



Social Security Scotland
Tèarainteachd Shòisealta Alba

Client representative guidelines

Part 4: Guardians and court appointed acting Bodies

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Introduction

1. When an adult is no longer able to deal with their own affairs, or able to consent to another person managing their finances (ie under a power of attorney), a court may need to make an order that grants another adult or an organisation the power to act for them.
2. In Scotland this is called a Guardianship order and is made under the Adults with Incapacity (Scotland) Act 2000. The register of these is held and maintained by the Office of the Public Guardian Scotland (OPG(S)), who has been given statutory powers to supervise financial guardians and ensure they act in the best interests of an adult with incapacity and carry out their duties properly within the scope of their powers.
3. Where a Sheriff is satisfied that the adult is incapable of taking an action, or incapable in respect of a decision about their property, financial affairs or personal welfare, they may, rather than making a long term appointment, make a more limited appointment of a person or organisation to make a particular decision or take certain action on behalf of an incapable adult. This is called an Intervention Order.
4. Where a court has granted powers to a Guardian or person authorised under an Intervention Order that allow them to manage a client's social security benefits, this takes precedence over any previous Power of Attorney put in place by the client, or appointment made by Social Security Scotland.
5. England, Wales, Northern Ireland, and some countries outside of the UK have their own equivalent measures. For a court appointed person or organisation from a country outside of Scotland to act for an adult with incapacity when they are living in Scotland, it must be registered with the OPG(S) as an "International Measure" through a summary application to the Sheriff court.
6. The OPG(S) maintains the register of both Guardianship orders and International Measures.

Guardianship and Intervention Orders - Scotland

7. In Scotland the Adults with Incapacity (Scotland) Act 2000 allows anyone over the age of 16 with an interest, to make an application for a Guardianship order to be granted in respect of an adult (over 16), who is not able to look after their own affairs.
8. For children about to reach the age of 16, an application can be made up to three months before they turn 16. This means that the order will take effect from their birthday.
9. An adult is considered an adult with incapacity if they are incapable of:
 - acting; or
 - making decisions; or
 - communicating decisions; or

- understanding decisions; or
- retaining the memory of decisions

10. because of mental disorder, or an inability to communicate because of physical disability. Where they are unable to communicate it must be the case that this difficulty cannot be overcome by human help, or mechanical aids or technology - for example an interpreter.

Guardianship order

11. A Guardianship order is made at the sheriff court and is tailored to the adult with incapacity and their needs. It will state:

- who has been appointed to look after the affairs of an incapable adult;
- what the appointed person or organisation (the Guardian) can do; and
- how long they can do it for

12. It may grant the Guardian any combination of powers that the Sheriff decides is appropriate:

- Financial - powers in relation to the finances and property belonging to the adult.
- Welfare - powers in relation to making welfare decisions for the adult.
- Combined - financial/property and welfare powers

13. Only an order that includes general or specific financial powers to manage the client's benefits will empower the Guardian to act in relation to devolved benefits.

Intervention Order

14. The Adults with Incapacity (Scotland) Act 2000 also gives the courts power to impose Intervention orders. These are intended as a temporary measure in relation to a specific act or decision that needs to be made on behalf of a person to protect their interests. For example the selling of a house, or opening of a bank account.

15. The length of time the Intervention order is in force, and the powers specified in the order will determine whether Social Security Scotland needs to take any action. Like a Guardianship order, an Intervention order takes precedence over a PoA or appointment made by Social Security Scotland, however if it is very limited or temporary in nature an appointee may still be required when it ends. This will require careful consideration and discussion with all relevant parties.

16. If the powers within an Intervention order relate to a one-off action or it is not clear whether the Intervener is appointed to deal with Social Security matters, refer for advice. See operational guidance for how to escalate for advice from Scottish Government Legal Division.

