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

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(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—

(a) beginning with the date the panel appointed under section 35 or, as the case may be, a review panel appointed under section 55 determined that the applicant was eligible for the fixed rate payment or, where subsection (3)(b) applies, the previous individually assessed payment, and

(b) ending with the date the panel appointed under section 35 or, as the case may be, a review panel appointed under section 55 determines that the applicant is eligible for 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—

"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,

"relevant scheme contributor" is a scheme contributor who is included in the contributor list on the date the panel appointed under section 35 or, as the case may be, a review panel appointed under section 55 determines that the applicant is eligible for the redress payment.

(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.