

- (a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor
- (b) appealed against under section 46 of that Act.”.

(7) After section 85D (as inserted by subsection (6)) insert—

**“85E Guidance for appointees**

(1) A person appointed under section 85A or 85B must have regard to any guidance issued by the Scottish Ministers about the way in which the role of appointee should be carried out.

(2) The Scottish Ministers must make guidance issued for the purpose of subsection (1) publicly available.”.

(8) In section 96(3), for “and 43(5)” substitute “, 43(5) and 85B(5)”.