



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

## 2021 asp 15

### PART 4

#### FINANCIAL REDRESS: REDRESS PAYMENTS

### CHAPTER 1

#### DETERMINATION OF APPLICATIONS FOR REDRESS PAYMENTS

##### *Applications*

#### **29 Application for a redress payment**

- (1) An application for a redress payment must—
  - (a) be made to the Scottish Ministers,
  - (b) be received during the application period,
  - (c) be an application for—
    - (i) a fixed rate payment,
    - (ii) an individually assessed payment, or
    - (iii) a next of kin payment,
  - (d) be made in such form, if any, as Ministers require, and
  - (e) contain or be accompanied by such information or evidence as Ministers require.
- (2) An application may relate to one or more relevant care settings in which abuse took place.
- (3) Other than as provided for in section 30, only one application may be made in respect of a person who was abused.
- (4) On receiving an application, the Scottish Ministers must provide the summary of options to the applicant.

*Status: Point in time view as at 09/02/2022.*

*Changes to legislation: There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, CHAPTER 1. (See end of Document for details)*

- (5) The Scottish Ministers must provide any application received, and any information or evidence accompanying it, to Redress Scotland.
- (6) The Scottish Ministers must publicise any requirements which are for the time being set under subsection (1)(d) or (e).

#### Commencement Information

**II** S. 29 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

### 30 Cases where more than one application permitted

- (1) This section makes provision about when a person who is eligible to apply for a redress payment may do so despite an application already having been made in respect of the person who was abused and to whom the application will relate.
- (2) An application for an individually assessed payment may be made by a person where—
  - (a) an application for a fixed rate payment has previously been made in respect of the person, and
  - (b) that application resulted in a determination that the person was eligible for a fixed rate payment.
- (3) An application for an individually assessed payment may be made by a person where—
  - (a) an application for an individually assessed payment has previously been made in respect of the person,
  - (b) that application resulted in the applicant accepting a redress payment other than a level 5 payment, and
  - (c) Redress Scotland is satisfied that allowing a further application is justified on the basis that—
    - (i) new evidence is available which the person had a reasonable excuse for not providing in connection with the previous application, or
    - (ii) regulations under section 20(4) have had the effect of modifying eligibility to apply for a redress payment.
- (4) An application for a next of kin payment may be made by a person where—
  - (a) a deceased person had previously applied for a fixed rate payment or an individually assessed payment, and
  - (b) the circumstances are such that the person is permitted to apply for a next of kin payment under section 24(1).
- (5) An application for a next of kin payment may be made by a child of a deceased person where an application for a next of kin payment has previously been made in respect of the deceased person by another child of the deceased person.
- (6) An application for a redress payment may be made by a person where—
  - (a) a previous application in respect of the person was withdrawn under section 33, and
  - (b) the new application is for a type of redress payment the person would have been able to apply for had the withdrawn application not been made.

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- (7) An application for a redress payment may be made by a person where—
- (a) an application for a redress payment has previously resulted in a determination under section 60 that the person was precluded from being offered a redress payment, and
  - (b) as a result of an appeal in respect of a conviction or sentence, section 60 will no longer apply in respect of an application by the person.
- (8) An application for a redress payment may be made in respect of a person where—
- (a) the person has not previously received a redress payment of a particular type despite having made an application for it which has been brought to an end, but
  - (b) Redress Scotland is satisfied that special circumstances exist which justify allowing a further application.
- (9) For the purpose of subsection (8), special circumstances may include—
- (a) the person's individual circumstances,
  - (b) the availability of new evidence which the person had a reasonable excuse for not providing in connection with the original application,
  - (c) regulations under section 20(4) having had the effect of modifying eligibility to apply for a redress payment.