Verifying the Guardianship or Intervention order is genuine

17. If you receive an application or enquiry from any person stating that they are the an adult client's Guardian or Intervener, first [check whether they are already acting for Social Security Scotland or DWP benefits](#) .
18. If they are, this means that it has already been confirmed by one of these agencies that they have the right to act in relation to social security benefits. [You can set up the Guardian or Intervener on SPM](#) but you may need to check whether the order is for a limited period and enter the end date.
19. If they are not already on DWP systems or SPM [ask to see](#) either the original documents or a certified copy of the:
 - Court order; and
 - Certificate from the OPG(S) which shows that it has been formally registered
20. These will be received and [authenticated by the Mail Room](#) . Paper certificates have a red seal on them which are embossed in order to authenticate them and are usually attached to a copy of the order. They include a unique certificate number and case number which can be used to check with the OPG(S). Where more than one person has been appointed, all those named must have a certificate of registration.
21. The original documents must always be returned to the sender by recorded delivery.

Verifying the Guardian or Intervener is empowered to act for social security benefits

22. [Check the text of the court order](#) to ensure that it empowers the Guardian or Intervener to deal with particular matters on behalf of the adult, for example:-

*“To claim and receive on behalf of the Adult all benefits, allowances, services, financial contributions, repayments, rebates and the like, to which the Adult would be entitled and to claim and receive on behalf of the Adult, Self-Directed Support to allow the Guardians to purchase, as deemed appropriate, such community care and services as are required to meet the Adult’s needs; **and***

“To pursue or defend on behalf of the Adult any court, tribunal or other proceedings which the Guardian/s may consider to be competent and appropriate in relation to the Adult’s property and financial affairs and to appeal against, enforce or implement any Judgement, Order or award to include all necessary steps.”

23. In exceptional circumstances you can [check with the OPG\(S\)](#) whether a Guardianship order is in place.

24. Provide as much personal information as possible about the person who is the subject of the search for example, names, known addresses, date of birth etc. as this will make it easier to search the register. If you have the Certificate and Case Number from the OPG(S) certificate include them in your request.

Guardian or Intervener is empowered to act for the client

25. When it has been verified that the Guardian is empowered to act on behalf of the client, they should be set up on SPM. The end date of the order should be noted where known. [Setting up and setting reviews for Guardianships and similar client relationships on SPM](#)

26. When a new Guardian is appointed and set up on SPM while an ongoing benefit is in payment (e.g. SCP, CDP, ADP), we must send them a copy of the client's notification of entitlement. This will tell them what the client is entitled to and what changes of circumstances must be reported to Social Security Scotland.

How long does a Guardianship or Intervention order last?

27. Guardianship orders can be for the lifetime of the adult, but usually last between 3 and 5 years before they need to be renewed through a fresh application to the Sheriff court. Where an application has been made to renew the Guardianship before it expires, the Guardian may continue to use it after the expiry date while the renewal application is being considered.

28. If no renewal is submitted before the order expires the OPG(S) contact the Local Authority drawing the matter to their attention. Where it appears to the Local Authority that an application for renewal of a guardianship order is necessary but that no application has been made or is likely to be made, they will apply for an order and the existing order will continue to have effect until the application is determined. The Local Authority will then seek to have another individual appointed, this could be a relative, friend or a professional such as a solicitor.

29. An intervention order only lasts for as long as it takes to make the decision or take the action to which the order relates.

30. See further operational guidance at [Checking if a Guardianship order will be renewed](#) .

Time limited Guardianship orders issued before 30 September 2020

31. The Coronavirus (Scotland) Act 2020 came into force on 7 April 2020. This effectively hit a "pause button" on the length of a guardianship order up to and including 29 September 2020(a total of 176 calendar days).

32. Any time limited Guardianship issued on or before 29 September 2020, should be treated as though it had 176 calendar days added on to the original expiry date.

Example

- Original guardianship expiry date; 20 April 2020
- Add on 176 days
- New guardianship expiry date: 13 October 2020

33. Guardianship orders issued on or after 30 September 2020 are not impacted and are effective for the time stated on the original order.

Care Home Managers under Part 4 of the Adults with Incapacity (Scotland) Act 2000

34. Part 4 of the Adults with Incapacity (Scotland) Act 2000 allows Care Home Managers, as a last resort, to apply to the Care Inspectorate to manage money for service users in certain circumstances. If granted, the Care Inspectorate or other supervisory body such as the local authority would issue a 'Certificate of Authority' which they will need to present before they can use the power.

