
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 419 (C. 29)

REDRESS SCHEME

The Redress for Survivors (Historical Child Abuse in Care)
(Scotland) Act 2021 (Commencement No. 2) Regulations 2021

Made - - - - 16th November 2021
Laid before the Scottish
Parliament - - - - 18th November 2021
Coming into force - - 7th December 2021

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 109(2) of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021⁽¹⁾.

Citation and commencement

1. These Regulations may be cited as the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Commencement No. 2) Regulations 2021 and come into force on 7 December 2021.

Appointed day

2. The day appointed for the coming into force of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, so far as not already in force, is 7 December 2021.

St Andrew's House,
Edinburgh
16th November 2021

JOHN SWINNEY
A member of the Scottish Government

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force the following provisions of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the Act”), on 7 December 2021:

Section 7 – setting out the functions of Redress Scotland,

Section 9 – requiring the Scottish Ministers to use their best endeavours to ensure that individuals who are or may be considering applying or who have made such an application have the opportunity to make informed choices, by publishing a “summary of options”,

Section 18 – setting out the eligibility criteria for a person to apply for a redress payment,

Section 19 – providing the meaning of “abuse”,

Section 20 – providing the meaning of “relevant care setting”,

Section 21 – making further provision about the meaning of “residential institution”,

Section 22 – providing the meaning of “resident”,

Section 24 – setting out eligibility criteria for a person to apply for a next of kin payment,

Section 25 – making further provision about exceptional circumstances to apply for a next of kin payment,

Section 26 – providing for a right of review of a determination made under section 25,

Section 27 – setting out provisions on the outcome of a section 26 review,

Section 28 – providing the meaning of “specified next of kin”,

Section 29 – setting out requirements for an application for a redress payment,

Section 30 – setting out circumstances where more than one application for redress is permitted,

Section 31 – setting out the period during which applications for a redress payment can be made,

Section 32 – allowing applications to be paused at an applicant’s request,

Section 33 – allowing an applicant to withdraw their application,

Section 34 – requiring the chairing member of Redress Scotland to decide the order of priority of applications, in particular with regard to age and health of applicants,

Section 35 – setting out that decisions on applications will be made by decision-making panels of at least 2 members of Redress Scotland (for applications for fixed rate or next of kin payments) and at least 3 members for an application for an individually assessed payment,

Section 36 – setting out the standard of proof, and the manner and procedure in which the panel appointed under section 35 must determine the application,

Section 37 – making provision for the assessment of the amount of a redress payment,

Section 38 – setting out that a fixed rate payment is a payment of £10,000,

Section 39 – setting out the payment levels of individually assessed payments,

Section 40 – providing for the level of next of kin payments, by reference to the relevant share of a fixed rate payment,

Section 41 – giving the Scottish Ministers power by regulations to adjust redress payment amounts for inflation,

