

2021 No. 313

REDRESS SCHEME

**The Redress for Survivors (Historical Child Abuse in Care)
(Payment of Legal Fees) (Scotland) Regulations 2021**

Made - - - - *13th September 2021*

Laid before the Scottish Parliament *15th September 2021*

Coming into force - - *1st December 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 94(3), (4) and (6) and 95(5) of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Redress for Survivors (Historical Child Abuse in Care) (Payment of Legal Fees) (Scotland) Regulations 2021 and come into force on 1 December 2021.

(2) In these Regulations—

“the Act” means the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021,

“applicant” means any person making or who may be considering making an application, and

“application” means an application for a redress payment under Part 4 of the Act.

Fee payment requests

2. A fee payment request must—

- (a) be made by completing and submitting to the Scottish Ministers a form to be provided by the Scottish Ministers for that purpose,
- (b) specify which one or more of section 92(1), 93(1) or (3) of the Act the request relates to,
- (c) specify the legal work undertaken and when that work was carried out,
- (d) in the case of a request under section 93(1) or (3) of the Act, provide information about the exceptional or unexpected circumstances which the solicitor considers may justify the payment of the prescribed sum or, as the case may be, an additional sum,
- (e) contain or be accompanied by any other information the solicitor considers relevant to the request.

Time limit for fee payment requests

3.—(1) A fee payment request must be submitted to Scottish Ministers where it relates to—

- (a) an application which has been submitted but which has not been paused under section 32 of the Act nor withdrawn under section 33 of the Act, before the end of the period of 8 weeks beginning with the date on which the notice of a determination under section 36 of the Act or, as the case may be, the outcome of any review of that determination under section 57 of the Act, was received by the applicant,
- (b) an application which has been paused under section 32 of the Act, before the end of the period of 6 months beginning with the date on which the Scottish Ministers received the request to pause the application,
- (c) an application which has been withdrawn under section 33 of the Act, before the end of the period of 6 months beginning with the date on which the Scottish Ministers received the request to withdraw the application,
- (d) a proposed application by a person who did not subsequently submit an application, before the end of the period of 6 months beginning with the date on which the decision was taken not to submit an application.

(2) The Scottish Ministers may consider a fee payment request despite the request for it not being made within the relevant applicable period in each of the sub-paragraphs of paragraph (1), if they are satisfied that the person had a good reason for not making the request sooner.

Prior approval to undertake legal work in exceptional or unexpected circumstances

4.—(1) A solicitor must, prior to undertaking legal work in exceptional or unexpected circumstances as referred to in section 93(3) of the Act—

- (a) make a request in writing to the Scottish Ministers for authority in principle to undertake the legal work, and
- (b) specify the additional sum which the solicitor considers is likely to be requested under section 93(3) of the Act in respect of the legal work.

(2) The Scottish Ministers must, as soon as reasonably practicable after receiving a request under paragraph (1), provide the request and any information accompanying it, to Redress Scotland.

(3) On receipt of a request under paragraph (2), Redress Scotland must as soon as reasonably practicable—

- (a) assess whether there are exceptional or unexpected circumstances which justify the solicitor reasonably undertaking the legal work so that authority in principle ought to be given, and
- (b) where satisfied that there are exceptional or unexpected circumstances which justify the legal work being reasonably undertaken, indicate if the additional sum specified under paragraph (1)(b) or such other sum is appropriate.

(4) Once Redress Scotland has carried out its assessment, it must inform the Scottish Ministers who must, as soon as reasonably practicable, provide the solicitor who made the request with—

- (a) the outcome of the request, and
- (b) a summary, provided by Redress Scotland, of the reasons for that.

(5) Redress Scotland may dispense with any of the requirements under this regulation if satisfied that the solicitor had a good reason for not having obtained authority in principle to undertake the legal work prior to undertaking it.

Review of assessment of prior approval

5.—(1) A solicitor may request Redress Scotland to review the assessment made under regulation 4, where the outcome of the assessment is that Redress Scotland—

- (a) is not satisfied, in accordance with regulation 4(3)(a), that authority in principle to undertake the legal work ought to be given, or
- (b) considers that an additional sum lower than that specified by the solicitor under regulation 4(1)(b) is appropriate.

(2) A request under paragraph (1) must be made in writing to the Scottish Ministers and contain or be accompanied by any information that the solicitor considers relevant to the review requested.

(3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request for a review under paragraph (1), provide the request and any information accompanying it, to Redress Scotland.

(4) On receipt of a request under paragraph (3), Redress Scotland must assess it.

(5) Once Redress Scotland has carried out its assessment, it must inform the Scottish Ministers who must, as soon as reasonably practicable, provide the solicitor who made the request with—

- (a) the outcome of the request, and
- (b) a summary, provided by Redress Scotland, of the reasons for that.

Prescribed sums in respect of legal work reasonably undertaken

6.—(1) For the purpose of section 92(1) of the Act, column A and B of the table of fees in the relevant part of the schedule of these Regulations prescribes the sum for the corresponding description of legal work specified in the second column of that table.