35. The Adults with Incapacity (Scotland) Act 2000 does not permit Care Home Managers to manage DWP benefits, but it has not been amended to exclude the management of devolved benefits delivered by Social Security Scotland. Care Home Managers are more likely to apply to become a client's corporate appointee (see Part 5.2 of the Client Representative Guidelines) but in the exceptional circumstance that you receive a Certificate of Authority from a Care Home Manager you should refer this for advice. See See operational guidance for how to escalate for advice from Scottish Government Legal Division.

Curator Bonis or Tutor

36. You may occasionally come across old references to a curator bonis, tutor-dative, tutor-at-law and Mental Health Act guardian. These types of authority to act were replaced in law by Guardianship under the Adults with Incapacity (Scotland) Act 2000 and are now obsolete.

Deputies – England and Wales

37. A Deputy is similar to a Scottish Guardian but where the client was living in England or Wales. They are appointed by the Court of Protection under the Mental Capacity Act 2005 to make decisions for an adult when they have become unable to make them for themselves. A Deputy must be aged 18 or over.

Verifying a Deputyship court order is genuine

38. All Deputyship orders should carry the validation stamp of the Court of Protection on top of the front page. They must also have the seal of the Court at the bottom of the page. If either is missing the order cannot be accepted.

39. If there is any doubt about whether a Deputyship order is genuine you can follow operational guidance to contact the Office of the Public Guardian for England and Wales.

Verifying the Deputy is empowered to act for social security benefits in Scotland

40. Like a Guardianship order, a court order from the Court of Protection will set out what a Deputy is empowered to do. Where it grant powers relating to finances this is sometimes described as ‘property and affairs’.

41. For a Deputy to act for an incapable adult when they are living in Scotland, the court order from the Court of Protection must also have been registered with the OPG(S) as an “International Measure” through a summary application to the sheriff court. The Deputy should be able to provide a copy of a court order from the Sheriff which will specify that the Deputy be entered into the register of International Measures and a certificate of registration with the OPG(S).

42. Should you need to verify this or if it is unclear whether an order has been registered with the OPG(S) you should [make a request](#) to them providing as much personal information as possible about the person who is the subject of the search - for example, names, known addresses, date of birth etc.

Deputy is empowered to act for the client

43. If it is verified that the Deputy is empowered to act for the client, you should [set them up them on SPM](#).

44. When a new Deputy is appointed and set up on SPM while an ongoing benefit is in payment (e.g. SCP, CDP, ADP) we must send them a copy of the client’s notification of entitlement. This will tell them what the client is entitled to and what changes of circumstances must be reported to Social Security Scotland.

How long does a Deputyship last?

45. A deputyship order stays in force until it expires or is discharged by another Court order.

Controller appointed under the Mental Health (Northern Ireland) Order 1986 – Northern Ireland

46. Responsibility for the management of the property and affairs of people in Northern Ireland who, through mental disorder, are incapable of managing their own financial affairs is vested in the High Court under the provisions of Part VIII of the Mental Health (Northern Ireland) Order 1986. The “Patient” is the name given by the Order to a person who is suffering from mental disorder and whose financial affairs are subject to the Court’s control.

47. Like a Guardian or Deputy, a Controller is a person appointed by the Court to deal with the day-to-day management of the patient’s financial affairs. They can be a relative, a friend, or perhaps a professional adviser. If there is no one else suitable or willing to act, an officer of the Court or the Official Solicitor can be appointed in the last resort.

48. The Office of Care and Protection, is the department of the High Court in which administrative work relating to a Patient’s case is dealt with under the supervision of the Master (Care and Protection). This is similar to the role of the Public Guardian in the rest of the United Kingdom.

Verifying a Controller order is genuine

49. A Controller order will have been impressed with the Seal of the Court, there may also be “sealed copies” which have also been impressed with the seal where the Controller may wish to have more than one for office use. As with a Guardianship order Social Security Scotland must see originals or certified copies.