#### Commencement Information

**I2** S. 30 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

### 31 Application period

- (1) For the purpose of this Act, the application period during which an application for a redress payment may be made—
- (a) begins on the day this section comes into force, and
  - (b) ends with whichever is the later of—
    - (i) the expiry of the period of 5 years beginning with that day,
    - (ii) the day falling 2 years after the Scottish Child Abuse Inquiry (established under the Inquiries Act 2005) publishes its final report.
- (2) The Scottish Ministers may by regulations modify paragraph (b) of subsection (1) so as to extend the application period for the time being specified in that subsection.
- (3) The Scottish Ministers must, within the period of 15 months ending with the day the application period is due to end under subsection (1)(b), carry out a review of whether the application period should be extended.
- (4) But subsection (3) does not apply if, at the beginning of the 15 month period—
- (a) the application period has already been extended by regulations under subsection (2), or
  - (b) a draft Scottish statutory instrument containing regulations under subsection (2) has been laid and is before the Scottish Parliament for approval.
- (5) As soon as reasonably practicable following completion of a review under subsection (3), the Scottish Ministers must—
- (a) publish the findings of the review,
  - (b) lay the findings of the review before the Scottish Parliament.

*Status: Point in time view as at 09/02/2022.*

*Changes to legislation: There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, CHAPTER 1. (See end of Document for details)*

#### Commencement Information

**I3** S. 31 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

### 32 Pausing of application

- (1) An application for a redress payment may, at the request of the applicant—
  - (a) be paused, or
  - (b) having been paused, be resumed,at any time prior to a determination being made under section 36.
- (2) A request under subsection (1) must be made in writing to the Scottish Ministers.
- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request under subsection (1), inform Redress Scotland of it.
- (4) Where Redress Scotland is informed of a request that an application be paused, Redress Scotland must pause any further determination of the application to which the request relates until such time as Redress Scotland is informed that—
  - (a) the applicant has requested that determination of the application be resumed, or
  - (b) the application has been withdrawn under section 33.
- (5) Where an application is paused under this section, it is to be treated as having been withdrawn on the final day of the application period unless the applicant, on or before that day, either requests that the application be resumed or requests that it be withdrawn.

#### Commencement Information

**I4** S. 32 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

### 33 Withdrawal of application

- (1) An application for a redress payment may be withdrawn at the request of the applicant at any time prior to a determination being made under section 36.
- (2) A request under subsection (1) must be made in writing to the Scottish Ministers.
- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request under subsection (1), inform Redress Scotland of it.
- (4) Where Redress Scotland is informed of a request that an application be withdrawn, Redress Scotland must bring to an end any further determination of the application to which the request relates.
- (5) Where an application is withdrawn, it is to be treated for the purpose of section 24(3)
  - (a) as never having been made.

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#### Commencement Information

**I5** S. 33 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

### *Determination of applications*

#### **34**      **Prioritisation of applications**

- (1) The chairing member of Redress Scotland must decide the order of priority in which applications for a redress payment are to be determined.
- (2) In making a decision under subsection (1), the chairing member must, in particular, have regard to—
  - (a) the age of the persons by whom applications are made, and
  - (b) to the extent that it is disclosed to Redress Scotland (in the application or otherwise), the health of those persons.

#### Commencement Information

**I6** S. 34 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

#### **35**      **Decision-making panels**

- (1) An application for a redress payment is to be determined on behalf of Redress Scotland by a panel of members of Redress Scotland appointed by the chairing member in accordance with this section.
- (2) A panel appointed to determine an application for a fixed rate payment or a next of kin payment is to consist of at least 2 members.
- (3) A panel appointed to determine an application for an individually assessed payment is to consist of at least 3 members.

#### Commencement Information

**I7** S. 35 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

#### **36**      **Determination of applications**

- (1) On receipt of an application by Redress Scotland under section 29, the panel appointed under section 35 to determine the application must determine—
  - (a) whether, on the balance of probabilities, the applicant is eligible for the type of redress payment sought, and
  - (b) if so, the amount which the applicant is to be offered.
- (2) An application is to be determined on the basis of—
  - (a) the information provided in or with the application,
  - (b) any further information provided in response to a request by the panel, and
  - (c) any other information which the panel considers relevant.

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- (3) In determining an application, the panel is to start with the presumption that any information provided by the applicant in respect of the application is true and accurate to the best of the applicant's knowledge and belief.
- (4) When determining an application, the panel must not rule on, and has no power to determine, any person's civil or criminal liability arising from any matter to which the application relates.
- (5) The procedure for determining an application is otherwise to be determined by Redress Scotland.
- (6) Once the panel has determined the application, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
  - (a) notify the applicant of the determination, and
  - (b) provide the applicant with—
    - (i) a summary, provided by Redress Scotland, of the panel's reasons for reaching that determination,
    - (ii) the summary of options, and
    - (iii) where an offer of a redress payment is made, information about the period for which the offer remains valid under section 49 and the options available to the applicant in respect of it.
- (7) For the purposes of other proceedings, neither the offer of a redress payment nor the failure to make an offer is to be taken as a finding as to whether or not a person who is referred to in an application acted, or failed to act, in a way suggested in the application.

