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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2022 No.**

**The Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022**

**PART 2**

**LEGAL FEES IN CONNECTION WITH RECONSIDERATION AND REVIEW**

**Payment of fees for legal work in connection with reconsideration and review**

**2.—(1)** The Scottish Ministers must, on request, pay—

- (a) the relevant sum to a solicitor in respect of legal work reasonably undertaken for a relevant person in connection with—
  - (i) a reconsideration (whether or not the reconsideration resulted in a re-determination),
  - (ii) a review (irrespective of whether the determination under review was upheld, reversed or varied), and
- (b) such additional sum as is specified by Redress Scotland in respect of the legal work mentioned in paragraph (a), where Redress Scotland's assessment is that there are exceptional or unexpected circumstances which justify the payment of an additional sum.

(2) Where the Scottish Ministers have cause to believe that the legal work to which a request relates may not have been reasonably undertaken in connection with a reconsideration or review, it is for Redress Scotland to decide the question.

(3) The relevant sum for the corresponding description of legal work specified in the second column of the table of fees in Part 1 of the schedule of these Regulations is that specified in column A of that table, whether or not that work is conducted before or after the reconsideration and irrespective of its outcome.

(4) Unless paragraph (5) applies, the relevant sum for the corresponding description of legal work specified in the second column of the table of fees in Part 2 of the schedule is that specified in column A of that table, whether or not that work is conducted before or after the review and irrespective of its outcome.

(5) This paragraph applies if—

- (a) a request for a review is withdrawn in accordance with section 59(2) of the Act before a determination is made under section 77, or
- (b) the relevant person dies, or in the case of a person other than an individual, ceases to exist, after a request for a review is made under section 76 of the Act, but before the review is determined under section 77.

(6) Where paragraph (5) applies, the relevant sum for the corresponding description of legal work specified in the second column of the table of fees in Part 2 of the schedule is that specified in column B of that table.

(7) Where the work done by the solicitor constitutes a supply of services in respect of which value added tax is chargeable, an amount equal to the amount of value added tax chargeable will be added to the applicable sum payable by virtue of this regulation.

### **Fee payment requests**

**3.** A fee payment request must—

- (a) be made by completing and submitting to the Scottish Ministers a form to be provided by the Scottish Ministers for that purpose,
- (b) specify the legal work undertaken and when that work was carried out,
- (c) in the case of a request for an additional sum under regulation 2(1)(b), provide information about the exceptional or unexpected circumstances which the solicitor considers may justify the payment of an additional sum,
- (d) contain or be accompanied by any other information the solicitor considers relevant to the request.

### **Time limit for fee payment requests**

**4.—(1)** A fee payment request under regulation 3 must be submitted to the Scottish Ministers before the end of the period of 8 weeks beginning with the date on which the notice of the outcome of the reconsideration, or as the case may be, the review, was received by the relevant person.

(2) The Scottish Ministers may consider a fee payment request despite it not being made within the period specified in paragraph (1), if they are satisfied that the person had a good reason for not making the request sooner.

### **Prior approval to undertake legal work in exceptional or unexpected circumstances**

**5.—(1)** A solicitor must, prior to undertaking legal work in exceptional or unexpected circumstances as referred to in regulation 2(1)(b)—

- (a) make a request in writing to the Scottish Ministers for authority in principle to undertake the legal work, and
- (b) specify the additional sum which the solicitor considers is likely to be requested in respect of the legal work.

(2) The Scottish Ministers must, as soon as reasonably practicable after receiving a request under paragraph (1), provide the request and any information accompanying it to Redress Scotland.

(3) On receipt of a request under paragraph (2), Redress Scotland must as soon as reasonably practicable—

- (a) assess whether there are exceptional or unexpected circumstances which justify the solicitor reasonably undertaking the legal work so that authority in principle ought to be given, and
- (b) where satisfied that there are exceptional or unexpected circumstances which justify the legal work being reasonably undertaken, indicate if the additional sum specified under paragraph (1)(b) or such other sum is appropriate.

(4) Once Redress Scotland has carried out its assessment, it must inform the Scottish Ministers who must, as soon as reasonably practicable, provide the solicitor who made the request with—

- (a) the outcome of the request, and
- (b) a summary, provided by Redress Scotland, of the reasons for that.

(5) Redress Scotland may dispense with any of the requirements under this regulation if satisfied that the solicitor had a good reason for not having obtained authority in principle to undertake the legal work prior to undertaking it.

#### **Review of assessment of prior approval**

6.—(1) A solicitor may request that Redress Scotland review the assessment made under regulation 5, where the outcome of the assessment is that Redress Scotland—

- (a) is not satisfied, in accordance with regulation 5(3)(a), that authority in principle to undertake the legal work ought to be given, or
- (b) considers that an additional sum lower than that specified by the solicitor under regulation 5(1)(b) is appropriate.