(2) Unless paragraph (3) applies, the prescribed sum for the corresponding description of legal work specified in the second column of that table, is that specified in column A of the table of fees, whether or not that work is conducted before or after the determination of the application and whether or not the application resulted in an offer of a redress payment.

(3) This paragraph applies if—

- (a) the application has not been determined by Redress Scotland because the application has been paused by virtue of section 32 of the Act and has not been resumed, or the application has been withdrawn by virtue of section 33 of the Act, or
- (b) the applicant died after making an application but before their application was determined.

(4) Where paragraph (3) applies, the prescribed sum for the corresponding description of legal work specified in the second column of that schedule, is that specified in column B of the table of fees.

(5) For the purposes of section 93(1) of the Act, the sum prescribed is £250.

(6) Where the work done by the solicitor constitutes a supply of services in respect of which value added tax is chargeable, an amount equal to the amount of value added tax chargeable will be added to the applicable sum as prescribed by virtue of this regulation.

Reviews of assessments of fee payment requests

7.—(1) This regulation applies where a solicitor requests a review by Redress Scotland of an assessment of a fee payment request in accordance with section 95(4) of the Act.

(2) A request to Redress Scotland to review its assessment of a fee payment request must—

- (a) be made by completing and submitting to the Scottish Ministers a form to be provided by Scottish Ministers for that purpose,

- (b) be made before the end of the period of 8 weeks beginning with the date on which notice of the outcome of the fee payment request was received by the solicitor,
- (c) specify why a review is being requested, and
- (d) contain or be accompanied by any information the solicitor considers relevant to the review requested.

(3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request for a review, provide the request and any information accompanying it, to Redress Scotland.

(4) A review may be conducted despite the request for it not being made within the period mentioned in paragraph (2)(b) if Redress Scotland is satisfied that the person had good reason for not requesting a review sooner.

(5) Where a request for a review is submitted in a case mentioned in section 95(4)(c)(ii) of the Act, payment of the additional sum, so far as not already made, is to be suspended pending the determination of the request for a review.

Review panels

8.—(1) A review requested under regulation 7 is to be determined on behalf of Redress Scotland by a panel consisting of at least 2 members of Redress Scotland appointed by the chairing member (“a review panel”).

(2) A review panel must not include any member of Redress Scotland whose assessment is the subject of the request for a review.

Procedure for a review

9.—(1) The review panel appointed under regulation 8 to conduct the review is to determine it on the basis of—

- (a) the information on which the assessment which is the subject of the request for a review was made, and
- (b) any further relevant information which is provided to it or obtained by the review panel, including any information contained in or accompanying the request for a review and any written representations which are made to the review panel.

(2) The procedure for conducting a review is otherwise to be determined by Redress Scotland.

Outcome of a review

10.—(1) On a review, the review panel appointed under regulation 8 to conduct the review must consider—

- (a) whether Redress Scotland ought to have assessed the fee payment request differently, and
- (b) in the case where additional information is provided to or obtained by the review panel, whether the fee payment request ought to be assessed differently as a result.

(2) The review panel may uphold, reverse or vary any part of the assessment of the fee payment request (whether the request for a review relates to that part of it or not).

(3) Once the review panel has conducted the review, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—

- (a) notify the solicitor of the review panel’s assessment, and
- (b) provide the solicitor with a summary, provided by Redress Scotland, of the review panel’s reasons for reaching that assessment.

(4) The assessment of the review panel under this regulation is final.

Withdrawal of review request

11.—(1) A request for a review may be withdrawn at the request of the solicitor at any time prior to the outcome of the assessment made under regulation 10.

(2) A request under paragraph (1) must be made in writing to the Scottish Ministers.

(3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request under paragraph (1) inform Redress Scotland of it.

(4) Where Redress Scotland is informed of a request made under paragraph (1), Redress Scotland must bring to an end any further assessment of the review to which the request relates.

(5) Where a request for a review is withdrawn, no further request for a review may be made in respect of the assessment to which the request relates, unless the further request is made for a different reason.

St Andrew's House,
Edinburgh
13th September 2021

JOHN SWINNEY
A member of the Scottish Government

SCHEDULE

Regulation 6

Table of Fees

Part 1 – first applications

	<i>Column A</i>	<i>Column B</i>
1. For all work in connection with an application for a fixed rate payment under section 29(1)(c)(i) of the Act.	£450	£340
2. For all work in connection with an application for an individually assessed payment under section 29(1)(c)(ii) of the Act.	£2000	£1500
3. For all work in connection with any application for a next of kin payment under section 29(1)(c)(iii) of the Act.	£450	£340