#### Commencement Information

**I8** S. 36 in force at 7.12.2021 by [S.S.I. 2021/419](#), [reg. 2](#)

### 37 Assessment of amount of redress payment

- (1) Where a panel is appointed under section 35 to determine an application for a redress payment, the amount of the redress payment (if any) to be offered in respect of the application is to be determined in accordance with this section.
- (2) An applicant is eligible for a redress payment where the panel is satisfied that—
  - (a) the applicant is eligible to apply for a redress payment by virtue of section 18,
  - (b) where the application is for a next of kin payment, the applicant is eligible to apply for a next of kin payment by virtue of section 24,
  - (c) the application satisfies the requirements of section 29 to the extent that they apply to the type of redress payment sought, and
  - (d) the applicant is not precluded from being offered a redress payment by virtue of section 60.
- (3) An applicant who is eligible for a redress payment is, subject to any deductions to be made in accordance with section 42, to be offered—
  - (a) on an application for a fixed rate payment, a fixed rate payment under section 38,
  - (b) on an application for an individually assessed payment, an individually assessed payment calculated in relation to the application under section 39

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(which, in the case of an application made by virtue of section 30(2) or (3), may be zero), or

- (c) on an application for a next of kin payment, a next of kin payment calculated in relation to the application under section 40.

- (4) In the case of an application which relates to more than one relevant care setting, only one determination of a redress payment may be made in respect of an application regardless of the number of care settings concerned.

#### Commencement Information

**I9** S. 37 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

### Payment levels

#### 38 Fixed rate payment

A fixed rate payment is a payment of £10,000.

#### Commencement Information

**I10** S. 38 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

#### 39 Individually assessed payment

- (1) An individually assessed payment is a payment, based on an assessment of the matters raised by an application, of—

- (a) the fixed rate payment, and  
 (b) if the panel appointed under section 35 to determine the application considers a further sum to be appropriate, the further sum of—  
 (i) £10,000,  
 (ii) £30,000,  
 (iii) £50,000,  
 (iv) £70,000, or  
 (v) £90,000,

as the panel considers appropriate.

- (2) Accordingly, depending on what (if any) further sum is considered appropriate, an individually assessed payment is a payment in total of—

- (a) £10,000 for a fixed rate payment,  
 (b) £20,000 (a level 1 payment),  
 (c) £40,000 (a level 2 payment),  
 (d) £60,000 (a level 3 payment),  
 (e) £80,000 (a level 4 payment), or  
 (f) £100,000 (a level 5 payment).

- (3) But where—

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- (a) a fixed rate payment has previously been paid to an applicant, no further fixed rate payment is payable to that applicant when determining an application for an individually assessed payment made by virtue of section 30(2),
  - (b) the application is an application for an individually assessed payment made by virtue of section 30(3), any redress payment (other than a next of kin payment) which has previously been paid to the applicant is to be deducted from the individually assessed payment for which the applicant is eligible.
- (4) In considering what further sum, if any, is appropriate for the purpose of subsection (1) (b), the panel—
- (a) must have regard to the nature, severity, frequency and duration of the abuse to which the application relates, and
  - (b) may have regard to any other matter it considers relevant.

**Commencement Information**

**I11** S. 39 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

**40 Next of kin payment**

- (1) A next of kin payment is a payment of the relevant share of the fixed rate payment.
- (2) For the purpose of subsection (1), the relevant share is—
- (a) in the case of an application by the spouse, civil partner or cohabitant of the person in respect of whom the application is made (“the deceased person”), the whole amount,
  - (b) in the case of an application by a child of the deceased person, the whole amount divided by the total number of surviving children of the deceased person at the date that the first (or, as the case may be, only) application for a next of kin payment is made in respect of the deceased person by a child of the deceased person.

