



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

2021 asp 15

## PART 4

### FINANCIAL REDRESS: REDRESS PAYMENTS

## CHAPTER 6

### PROVISION OF INFORMATION AND EVIDENCE

#### **79 Power of the Scottish Ministers to require the provision of evidence**

- (1) The Scottish Ministers may, for a purpose mentioned in subsection (2), by notice in writing require a person, other than an applicant, to provide the Scottish Ministers on or before a specified date with—
  - (a) specified information, documents, objects, or other items of evidence,
  - (b) evidence in the form of a written statement.
- (2) The purposes referred to in subsection (1) are the determination of any matter by—
  - (a) a panel appointed under section 35 to determine an application,
  - (b) a review panel appointed under section 55 to conduct a review,
  - (c) a reconsideration panel appointed under section 75 to reconsider a determination.
- (3) A person to whom a notice under subsection (1) is given may, before the end of the period of 4 weeks beginning with the date on which the notice was received by the person, make a claim to the Scottish Ministers that—
  - (a) the person is unable to comply with the notice, or
  - (b) it is not reasonable in all the circumstances to require the person to comply with the notice.
- (4) The Scottish Ministers must, as soon as reasonably practicable after receiving a claim made under subsection (3), provide the claim, and any information accompanying it, to Redress Scotland.

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- (5) Where a claim is made under subsection (3), Redress Scotland may confirm, revoke or vary the notice to which the claim relates.
- (6) A person who is required by a notice to provide documents must do so in a redacted form if—
  - (a) the documents contain information about another person which is irrelevant to the determination of the application to which the notice relates, and
  - (b) the disclosure of that information would breach an obligation of confidence.
- (7) A notice does not have effect to the extent that—
  - (a) complying with the notice would involve the disclosure of information which would contravene the data protection legislation, or
  - (b) the person to whom the notice applies would be entitled to refuse to comply with the notice in or for the purposes of proceedings in a court in Scotland.
- (8) In this section, “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.

## **80 Power to obtain information about previous payments**

- (1) The Scottish Ministers may, for the purpose of calculating any relevant payments to be deducted from a redress payment in accordance with section 42, by notice in writing require a person, other than an applicant, to provide the Scottish Ministers, on or before a specified date, with details of a relevant payment.
- (2) A notice under subsection (1) may, in particular, require the provision of the following details—
  - (a) the date on which the payment was made or, as the case may be, an entitlement to it arose,
  - (b) the amount of the payment,
  - (c) the matter to which the payment related.
- (3) A notice under subsection (1) must specify the name and date of birth of the applicant, or the person in respect of whom the application is made, to whom the relevant payment relates.
- (4) A notice does not have effect to the extent that—
  - (a) complying with the notice would involve the disclosure of information which would contravene the data protection legislation, or
  - (b) the person to whom the notice applies would be entitled to refuse to comply with the notice in or for the purposes of proceedings in a court in Scotland.
- (5) In this section, “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.

## **81 Redress Scotland’s power in relation to information and evidence**

- (1) Redress Scotland may ask the Scottish Ministers to—
  - (a) issue a notice under section 79,
  - (b) issue a notice under section 80,
  - (c) provide Redress Scotland with specified information, documents, objects, other items of evidence or evidence in the form of a written statement.

- (2) The Scottish Ministers must comply with a request under subsection (1)(a) or (b) before the end of the period of 4 weeks beginning with the date on which the request was received by them.
- (3) The Scottish Ministers must comply with a request under subsection (1)(c) before the end of such period as Redress Scotland specifies in relation to the request (which may not be less than 4 weeks beginning with the date on which the request was received by them).

## **82 Applicant access to information and evidence**

- (1) Redress Scotland and the Scottish Ministers must, on request, provide a person with access to any information or evidence held by it or them which has been obtained by or provided to it or them in connection with the person's application for a redress payment.
- (2) Where the person making the request is a nominated beneficiary who has taken over the application by virtue of section 71, the information or evidence to be provided under subsection (1) includes information or evidence which has been obtained or provided in connection with the application prior to it being taken over.
- (3) Nothing in this section authorises the disclosure of any information or evidence—
  - (a) that would be likely to identify any person other than the person making the request or the person in respect of whom the application is made,
  - (b) that would be in contravention of the data protection legislation.
- (4) In this section, “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.

## **83 Power to commission reports**

- (1) The Scottish Ministers may commission or arrange the commission of such reports as they consider to be reasonably necessary for the purposes of—
  - (a) progressing an application for a fixed rate payment or an individually assessed payment,
  - (b) the determination of such an application by a panel appointed under section 35,
  - (c) the conducting of a review in relation to such an application by a panel appointed under section 55, or
  - (d) the reconsideration of a determination in relation to such an application by a panel appointed under section 75.
- (2) But no report may be commissioned under subsection (1) without the applicant's consent.

## **84 Offences of failure to provide, and of tampering with, information or evidence**

- (1) A person who is required by a notice under section 79 or 80, or asked under section 81(1)(c), to provide information, documents, objects, other items of evidence, or evidence in the form of a written statement, commits an offence if the person fails, without reasonable excuse, to comply with the notice or, as the case may be, the request.

