POLICY NOTE

THE SOCIAL SECURITY ADMINISTRATION AND TRIBUNAL MEMBERSHIP (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 1) REGULATIONS 2020

SSI 2020/422 (C. 39)

The above instrument was made in exercise of the powers conferred by section 18(2) and (3) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020). The instrument is to be laid only.

This instrument will commence the relevant parts the Social Security Administration and Tribunal Membership (Scotland) Act 2020 for the limited purpose of allowing Scottish Ministers to appoint another person to act on behalf of an individual who is legally regarded as lacking capacity or is deceased, in relation to applications for top-up assistance payable under regulations made under section 79 of the Social Security (Scotland) Act 2018.

Policy Objectives

Section 58 of the Social Security (Scotland) Act 2018 ("the 2018 Act") allows for Scottish Ministers, in certain circumstances where an individual is regarded as lacking capacity or is deceased, to appoint another person to Act for them in relation to benefits paid under Part 2 of that Act. However, the introduction of the Scottish Child Payment means appointees will now also be needed to act for clients in relation top-up assistance paid under section 79 of the 2018 Act.

This instrument commences the relevant parts of section 2(4) of the Security Administration and Tribunal Membership (Scotland) Act 2020("the 2020 Act"), inserting parts of section 85B for the specific purpose of allowing an appointee to act on an individual's behalf in connection with entitlement for top-up forms of assistance payable under section 79 of the 2018 Act. Where someone has already been appointed under Section 58 of the 2018 Act, in relation to a form of assistance paid under Chapter 2, that appointment will continue. That section will also remain the legal basis for making appointments in connection with those benefits until such time as section 2(4) of the 2020 Act is commenced for all purposes. At that point section 2(2) of the 2020 Act will also be commenced, to effect the repeal of section 58 of the 2018 Act.

This instrument does not commence subsections of section 85B which relate to the making of an appointment for an adult with capacity who has explicitly consented, or the requirement to take certain persons' views into account, and consider terminating an appointment when requested. Neither does it commence sections 85C, 85D and 85E. These will require further regulations to be laid, and detailed guidelines to be drafted and consulted on, as well as significant service design and will be commenced at a later date.

While the formal safeguarding elements of the appointee provisions in the 2020 Act are not yet commenced, interim arrangements are in place within Social Security Scotland to manage situations where a client, believed to be an adult with incapacity, or other third party raise a concern about an appointment.

Consultation

The provisions being commenced here replicate those already in place under section 58 of the 2018 Act, which have already been implemented for the first phase of benefits administered by Social Security Scotland, they simply extend them to top-up assistance.

However, consultation with stakeholders during the passage of the 2020 Act, prompted a number of enhancements to those provisions, particularly in the context of the forthcoming rollout of disability assistance. Advice was sought from the Ill Health and Disability Benefits Stakeholder Reference Group(IHDBSRG) and the Disability and Carer Benefits Expert Advisory Group(DACBEAG) and number of bi-lateral meetings also took place between officials and key stakeholder organisations.

Officials will now embark upon further consultation with these stakeholders, and the statutory consultees set out in section 85C, to draft and publish detailed guidelines and to design the required safeguarding processes for their implementation.

Impact Assessments

The provisions in the 2020 Act being commenced here replicate existing provisions in the Social Security (Scotland) Act 2018, but allow appointees to act in relation to a wider range of benefits administered by Social Security Scotland. No further impact assessments are required.

Financial Effects

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

The Cabinet Secretary for Social Security and Older People 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

9 December 2020