



# 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

#### *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—

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*Status: Point in time view as at 09/02/2022.*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, Cross Heading: Waiver. (See end of Document for details)

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- [<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,
- (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.

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### 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

- I1** 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.

### Commencement Information

- I2** 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

- I3** S. 48 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, Cross Heading: Waiver.