**Commencement Information**

**I12** S. 40 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

**41 Power to adjust redress payment amounts for inflation**

The Scottish Ministers may by regulations modify sections 38 and 39 to replace any amount for the time being set out in those sections with such higher amount as they consider to be appropriate in consequence of material changes in the value of money.

**Commencement Information**

**I13** S. 41 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2



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### *Deduction of previous payments*

## **42 Deduction of previous payments from redress payment**

- (1) This section and section 43 apply where—
  - (a) the panel appointed under section 35 to determine an application or, as the case may be, a review panel appointed under section 55 to conduct a review determines that an applicant is eligible for a redress payment, and
  - (b) before the date of the determination by virtue of which an offer of a redress payment is made, the applicant, or the person in respect of whom the application is made, received or became entitled to a payment mentioned in subsection (2) (a “relevant payment”).
- (2) A relevant payment is a payment, to the extent that it relates to relevant abuse, by way of any of the following—
  - (a) an award of damages or compensation by a court,
  - (b) a payment in settlement of a claim (whether or not court proceedings were commenced),
  - (c) an award of compensation under the Criminal Injuries Compensation Scheme,
  - (d) a payment under any other statutory scheme,
  - (e) a payment under the advance payment scheme or under any other non-statutory scheme,
  - (f) in so far as not falling within paragraphs (a) to (e), an ex gratia payment.
- (3) But a payment is not a relevant payment—
  - (a) to the extent that it relates to legal fees or other costs incurred in relation to any proceedings, application or other process by virtue of which the relevant payment, or the entitlement to it, was obtained, or
  - (b) if it is a redress payment or a payment of costs in relation to such a payment by virtue of section 91.
- (4) Subject to section 43—
  - (a) the relevant payment mentioned in subsection (1)(b) or, as the case may be, that payment as adjusted in accordance with subsection (5), or
  - (b) where more than one relevant payment has been made, the total of the relevant payments, or of the payments as so adjusted,is to be deducted from the redress payment for which the applicant is eligible.
- (5) A relevant payment which was received before the day this section comes into force is to be adjusted in accordance with this subsection by adjusting it using the ratio published by the Treasury and known as the Gross Domestic Product deflator by reference to the period—
  - (a) beginning with the date the relevant payment was made, and
  - (b) ending with the day this section comes into force.
- (6) The Scottish Ministers may by regulations—
  - (a) modify the meaning of “relevant payment” (by modifying this section or otherwise) to—
    - (i) add a description of a payment,
    - (ii) vary the description of a payment,
    - (iii) remove a description of a payment,

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- (b) modify subsection (7) as Ministers consider appropriate in consequence of any modification made by virtue of paragraph (a) or otherwise.
- (7) For the purposes of subsection (2)—
- “the advance payment scheme” means the non-statutory scheme operated by the Scottish Ministers, for payment to certain persons who were abused as children in certain care settings, which opened for applications on 25 April 2019,
- “the Criminal Injuries Compensation Scheme” means—
- (a) the schemes established by arrangements made under the Criminal Injuries Compensation Act 1995,
  - (b) arrangements for compensation for criminal injuries which were made by the Secretary of State and in operation before the commencement of those schemes, or
  - (c) the scheme established under the Criminal Injuries (Northern Ireland) Order 2002 (S.I. 2002/796 (N.I.1)),
- “relevant abuse” means—
- (a) the abuse to which the application relates, and
  - (b) any other abuse of the person in respect of whom the application is made for which the applicant would have been eligible to apply for a redress payment by virtue of section 18.

#### **Commencement Information**

**I14** S. 42 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

### **43 Deduction of previous payments: further provision**

- (1) This section makes further provision about the deduction of relevant payments from redress payments under section 42(4) and the adjustment of relevant payments in accordance with section 42(5).
- (2) Where the applicant mentioned in section 42(1) is a child of a deceased person applying for a next of kin payment in respect of that person, the amount which is to be deducted from the redress payment for which the child is eligible is to be calculated in accordance with subsection (3).
- (3) The amount calculated under section 42(4) as the amount to be deducted is to be divided by the total number of surviving children of the deceased person at the date that the first (or, as the case may be, only) application for a next of kin payment is made in respect of the deceased person by a child of that person.
- (4) Where—
  - (a) the application being determined is an application for an individually assessed payment, and
  - (b) the applicant has previously been paid a redress payment,
 a relevant payment is not to be deducted under section 42(4) to the extent that it has already been deducted from the previous redress payment.
- (5) Where the panel appointed under section 35 to determine an application or, as the case may be, the review panel appointed under section 55 to conduct a review considers it appropriate, the panel need not deduct under section 42(4) a relevant payment to which

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the applicant or, as the case may be, the person in respect of whom the application is made, has only an entitlement.

