



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

## 2021 asp 15

### PART 5

#### OTHER SUPPORT FOR SURVIVORS OF ABUSE

##### *Liability for certain payments made in error*

#### **97 Liability for payments, other than redress payments, made in error**

- (1) This section applies where a payment mentioned in subsection (2) is made by the Scottish Ministers due to a relevant error.
- (2) The payment referred to in subsection (1) is a payment made—
  - (a) in respect of a report commissioned under or by virtue of section 83(1),
  - (b) by virtue of arrangements made under section 89 or 90 for or in connection with the provision of support,
  - (c) by virtue of regulations under section 91 providing for the reimbursement of costs and expenses incurred in connection with the making of an application for a redress payment or a proposed application for such a payment, or
  - (d) under section 92 or 93 in respect of fees for legal work undertaken in making an application for a redress payment or in connection with a proposed application for such a payment.
- (3) A person—
  - (a) to whom the payment was made, or
  - (b) who received payment in respect of the report, support or, as the case may be, the matter in relation to which costs or expenses were reimbursed,is liable to pay the Scottish Ministers the value of the payment to the extent that it is paid due to a relevant error.
- (4) A person's liability under subsection (3) is the difference in value between—
  - (a) the payment made to or received by the person, and

*Changes to legislation: There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, Cross Heading: Liability for certain payments made in error. (See end of Document for details)*

- (b) the payment (if any) that would have been made or received had the relevant error not been made.
- (5) Where the Scottish Ministers seek to recover a sum due to them by a person under subsection (3), the sum may be paid—
- (a) in such instalments as are agreed at the request of, or otherwise with the consent of the person, or
  - (b) otherwise, as a single payment.
- (6) But the Scottish Ministers may not seek to recover any sum—
- (a) where the payment is in respect of a report commissioned under or by virtue of section 83(1), from the applicant in relation to whom the report was obtained,
  - (b) where the payment is in respect of support provided by virtue of arrangements made under section 89 or 90, from the person to whom the support was provided,
  - (c) where the payment is in respect of reimbursement of costs or expenses by virtue of regulations under section 91, from the person who requested the reimbursement,
  - (d) where the payment is in respect of fees for legal work paid under section 92 or 93, from the applicant or other person on whose behalf the work was undertaken.
- (7) In this section, references to a relevant error are to—
- (a) an error when making the payment,
  - (b) an error which the Scottish Ministers consider led to the decision to make the payment being made—
    - (i) incorrectly, or
    - (ii) correctly but on the basis of incorrect or misleading information, in a way which materially affected the decision.
- (8) But an error in making a redress payment in relation to which a payment mentioned in subsection (1) was made is not a relevant error for the purpose of this section.

**Commencement Information**

**II** [S. 97](#) in force at 7.12.2021 by [S.S.I. 2021/419](#), [reg. 2](#)

**98 Power to make further provision about payments, other than redress payments, made in error**

- (1) The Scottish Ministers may by regulations make further provision about or in connection with the consideration by them as to whether decisions to make payments to which section 97 applies were materially affected by error.
- (2) Regulations under subsection (1) may, in particular, make provision about—
- (a) the procedure for such consideration,
  - (b) review of decisions following such consideration,
  - (c) requiring or enabling the payment by the Scottish Ministers of fees for legal work and other costs and expenses reasonably incurred by a person in connection with such consideration or review,

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(d) the recovery of such fees for legal work and other costs and expenses where payment of those fees, costs and expenses was due to an error.

(3) Regulations under subsection (1) may modify any enactment (including this Act).

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**Commencement Information**

**I2** [S. 98](#) in force at 28.6.2021 by [S.S.I. 2021/234](#), reg. 2, [sch.](#)

**Changes to legislation:**

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