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

2021 asp 15

PART 4

FINANCIAL REDRESS: REDRESS PAYMENTS

CHAPTER 5

REDRESS PAYMENTS OR DETERMINATIONS MADE IN ERROR

75 Reconsideration of determination where possible material error

(1) Where Redress Scotland has, or the Scottish Ministers have, cause to believe that a determination under this Part may have been materially affected by an error, it or they must refer the determination for reconsideration (regardless of whether or not a payment has been made under it).

(2) A determination which is referred for reconsideration is to be considered on behalf of Redress Scotland by a panel of at least 3 members of Redress Scotland appointed by the chairing member ("a reconsideration panel").

(3) Where Redress Scotland refers a determination for reconsideration, it must, as soon as reasonably practicable, inform the Scottish Ministers of the referral.

(4) Where a determination is referred for reconsideration by either Redress Scotland or the Scottish Ministers, the Scottish Ministers must, as soon as reasonably practicable—

(a) notify the relevant person—

(i) that the determination is to be reconsidered, and

(ii) of the reasons, provided by the person who has made the referral, for the reconsideration,

(b) provide the relevant person with information about the implications of the determination being reconsidered, and

Changes to legislation: *There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, Section 75. (See end of Document for details)*

(c) allow the relevant person a period of at least 8 weeks, beginning with the date on which notice of the reconsideration was received by the person, for the person to make written representations in connection with the reconsideration.

(5) After the period for the making of representations under subsection (4)(c) has ended, the reconsideration panel must—

(a) determine whether the original determination was materially affected by an error, and

(b) if it was so affected, re-determine it on the basis of how it would have been determined had the error not been made.

[[F1](5A) Subsection (5B) applies where, in relation to an original determination which determined an application for a redress payment, the reconsideration panel determines under subsection (5)(b) that a person—

(a) is eligible for a redress payment, and

(b) is not precluded from being offered a redress payment by virtue of section 60 (as it applies by virtue of subsection (5)(b)).

(5B) In assessing the amount of the redress payment (if any) to be offered, no account is to be taken of any redress payment which has previously been paid in respect of the original determination but no entitlement to any such amount arises by virtue of section 50(2).**]**

(6) For the purposes of other proceedings, nothing done under a reconsideration is to be taken as a finding as to whether or not a person who is referred to in the application to which the original determination relates acted, or failed to act, in a way suggested in the application.

(7) Once the reconsideration panel has conducted the reconsideration, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—

(a) notify the relevant person of the reconsideration panel's determination, and

[[F2](b) provide the relevant person with—

(i) a summary, provided by Redress Scotland, of the reconsideration panel's reasons for reaching that determination,

(ii) information in relation to the effect of the panel's determination on a previous offer of a redress payment made under the original determination,

(iii) where the panel's determination makes an offer of a redress payment, information about the period for which the offer remains valid by virtue of section 49(3) and the options available to the relevant person in respect of it.**]**

[[F3](8) Where the reconsideration panel makes a determination, in relation to an original determination in respect of which a right of review still exists, that the original determination was materially affected by an error—

(a) the reconsideration panel's determination takes the place of the original determination, and

(b) any review of the reconsideration panel's determination is to be conducted under section 76.**]**

(9) In **[**[F4]this section and in sections 75A to 78**]** —

"error" means an error which led to a determination under this Part being made—

(a) incorrectly, or

(b) correctly but on the basis of incorrect or misleading information,

[[F5]"original determination" means the determination referred for reconsideration under subsection (1),**]**

"relevant person" means—

(a) the person who was notified of the determination which is the subject of the referral, or

(b) if that person has died—

(i) where a payment under the determination was made to the deceased person, the deceased person's estate,

(ii) where a payment under the determination was, or is to be, made to another person (including the deceased person's estate), that person.

Textual Amendments

F1 S. 75(5A)(5B) inserted (9.2.2022) by The Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022 (S.S.I. 2022/44), regs. 1(1), **24(2)**

F2 S. 75(7)(b) substituted (9.2.2022) by The Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022 (S.S.I. 2022/44), regs. 1(1), **24(3)**

F3 S. 75(8) substituted (9.2.2022) by The Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022 (S.S.I. 2022/44), regs. 1(1), **24(4)**

F4 Words in s. 75(9) substituted (9.2.2022) by The Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022 (S.S.I. 2022/44), regs. 1(1), **24(5)(a)**

F5 Words in s. 75(9) inserted (9.2.2022) by The Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022 (S.S.I. 2022/44), regs. 1(1), **24(5)(b)**

Commencement Information

I1 S. 75 in force at 7.12.2021 by S.S.I. 2021/419, **reg. 2**

Changes to legislation:
There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, Section 75.