

## POLICY NOTE

### THE SOCIAL SECURITY ADMINISTRATION AND TRIBUNAL MEMBERSHIP (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 5 AND TRANSITIONAL PROVISIONS) REGULATIONS 2021

#### SSI 2021/442 (C. 31)

The above instrument was made in exercise of the powers conferred by sections 17(1) and 18(2) of the Social Security and Tribunal Membership (Scotland) Act 2020 (“the 2020 Act”). The instrument is subject to negative procedure.

#### **Purpose of the instrument.**

This instrument is intended to commence parts of section 2 of the 2020 Act that will:

- repeal section 58 of the Social Security (Scotland) Act 2018 (“the 2018 Act”)
- insert subsections (5A), (5B) and (5C) to section 85A of the 2018 Act, which was inserted by section 1 of the 2020 Act, relating to the appointment of a person to act on behalf of a child,
- insert new section 85B into the 2018 Act for the purpose of allowing appointments to be made in respect of a person’s entitlement to assistance under Part 2 of the 2018 Act, in certain circumstances where the person is regarded as not having legal capacity or is deceased
- insert new section 85E into the 2018 Act, relating to guidance for appointees.

#### **Policy Objectives**

This is the fifth set of commencement regulations implementing the provisions of the Social Security Administration and Tribunal Membership (Scotland) Act 2020. They bring into force provisions in relation to the appointment of another person to act on behalf of clients of Social Security Scotland.

#### **Appointees**

This instrument commences section 2(2) of the 2018 Act which repeals section 58 of the 2018 Act from 24 January 2022, and makes transitional provision for persons previously appointed under it. On and after that date, anyone already appointed under section 58, to act on behalf of someone who is deceased, or who is regarded as incapable within the definition of the Adults with Incapacity (Scotland) Act 2000, will be treated if they had been appointed under the equivalent provisions in section 85B, which are inserted into the 2018 Act by section 2(4).

The instrument also inserts all of the remaining subsections of 85A and 85B (other than for the purpose of making appointments in the circumstances where section 85B(3)(a) applies (relating to adults with capacity). These are intended to introduce greater safeguards to the appointment process for vulnerable clients.

**Appointments for children** - sections 85A (5A), (5B) and (5C) are now inserted allowing for the child and a range of other parties to request that an appointment is made, or terminated. They also require that the views of the child, anyone who is a relevant person within the meaning of section 200 of the Children’s Hearings (Scotland) Act 2011, and anyone else who appears to have an interest in the child’s welfare or financial affairs, are taken into account in the appointment process.

***Appointments for adults regarded as lacking capacity*** - The client, and anyone with authority to act for them, or an interest in their welfare or financial affairs, can request a new appointment, or ask for the existing appointment to be terminated at any time. The views or wishes and feelings of those people should be taken into account where practicable when making the appointment decision.

***Appointments for the deceased*** – Social Security Scotland must consider whether to terminate an appointment if requested to do so by anyone who appears to have an interest in the financial affairs of the deceased client .

***Guidance for Appointees*** - Section 85E is inserted which stipulates that where a person is appointed under section 85A or 85B they must have regard to any guidance that Scottish Ministers issue in relation to how they carry out the role. Where this type of guidance is issued it must be made publicly available.

## **Consultation**

As these regulations 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**

The Financial Memorandum<sup>1</sup> and Revised Financial Memorandum<sup>2</sup> for the Social Security Administration and Tribunal Membership (Scotland) Act 2020 set out the expected costs associated with the provisions being commenced by this instrument. They address anticipated or potential cost implications.

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

Scottish Government  
Social Security Directorate  
November 2021

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<sup>1</sup> Financial Memorandum ([parliament.scot](https://www.parliament.scot))

<sup>2</sup> Financial Memorandum ([parliament.scot](https://www.parliament.scot))