
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

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

PART 4

PAYMENTS AND REIMBURSEMENTS MADE IN ERROR

Liability for payments made and costs and expenses reimbursed due to error

19.—(1) A person is liable to pay the Scottish Ministers the value of any payment of fees or, as the case may be, any costs and expenses reimbursed under these Regulations to the extent that the payment or reimbursement was due to a relevant error.

(2) A person's liability under paragraph (1) is the difference in value between—

- (a) the payment made, or as the case may be, the costs and expenses reimbursed to the person, and
- (b) the payment or, as the case may be, the costs and expenses (if any) that would have been paid or reimbursed to the person had the relevant error not been made.

(3) Where the Scottish Ministers seek to recover a sum due to them by a person under paragraph (1), the sum may be paid—

- (a) in such instalments as are agreed at the request of, or otherwise with the consent of the person, or
- (b) otherwise, as a single payment.

(4) In this regulation, “relevant error” means—

- (a) an error when making a payment of fees or reimbursing costs and expenses under these Regulations, or
- (b) an error which the Scottish Ministers consider led to a decision to make a payment or to reimburse costs and expenses under these Regulations—
 - (i) incorrectly, or
 - (ii) correctly but on the basis of incorrect or misleading information,

in a way which materially affected the decision.

Reconsideration of decisions to pay fees for legal work, costs and expenses

20.—(1) Where Redress Scotland has, or the Scottish Ministers have, cause to believe that a decision error has occurred, it or they may refer the decision in question for reconsideration (regardless of whether or not a payment or reimbursement has been made).

(2) The decision in question is to be considered on behalf of Redress Scotland by a panel of at least 2 members of Redress Scotland appointed by the chairing member (“a reconsideration panel”).

(3) Where Redress Scotland refers a decision for reconsideration under paragraph (1), it must, as soon as reasonably practicable, inform the Scottish Ministers of the referral.

(4) Where a decision is referred for reconsideration under paragraph (1) by either Redress Scotland or the Scottish Ministers, the Scottish Ministers must, as soon as reasonably practicable—

- (a) notify the appropriate person that the decision is to be reconsidered,
- (b) notify the appropriate person of the reasons for the reconsideration, and
- (c) provide the appropriate person with information about the implications of the decision being reconsidered.

(5) The Scottish Ministers must allow the appropriate person a period of at least 8 weeks, beginning with the date on which the notice of the reconsideration was received by them, to make written representations in connection with the reconsideration.

(6) A reconsideration panel may consider written representations made later than the period mentioned in paragraph (5), if it is satisfied that the appropriate person had a good reason for not making those representations sooner.

(7) After the period of making representations under paragraph (5) has ended or, where paragraph (6) applies and representations are considered later than that period, the reconsideration panel must—

- (a) determine whether the decision in question was affected by a decision error, and
- (b) if so, re-determine it on the basis of how it would have been decided had the error not been made.

(8) Once the reconsideration panel has conducted the reconsideration, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—

- (a) notify the appropriate person of the reconsideration panel's determination under paragraph (7)(a) and where, appropriate, its re-determination under paragraph (7)(b), and
- (b) provide the appropriate person with a summary, provided by Redress Scotland, of the reconsideration panel's reasons for reaching that outcome.

(9) In this regulation—

- (a) “the appropriate person” means the person to whom payment was, or was due to be, made as a result of the decision in question,
- (b) “decision error” means an error which led to a decision to make a payment or to reimburse costs and expenses under these Regulations being made—
 - (i) incorrectly, or
 - (ii) correctly but on the basis of incorrect or misleading information, in a way which materially affected the decision,
- (c) “the decision in question” means a decision to make a payment of fees or, as the case may be, to reimburse costs and expenses to the appropriate person under these Regulations.

Review of a reconsideration outcome

21.—(1) Where the appropriate person has received notice of the outcome of a reconsideration under regulation 20(8), they may request a review of it.

(2) A request for a review must—

- (a) be made in writing 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 outcome was received by the person,

- (c) specify why a review is being requested, and
 - (d) contain or be accompanied by any information the appropriate person 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.
- (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 appropriate person had a good reason for not requesting a review sooner.
- (5) A request for a review is to be determined on behalf of Redress Scotland by a panel (“an error review panel”) of at least 2 members of Redress Scotland appointed by the chairing member and must not include any member of the panel which made the determination which is subject to the review.
- (6) The error review panel appointed under paragraph (5) to conduct the review is to determine it on the basis of—
- (a) the evidence on which the outcome which is the subject of the request for a review was determined, and
 - (b) any further relevant evidence which is provided to it or obtained by the panel, including any information contained in or accompanying the request for a review and any written representations which are made to the panel.
- (7) The procedure for conducting a review is otherwise to be determined by Redress Scotland.
- (8) On a review, the error review panel appointed under paragraph (5) must consider—
- (a) whether the reconsideration panel ought to have reached a different outcome under regulation 20(7)(a), and
 - (b) in the case where additional evidence is provided to or obtained by the error review panel, whether the outcome of the review ought to be determined differently as a result.
- (9) The error review panel may uphold, reverse or vary any part of the outcome of a reconsideration (whether the request for a review relates to that part of it or not).
- (10) Once the error review panel has conducted the review, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
- (a) notify the appropriate person of the error review panel’s determination, and
 - (b) provide the appropriate person with a summary, provided by Redress Scotland, of the error review panel’s reasons for reaching that determination.
- (11) The determination of the error review panel under this regulation is final.
- (12) The definitions in regulation 20(9)(a) and (c) apply for the purposes of this regulation.

Withdrawal of review request

- 22.**—(1) A request for a review made under regulation 21(2) may be withdrawn by an appropriate person making a withdrawal request at any time prior to the determination of the review under regulation 21(9).
- (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 a withdrawal request under paragraph (1), inform Redress Scotland of it.
- (4) Where Redress Scotland is informed of withdrawal request made under paragraph (1), Redress Scotland must bring to an end any further determination of the review which is the subject of the withdrawal request.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022 No. 44*

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