- (6) A relevant payment which is a payment under the advance payment scheme is not to be adjusted in accordance with section 42(5).

#### Commencement Information

**I15** S. 43 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

### 44 Information about previous payments from applicant

- (1) An applicant for a redress payment must provide the Scottish Ministers with the information mentioned in subsection (2) about any relevant payment—
- (a) which the applicant, or the person in respect of whom the application is made, has received or become entitled to before the application is made, and
  - (b) which the applicant receives or becomes entitled to after the application is made but before the application is determined.
- (2) The information to be provided is—
- (a) the amount of the relevant payment,
  - (b) the date the relevant payment was made or, as the case may be, an entitlement to it arose,
  - (c) the name and, in so far as known, the address of the person who made or is due to make the relevant payment,
  - (d) the circumstances in which the relevant payment was made or an entitlement to it arose, and
  - (e) any other information about the relevant payment prescribed in regulations made by the Scottish Ministers.
- (3) Where an applicant provides information under subsection (1) in relation to a relevant payment, the Scottish Ministers must, as soon as reasonably practicable, provide that information to Redress Scotland.

#### Commencement Information

**I16** S. 44 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

### 45 Information about previous payments: further provision

- (1) This section applies where—
- (a) an applicant provides information about a relevant payment to the Scottish Ministers in accordance with section 44,
  - (b) the applicant has entered into a settlement or other agreement with any other person in relation to the relevant payment, and
  - (c) the settlement or other agreement prohibits the applicant from disclosing that information.
- (2) The disclosure of the information in accordance with section 44 is not to be treated as a breach of the settlement or other agreement.

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### Commencement Information

I17 S. 45 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

## Waiver

### 46 Waiver

- (1) An applicant to whom an offer of a redress payment is made under section 36 or, as the case may be, 57 and who wishes to accept the offer must sign and return a waiver agreeing—
  - (a) to abandon any civil proceedings to the extent they are relevant civil proceedings, and
  - (b) to waive any right to bring relevant civil proceedings.
- (2) But an applicant to whom subsection (3) applies may accept an offer of a further sum (made by virtue of section 39(1)(b)) without signing and returning a waiver if the condition in subsection (4) is met.
- (3) This subsection applies to an applicant for an individually assessed payment who has previously been paid—
  - (a) a fixed rate payment under a previous application for one, or
  - (b) where the application is made by virtue of section 30(3), an individually assessed payment.
- (4) The condition referred to in subsection (2) is that no new scheme contributors have been included in the contributor list in the period—
  - [<sup>F1</sup>(a) beginning with the effective date of the waiver signed and returned in respect of the fixed rate payment or, where subsection (3)(b) applies, the previous individually assessed payment, and
  - (b) ending with the date that, but for subsection (2), would be the effective date of a waiver signed and returned in respect of the further sum.]
- (5) Where an applicant signs and returns a waiver in accordance with subsection (1)—
  - (a) no relevant civil proceedings may be brought by or on behalf of the applicant,
  - (b) section 3(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 does not apply in so far as it would entitle any person to recover from the Scottish Ministers or a relevant scheme contributor any contribution towards the payment by that person of any damages or expenses in respect of relevant abuse, and
  - (c) any other right under any enactment or rule of law to recover any contribution from the Scottish Ministers or a relevant scheme contributor in relation to relevant abuse, and any right of relief or of indemnity against Ministers or a relevant scheme contributor in relation to relevant abuse, ceases to have effect.
- (6) For the purposes of this section—
  - [<sup>F2</sup>“effective date”, in relation to a waiver in respect of a redress payment, is—
    - (a) in a case where a panel appointed under section 35 determines that the applicant is eligible for a redress payment, the date of that determination,

