



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

2021 asp 15

PART 5

OTHER SUPPORT FOR SURVIVORS OF ABUSE

Payment of fees for legal work

VALID FROM 07/12/2021

92 Duty on the Scottish Ministers to pay fee for legal work in making an application

- (1) The Scottish Ministers must, on request, pay the prescribed sum to a solicitor in respect of the legal work reasonably undertaken in making an application for a redress payment on behalf of a person (whether or not the application was successful, and whether or not it was subsequently withdrawn).
- (2) Where the Scottish Ministers have cause to believe that the legal work to which a request relates may not have been reasonably undertaken in making an application for a redress payment, it is for Redress Scotland to decide the question.
- (3) For the purpose of subsection (1), where legal work is undertaken in connection with advice and assistance on whether to pursue litigation as an alternative to making an application for a redress payment, that work is not to be treated as having been undertaken in making an application for a redress payment unless advice and assistance was also given on any of the matters mentioned in subsection (4).
- (4) Those matters are—
 - (a) a person's eligibility to make an application for a redress payment,
 - (b) which type of redress payment to apply for,
 - (c) the application process,
 - (d) whether to accept an offer of a redress payment and sign a waiver under section 46,

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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: Payment of fees for legal work. (See end of Document for details)

- (e) whether to request a review of the offer under section 54,
- (f) the review process.

VALID FROM 07/12/2021

93 Duty on the Scottish Ministers to pay certain fees for legal work in exceptional cases

- (1) The Scottish Ministers must, on request, pay the prescribed sum to a solicitor in respect of the legal work mentioned in subsection (2) where Redress Scotland's assessment is that there are exceptional or unexpected circumstances which justify the payment of the prescribed sum.
- (2) That legal work is the legal work Redress Scotland considers is reasonably undertaken in connection with a proposed application by a person who sought legal advice on the person's eligibility to apply for a redress payment, but did not subsequently apply.
- (3) The Scottish Ministers must, on request, pay to a solicitor such additional sum as is specified by Redress Scotland in respect of the legal work reasonably undertaken in making an application for a redress payment, or in connection with a proposed application, where Redress Scotland's assessment is that there are exceptional or unexpected circumstances which justify the payment of an additional sum.

94 Sections 92 and 93: further provision

- (1) A request under section 92(1) or 93(1) or (3) is referred to in this Act as a “fee payment request”.
- (2) A fee payment request may be made only by a solicitor who has acted for a person in relation to an application for a redress payment, or a proposed application, submitting a request to the Scottish Ministers.
- (3) The Scottish Ministers may by regulations—
 - (a) make further provision about fee payment requests, including about—
 - (i) the time limit for making a request,
 - (ii) any steps that must be taken prior to making a request (including any assessment of whether those steps have been taken and notification and review of the outcome of that assessment),
 - (iii) the required content and form of a request,
 - (iv) the information and evidence to be provided in or with a request,
 - (b) make provision about legal work, undertaken in connection with particular types of advice and assistance, which is or is not to be regarded as reasonably undertaken for the purpose of assessing whether a sum is to be paid.
- (4) For the purpose of sections 92(1) and 93(1), “prescribed”, in relation to a sum, means prescribed by the Scottish Ministers in regulations under this subsection.
- (5) Regulations under subsection (3) may modify any enactment (including this Act).

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- (6) Regulations under subsection (4) may prescribe sums or scales of sums and the conditions under which such sums will be payable.

Commencement Information

I1 S. 94(3)-(6) in force at 28.6.2021 by S.S.I. 2021/234, reg. 2, sch.

95 Assessment, notification and review of certain fee payment requests

- (1) The Scottish Ministers must, as soon as reasonably practicable after receiving it, send Redress Scotland—
- (a) any fee payment request made under section 92(1) which gives rise to a requirement for a decision of the type mentioned in section 92(2),
 - (b) any fee payment request made under section 93(1),
 - (c) any fee payment request made under section 93(3).
- (2) On receipt of a request under subsection (1), Redress Scotland must assess it and inform the Scottish Ministers of the outcome of that assessment.
- (3) Once the Scottish Ministers have been informed of the outcome of Redress Scotland's assessment under subsection (2), they must, as soon as reasonably practicable—
- (a) notify the solicitor who made the request of the outcome, and
 - (b) provide the solicitor with a summary, provided by Redress Scotland, of Redress Scotland's reasons for its assessment.
- (4) A solicitor may ask Redress Scotland to review its assessment where—
- (a) in the case of a fee payment request mentioned in subsection (1)(a), the outcome is that no sum is to be paid,
 - (b) in the case of a fee payment request mentioned in subsection (1)(b), the outcome is that no sum is to be paid,
 - (c) in the case of a fee payment request mentioned in subsection (1)(c), the outcome is that—
 - (i) no additional sum is to be paid, or
 - (ii) the additional sum to be paid is lower than the sum requested.
- (5) The Scottish Ministers may by regulations make further provision about reviews by Redress Scotland of assessments of fee payment requests, including about—
- (a) the time limit for requesting a review,
 - (b) the required content and form of a request for a review,
 - (c) the outcome of a review and the powers available to a review panel,
 - (d) the notification of the outcome of a review,
 - (e) the suspension of the payment of a sum in respect of the work until a request for a review is determined,
 - (f) the payment of a sum in respect of the work where the outcome of a review is that the sum is to be paid.

Commencement Information

I2 S. 95(5) in force at 28.6.2021 by S.S.I. 2021/234, reg. 2, sch.

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96 Restriction on additional legal fees

- (1) This section applies where a solicitor receives a payment under section 92 or 93 in respect of the legal work reasonably undertaken—
 - (a) in making an application for a redress payment on behalf of a person, or
 - (b) in connection with a proposed application by a person who sought legal advice on the person's eligibility to apply for a redress payment, but did not subsequently apply.
- (2) Other than a payment made under or by virtue of this Act, the solicitor may not accept any payment (directly or indirectly) in respect of the legal work undertaken in making the application for a redress payment or, as the case may be, in connection with the proposed application for one.
- (3) But subsection (2) does not prevent payment being accepted for any legal work undertaken in connection with advice and assistance on whether to pursue litigation as an alternative to making an application for a redress payment to the extent that such advice and assistance goes beyond that which is necessary or appropriate as part of the legal work undertaken in making an application or, as the case may be, in connection with a proposed application.

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