



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

2021 asp 15

## PART 5

### OTHER SUPPORT FOR SURVIVORS OF ABUSE

#### *Provision of support*

#### **89 Provision of support to persons in connection with an application**

- (1) The Scottish Ministers may make arrangements (contractual or otherwise) for or in connection with the provision of support to persons who—
  - (a) are, or may be, considering making an application for a redress payment, or
  - (b) have decided to make, or have made, such an application.
- (2) In this section, “support” means such emotional, psychological or practical support as the Scottish Ministers consider necessary given the person’s needs in connection with—
  - (a) the decision whether to make an application,
  - (b) the making of an application.

#### **90 Provision of support to certain persons eligible for a payment etc.**

- (1) The Scottish Ministers may make arrangements (contractual or otherwise) for or in connection with the provision of support to persons who meet one or more of the following—
  - (a) the conditions in subsection (2),
  - (b) the conditions in subsection (3), or
  - (c) the condition in subsection (4).
- (2) The conditions in this subsection are that—
  - (a) the person has applied for a redress payment other than a next of kin payment,

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- (b) the panel appointed under section 35 to determine the application or, as the case may be, the review panel appointed under section 55 to conduct a review has determined that the person is eligible for a redress payment, and
  - (c) either of the following sub-paragraphs applies—
    - (i) the person has accepted an offer of a redress payment by signing and returning a waiver under section 46, or
    - (ii) the person is not receiving a payment only because of the deduction of a relevant payment in accordance with section 42(4).
- (3) The conditions in this subsection are that—
- (a) the person has applied for a redress payment other than a next of kin payment,
  - (b) the panel appointed under section 35 to determine the application or, as the case may be, the review panel appointed under section 55 to conduct a review has determined under section 60 that the person is precluded from being offered a redress payment, and
  - (c) that panel or, as the case may be, a review panel appointed to conduct a review under section 62 has determined that the person would otherwise have been eligible for a redress payment.
- (4) The condition in this subsection is that the person has previously received a payment under the advance payment scheme.
- (5) In this section, “support” means such emotional or psychological support in connection with the abuse to which the application relates as the Scottish Ministers consider necessary, given the person’s needs, and for such period as they consider appropriate.

#### *Payment of costs and expenses*

### **91 Reimbursement of costs incurred in connection with applications**

- (1) The Scottish Ministers must by regulations make provision—
- (a) requiring the reimbursement by them, on request, of the costs and expenses reasonably incurred by an applicant in connection with an application for a redress payment under section 29 (whether or not the application was successful, and whether or not it was subsequently withdrawn),
  - (b) enabling the reimbursement by them, on request, of the costs and expenses reasonably incurred in connection with a proposed application by a person who did not subsequently apply, where Ministers’ assessment (or the assessment on a review) is that the request discloses exceptional or unexpected circumstances which justify the reimbursement of those costs and expenses.
- (2) Regulations under subsection (1) must make provision requiring the Scottish Ministers to—
- (a) notify the person who made the request of Ministers’ assessment of the amount (if any) to be reimbursed in response to the request, and
  - (b) provide the person with a summary of the reasons for their assessment.
- (3) Regulations under subsection (1) may, in particular, make provision about—
- (a) the types of costs and expenses which may be reimbursed,
  - (b) limits on the amount that may be reimbursed in respect of specified types of costs and expenses,

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- (c) any process by which confirmation that anticipated costs and expenses are reasonable can be obtained before they are incurred,
- (d) the time limit for making a request,
- (e) the required content and form of a request,
- (f) the information and evidence to be provided in or with a request,
- (g) the factors to be considered by the Scottish Ministers in assessing the reasonableness of the costs and expenses for which reimbursement is requested,
- (h) reviews by Redress Scotland of assessments made by the Scottish Ministers by virtue of this section.

#### *Payment of fees for legal work*

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

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

#### **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.

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- (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.

## **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.

*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—

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- (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
  - (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.

**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,
  - (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).