



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

## 2021 asp 15

### PART 4

#### FINANCIAL REDRESS: REDRESS PAYMENTS

### CHAPTER 3

#### APPLICATIONS AFFECTED BY CONVICTIONS FOR SERIOUS OFFENCES

#### **60 Applicants etc. with convictions for serious offences**

- (1) This section applies where, at any time before a panel appointed under section 35 to determine an application, or, as the case may be, a review panel appointed under section 55 to conduct a review, does so, a person mentioned in subsection (2) is—
- (a) convicted of—
    - (i) murder,
    - (ii) rape, or
    - (iii) a relevant offence for which the person is sentenced to imprisonment for a term of 5 years or more, or
  - (b) convicted of an equivalent offence and, in the case of an offence equivalent to a relevant offence, is sentenced to imprisonment for a term of 5 years or more.
- (2) The person referred to in subsection (1) is—
- (a) in the case of an application for a fixed rate payment or an individually assessed payment—
    - (i) the applicant, or
    - (ii) where the applicant dies while the application is ongoing, the applicant or the applicant's nominated beneficiary,
  - (b) in the case of an application for a next of kin payment, the applicant or the person in respect of whom the application is made.

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- (3) For the purpose of subsection (2)(a)(ii), whether an application is ongoing is to be determined in accordance with section 66(6) and (7).
- (4) Before the panel mentioned in subsection (1) determines the application or, as the case may be, the request for a review, it must determine, in accordance with subsection (5), whether or not the applicant or, as the case may be, the nominated beneficiary (“the relevant person”) is precluded from being offered a redress payment.
- (5) The relevant person is precluded from being offered a redress payment where the panel, having regard to the matters mentioned in subsection (6), considers that it would be contrary to the public interest to make a redress payment to that person.
- (6) The matters referred to in subsection (5) are—
  - (a) the nature of the offence,
  - (b) the sentence imposed (and, where the sentence is or includes imprisonment, the term imposed),
  - (c) the length of time since the offence was committed,
  - (d) any rehabilitation activity undertaken by the person who committed the offence, and
  - (e) any other matter that the panel considers relevant.
- (7) Where the panel mentioned in subsection (1) determines under subsection (4) that a relevant person is precluded from being offered a redress payment, it may also determine whether or not the relevant person would otherwise have been eligible for a redress payment.
- (8) Once the panel has determined whether or not the relevant person is precluded from being offered a redress payment and, where applicable, whether or not the person would otherwise have been eligible for such a payment, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
  - (a) notify the relevant person of the determination, and
  - (b) provide the relevant person with a summary, provided by Redress Scotland, of the panel's reasons for reaching that determination.
- (9) In this section, “equivalent offence” means an offence under the law in force in a country outside the United Kingdom at the time of the offence where the acts or omissions which constitute the offence would, if committed in the United Kingdom, have constituted an offence mentioned in subsection (1)(a).

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**Commencement Information**

**II** S. 60 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

## 61 Applicants etc. with convictions for serious offences: definitions

- (1) For the purposes of section 60—
  - “imprisonment” includes detention in a young offenders institution or detention centre, detention in a Borstal institution and penal servitude,
  - “murder” includes, in relation to murder committed outside Scotland, aiding, abetting, counselling, procuring or inciting murder,
  - “rape”—

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- (a) means rape—
- (i) at common law,
  - (ii) under section 1 of the Sexual Offences Act 1956,
  - (iii) under section 1 of the Sexual Offences Act 2003,
  - (iv) of a child under 13 (under section 5 of that Act),
  - (v) by virtue of article 18 of the Criminal Justice (Northern Ireland) Order 2003 (SI 2003/1247 (N.I. 13)),
  - (vi) under article 5 of the Sexual Offences (Northern Ireland) Order 2008 (SI 2008/1769 (N.I. 2)),
  - (vii) of a child under 13 (under article 12 of that Order),
  - (viii) under section 1 of the Sexual Offences (Scotland) Act 2009,
  - (ix) of a young child (under section 18 of that Act), and
- (b) includes, in relation to rape committed outside Scotland, aiding, abetting, counselling, procuring or inciting rape,

“relevant offence” means—

- (a) a violent offence, being an offence inferring personal violence other than—
  - (i) murder,
  - (ii) rape, or
  - (iii) a sexual offence,
- (b) a sexual offence listed in schedule 3 of the Sexual Offences Act 2003 other than rape (but including attempted rape and conspiracy to commit rape).

(2) The Scottish Ministers may by regulations modify subsection (1) to—

- (a) add an offence,
- (b) vary the description of an offence,
- (c) remove an offence.

#### Commencement Information

**I2** S. 61 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

## 62 Review of determination made under section 60

- (1) A relevant person who is notified of a determination under section 60 that the person is precluded from being offered a redress payment or, as the case may be, that the person would otherwise not have been eligible for such a payment 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 relevant person,
  - (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 person considers relevant.

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- (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 relevant person 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 63.

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**Commencement Information**

**I3** S. 62 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

### **63 Outcome of a section 62 review**

- (1) On a review under section 62, the review panel appointed under section 55 to conduct it—
  - (a) must consider—
    - (i) whether the panel which determined, under section 60, that the relevant person is precluded from being offered a redress payment, or, as the case may be, would not otherwise have been eligible for a redress payment, 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 relevant person of the review panel's determination,
  - (b) provide the person with a summary, provided by Redress Scotland, of the review panel's reasons for reaching that determination.
- (3) Where the review panel reverses a determination that the relevant person is precluded from being offered a redress payment, the Scottish Ministers must refer the application or, as the case may be, the request for a review under section 54 to the panel which made the determination under section 60(4), to determine it.
- (4) The determination of the review panel under this section is final.

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**Commencement Information**

**I4** S. 63 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

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## 64 Information about convictions for serious offences

- (1) An applicant or, as the case may be, an applicant's nominated beneficiary (“a relevant person”) must provide the Scottish Ministers with the information mentioned in subsection (2) in relation to any conviction which is or may be relevant for the purposes of section 60.
- (2) The information to be provided in relation to a conviction is—
  - (a) the nature of the offence,
  - (b) the sentence imposed (and, where the sentence is or includes imprisonment, the term imposed),
  - (c) the length of time since the offence was committed, and
  - (d) any rehabilitation activity undertaken by the person who committed the offence.
- (3) Where the relevant person provides information in relation to a conviction under subsection (1), the Scottish Ministers must, as soon as reasonably practicable, provide that information to Redress Scotland.

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### Commencement Information

**I5** S. 64 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

**Changes to legislation:**

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