Part 2 – subsequent applications

	<i>Column A</i>	<i>Column B</i>
4. Where a person has made a previous application for a fixed rate payment, for all work in connection with an application for an individually assessed payment under section 30(2) of the Act by that person.	£1550	£1160
5. Where a person has made a previous application for an individually assessed payment, for all work in connection with a further application for an individually assessed payment under section 30(3) of the Act by that person.	£250	£190
6. Where a person has made and withdrawn a previous application for an individually assessed payment, for all work in connection with a new application for an individually assessed payment under section 30(6) of the Act by that person.	£500	£375
7. Where a person has made a previous application for an individually assessed payment, for all work in connection with a further application for an individually assessed payment under section 30(8) of the Act by that person.	£250	£190
8. Where a previous application for an individually assessed payment resulted in a determination under section 60(4) of the Act that the person was precluded from being offered a payment and as a result of an appeal in respect of a conviction or sentence, section 60 will no longer apply, for all work in connection with a further application for an individually assessed payment under 30(7) of the Act by that person.	£250	£190
9. Where a previous application for a fixed rate payment resulted in a determination under section 60(4) of the Act that the person was precluded from being offered a payment and as a result of an appeal in respect of a conviction or sentence, section 60 will no longer apply, for all work in connection with an application for an individually assessed payment under section 30(7) of the Act by that person.	£1550	£1160
10. Where a previous application for a fixed rate payment has been made and withdrawn by an applicant, for all work in connection with a new application for a fixed rate payment under section 30(6) of the Act by that person.	£110	£80

11.	Where a previous application for a fixed rate payment has been made, for all work in connection with a further application for a fixed rate payment under section 30(8) of the Act by that person.	£250	£190
12.	Where a previous application for a fixed rate payment resulted in a determination under section 60(4) of the Act that the person was precluded from being offered a payment and as a result of an appeal in respect of a conviction or sentence, section 60 will no longer apply, for all work in connection with a further application for a fixed rate payment under section 30(7) of the Act by that person.	£250	£190
13.	Where a previous application for a next of kin payment has been made and withdrawn by a person, for all work in connection with a further application for a next of kin payment under section 30(6) of the Act by that person.	£110	£80
14.	Where a previous application for a next of kin payment resulted in a determination under section 60(4) of the Act that the person was precluded from being offered a payment and as a result of an appeal in respect of a conviction or sentence, section 60 will no longer apply, for all work in connection with a further application for a next of kin payment under section 30(7) of the Act by that person.	£250	£190
15.	Where a previous application for a next of kin payment has been made, for all work in connection with a further application for a next of kin payment under section 30(8) of the Act by that person.	£250	£190

Part 3 - reviews

		<i>Column A</i>	<i>Column B</i>
16.	For all work in connection with a review of a determination made under section 25 of the Act (eligibility to apply for a next of kin payment: exceptional circumstances) under section 26 of the Act.	£250	£190
17.	For all work in connection with a review of a direction under section 51 of the Act (payments to children) under section 52 of the Act.	£250	£190
18.	For all work in connection with a review of a redress payment determination under section 54 of the Act.	£250	£190
19.	For all work in connection with a review of a determination made under section 60(4) of the Act (applicants etc. with convictions for serious offences) under section 62 of the Act.	£250	£190
20.	For all work in connection with a review of a determination made under section 66(3) of the Act (applicant's death while application ongoing) as to whether a nominated beneficiary is to be invited to take over the application under section 68 of the Act.	£250	£190

Part 4 – nominated beneficiaries

	<i>Column A</i>	<i>Column B</i>
21. For all work in connection with an application for a redress payment by a nominated beneficiary where the nominated beneficiary has been invited to take over the application under section 66 of the Act.	£500	£375

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the redress scheme established by the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (asp 15) (“the Act”).

Section 92 of the Act requires the Scottish Ministers, on request, to pay prescribed sums to a solicitor in respect of the legal work reasonably undertaken in making an application for a redress payment.

Section 93 of the Act requires Scottish Ministers to pay certain fees for legal work in exceptional cases. This includes cases where a person sought legal advice on their eligibility to apply for a redress payment, but did not subsequently apply.

Section 95 of the Act makes provision in relation to assessment, notification and review of fee payment requests.

These Regulations make provision for the purposes of sections 92, 93 and 95 of the Act.

Regulation 2 makes provision for the form and content and information accompanying a fee payment request.

Regulation 3 makes provision for the timescale for submission of fee payment requests.

Regulation 4 makes provision to require the prior authorisation by Redress Scotland of legal work in exceptional or unexpected circumstances before the legal work is undertaken.

Regulation 5 provides that a solicitor may ask for review of an assessment by Redress Scotland under regulation 4 where Redress Scotland does not consider that authority in principle for undertaking exceptional or unexpected legal work ought to be given, or it considers that the additional sum likely to be paid for that work is less than the solicitor requested.

Regulation 6 and the schedule prescribes sums for the purposes of sections 92(1) and 93(1) of the Act.

Regulations 7 to 11 make provision for the review of decisions by Redress Scotland in relation to fee payment requests, and the timescales and procedures for those reviews.

Impact assessments have been prepared in relation to the Act and instruments under it and will be published online at www.gov.scot.

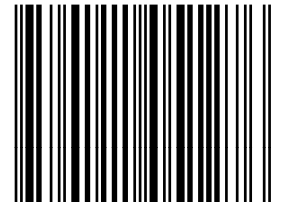
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