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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 5**

**MODIFICATIONS OF THE ACT**

**Amendment of section 46 of the Act - waiver**

**23.**—(1) Section 46 of the Act is amended as follows.

(2) In subsection (4), for paragraphs (a) and (b) substitute—

- “(a) beginning with the effective date of the waiver signed and returned in respect of the fixed rate payment or, where subsection (3)(b) applies, the previous individually assessed payment, and
- (b) ending with the date that, but for subsection (2), would be the effective date of a waiver signed and returned in respect of the further sum.”.

(3) In subsection (6)—

(a) before the definition of “relevant abuse” insert—

““effective date”, in relation to a waiver in respect of a redress payment, is—

- (a) in a case where a panel appointed under section 35 determines that the applicant is eligible for a redress payment, the date of that determination,
- (b) in a case where a panel appointed under section 55 to conduct a review determines that the applicant is eligible for a redress payment, the date of that determination,
- (c) in a case where a panel appointed under section 75 to reconsider a determination or, as the case may be, a panel appointed to conduct a review under section 76 determines that a person is or remains, eligible for a redress payment, the date on which it should have been determined that the applicant was eligible for a redress payment had the original determination not been materially affected by an error,”.

(b) for the definition of “relevant scheme contributor” substitute—

““relevant scheme contributor” is a scheme contributor who is included in the contributor list on the effective date of a waiver signed and returned in accordance with subsection (1).”.

**Amendment of section 75 of the Act – reconsideration of determination where possible material error**

**24.**—(1) Section 75 of the Act is amended as follows.

(2) After subsection (5) insert—

“(5A) Subsection (5B) applies where, in relation to an original determination which determined an application for a redress payment, the reconsideration panel determines under subsection (5)(b) that a person—

- (a) is eligible for a redress payment, and
- (b) is not precluded from being offered a redress payment by virtue of section 60 (as it applies by virtue of subsection (5)(b)).

(5B) In assessing the amount of the redress payment (if any) to be offered, no account is to be taken of any redress payment which has previously been paid in respect of the original determination but no entitlement to any such amount arises by virtue of section 50(2).”.

(3) In subsection (7), for paragraph (b) substitute—

- “(b) provide the relevant person with—
- (i) a summary, provided by Redress Scotland, of the reconsideration panel’s reasons for reaching that determination,
  - (ii) information in relation to the effect of the panel’s determination on a previous offer of a redress payment made under the original determination,
  - (iii) where the panel’s determination makes an offer of a redress payment, information about the period for which the offer remains valid by virtue of section 49(3) and the options available to the relevant person in respect of it.”.

(4) For subsection (8) substitute—

“(8) Where the reconsideration panel makes a determination, in relation to an original determination in respect of which a right of review still exists, that the original determination was materially affected by an error—

- (a) the reconsideration panel’s determination takes the place of the original determination, and
- (b) any review of the reconsideration panel’s determination is to be conducted under section 76.”.

(5) In subsection (9)—

- (a) for “this section” substitute “this section and in sections 75A to 78”,
- (b) after the definition of “error” insert—  
““original determination” means the determination referred for reconsideration under subsection (1),”.

### **Effect of reconsideration on ongoing applications etc.**

25. After section 75 of the Act, insert—

#### **“Effect of referral for reconsideration on ongoing applications**

**75A.—**(1) This section applies where—

- (a) an offer of a redress payment was made under the original determination,
- (b) at the point at which the original determination was referred for reconsideration, the offer had not been accepted and the period for which the offer (or, as the case may be, the offer as revived under section 49(4) or 58(4)) is valid had not ended.

(2) From the point at which the original determination is referred for reconsideration—

- (a) the offer is suspended (and any purported acceptance of it while it is suspended is of no effect),
  - (a) where a request for a review of the original determination has been made but not determined, the review is paused.
- (3) Where the reconsideration panel determines under section 75(5)(a) that the original determination was not materially affected by an error—
- (a) the offer is revived,
  - (b) subsections (4) and (5) apply, and
  - (c) any review paused by virtue of subsection (2)(b) is resumed.
- (4) Where the original determination was made under section 36, sections 49 to 53 apply subject to the following modifications—
- (a) references to the applicant are to be read as references to the relevant person,
  - (b) in section 49—
    - (i) in subsection (3)(a), for “the date on which the offer was received by the applicant” there is substituted “the date on which the relevant person received notification of the determination under section 75(5)(a)”, and
    - (ii) in subsections (3)(b) and (4), the references to the panel appointed under section 35 are to be read as references to the reconsideration panel,
  - (c) in section 51(1), the reference to the panel appointed under section 35 or, as the case may be, a review panel appointed under section 55 is to be read as a reference to the reconsideration panel.
- (5) Where the original determination was made on a review, sections 50 and 58 apply subject to the following modifications—
- (a) references to the applicant are to be read as references to the relevant person,
  - (b) in section 58(3)(a), for “the date on which the offer was received by the applicant” there is substituted “the date on which the relevant person received notification of the determination under section 75(5)(a)”, and
  - (c) in section 58(3)(b) and (4), the references to the review panel are to be read as references to the reconsideration panel.

