

POLICY NOTE

THE REDRESS FOR SURVIVORS (HISTORICAL CHILD ABUSE IN CARE) (SCOTLAND) ACT 2021 (FORM AND CONTENT OF WAIVER ETC.) REGULATIONS 2021

SSI 2021/414

The above instrument was made in exercise of the powers conferred by section 47 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. The instrument is subject to affirmative procedure.

Summary Box

The Regulations set out the form and content of the waiver that applicants must sign if they want to accept an offer of a redress payment under the redress scheme created by the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. The Regulations also set out information that is to be provided to applicants in relation to waiver.

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 eligible 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.

In accordance with section 46 of the Act, a person who wishes to accept an offer of a redress payment must sign and return a waiver agreeing to abandon any civil proceedings to the extent they are “relevant civil proceedings” and waive any right to bring such proceedings. “Relevant civil proceedings” are proceedings against the Scottish Ministers and any “relevant scheme contributor” in relation to abuse suffered which is eligible under the scheme. “Relevant scheme contributor” is a scheme contributor included in the list maintained by Ministers under section 14 of the Act. To be included in the list under section 14, a contributor must be making a financial contribution to the scheme which in the opinion of Ministers is fair and meaningful.

The purpose of these Regulations is to make further provision about the form and content of the waiver and Regulation 2, which incorporates the Schedule, does this by prescribing the text of the waiver that will require to be signed by applicants who wish to accept an offer of a redress payment.

It is in the interests of fairness and transparency to all applicants and contributors that the waiver is in a prescribed form rather than negotiated on a case by case basis.

The Regulations also make provision about what information is to be provided to applicants in relation to waiver and its effect including information about the relevant scheme contributors the waiver is to apply to, the importance of obtaining independent legal advice before accepting an offer of a redress payment and signing and returning a waiver, and the availability, under the redress scheme, of payment of fees for legal work in connection such independent legal advice. Therefore, it is absolutely clear and transparent that, under these Regulations, applicants must be given this important information to enable them to make informed choices about the offer of redress and the waiver.

The information set out in the Regulations is not the only information that will be provided to applicants considering whether to accept an offer of a redress payment and sign a waiver.

Section 9 of the Act also places a duty on the Scottish Ministers to use their best endeavours to ensure that applicants, and potential applicants, to the redress scheme have the opportunity to make informed choices, and in particular to publish a 'summary of options' setting out, in an accessible format, information about the options available to individuals in connection with applications, the support and other assistance available under the scheme and alternatives to the scheme (which could, for example, include raising an action for damages). Section 36 of the Act requires the summary of options to be sent at the same time as notifying the applicant the outcome of their redress application.

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. Their views have been taken on board in terms of the general approach to Regulation 3 and will continue to inform the guidance that is being drafted for applicants.

Impact Assessments

The legislative impact assessments for the relevant Act were 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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