

POLICY NOTE

THE SOCIAL SECURITY ADMINISTRATION AND TRIBUNAL MEMBERSHIP (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 2) REGULATIONS 2021

SSI 2021/232 (C. 12)

The above instrument was made in exercise of the powers conferred by section 18(2) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020. The instrument is to be laid only.

This instrument will commence sections 2(5), 3, 9, 10, 11, 12 and 13 of the Social Security Administration and Tribunal Membership (Scotland) Act 2020.

Policy Objectives

The Social Security Administration and Tribunal Membership (Scotland) Act 2020 (“the 2020 Act”) modifies the Social Security (Scotland) Act 2018 (the “2018” Act) in relation to the appointment of persons to act on behalf of applicants; the provision of information in connection with the determination of eligibility for assistance; the duty to inform about possible eligibility for assistance; the operation of top-up assistance; the diagnosis of terminal illness for disability assistance purposes; and the recovery of assistance given in error; and to modify the Tribunals (Scotland) Act 2014 in relation to the eligibility of judicial office-holders to sit in the First-tier Tribunal and the Upper Tribunal.

This instrument commences section 2(5) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (“the 2020 Act”), which inserts a new section 85C into the Social Security (Scotland) Act 2018 (“the 2018 Act”). The provision requires the Scottish Ministers to prepare and publish guidelines governing their decisions in connection with appointments.

This instrument commences section 3 of the 2020 Act, which inserts new section 62A into the 2018 Act. Section 62A relates to non-disclosure of information about an individual’s health in connection with the determination of their entitlement to assistance. It is necessary to ensure where a healthcare professional has withheld the information, as they determine it would be likely to cause serious harm to the recipient’s physical or mental health, Scottish Ministers do not disclose this information about an individual’s health.

This instrument commences sections 9 and 10 of the 2020 Act. Section 53 of the 2018 Act places a duty on the Scottish Ministers to alert an individual if, in the process of making a determination, they identify that the individual may be eligible for other assistance. Sections 9 and 10 of the 2020 Act make provision to extend the duty currently in section 53 of the 2018 Act to include top-up payments made using powers conferred by section 79 of the 2018 Act.

This instrument commences section 11 of the 2020 Act which amends schedule 5 of the 2018 Act which makes provision about regulations under section 31 of that Act in relation to disability assistance. The amendment relates to the diagnosis of terminal illness and who is an appropriate healthcare professional able to make this diagnosis for the purposes of disability

assistance. Regulations defining ‘appropriate healthcare professional’ must include both registered medical practitioners and registered nurses as appropriate healthcare professionals.

This instrument commences section 12 of the 2020 Act which amends sections 51 and 54 and inserts new schedule 11 into the 2018 Act and enables the Scottish Ministers to make provision in regulations about suspension of assistance.

This instrument commences section 13 of the 2020 Act which amends schedules 2, 5, 7 and 9 of the 2018 Act to enable the Scottish Ministers, when making regulations about the value of the forms of assistance to which these schedules relate, to make provision that, in certain circumstances, the value of assistance to be given to an individual in respect of a period is nil.

Consultation

As these regulations only bring into force provisions of the 2020 Act, no specific consultation has been carried out in relation to this instrument.

Impact Assessments

No specific Impact Assessments have been prepared for these Regulations. There are no equalities or rights impacts that require further consideration in relation to the commencement of these regulations.

Impact Assessments were completed for the 2020 Act:

- BRIA: <https://www.gov.scot/publications/social-security-administration-tribunals-scotland-bill-2020-business-regulatory-impact-assessment/>
- CRWIA: <https://www.gov.scot/publications/social-security-administration-tribunals-scotland-bill-2020-child-rights-wellbeing-impact-assessment/>
- EQIA: <https://www.gov.scot/publications/social-security-administration-tribunals-scotland-bill-2020-equality-impact-assessment/>
- ICIA: <https://www.gov.scot/publications/social-security-administration-tribunals-scotland-bill-2020-island-communities-impact-assessment/>

Financial Effects

No significant financial impacts are foreseen as a result of these regulations.

The Minister for Social Security and Local Government confirms that no BRIA is necessary as the instrument has no significant financial effects on the Scottish Government, local government or on business.

Scottish Government
Social Security Directorate

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