



# Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021

## 2021 asp 15

### PART 3

#### ELIGIBILITY AND KEY CONCEPTS

##### *Eligibility to apply for next of kin payments*

#### **24 Eligibility to apply for a next of kin payment**

- (1) A person may apply for a redress payment under section 18 which takes the form of a next of kin payment only if—
  - (a) the person meets the eligibility criteria to apply for a next of kin payment, or
  - (b) the person is granted permission to apply for a next of kin payment under section 25, or on a review under section 26, due to exceptional circumstances.
- (2) A person meets the eligibility criteria to apply for a next of kin payment where—
  - (a) the person is the specified next of kin of someone who died on or after 1 December 2004 (“the deceased person”),
  - (b) the deceased person would, if alive, have been eligible to apply for a redress payment under section 18 (other than for a next of kin payment), and
  - (c) where the deceased person died on or after the day section 18 came into force, the condition in subsection (3) is met.
- (3) The condition referred to in subsection (2)(c) is that—
  - (a) the deceased person had not applied for a fixed rate payment or an individually assessed payment, or
  - (b) the deceased person had applied for such a redress payment but—
    - (i) died while the application was ongoing,
    - (ii) where the application was for an individually assessed payment, had not previously been paid a fixed rate payment, and
    - (iii) either a nominated beneficiary is not taking over, or has not taken over, the application by virtue of section 71 or, if the application was so taken over, it was brought to an end in the circumstances described

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*Status: This is the original version (as it was originally enacted).*

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in section 73(2) without the nominated beneficiary having accepted any redress payment in respect of the application.

- (4) For the purpose of subsection (3)(b)(i), whether an application is ongoing is to be determined in accordance with section 66(6) and (7).

## **25 Eligibility to apply for a next of kin payment: exceptional circumstances**

- (1) A person may apply for permission to apply for a next of kin payment due to exceptional circumstances where—
- the person is the specified next of kin of someone who died (“the deceased person”),
  - the deceased person had applied for, and been offered, a fixed rate payment or an individually assessed payment but the offer was not accepted during the period it was valid and the deceased person subsequently died, and
  - if the application was for an individually assessed payment, the deceased person had not previously been paid a fixed rate payment.
- (2) An application under subsection (1) must—
- be made to the Scottish Ministers,
  - be made in such form, if any, as Ministers require,
  - specify the exceptional circumstances due to which permission is being sought, and
  - contain or be accompanied by any information the applicant considers relevant.
- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving an application under subsection (1), provide the application, and any information accompanying it, to Redress Scotland.
- (4) The Scottish Ministers must publicise any requirements which are for the time being set under subsection (2)(b).
- (5) An application under subsection (1) is to be determined on behalf of Redress Scotland by a panel of at least 2 members of Redress Scotland appointed by the chairing member.
- (6) The procedure for determining an application under subsection (1) is to be determined by Redress Scotland.
- (7) The panel appointed under subsection (5) to determine the application may grant the applicant permission to apply for a next of kin payment only where it considers that there are exceptional circumstances which merit it.
- (8) Once the panel has determined whether or not to grant the applicant permission to apply for a next of kin payment due to exceptional circumstances, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
- notify the applicant of the determination, and
  - provide the applicant with a summary, provided by Redress Scotland, of the panel’s reasons for reaching that determination.

## **26 Review of determination made under section 25**

- (1) Where an applicant is notified of a determination under section 25 that permission to apply for a next of kin payment due to exceptional circumstances is not being granted, the applicant may request a review of the determination.
- (2) A request for a review must—
  - (a) be made to the Scottish Ministers,
  - (b) be made before the end of the period of 8 weeks beginning with the date on which notice of the determination was received by the applicant,
  - (c) be made in such form, if any, as Ministers require,
  - (d) specify why a review is being requested, and
  - (e) contain or be accompanied by any information the applicant considers relevant.
- (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 specified in subsection (2)(b) if Redress Scotland is satisfied that the applicant has a good reason for not requesting a review sooner.
- (5) The Scottish Ministers must publicise any requirements which are for the time being set under subsection (2)(c).
- (6) Sections 55, 56 and 59(1) to (5) apply for the purposes of a review under this section as they apply for the purposes of a review under section 54, subject to the modification that the reference in section 59(1) to a determination being made under section 57 is to be read as a reference to a determination being made under section 27.

## **27 Outcome of a section 26 review**

- (1) On a review under section 26, the review panel appointed under section 55 to conduct it—
  - (a) must consider—
    - (i) whether the panel appointed under section 25(5) to determine whether or not to grant permission to apply for a next of kin payment due to exceptional circumstances ought to have reached a different determination, and
    - (ii) in a case where additional evidence is provided to or obtained by the review panel, whether the application ought to be determined differently as a result,
  - (b) may uphold or reverse the determination.
- (2) 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 applicant of the review panel's determination, and
  - (b) provide the applicant with a summary, provided by Redress Scotland, of the review panel's reasons for reaching that determination.
- (3) The determination of the review panel under this section is final.

## **28 Meaning of “specified next of kin”**

- (1) In this Act, “specified next of kin”, in relation to a deceased person, means—
- (a) the person who, immediately before the death of the deceased person, was—
    - (i) the spouse or civil partner of the deceased person, or
    - (ii) the cohabitant of the deceased person,
  - (b) where the condition in subsection (3) is met, a child of the deceased person.
- (2) In a case where there is or was both a person falling within subsection (1)(a)(i) and a person falling within subsection (1)(a)(ii), subsection (1)(a) is to be read as including only the person who was the cohabitant of the deceased person.
- (3) The condition referred to in subsection (1)(b) is that—
- (a) there is nobody who falls within subsection (1)(a) (either because there was no such person or because the person has since died), and
  - (b) in a case where the person has since died, the person had not accepted an offer of a next of kin payment in respect of the deceased person.
- (4) In this section—
- “child of the deceased person” includes—
    - (a) a stepchild of the deceased person, and
    - (b) a person who was treated by the deceased person as the deceased person’s child,
  - “cohabitant of the deceased person” means a person who—
    - (a) was neither married to nor in a civil partnership with the deceased person, but
    - (b) was living with that person as if they were married to each other and had been so living for a period of at least 6 months.