- Section 42 – requiring deduction of certain previous payments from a redress payment,
- Section 43 – making further provision about deduction of previous payments,
- Section 44 – requiring an applicant to provide the Scottish Ministers with certain information about previous payments,
- Section 45 – providing that the disclosure of information about previous payments is not to be treated as a breach of a previous settlement or other agreement concerning the payments,
- Section 46 – requiring an applicant who wishes to accept an offer of a redress payment to sign and return a waiver, and setting out the effect of a waiver and definitions relevant to the waiver,
- Section 48 – requiring Scottish Ministers to lay before the Scottish Parliament a report (within 18 months of the commencement of section 46) on their assessment of the effect of waiver on applications for a redress payment and the effectiveness of waiver in encouraging financial contributions,
- Section 49 – setting out the period of time for which an offer of a redress payment is valid,
- Section 50 – setting out how an offer of redress may be accepted, and the ability to pay redress by instalments if requested by the applicant,
- Section 51 – making provision for directions to be made, including payment by instalments, in relation to redress payments to those applicants aged under 18,
- Section 52 – making provision for an applicant to request a review of a direction made under section 51,
- Section 53 – setting out the role of a review panel in relation to a section 52 review,
- Section 54 – setting out the right of an applicant to request a review of a determination of a decision-making panel in certain circumstances, and the timescales and procedure for such a request,
- Section 55 – setting out that a review must be determined by a review panel of at least 3 members of Redress Scotland who were not previously involved in the determination,
- Section 56 – making provision for the procedure for a review,
- Section 57 – making provision for the possible outcomes of a review,
- Section 58 – setting out the period for which an offer of a redress payment is valid following a review determination,
- Section 59 – allowing an applicant to withdraw a review request,
- Section 60 – setting out that applicants etc. with convictions for certain serious offences may be precluded in certain circumstances from being offered a redress payment,
- Section 61 – providing definitions for the purposes of section 60,
- Section 62 – providing a person who is notified of a determination under section 60 that they are precluded from being offered a redress payment or, as the case may be, that that person would otherwise not have been eligible for such a payment, with the right to request a review of that determination,
- Section 63 – setting out the possible outcomes of a review under section 62,
- Section 64 – requiring an applicant or their nominated beneficiary to provide the Scottish Ministers with information about relevant convictions for serious offences for the purposes of section 60,
- Section 65 – providing for an applicant to nominate a beneficiary to take over their application in the event of their death while an application is ongoing,
- Section 66 – setting out that an applicant’s death while an application is ongoing will bring the application to an end unless the applicant has nominated a beneficiary and Redress Scotland invites the nominated beneficiary to take over the application, as well as the circumstances when Redress Scotland must or may invite a nominated beneficiary to take over an application.

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Section 67 – requiring Redress Scotland and the Scottish Ministers, on request, to provide the nominated beneficiary with access to information and evidence in connection with the application for redress,

Section 68 – giving a nominated beneficiary a right to review a determination under section 66(3) not to invite them to take over the application,

Section 69 – setting out the possible outcomes of a section 68 review,

Section 70 – providing that where an applicant dies after accepting an offer of a redress payment but before it is paid, the payment is to be paid to the applicant’s estate,

Section 71 – making provision for the Scottish Ministers to notify a nominated beneficiary of the invitation to take over the application and the timescale for accepting the invitation,

Section 72 – making further provision in relation to an application taken over by nominated beneficiary including that eligibility is determined on the basis of the applicant’s eligibility, but that otherwise, subject to certain exceptions, the nominated beneficiary takes the place of the applicant in relation to the application,

Section 73 – setting out that an application taken over by a nominated beneficiary who dies or ceases to exist is brought to an end, but if an individual nominated beneficiary has accepted but not been paid the redress payment, it is to be paid to their estate,

Section 74 – providing that if a person is paid a redress payment due to a relevant error that person is liable to repay the value of the redress payment to the extent it is paid due to that error,

Section 75 – making provision for the reconsideration of a redress payment determination where it may have been materially affected by an error,

Section 76 – giving a person who is notified of a determination under section 75 a right to request a review of it,

Section 77 – setting out the possible outcomes of a section 76 review,

Section 79 – giving the Scottish Ministers power to require the provision of evidence from a person, other than the applicant, for the purposes of determination of any matter by a Redress Scotland decision-making panel initially deciding an application or on review,

Section 80 – giving the Scottish Ministers power to obtain information from persons, other than the applicant, about previous payments,

Section 81 – giving Redress Scotland the power to require that the Scottish Ministers obtain information under sections 79 or 80 and the timescales for doing so,

Section 82 – requiring Redress Scotland and the Scottish Ministers to provide an applicant on request, with access to information and evidence held in connection with an application,

Section 83 – giving the Scottish Ministers the power to commission reports reasonably necessary for applications for redress, with the applicant’s consent,

Section 84 – creating offences in respect of failing to provide, or tampering with information or evidence, required to be provided under sections 79 or 80 or section 81(1)(c),

Section 85 – providing for an individual’s culpability in certain circumstances, for an offence under section 84 where certain organisations commit the offence,

Section 86 – preventing the Crown from being criminally liable for offences under section 84 but allowing the Court of Session, on an application by the Lord Advocate, to declare unlawful any act or omission for which the Crown would, but for this section, be criminally liable,