Verifying a Controller is empowered to act for social security benefits in Scotland

50. Like a Guardianship order, the court order from the Court of Protection will set out what a Controller is empowered to do. Where it grant powers relating to finances this is sometimes described as ‘property and affairs’.

51. For a Controller to act for an incapable adult when they are living in Scotland, the court order from the Court of Protection must also have been registered with the OPG(S) as an “International Measure” through a summary application to the Sheriff court. The Deputy should be able to provide a copy of a court order from the Sheriff which will specify that the Deputy be entered into the register of International Measures and a certificate of registration with the OPG(S).

52. Should you need to verify this or if it is unclear whether an order has been registered with the OPG(S) you should [make a request](#) to them providing as much personal information as possible about the person who is the subject of the search - for example, names, known addresses, date of birth etc.

How long does Controllership last

53. A Controllership will only come to an end for one of the following reasons:

- the Patient has recovered and is once again able to manage their own affairs;
- the Controller wishes to retire or for some other reason it becomes necessary to appoint a new Controller;
- the Court agrees that it is no longer necessary to retain the services of a Controller;
- the Patient dies

54. It is the responsibility of the Controller to notify Social Security Scotland if their powers end for any reason except their own death. Where a new Controller is put in place they should provide original or certified copies of the documents to show that they have been granted powers to act for the client.

Court order from outside of the UK

55. If you receive a court order outside the UK it must have been registered with the OPG(S) as an “International Measure” through a summary application to the sheriff court. The person stating that they have the authority to act should be able to provide a copy of a court order from the Sheriff which will specify that it be entered into the register of International Measures.

56. Should you need to verify this or if it is unclear whether an order has been registered with the OPG(S) you [should make a request](#) to them providing as much personal information as possible about the person who is the subject of the search - for example, names, known addresses, date of birth etc.

57. You must also check that it is authentic and grants the relevant powers to claim and receive the client’s benefits. Where the document is in any language other than English you should ask the attorney to provide either the original document or a certified copy of the original document, and a certified translation. You should then refer the document for advice - see operational guidance for how to escalate for advice from Scottish Government Legal Division.

Is the court order granted to an individual, or an organisation/ someone acting in a professional capacity?

58. It is important to determine whether any Guardian or other court appointed acting body from within the UK or elsewhere is acting in a personal or professional capacity.

Acting in a personal capacity

59. If they are acting in a personal capacity e.g they are friend or family member of the client, use his or her NINO as an identifier - if they have one.

60. Please note there is no obligation for them to provide these details. If they object, explain that, because of the way benefits are administered it will ease the handling of the claim and the payment of benefit if they provide their NINO or enough information for their NINO to be traced and for their identity to be verified.

Professional or corporate acting body

61. If they are acting in a professional capacity or as an employee of an organization never record their own personal details i.e. NINO, date of birth, or home address.

62. After you verify the attorney is empowered to act on the client's behalf for Social Security benefits see set them up the relationship on SPM – see operational guidance.

Multiple parties empowered to act within a court order

63. It is not unusual to have multiple Guardians or people named within a court order. For example a solicitor may be dealing with the finances while a family member or friend deal with the client's welfare, or for there to be joint guardians where both have finance and welfare powers.

Court order appointing multiple people allows Guardians to act separately

64. If the court order appoints two or more persons jointly and authorises them to act separately, you can pay benefit to whichever one makes the application provided the text of the order document meets the other requirements see '*Bank accounts and Court appointed acting bodies*' in this chapter. For more information about the other requirements, see '*Verifying the Guardian or Intervener is empowered to act for social security benefits*'.

Court order includes more than one person but does not allow them to act separately

65. If the court appoints two or more persons jointly but does not authorise them to act separately, any application for benefit must be made jointly and signed by all parties. All

payments in respect of the client must go into a bank account in the client's name that those acting for them agree on and have access to.