### **Effect of referral for reconsideration on unpaid redress payments**

**75B.**—(1) This section applies where—

- (a) an offer of a redress payment was made under the original determination,
- (b) at the point at which the original determination was referred for reconsideration, the offer had been accepted but payment (in whole or in part) had not been made.

(2) From the point at which the original determination is referred for reconsideration, any entitlement to the redress payment (or any unpaid part of it) under section 50(2) is suspended.

(3) Where the reconsideration panel determines under section 75(5)(a) that the original determination was not materially affected by an error, any entitlement to the redress payment (or any unpaid part of it) under section 50(2) is restored.

### **Effect of redetermination: no eligibility or no offer made**

**75C.**—(1) This section applies where a reconsideration panel determines under section 75(5)(b) that a person—

- (a) is not eligible for a redress payment,
  - (b) is so eligible but no redress payment is to be offered (for example, due to the deduction of relevant payments), or
  - (c) is precluded from being offered a redress payment by virtue of section 60 (as it applies by virtue of section 75(5)(b)).
- (2) Any waiver signed and returned in accordance with section 46 in respect of an offer made under the original determination is of no effect.

**Effect of redetermination: offer made where no previous offer or previous offer not accepted**

**75D.—**(1) This section applies where the reconsideration panel determines under section 75(5)(b) that an offer of a redress payment is to be made and—

- (a) no offer of a redress payment was made under the original determination, or
- (b) such an offer was made but, at the point at which the original determination was referred for reconsideration, the offer had not been accepted.

(2) Subject to subsection (3), sections 46, 47 and 49 to 53 apply to the offer made under section 75(5)(b) as they apply to an offer made under a determination under section 36 but subject to the modification that references in those sections to—

- (a) the applicant (other than the reference in the definition of “relevant abuse” in section 46(6)) are to be read as references to the relevant person, and
- (b) the panel appointed under section 35 or, as the case may be, a review panel appointed under section 55 are to be read as references to the reconsideration panel.

(3) Sections 46, 47 and 49 to 53 are subject to the following further modifications—

- (a) in section 46(2), for “an applicant to whom subsection (3) applies” substitute “, where subsection (3) applies, the relevant person”,
- (b) in section 46(3), for “to an applicant for an individually assessed payment who” substitute “where the application to which the original determination relates is an application for an individually assessed payment and the applicant in relation to that application”,
- (c) for section 49(1), substitute—

“(1) A relevant person to whom an offer of a redress payment is made under section 75(5)(b) may—

- (a) accept the offer in accordance with section 50(1),
- (b) reject the offer in accordance with subsection (1A), or
- (c) request a review of the offer in accordance with section 76.

(1A) An offer of a redress payment made under section 75(5)(b) is rejected by the relevant person giving the Scottish Ministers notice in writing that the offer is rejected.”,

- (d) in section 49(2), for “neither” substitute “none”,
- (e) in section 49(3)(a), for “the date on which the offer was received by the applicant” there is substituted “the date on which the relevant person received notification of the determination under section 75(5)(b)”.

### **Effect of redetermination: offer made where previous offer accepted**

**75E.—**(1) This section applies where the reconsideration panel determines under section 75(5)(b) that an offer of a redress payment is to be made (“the new offer”) and—

- (a) an offer of a redress payment was made under the original determination (“the original offer”), and
- (b) at the point at which the original determination was referred for reconsideration, the original offer had been accepted.

(2) Where the new offer is an offer of the same amount as the original offer—

- (a) the new offer is deemed to have been accepted in accordance with section 50(1),
- (b) any waiver signed and returned in accordance with section 46 in respect of the original offer continues to have effect,
- (c) subject to the modification in subsection (3), sections 50(2) to (4) and 51 to 53 apply to the new offer as they apply to an offer made under a determination under section 36, and
- (d) references in those sections to—
  - (i) the applicant are to be read as references to the relevant person, and
  - (ii) the panel appointed under section 35 or, as the case may be, a review panel appointed under section 55 are to be read as references to the reconsideration panel.

(3) The modification referred to in subsection (2)(c) is, in section 50(4), after “section 46” insert “(as modified by section 75D(2)(a))”.

(4) Where the new offer is not an offer of the same amount as the original offer, sections 49 to 53 apply to the new offer as they apply to an offer made under a determination under section 36 but subject to the modification that references in those sections to—

- (a) the applicant are to be read as references to the relevant person, and
- (b) the panel appointed under section 35 or, as the case may be, review panel appointed under section 55 are to be read as references to the reconsideration panel.