Section 88 – providing the Scottish Ministers or Redress Scotland with the power to share information with third parties, in certain circumstances,

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Section 92 – setting out the duty on the Scottish Ministers to pay prescribed fees for legal work reasonably undertaken in making an application for redress, and enabling them to refer to Redress Scotland cases where they have cause to believe that legal work was not reasonably undertaken,

Section 93 – setting out duty on the Scottish Ministers to pay certain fees for legal work in exceptional cases, including for work that Redress Scotland considers was reasonably undertaken in connection with a proposed application by a person who sought legal advice on eligibility, where the person did not subsequently apply,

Section 94(1) and (2) – providing for the making of payment requests by solicitors in relation to fees for legal work in connection with applications (“fee payment requests”),

Section 95(1) to (4) – providing for receipt and assessment of fee payment requests, and for the review of assessments in certain circumstances,

Section 96 – setting out that where a solicitor receives a payment of legal fees under section 92 or 93, the solicitor may not accept any additional payment (directly or indirectly) in respect of the legal work in making the application or the proposed application,

Section 97 – setting out the liability to repay certain payments, such as payments in respect of a report commissioned under section 83, or legal fees under section 92 and 93, where these payments were made due to a relevant error,

Section 99 – setting out the responsibility of those included in the contributor list during the first 9 months of the reporting period to send to the Scottish Ministers an annual report on wider redress actions they are taking,

Section 100 – giving the Scottish Ministers the power to require production of a report from a person that has failed to comply with section 99 and where an application for redress involving a person who is not included in the contributor list results in an offer of redress,

Section 101 – giving the Scottish Ministers the power to make provision by regulations about additional redress reporting in an annual report or equivalent document,

Section 104 – giving the Scottish Ministers the power by regulations to provide for dissolution of Redress Scotland after the application period in respect of redress payments (as set out in section 31) has ended.

The Bill for the Act received Royal Assent on 23 April 2021. Sections 105 (interpretation), 107 (regulation-making powers), 108 (ancillary provision), 109 (commencement) and 110 (short title) came into force the following day.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulation)

The following provisions of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 have been brought into force by commencement regulations made before the date of these Regulations—

<i>Provision</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 1	28 June 2021	S.S.I. 2021/234
Section 2	28 June 2021	S.S.I. 2021/234
Section 3	28 June 2021	S.S.I. 2021/234
Section 4	28 June 2021	S.S.I. 2021/234
Section 5	28 June 2021	S.S.I. 2021/234

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<i>Provision</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 6	28 June 2021	S.S.I. 2021/234
Section 8	28 June 2021	S.S.I. 2021/234
Section 10	28 June 2021	S.S.I. 2021/234
Section 11	28 June 2021	S.S.I. 2021/234
Section 12	28 June 2021	S.S.I. 2021/234
Section 13	28 June 2021	S.S.I. 2021/234
Section 14	28 June 2021	S.S.I. 2021/234
Section 15	28 June 2021	S.S.I. 2021/234
Section 16	28 June 2021	S.S.I. 2021/234
Section 17	28 June 2021	S.S.I. 2021/234
Section 23	28 June 2021	S.S.I. 2021/234
Section 47	28 June 2021	S.S.I. 2021/234
Section 78	28 June 2021	S.S.I. 2021/234
Section 87	28 June 2021	S.S.I. 2021/234
Section 89	28 June 2021	S.S.I. 2021/234
Section 90	28 June 2021	S.S.I. 2021/234
Section 91	28 June 2021	S.S.I. 2021/234
Section 94(3) to (6)	28 June 2021	S.S.I. 2021/234
Section 95(5)	28 June 2021	S.S.I. 2021/234
Section 98	28 June 2021	S.S.I. 2021/234
Section 102	28 June 2021	S.S.I. 2021/234
Section 103	28 June 2021	S.S.I. 2021/234
Section 106	28 June 2021	S.S.I. 2021/234
Schedule 1	28 June 2021	S.S.I. 2021/234
Schedule 2	28 June 2021	S.S.I. 2021/234