



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

## 2021 asp 15

### PART 4

#### FINANCIAL REDRESS: REDRESS PAYMENTS

### CHAPTER 4

#### DEATH OF APPLICANT

#### 65 Nomination of a beneficiary

- (1) An applicant for a fixed rate payment or an individually assessed payment may, as part of the application or by other notice in writing to the Scottish Ministers, nominate a person (a “nominated beneficiary”) whom the applicant would like to be invited to take over the application in the event that the applicant dies while the application is ongoing.
- (2) A nomination under subsection (1) remains in force unless—
  - (a) the nomination is withdrawn by the applicant giving notice in writing to the Scottish Ministers, or
  - (b) the person who is nominated dies or, in the case of a person other than an individual, ceases to exist.
- (3) In this section and in sections 66 to 73, the “application” includes, in relation to an application for a redress payment, a request for a review of the determination of that application.

#### Commencement Information

**11** S. 65 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

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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, CHAPTER 4. (See end of Document for details)

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## 66 Applicant's death while application ongoing

- (1) Where an applicant for a redress payment dies while the application is ongoing, it brings the application to an end unless—
  - (a) there is a nomination in force in relation to the application under section 65, and
  - (b) the nominated beneficiary is to be invited to take over the application by virtue of subsection (2) or (3).
- (2) Where the applicant dies—
  - (a) after the panel appointed under section 35 to determine the application has all the information that it requires in order to do so, but
  - (b) while the application is ongoing,
 the nominated beneficiary is to be invited to take over the application.
- (3) Where the applicant dies—
  - (a) after making the application, but
  - (b) before the panel appointed under section 35 to determine the application has all the information that it requires in order to do so,
 the panel must determine, in accordance with subsection (4), whether or not the nominated beneficiary is to be invited to take over the application.
- (4) The panel may determine under subsection (3) that the nominated beneficiary is to be invited to take over the application only if it considers that there are exceptional circumstances which merit it.
- (5) Once the panel has reached a determination under subsection (3), Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
  - (a) notify the nominated beneficiary of the determination, and
  - (b) provide the nominated beneficiary with a summary, provided by Redress Scotland, of the panel's reasons for reaching that determination.
- (6) For the purpose of this section, an application is ongoing from the time it is made until—
  - (a) it is withdrawn under section 33,
  - (b) in a case where a determination is made under section 36 or 60 that the applicant is not eligible for, or is precluded from being offered, a redress payment, either—
    - (i) the period within which a review may be requested expires, no review of the determination having been requested, or
    - (ii) a review of the determination having been requested, the determination is upheld on review or the request for a review of the determination is withdrawn, or
  - (c) in a case where a determination is made (whether under section 36 or on a review) that the applicant is eligible for a redress payment, the application is brought to an end under section 49 or, as the case may be, 58.
- (7) An application is also ongoing from the time either—
  - (a) a request to revive it is made by virtue of section 49(4) or 58(4) or it is revived under either of those sections without such a request being made, or
  - (b) a late request for a review is made in relation to it,

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until the time any such request is rejected or withdrawn, or the application is brought to an end as mentioned in subsection (6)(b)(ii) or (c).

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**Commencement Information**

**I2** S. 66 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

## **67 Access to information and evidence by nominated beneficiary**

- (1) This section applies where a nominated beneficiary—
  - (a) has been invited to take over an application by virtue of section 66 and the period specified in section 71(3) has not expired, or
  - (b) has requested a review under section 68.
- (2) Redress Scotland and the Scottish Ministers must, on request, provide the nominated beneficiary with access to any information or evidence held by it or them which has been obtained by or provided to it or them in connection with the application to which the invitation or, as the case may be, the review relates.
- (3) Nothing in this section authorises the disclosure of any information or evidence—
  - (a) that would be likely to identify any person other than the nominated beneficiary or the person in respect of whom the application to which the invitation or, as the case may be, review relates,
  - (b) that would be in contravention of the data protection legislation.
- (4) In this section, “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.

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**Commencement Information**

**I3** S. 67 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

## **68 Review of determination made under section 66(3)**

- (1) A nominated beneficiary who is notified of a determination under section 66(3) that the nominated beneficiary is not going to be invited to take over the application may request a review of the determination.
- (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 determination was received by the nominated beneficiary,
  - (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 nominated beneficiary 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.

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- (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 nominated beneficiary 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 69.

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**Commencement Information**

**I4** S. 68 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

**69 Outcome of a section 68 review**

- (1) On a review under section 68, the review panel appointed under section 55 to conduct it—
  - (a) must consider—
    - (i) whether the panel which determined, under section 66(3), whether or not to invite the nominated beneficiary to take over the application ought to have reached a different determination, and
    - (ii) 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,
  - (b) may uphold or reverse the determination.
- (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 nominated beneficiary of the review panel's determination, and
  - (b) provide the nominated beneficiary with a summary, provided by Redress Scotland, of the review panel's reasons for reaching that determination.
- (3) Where the review panel reverses the determination in respect of which the review was requested, the Scottish Ministers must invite the nominated beneficiary to take over the application.
- (4) Where the review panel determines that the nominated beneficiary is to be invited to take over the application, the application is to be treated as having been continued by virtue of section 66(3).
- (5) The determination of the review panel under this section is final.

