



# 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

#### 77 Outcome of a section 76 review

- (1) On a review under section 76, the review panel appointed under section 55 to conduct it must consider—
  - (a) whether the reconsideration panel which determined, under section 75, whether the original determination was materially affected by error and, if so, how it ought to be re-determined ought to have reached a different determination, and
  - (b) in a case where additional evidence is provided to or obtained by the review panel, whether the application ought to be determined differently as a result.
- (2) The review panel may not—
  - (a) reverse or vary a determination under section 75 that a person [<sup>F1</sup>is or] remains eligible for a redress payment,
  - (b) determine that a person is to be entitled to or, as the case may be, offered a lower amount by way of an individually assessed payment than the person was entitled to or offered under section 75, or
  - (c) determine that more is to be deducted in accordance with section 42 from the person's redress payment than was determined under section 75.
- (3) But the review panel may otherwise uphold, reverse or vary any part of the determination (whether the request for a review relates to that part of it or not).

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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, Section 77. (See end of Document for details)

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(4) Subsections (4) and (7) of section 36 apply to a determination as upheld, reversed or varied as they apply to a determination made under section 36, subject to the modification that references to the panel appointed under section 35 to determine the application are to be read as references to the review panel.

[<sup>F2</sup>(4A) Subsections (4B) and (4C) apply where the review panel determines under this section that an offer of a redress payment is to be made (whether or not an offer of a redress payment was made under the determination under section 75(5)(b) which was the subject of the request for a review).

(4B) 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 which was referred for reconsideration under section 75 but no entitlement to any such amount arises by virtue of section 50(2).

(4C) Section 75D or, as the case may be, 75E applies to an offer made under a determination under this section as it applies to an offer made under a determination under section 75(5)(b) subject to the following modifications—

- (a) references to the relevant person are to be read as references to the person who requested the review,
- (b) references to the reconsideration panel are to be read as references to the review panel appointed to conduct the review under section 76.]

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

- (a) notify the person who requested it of the review panel's determination, and
- [<sup>F3</sup>(b) provide the person with—
  - (i) a summary, provided by Redress Scotland, of the review 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 determination under section 75(5)(b),
  - (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 person in respect of it.]

(6) The determination of the review panel under this section is final.

(7) For the avoidance of doubt, subsection (6) does not prevent the determination of the review panel being the subject of a referral under section 75 provided that the referral relates to a different error from the one which previously led to the review.

#### Textual Amendments

- F1** Words in s. 77(2)(a) 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), 26(2)
- F2** S. 77(4A)-(4C) 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), 26(3)

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**F3** S. 77(5)(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), **26(4)**

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**Commencement Information**

**I1** S. 77 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 77.