(2) A request under paragraph (1) must be made in writing to the Scottish Ministers and contain or be accompanied by any information that the solicitor considers relevant to the review requested.

(3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request for a review under paragraph (1), provide the request and any information accompanying it, to Redress Scotland.

(4) On receipt of a request under paragraph (3), Redress Scotland must assess it.

(5) Once Redress Scotland has carried out its assessment, it must inform the Scottish Ministers who must, as soon as reasonably practicable, provide the solicitor who made the request with—

- (a) the outcome of the request, and
- (b) a summary, provided by Redress Scotland, of the reasons for that.

#### **Assessment and notification of certain fee payment requests**

7.—(1) The Scottish Ministers must, as soon as reasonably practicable after receiving it, send Redress Scotland—

- (a) any fee payment request made under regulation 2(1)(a) which gives rise to a requirement for a decision of the type mentioned in regulation 2(2), and
- (b) any fee payment request made under regulation 2(1)(b).

(2) On receipt of a request under paragraph (1), Redress Scotland must assess it and inform the Scottish Ministers of the outcome of that assessment.

(3) Once the Scottish Ministers have been informed of the outcome of Redress Scotland's assessment under paragraph (2), they must, as soon as reasonably practicable—

- (a) notify the solicitor who made the request of the outcome, and
- (b) provide the solicitor with a summary, provided by Redress Scotland, of Redress Scotland's reasons for its assessment.

#### **Reviews of assessments of fee payment requests**

8.—(1) A solicitor may request that Redress Scotland review its assessment of a fee payment request under regulation 7(2) where—

- (a) in the case of a fee payment request mentioned in regulation 2(1)(a), the outcome is that no sum is to be paid,
- (b) in the case of a fee payment request mentioned in regulation 2(1)(b), the outcome is that—
  - (i) no additional sum is to be paid, or
  - (ii) the additional sum to be paid is lower than the sum requested.

- (2) A request to Redress Scotland to review its assessment of a fee payment request must—
- (a) be made by completing and submitting to the Scottish Ministers a form to be provided by the Scottish Ministers for that purpose,
  - (b) be made before the end of the period of 8 weeks beginning with the date on which notice of the outcome of the fee payment request was received by the solicitor,
  - (c) specify why a review is being requested, and
  - (d) contain or be accompanied by any information the solicitor considers relevant to the review requested.
- (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.
- (4) A review may be conducted despite the request for it not being made within the period mentioned in paragraph (2)(b) if Redress Scotland is satisfied that the person had good reason for not requesting a review sooner.
- (5) Where a request for a review is submitted in a case mentioned in paragraph (1)(b)(ii), payment of the additional sum, so far as not already made, is to be suspended pending the determination of the review.

### **Fee review panels**

- 9.**—(1) A review requested under regulation 8 is to be determined on behalf of Redress Scotland by a panel consisting of at least 2 members of Redress Scotland appointed by the chairing member (“a fee review panel”).
- (2) A fee review panel must not include any member of Redress Scotland whose assessment is the subject of the request for a review.

### **Procedure for a fee review**

- 10.**—(1) The fee review panel appointed under regulation 9 to conduct the review is to determine it on the basis of—
- (a) the information on which the assessment which is the subject of the request for a review was made, and
  - (b) any further relevant information which is provided to it or obtained by the review panel, including any information contained in or accompanying the request for a review and any written representations which are made to the review panel.
- (2) The procedure for conducting a review is otherwise to be determined by Redress Scotland.

### **Outcome of a fee review**

- 11.**—(1) On a review, the fee review panel appointed under regulation 9 to conduct the review must consider—
- (a) whether Redress Scotland ought to have assessed the fee payment request differently, and
  - (b) in the case where additional information is provided to or obtained by the review panel, whether the fee payment request ought to be determined differently as a result.
- (2) The fee review panel may uphold, reverse or vary any part of the assessment of the fee payment request (whether the request for a review relates to that part of it or not).
- (3) Once the fee review panel has conducted the review, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
- (a) notify the solicitor of the fee review panel’s assessment, and

- (b) provide the solicitor with a summary, provided by Redress Scotland, of the fee review panel's reasons for reaching that assessment.
- (4) The assessment of the fee review panel under this regulation is final.

#### **Withdrawal of request for review made under regulation 8**

**12.**—(1) A request for a review may be withdrawn by a solicitor making a withdrawal request at any time prior to the outcome of the review assessment made under regulation 11.

(2) A withdrawal request under paragraph (1) must be made in writing to the Scottish Ministers.

(3) The Scottish Ministers must, as soon as reasonably practicable after receiving the withdrawal request under paragraph (1), inform Redress Scotland of it.

(4) Where Redress Scotland is informed of a withdrawal request made under paragraph (1), Redress Scotland must bring to an end any further assessment of the review which is the subject of the withdrawal request.

(5) Where a request for a review is withdrawn, no further request for a review may be made in respect of the assessment to which the request relates, unless the further request is made for a different reason.