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**Commencement Information**

**I5** S. 69 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

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## 70 Applicant's death after offer accepted

Where an applicant for a redress payment dies—

- (a) after accepting an offer of a redress payment in accordance with section 50(1), but
  - (b) before the redress payment is paid,
- the redress payment is to be paid to the applicant's estate.

### Commencement Information

16 S. 70 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

## 71 Invitation to nominated beneficiary to take over application

- (1) This section applies where, by virtue of section 66, a nominated beneficiary is to be invited to take over an application after an applicant's death.
- (2) On becoming aware that a nominated beneficiary is to be invited to take over an application, the Scottish Ministers must—
  - (a) notify the nominated beneficiary of the invitation to take over the application, and
  - (b) provide the nominated beneficiary with information about the effect of taking over the application.
- (3) The nominated beneficiary has a period of 8 weeks, beginning with the date on which notice of the invitation was received by the nominated beneficiary, to—
  - (a) accept the invitation by giving notice in writing to the Scottish Ministers, and
  - (b) in a case where the nominated beneficiary is being invited to take over the application by virtue of section 66(3), provide any remaining information that the panel appointed under section 35 to determine the application requires from the nominated beneficiary in order to do so.
- (4) The Scottish Ministers must—
  - (a) as soon as reasonably practicable after receiving notification of acceptance in accordance with subsection (3)(a), inform Redress Scotland of that acceptance, and
  - (b) as soon as reasonably practicable after receiving any information provided in accordance with subsection (3)(b), provide Redress Scotland with that information.
- (5) Where the actions specified in subsection (3) are not taken within the period specified in that subsection, the application is to be treated as having been brought to an end by the invitation being rejected.
- (6) Where the actions specified in subsection (3) are taken within the period specified in that subsection, the nominated beneficiary takes over the application.
- (7) A nominated beneficiary must, on request by the Scottish Ministers, provide Ministers with such evidence as they require as to—
  - (a) the applicant's death,
  - (b) the nominated beneficiary's identity.

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### Commencement Information

I7 S. 71 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

## 72 Application taken over by nominated beneficiary

- (1) Where a nominated beneficiary takes over an application by virtue of section 71—
- (a) the application and any review of it is, subject to section 60, to be determined by the panel on the basis of the eligibility of the applicant,
  - (b) any relevant payments to be deducted from a redress payment are to be based on payments made to the applicant or to which the applicant was entitled, and
  - (c) the question of whether a fixed rate payment or, in the case of an application made by virtue of section 30(3), an individually assessed payment has previously been paid is to be determined based on payment to the applicant or the applicant's estate,
- but the nominated beneficiary is otherwise, subject to section 70 and the exceptions in subsection (3), to be treated for the purposes of this Act as taking the place of the applicant in relation to the application.
- (2) Accordingly, subject to section 70 and the exceptions in subsection (3)—
- (a) the nominated beneficiary is, subject to section 60, to be offered any redress payment which the applicant would, if alive, have been offered in respect of the application,
  - (b) the nominated beneficiary may do anything under this Act in relation to the determination of the application which the applicant could have done if alive (including seeking costs and expenses in connection with it), and
  - (c) any requirement imposed by this Act on the applicant in relation to the application is to be treated as being imposed on the nominated beneficiary.
- (3) The exceptions referred to in subsections (1) and (2) are—
- (a) for the purpose of Part 3, the nominated beneficiary is not to be treated as having applied for a redress payment,
  - (b) in relation to the waiver required in order to accept an offer of a redress payment, section 46(2) is not to be treated as applying to the nominated beneficiary by reason of the applicant having previously signed a waiver,
  - (c) the nominated beneficiary may not make a further nomination under section 65,
  - (d) the nominated beneficiary may not, in that capacity, apply for emotional or psychological support under any arrangements which may be made under section 90.
- (4) Where a nominated beneficiary takes over an application after a panel appointed under section 35 to determine the application or, as the case may be, a review panel appointed under section 55 to conduct a review, has already done so, section 60 applies as if—
- (a) subsection (4) of that section required the panel to make a determination under that subsection as soon as reasonably practicable after the nominated beneficiary takes over the application, and
  - (b) subsection (1) of that section applied to a conviction which occurred or a sentence which was imposed before the date of the determination to take place by virtue of paragraph (a).

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#### Commencement Information

**18** S. 72 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

### 73 Nominated beneficiary's death etc.

- (1) This section applies where a nominated beneficiary who has taken over an application dies or, as the case may be, ceases to exist.
- (2) Where the nominated beneficiary dies or, in the case of a person other than an individual, ceases to exist while the application in relation to which the person is nominated is ongoing, it brings the application to an end.
- (3) Where an individual is the nominated beneficiary and the individual dies—
  - (a) after accepting an offer of a redress payment in accordance with section 50(1), but
  - (b) before the redress payment is paid,the redress payment is to be paid to the individual's estate.
- (4) For the purpose of this section, the question of whether an application is ongoing is to be determined in accordance with section 66(6) and (7).

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#### Commencement Information

**19** S. 73 in force at 7.12.2021 by S.S.I. 2021/419, reg. 2

**Changes to legislation:**

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