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- (b) in a case where a panel appointed under section 55 to conduct a review determines that the applicant is eligible for a redress payment, the date of that determination,
- (c) in a case where a panel appointed under section 75 to reconsider a determination or, as the case may be, a panel appointed to conduct a review under section 76 determines that a person is or remains, eligible for a redress payment, the date on which it should have been determined that the applicant was eligible for a redress payment had the original determination not been materially affected by an error,]

“relevant abuse” means—

- (a) the abuse to which the application relates, and
- (b) any other abuse of the person in respect of whom the application is made for which the applicant would have been eligible to apply for a redress payment by virtue of section 18,

“relevant civil proceedings” are civil proceedings against the Scottish Ministers or any relevant scheme contributor (whether or not the proceedings are also against another person) in which the applicant seeks compensation or any other remedy in relation to relevant abuse,

[<sup>F3</sup>“relevant scheme contributor” is a scheme contributor who is included in the contributor list on the effective date of a waiver signed and returned in accordance with subsection (1).]

- (7) For the purpose of subsection (6), where a scheme contributor is removed from the contributor list with retrospective effect in accordance with section 16, the question of whether the scheme contributor is a relevant scheme contributor on a particular date is to be determined by reference to the contributor list as retrospectively amended.

#### Textual Amendments

- F1** S. 46(4)(a)(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), **23(2)**
- F2** Words in s. 46(6) 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), **23(3)(a)**
- F3** Words in s. 46(6) 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), **23(3)(b)**

#### Commencement Information

- I18** S. 46 in force at 7.12.2021 by [S.S.I. 2021/419](#), **reg. 2**

## 47 Form and content of waiver

The Scottish Ministers may by regulations make provision about—

- (a) the form and content of any waiver to be signed and returned under section 46,
- (b) the information to be provided to the applicant in relation to the waiver and its effects.

*Status: Point in time view as at 09/02/2022.*

*Changes to legislation: There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, CHAPTER 1. (See end of Document for details)*

#### Commencement Information

**I19** S. 47 in force at 28.6.2021 by S.S.I. 2021/234, reg. 2, sch.

### 48 Report on effect of waiver on participation in redress scheme

Before the end of the period of 18 months beginning with the day section 46 comes into force, the Scottish Ministers must lay before the Scottish Parliament a report setting out—

- (a) their assessment of—
  - (i) the impact (if any) of the waiver under section 46 on applications for a redress payment,
  - (ii) the effectiveness of the waiver in encouraging public authorities, voluntary organisations and other persons to become scheme contributors,
- (b) the steps (if any) they intend to take as a result of that assessment,
- (c) where they do not intend to take any such steps, their reasons for that.

#### Commencement Information

**I20** S. 48 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

#### *Payment of redress payment*

### 49 Period for which offer valid

- (1) An applicant to whom an offer of a redress payment is made under section 36 may—
  - (a) bring the application to an end by accepting the offer in accordance with section 50(1), or
  - (b) request a review of the offer in accordance with section 54.
- (2) If neither of the actions specified in subsection (1) is taken within the period for which the offer is valid, the application is to be treated as having been brought to an end by the offer being rejected unless it is continued by virtue of section 66(1).
- (3) The period for which the offer is valid is—
  - (a) the period of 6 months beginning with the date on which the offer was received by the applicant, or
  - (b) where the panel appointed under section 35 to determine the application is satisfied that there is a good reason why the applicant needs, or may need, longer to consider whether or not to accept the offer, such longer period as the panel determines.
- (4) Where an application is treated as having been brought to an end by virtue of subsection (2), the panel previously appointed under section 35 to determine it, or such other panel as the chairing member of Redress Scotland determines, may revive the application if it considers that there are exceptional circumstances which merit it.
- (5) Where an application is revived by virtue of subsection (4)—

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*Status: Point in time view as at 09/02/2022.*

*Changes to legislation: There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, CHAPTER 1. (See end of Document for details)*

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- (a) the offer of a redress payment previously made in relation to it is also revived, and
- (b) the period for which the revived offer is valid is such period as the panel determines.

