

POLICY NOTE

THE REDRESS FOR SURVIVORS (HISTORICAL CHILD ABUSE IN CARE) (EXCEPTIONS TO ELIGIBILITY) (SCOTLAND) REGULATIONS 2021

SSI 2021/XXX

The above instrument was made in exercise of the powers conferred by section 23 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. The instrument is subject to the affirmative procedure.

Summary Box

The Regulations provide that an application for redress cannot be made to the extent that it relates to abuse that occurred when a person was resident in a relevant care setting for the purpose of short-term respite or holiday care, under arrangements made by their parent or guardian and another person.

Policy Objectives

The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the Act”) creates a redress scheme for survivors, and in some circumstances their next of kin, in relation to historical child abuse in relevant care settings in Scotland. The scheme is designed to be a national, collective endeavour to recognise the harms of the past, and provides an alternative to the current civil court process; one designed to be non-adversarial, faster and sensitive to survivors’ needs.

Part 3 of the Act sets out the eligibility criteria for the scheme. It provides that a person may apply for a redress payment if they were abused when they were a child and resident in a relevant care setting in Scotland, where that abuse took place before 1 December 2004. The definition of “abuse” in section 19 of the Act follows that in section 17A of the Prescription and Limitation (Scotland) Act 1973 (as inserted by section 1 of the Limitation (Childhood Abuse) (Scotland) Act 2017). It is a broad definition, and provides that abuse “includes sexual abuse, physical abuse, emotional abuse and abuse that takes the form of neglect”.

Section 23 of the Act permits the Scottish Ministers to create exceptions to eligibility by way of regulations, with reference to certain factors such as the circumstances in which the abuse was carried out, or the purpose for which the person who was abused was resident in the relevant care setting. Given the broad and inclusive terms in which the eligibility requirements for the scheme are framed, this power is intended to allow for further refinement, where creating such exceptions would be in-keeping with the overall purpose of the scheme.

The Regulations provide that an application for redress may not be made by or in respect of a person to the extent that it relates to abuse that occurred when that person was resident in a relevant care setting for the purpose of being provided with short-term respite or holiday care, where that care was arranged by a parent or guardian and another person.

The abuse of children in all circumstances and settings is wrong and harmful. However, we believe that the exclusion of those abused in short-term respite or holiday care is in-keeping with the core purpose of the redress scheme, which is primarily for those vulnerable children who were in long-term care, often isolated with limited or no contact with their families.

Consultation

A formal consultation on the Regulations was not carried out and instead stakeholder views were obtained through a targeted engagement exercise with survivor organisations, representatives of the legal profession, care providers and others.

Respondents were divided as to whether these types of short-term care should be excluded or not. Some also noted the need for a definition of short-term or temporary in this context. We propose to cover this in the statutory guidance for the scheme to be issued under section 106 of the Act, and it is likely to mean, as a broad rule, stays of 14 days or less. The guidance will also provide further detail on the meaning of “abuse” and the definitions of the various categories of relevant care setting included within the Act.

Impact Assessments

The legislative impact assessments for the Act are being updated to reflect the impact of these Regulations.

Financial Effects

The Deputy First Minister and Cabinet Secretary for Covid Recovery confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Children and Families Directorate

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