(5) Where subsection (4) applies, sections 49 and 50 are subject to the following further modifications—

(a) for section 49(1), substitute—

“(1) A relevant person to whom an offer of a redress payment is made under section 75(5)(b) may—

- (a) accept the offer in accordance with section 50(1),
- (b) reject the offer in accordance with subsection (1A), or
- (c) request a review of the offer in accordance with section 76.

(1A) An offer of a redress payment made under section 75(5)(b) is rejected by the relevant person giving the Scottish Ministers notice in writing that the offer is rejected.”

(b) in section 49(2)—

- (i) for “neither” substitute “none”, and
- (ii) for “rejected” substitute “accepted”,

- (c) in section 49(3)(a), for “the date on which the offer was received by the applicant” there is substituted “the date on which the relevant person received notification of the determination under section 75(5)(b)”.
  - (d) for section 50(1) substitute—
    - “(1) An offer of a redress payment made under a determination under section 75(5)(b) is accepted by the relevant person giving the Scottish Ministers notice in writing that the offer is accepted.”,
  - (e) in section 50(2)(a), after “subsection (1)” insert “or, as the case may be, treated as accepted under section 49(2)”,
  - (f) in section 50(4), after “section 46” insert “(as modified by section 75D(2)(a))”.
- (6) Where the relevant person accepts the new offer or is treated as having accepted the new offer under section 49(2), any waiver signed and returned in accordance with section 46 in respect of the original offer continues to have effect.
- (7) Where the relevant person rejects the new offer, any waiver signed and returned in accordance with section 46 in respect of the original offer is of no effect.
- (8) For the avoidance of doubt, in a case where the original offer relates to an application for an individually assessed payment made by virtue of section 30(2) or, as the case may be, (3), subsection (7) does not apply to any waiver signed in relation to an offer of a redress payment made previously to or in respect of the applicant.”

#### **Amendment of section 77 of the Act – outcome of a section 76 review**

- 26.—(1) Section 77 of the Act is amended as follows.
- (2) In subsection (2)(a), after “person” insert “is or”.
  - (3) After subsection (4) insert—
    - “(4A) Subsections (4B) and (4C) apply where the review panel determines under this section that an offer of a redress payment is to be made (whether or not an offer of a redress payment was made under the determination under section 75(5)(b) which was the subject of the request for a review).
    - (4B) In assessing the amount of the redress payment (if any) to be offered, no account is to be taken of any redress payment which has previously been paid in respect of the original determination which was referred for reconsideration under section 75 but no entitlement to any such amount arises by virtue of section 50(2).
    - (4C) Section 75D or, as the case may be, 75E applies to an offer made under a determination under this section as it applies to an offer made under a determination under section 75(5)(b) subject to the following modifications—
      - (a) references to the relevant person are to be read as references to the person who requested the review,
      - (b) references to the reconsideration panel are to be read as references to the review panel appointed to conduct the review under section 76.”.
  - (4) In subsection (5), for paragraph (b) substitute—
    - “(b) provide the person with—
      - (i) a summary, provided by Redress Scotland, of the review panel’s reasons for reaching that determination,
      - (ii) information in relation to the effect of the panel’s determination on a previous offer of a redress payment made under the determination under section 75(5)(b),

- (iii) where the panel’s determination makes an offer of a redress payment, information about the period for which the offer remains valid by virtue of section 49(3) and the options available to the person in respect of it.”.

**Withdrawal of section 76 review request etc.**

27. After section 77 of the Act, insert—

**“Withdrawal of review request**

**77A.**—(1) This section applies where—

- (a) a request for a review under section 76 is withdrawn in accordance with section 59 (as applied by section 76(6)), and
- (b) the request relates to a review of a determination under section 75(5)(b) under which an offer of a redress payment was made.

(2) The period for which the offer remains valid under section 49(3), or any longer period which had been determined under that section prior to the request for a review being made, is to be extended by the number of days in the period—

- (a) beginning with the date on which the request for a review was made, and
- (b) ending with the date on which the request was withdrawn.

**Liability for redress payment where offer on redetermination rejected**

**77B.**—(1) This section applies where—

- (a) an offer of a redress payment was made under the original determination (“the original offer”),
- (b) the offer had been accepted in accordance with section 50(1) and payment (in whole or in part) had been made,
- (c) the reconsideration panel determines under section 75(5)(b) or, as the case may be, a review panel determines under section 77 that an offer of a redress payment is to be made (“the new offer”), and
- (d) the relevant person or, as the case may be, the person who requested the review rejects the new offer.

(2) The person is liable to pay the Scottish Ministers the value of any redress payment paid in respect of the original offer (whether or not that person is also liable to pay any amount by virtue of section 74).

(3) Where the Scottish Ministers seek to recover a sum due to them by a person under subsection (2), the sum may be paid—

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