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**Commencement Information**

**I21** S. 49 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

## 50 Acceptance of offer and making of payments

- (1) An offer of a redress payment is accepted—
  - (a) by the applicant to whom the offer is made signing and returning a waiver to the Scottish Ministers under section 46, or
  - (b) in a case where section 46(2) applies to the applicant, by the applicant giving the Scottish Ministers notice in writing that the offer is accepted.
- (2) Entitlement to a redress payment from the Scottish Ministers arises where—
  - (a) an offer of a redress payment is accepted in accordance with subsection (1), and
  - (b) the Scottish Ministers are satisfied that the applicant has abandoned or will abandon any civil proceedings to the extent they are relevant civil proceedings in accordance with the waiver signed and returned under section 46.
- (3) A redress payment is to be paid by the Scottish Ministers—
  - (a) in such instalments as are agreed at the request of, or otherwise with the consent of, the applicant, or
  - (b) otherwise, as a single payment.
- (4) In this section, “relevant civil proceedings” has the meaning given by section 46.

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**Commencement Information**

**I22** S. 50 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

## 51 Payments to children

- (1) This section applies where a panel appointed under section 35 to determine an application for a redress payment or, as the case may be, a review panel appointed under section 55 to conduct a review makes an offer of a redress payment to an applicant who is under the age of 18 years.
- (2) The panel may give such directions relating to the payment and management of the redress payment for the benefit of the applicant as it considers appropriate.
- (3) A direction under subsection (2) may, in particular, provide that the redress payment—
  - (a) is to be paid in instalments,
  - (b) is not to be paid until the applicant reaches the age of 18.
- (4) Where a direction under subsection (2) postpones the payment of the whole or part of the redress payment—

*Status: Point in time view as at 09/02/2022.*

*Changes to legislation: There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, CHAPTER 1. (See end of Document for details)*

- (a) Redress Scotland may at any time, at the request of or otherwise with the consent of the applicant, instruct the Scottish Ministers to make earlier payment to the applicant of the whole or part of the redress payment or, as the case may be, any remaining balance of it,
- (b) on the applicant reaching the age of 18, the Scottish Ministers must pay the redress payment or, as the case may be, the balance of it (if any) to the applicant in accordance with paragraphs (a) and (b) of section 50(3).

#### Commencement Information

**I23** S. 51 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

## 52 Review of direction made under section 51

- (1) An applicant who is notified of a direction under section 51(2) relating to the payment and management of a redress payment may request a review of the direction.
- (2) A request for a review must—
  - (a) be made to the Scottish Ministers,
  - (b) be made before the end of the period of 8 weeks beginning with the date on which notice of the direction was received by the applicant,
  - (c) be made in such form, if any, as Ministers require,
  - (d) specify why a review is being requested, and
  - (e) contain or be accompanied by any information the applicant considers relevant.
- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request for a review, provide the request, and any information accompanying it, to Redress Scotland.
- (4) A review may be conducted despite the request for it not being made within the period specified in subsection (2)(b) if Redress Scotland is satisfied that the applicant has a good reason for not requesting a review sooner.
- (5) The Scottish Ministers must publicise any requirements which are for the time being set under subsection (2)(c).
- (6) Sections 55, 56 and 59(1) to (5) apply for the purposes of a review under this section as they apply for the purposes of a review under section 54, subject to the modification that the reference in section 59(1) to a determination being made under section 57 is to be read as a reference to a determination being made under section 53.

#### Commencement Information

**I24** S. 52 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

## 53 Outcome of a section 52 review

- (1) On a review under section 52, the review panel appointed under section 55 to conduct it—
  - (a) must consider—



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**Status:** Point in time view as at 09/02/2022.

**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, CHAPTER 1. (See end of Document for details)

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- (i) whether the panel which gave the direction under section 51(2) relating to the payment and management of a redress payment ought to have done so,
    - (ii) in a case where additional evidence is provided to or obtained by the review panel, whether the question of what (if any) direction is given relating to the payment and management of a redress payment ought to be determined differently as a result,
  - (b) may uphold or reverse the direction.
- (2) 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 applicant of the review panel's determination, and
  - (b) provide the applicant with a summary, provided by Redress Scotland, of the review panel's reasons for reaching that determination.
- (3) The determination of the review panel under this section is final.

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**Commencement Information**

**I25** [S. 53](#) in force at 7.12.2021 by [S.S.I. 2021/419](#), [reg. 2](#)

**Status:**

Point in time view as at 09/02/2022.

**Changes to legislation:**

There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, CHAPTER 1.