



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

2021 asp 15

## PART 3

### ELIGIBILITY AND KEY CONCEPTS

#### *Meanings of “relevant care setting” and “resident”*

#### **20 Meaning of “relevant care setting”**

- (1) In this Act, “relevant care setting” means—
- (a) a residential institution in which the day-to-day care of children was provided by or on behalf of a person other than a parent or guardian of the children resident there,
  - (b) a place, other than a residential institution, in which a child resided while being—
    - (i) boarded-out,
    - (ii) fostered.
- (2) But a place is not a relevant care setting by virtue of subsection (1)(b) where the child was boarded-out or fostered—
- (a) with a relative or guardian of the child, or
  - (b) under arrangements between a parent or guardian of the child and another person unless that other person was either—
    - (i) a public authority, or
    - (ii) a voluntary organisation exercising functions in relation to the safeguarding or promotion of the welfare of the child or the protection or furthering of the child’s interests.
- (3) In this section and in section 22, “residential institution” means—
- (a) a children’s home,
  - (b) a penal institution,
  - (c) a residential care facility,

- (d) school-related accommodation,
  - (e) secure accommodation.
- (4) The Scottish Ministers may by regulations—
- (a) modify the meaning of “residential institution” by—
    - (i) adding a description of establishment as a residential institution to those mentioned in subsection (3),
    - (ii) varying the description of a residential institution in that subsection,
  - (b) modify section 21(1) as Ministers consider appropriate in consequence of any modification of subsection (3) or otherwise.
- (5) The Scottish Ministers may make regulations under subsection (4) only if satisfied, so far as reasonably practicable, that doing so will not have the effect that persons who would otherwise be eligible to apply for redress payments will cease to be so eligible.

## 21 Meaning of “residential institution”: further provision

- (1) For the purpose of this section and section 20—
- “children’s home” means a residential establishment which provided accommodation for children in order to safeguard or promote their welfare or otherwise to protect or further their interests,
- “penal institution” means an establishment in which children were detained or imprisoned on remand or in pursuance of a sentence imposed by a court of criminal jurisdiction (other than a court-martial),
- “personal care” means care which relates to—
- (a) the day-to-day physical tasks and needs of the person cared for (for example, but without prejudice to that generality, eating and washing), and
  - (b) the mental processes related to those tasks and needs (for example, but without prejudice to that generality, remembering to eat and wash),
- “personal support” means counselling, or other help, as part of a planned programme of care,
- “residential care facility” means an establishment, including a hospital—
- (a) which provided long-term residential accommodation for children for the purpose of meeting needs arising from a mental or physical condition, whether or not medical care or treatment, nursing, or personal care or support was also provided, and
  - (b) in which the child resided under arrangements made by or on behalf of—
    - (i) a public authority, or
    - (ii) a voluntary organisation exercising functions in relation to the safeguarding or promotion of the welfare of the child or the protection or furthering of the child’s interests,
- “school” includes a school other than a public school only where the child’s attendance at the school was arranged and paid for by or on behalf of—
- (a) a local authority or an education authority, or
  - (b) a voluntary organisation exercising functions in relation to the safeguarding or promotion of the welfare of the child or the protection or furthering of the child’s interests,
- “school-related accommodation” means an establishment (not including domestic premises)—

- (a) provided by, or under arrangements made by, a person who provided or managed a school, and
- (b) which provided residential accommodation for children for the purpose of or in connection with their attendance at the school,

“secure accommodation” means a residential establishment, other than a penal institution, provided for the purpose of restricting the liberty of children (whether or not the establishment was also provided in order to safeguard or promote the welfare or otherwise to protect or further the interests of children).

- (2) In subsection (1), references to an establishment include references to—
  - (a) part of an establishment, and
  - (b) an establishment which forms part of another establishment.

## **22 Meaning of “resident”**

- (1) A reference to being resident in a relevant care setting includes a reference to being absent from the care setting while under the care of—
  - (a) the person who provided residential accommodation for the child in the residential institution or other place, or
  - (b) a person authorised by that person.
- (2) For the purpose of subsection (1), it is immaterial whether the child was within or outside Scotland during the period of absence from the relevant care setting.