Impact of court appointed acting bodies on other relationship types on SPM

66. Where a court grants powers to a person or organisation that include managing their social security benefits, this takes precedence over any attorney or appointee, and any existing relationship on SPM should be ended.
67. If the client or previous Power of Attorney had previously given explicit authorisation for a third party representative to assist them in relation to any aspect of their benefits, this will become null and void and that 'third party representative' should be removed. The court appointed acting body may choose to give authorisation for the same person or organisation to represent them, but this will require fresh consent.
68. When a person or organisation takes over managing a client's benefits and recurring benefits are in payment, they should be sent a duplicate notification of entitlement. This is to ensure they understand what benefits are in payment and their responsibilities to report changes of circumstances. Check whether payments should continue to be paid into the same account or another account in the client's name that the person acting for them has access to.

Responsibilities of a court appointed acting body

69. If the court empowers a person or organisation to act in all matters, or specifically social security matters, they will be fully responsible for the client's benefits.
70. This includes:
- applying for benefit/s, including completing and signing any claim forms
 - collecting/receiving benefit payments and spending them in the client's interests
 - reporting any changes in circumstances
71. They are also responsible for reporting changes in their own circumstances that Social Security Scotland may require, e.g. a change of address or change of bank account.

Guardian or court appointed acting body not empowered to act

72. Check the text of the court order. If it appears that the person or organisation is not empowered to deal with the client's benefits or financial matters, or if it is unclear to you what powers they have been granted, you should seek advice - see operational guidance for how to escalate for advice from Scottish Government Legal Division.
73. If it is confirmed that the powers contained in the order do not allow the person to manage the client's benefits (for example welfare related powers only), do not set them up on SPM, but inform them that they are not able to apply on the client's behalf.

74. They can apply to the Court to have their powers amended, or Social Security Scotland can consider whether to put in place an appointee.
75. If an appointee is needed, [make a referral to Local Delivery to carry out an appointee visit/assessment](#). You should try to establish who should be the appointee before you make the referral, but regardless of who this is you must tell Local Delivery in the referral that a Guardianship or Intervention order that does not include social security powers is in place, and provide their contact details. This is because a court has already confirmed that the client is an incapable adult and the Guardian or Intervener may also be suitable to act as the appointee, or have views about who should act for the client instead of them.

Guardian or court appointed acting body dies

76. If you find out that someone who holds a court order to act for the client has died you should suspend payments immediately and consider whether to make a referral to Local Delivery to put in place an appointee. This is because the client has previously been deemed by a court to be an incapable adult and a new court order may be required, this may take several months to be put in place.
77. It could be that there is another named individual or organisation named within the existing Guardianship order. However, you may need to [liaise with the OPG\(S\)](#) to find out whether someone has been identified as the replacement. If so they may be the most likely candidate to become the client's appointee as an interim measure see [make a referral to Local Delivery to carry out an appointee visit/assessment](#).

Client with a court appointed acting body dies

78. When a client dies, the authority of anyone who was acting on their behalf while they were alive ends. While that person or organisation may also be their executor, or be in charge of making their funeral arrangements, the rules about who can deal with the client's application or receive any arrears due to them when they died are completely separate. See *Client Representative Guidelines Part 5.3 Executors and appointees for the deceased*.

Bank accounts and court appointed acting bodies

79. Benefit must never be paid into the court appointed acting body's personal bank account. Any funds received on behalf of the client must be deposited in an account in the name of the client to which the court appointed acting body should have access on their behalf.

Client has a court appointed acting body showing on DWP systems or SPM but they have completed an application themselves

80. Where you receive an application that has been completed by a client who is believed to be incapable of managing their benefits, you should contact the person or organisation acting for them to explore the circumstances of the application and to check that they are aware that it has been made.
81. As the client has been deemed an incapable adult by a court, the application may be withdrawn, or if the person acting for them wishes to proceed, they must check all of the contents of the application and complete the declaration afresh, but see below.

Client with a court appointed acting body calls us themselves

82. If a client who has a court appointed acting body contacts us we should remember that a court has decided that they are an incapable adult and cannot manage their benefits. However they may still be capable in many other ways. You should take note of what they say but you should not act on any of the information or instructions they may give you without careful consideration.
83. [You should consider why the client has contacted us](#). For example have they regained capacity, or could they be calling because something is wrong. If you have no concerns about the reason for the call, you should check with the person acting for the client that they are aware of it, and whether they wish it to be acted on - if any information was provided in support of an application, or instructions were given.

