

# Client representative guidelines

Part 5: Introduction to Social Security Scotland appointees

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## Introduction

1. Part 5 of these guidelines is split into four parts including this introduction. Each section sets out in detail the requirements and an overview of procedures for each type of appointee that may be made by Scottish Ministers.

## What is an Appointee

2. When a client needs another person to act on their behalf to manage their benefits, and nobody else has the legal authority to handle their financial affairs, Scottish Ministers can appoint a person as the client's 'appointee'. This is a person aged 16 or over, or an organisation, nominated to act on behalf of the client when dealing with Social Security Scotland.
3. By legal authority, we generally mean someone who has:
  - Parental Rights and Responsibilities (PRRs);
  - Power of Attorney; or
  - a Guardianship or Invention order
  - Grant of Confirmation

This list is not exhaustive.

4. An appointee can do anything the client could have done in relation the client's entitlement to devolved benefits if the client had been acting for themselves, this is an important position of trust.
5. They become responsible for:
  - The contents of any application, including making the legal declaration on the client's behalf
  - Supplying any information required by Social Security Scotland
  - Receiving and responding to letters and communications from Social Security Scotland
  - Exercising dispute rights on behalf of the client
  - Reporting changes to their own circumstances, and the client's circumstances where they may be relevant to administration of the client's benefits
  - Receiving payments and ensuring the money is spent for the benefit of the client
  - Supporting the client to participate in decision making to the extent that they are able, taking into account their past and present wishes
6. They can also enter into, or end an agreement in relation to the hire or hire-purchase of a vehicle through the Accessible Vehicles and Equipment Scheme where appropriate. They can give consent for Social Security Scotland to pay (in whole or in part) the mobility component of the client's disability benefits to an Accessible Vehicle and Equipment (AVE) provider.

7. Once an appointment is in place it applies to all devolved benefits paid under Part 2 and section 79 the Social Security (Scotland) Act 2018 <sup>1</sup>(the 2018 Act).
8. It is important to remember that an appointment only gives the appointee powers to interact with Social Security Scotland in relation to the client's devolved benefits. It should not be assumed they are responsible for, or have authority over any other areas of a client's life, including their welfare or other finances, as this requires additional legal powers.

## Legislation

9. The Social Security Administration and Tribunal Membership (Scotland) Act 2020 made amendments to the 2018 Act. It added provisions relating to appointees<sup>2</sup> that set out the circumstances where Scottish Ministers can appoint another person or organisation to manage a client's benefits for them.
10. The three situations in which an appointment may be appropriate are:
  - when an individual under of the age of 16 (a child) is not living with, or being cared for by someone who has parental rights and responsibilities (i.e. a parent or legal guardian) and that person is willing and practicably able to act on behalf of the the child on matters relating to the child's entitlement to Social Security Scotland benefits.  
*-section 85A(3)*
  - when an individual, who is 16 or over (an adult), meets the definition of an adult with incapacity under the Adults with Incapacity (Scotland) Act 2000, and nobody else, such as an attorney or guardian, already has legal authority and is willing to act on behalf of the individual to manage their benefits  
*-section 85B(7)*
  - When an individual is deceased and there is no executor appointed to administer the individual's estate  
*-section 85B(6)*
11. The detailed rules and processes for each appointee type are set out in Parts 5.1, 5.2, 5.3 of these guidelines.
12. These have been subject to consultation with statutory consultees set out in section 85C of the 2018 Act, and meet the statutory requirement for Scottish Ministers to prepare and publish guidelines for each appointment which must include:
  - how Social Security will decide that a person is suitable to be appointed;
  - how a person or organisation can request that an appointment is made or terminated, and how that it will be handled;

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<sup>1</sup> Job Start Payment and Best Start Foods are not paid under the Social Security (Scotland) Act 2018.

<sup>2</sup> [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

- how those with an interest in the making or termination of an appointment will be involved in those decisions;
  - how Social Security Scotland will go about reviewing appointments at least every 5 years;
  - how concerns about an appointee can be raised and how those concerns will be handled.
13. Section 85A and 85B also set out who can ask for each type of appointment to be made or terminated in relation to a child or an adult, respectively.

## Principles of appointment

14. All appointments made under the 2018 Act are underpinned by the following principles.
15. An appointment should:
- only be made if it appears to secure a benefit in respect of the client which cannot be reasonably achieved without the appointment
  - take account of the circumstances of individual cases before a decision is made to make an appointment
  - only be in place for as long as it continues to secure the benefit for the client
  - be reviewed regularly according to the client's circumstances, but at least every 5 years
  - be made on the basis of good information
16. When possible Social Security Scotland must:
- take account of the views of those who may be affected by the appointment before making or terminating it - including the client and others involved in their care.
  - provide the client, prospective appointees, and relevant others with adequate information to support their involvement in the decision-making process.