



# 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

##### *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.

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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: Deduction of previous payments. (See end of Document for details)

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- (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,
  - (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.

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#### Commencement Information

**11** 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 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).

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#### Commencement Information

**12** 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,

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- (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.

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**Commencement Information**

**I3** 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**

**I4** S. 45 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

**Changes to legislation:**

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