Concerns about the actions of a court appointed acting body

84. There may be times when the behaviour of a court appointed acting body causes concern, or the client or someone else contacts Social Security Scotland to report that the client is at risk of financial or other harm.
85. If this happens you should consider carefully what to do next so that the client is not placed at increased risk by our response. You should seek advice from the OPG(S). Their statutory duty is to ensure that those appointed to act for adults with incapacity act in their best interests and carry out their duties properly within the scope of their powers.
86. In some circumstances if a client's finances are at risk it may be necessary to suspend ongoing payments see suspensions chapter of the decision makers guide.

Client has a court appointed acting body showing on DWP systems or SPM but a different third party has completed the application

87. If an application is received from someone other than the acting body on SPM/DWP systems, you must find out whether the person who completed it has the legal authority to do so.

88. They may already be named on the court order or have replaced the existing Guardian and therefore have the authority to act. Where they have replaced the Guardian you should verify the documentation and update the relationship on SPM and proceed to process the application.

89. If:

- the person who has completed the form has no authority to act on behalf of the client; and
- the person who does have authority does not want to take it forward;

then reject the claim under Section 38(5) of the Social Security (Scotland) Act 2018*.

The known/verified acting body must be notified that the application was rejected, the reasons for that, and their right to appeal under section 61.

**this does not apply to BSF or JSP which are not paid under the 2018 Act*

A third party makes an application on behalf a client but says they are in the process of applying to become a Guardian

90. Check whether there is any other form of acting body or appointee in place. If there isn't, and the person who completed the form on the client's behalf is in the process of applying to become a Guardian, ask them whether they know when the Sheriff will consider the application. If the date is unknown or is some time away but the client is believed to lack capacity, discuss with the applicant whether they would want to apply to become an appointee in the interim. If so [make a referral to Local Delivery to carry out an appointee visit/assessment](#) and set a task for 3 months to check with the person whether their application has been granted. Once verified this would replace the Social Security Scotland appointee on SPM - see [Ending the relationship between a client representative and a client on SPM](#).

Guardian or court appointed acting body cannot be reached by phone, or correspondence is returned by Royal Mail and/or payments bounce

91. If a Guardian or court appointed acting body cannot be reached you should check the court order to see whether there are other named persons who can be contacted to clarify whether there has been a change in circumstances.

92. You can also [contact the OPG\(S\)](#) to establish whether there has been a change in the person or organisation on the public register. If you are unable to establish that the Guardian or acting body on SPM is still acting for the client you should consider suspending ongoing payments until the situation can be clarified. See Suspensions Decision Making Guide.

Court order seem to have been tampered with or fake, or another person is impersonating the court appointed acting body

93. There may be circumstances where a person tries to use a genuine court order to impersonate the named person or organisation who is genuinely appointed to act for the client. Someone may also present doctored or fake documents in order to access a client's benefits. You may need to [contact the OPG\(S\)](#) to check whether a Guardianship or intervention order is in place.
94. Provide as much personal information as possible about the person who is the subject of the search for example, names, known addresses, date of birth etc. as this will make it easier to search the register. If you have a Certificate and Case Number from the OPG(S) certificate include them in your request.
95. If you still have doubts about whether someone presenting as having Guardianship does have those powers, or if you have tried to verify the court order and have been unable to do so, and suspect that it may be false you should not set them up on SPM. No changes should be made to the location of any payments until the authority to act is verified. Consider whether they should be referred to fraud.

Overpayment made to a court appointed acting body

96. The Adults with Incapacity(Scotland) Act 2000 specifies that no liability shall be incurred by any guardian(or equivalent recognised by the law of Scotland), person authorised under an intervention order, or the managers of an establishment for any breach of any if they have:
- acted reasonably and in good faith and in accordance with the principles of the 2000 Act; or
 - failed to act and the failure was reasonable and in good faith and in accordance with the principles of the 2000 Act.

Adults with Incapacity (Scotland) Act 2000 section 82

97. Where an overpayment is incurred in respect of a client with someone with a court appointed acting body see detailed guidance on overpayment recovery.