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- (2) A person commits an offence if, without reasonable excuse, the person conceals, destroys, distorts or alters, or arranges for the concealment, destruction, distortion or alteration of, anything that the person knows to be required, or has reasonable grounds for believing might be required, to be provided—
- (a) to the Scottish Ministers by virtue of a notice under section 79 or 80,
  - (b) to Redress Scotland by virtue of a request under section 81(1)(c).
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to imprisonment for a term not exceeding six months, a fine not exceeding level 3 on the standard scale, or both.

## **85 Individual culpability where an organisation commits an offence under section 84**

- (1) This section applies where—
- (a) an offence under section 84 is committed by a relevant organisation, and
  - (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of—
    - (i) a responsible individual of the organisation, or
    - (ii) an individual purporting to act in the capacity of a responsible individual.
- (2) The responsible individual (or, as the case may be, the individual purporting to act in that capacity), as well as the relevant organisation, commits the offence.
- (3) “Relevant organisation” means—
- (a) a company,
  - (b) a partnership (including a limited liability partnership),
  - (c) another body or association.
- (4) “Responsible individual” means—
- (a) in the case of a company—
    - (i) a director, secretary, manager or similar officer, or
    - (ii) where the affairs of the company are managed by its members, a member,
  - (b) in the case of a limited liability partnership, a member,
  - (c) in the case of a partnership other than a limited liability partnership, a partner,
  - (d) in the case of another body or association, a person who is concerned in the management or control of its affairs.

## **86 Crown application in relation to offences under section 84**

- (1) Nothing in section 84 makes the Crown criminally liable.
- (2) The Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).
- (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.

## **87 Confidentiality of information**

- (1) This subsection applies to—
  - (a) Redress Scotland,
  - (b) a person who is a member of Redress Scotland,
  - (c) a person who is a member of staff of Redress Scotland,
  - (d) the Scottish Ministers,
  - (e) a person who is a member of staff of the Scottish Ministers,
  - (f) a person who has been given relevant information for the purpose of storing or preserving it.
- (2) A person to whom subsection (1) applies (or applied at the time the relevant information was provided to that person) must not disclose relevant information.
- (3) Subsection (2) does not prevent disclosure of relevant information by the person to the extent that—
  - (a) the disclosure is to another person to whom subsection (1) applies and is necessary for the purpose of enabling or assisting the carrying out by Redress Scotland or the Scottish Ministers of any of the functions conferred on it or on them under or by virtue of this Act,
  - (b) the disclosure is made with the consent of the person from whom the relevant information was obtained, or
  - (c) the disclosure is reasonably required by and done in accordance with a provision of, or made under, this Act.
- (4) A person to whom subsection (1) applies (or applied at the time the relevant information was provided to that person) must disclose relevant information to a constable to the extent that the disclosure is, in the opinion of that person acting in good faith—
  - (a) reasonably necessary to allow the investigation of an offence involving the abuse of a child, and
  - (b) in the public interest.
- (5) A court may order disclosure of relevant information in, or for the purposes of, civil or criminal proceedings (including for the purposes of an investigation of any offence or suspected offence).
- (6) In this section, “relevant information” means any information which—
  - (a) has been provided to a person in connection with the carrying out of—
    - (i) Redress Scotland’s functions, or
    - (ii) the Scottish Ministers’ functions in relation to the redress scheme, and
  - (b) is not otherwise in the public domain.

## **88 Power to share information with third parties**

- (1) The Scottish Ministers or Redress Scotland may, where the disclosure of relevant information is necessary for a purpose mentioned in subsection (2), disclose relevant information.
- (2) The purposes are—
  - (a) the verification or authentication of information, documents, objects or other items of evidence provided in connection with an application,

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- (b) the provision by the person to whom the disclosure is made of information, documents, objects, other items of evidence or evidence by written statement in relation to an application or the determination of an application,
  - (c) the provision by the person to whom the disclosure is made of details of any relevant payment that has been made to an applicant, or to the person in respect of whom the application is made, or to which the applicant or that person is entitled,
  - (d) the determination by the person to whom the disclosure is made as to whether civil proceedings commenced against the person have been commenced in contravention of section 46.
- (3) Where relevant information is disclosed under this section—
- (a) the person to whom the disclosure is made may only use the information or subsequently disclose it to any other person as is necessary for or in connection with a purpose mentioned in subsection (2) (including, in particular, contesting any civil proceedings commenced in contravention of section 46), and
  - (b) any other person to whom the information is subsequently disclosed may only use it for the purpose for which it was disclosed to that person under paragraph (a).
- (4) In this section, “relevant information” means such information as the Scottish Ministers consider, or, as the case may be, Redress Scotland considers, reasonably necessary for a purpose mentioned in subsection (2), which may, in particular, include—
- (a) the name and date of birth of an applicant,
  - (b) the name and date of birth of a person in respect of whom an application is made (where not the applicant),
  - (c) the relevant care setting to which an application relates,
  - (d) the approximate dates that an applicant or, as the case may be, a person in respect of whom the application is made was resident in the relevant care setting to which an application relates,
  - (e) whether an applicant has signed a waiver under section 46 and, if so, the information contained in that waiver.
- (5) Nothing in this section authorises a disclosure of any information that would be in contravention of the data protection legislation.
- (6) In this section, “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.