

REDRESS FOR SURVIVORS (HISTORICAL CHILD ABUSE IN CARE) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

DETAILED PROVISIONS

Schedule 2: The National Confidential Forum

345. Section 103 of the Act dissolves the National Confidential Forum (“the Forum”), which is a committee of the Mental Welfare Commission. Schedule 2 makes provision in respect of connected matters. Part 1 provides for continuing matters following the repeal of the Forum, while Part 2 repeals relevant sections of the Victims and Witnesses (Scotland) Act 2014 which established the Forum and makes adjustments to other legislation to take account of that repeal.

Part 1 - Continuing matters

Confidentiality and disclosure of information

346. Paragraph 1 of the schedule makes provision in relation to confidentiality and disclosure of information which will apply following the closure of the Forum. This includes setting out the persons to whom the paragraph applies, imposing a general prohibition on the disclosure of certain information, setting out the information which is not to be disclosed by those persons, and setting out the circumstances in which disclosure may be permissible.
347. Section 15(2) of ILRA provides that the repeal by an Act of the Scottish Parliament (“ASP”) of another ASP does not affect an existing right or obligation accrued under the repealed ASP. So, any information which had been received prior to the dissolution of the Forum would remain subject to the confidentiality provisions in force whilst it was in operation. However, this would not apply to someone who accessed the information after the repeal has taken place, as that person will not be subject to any existing obligation to maintain confidentiality or any existing right or obligation to disclose information in certain situations. Records accumulated during the Forum’s existence will continue to be stored and may need to be accessed for particular purposes. Therefore, this has been dealt with by way of a repeal and a specific provision (which is tailored to the fact that the Forum will no longer exist) about the duty of confidentiality and the ability to disclose in certain circumstances.
348. The disclosure of relevant information is not prevented to the extent that it is a disclosure to another person referred to in paragraph 1(1) and is necessary for the purpose of enabling or assisting the carrying out of functions by the Mental Welfare Commission for Scotland, or it is necessary for the preparation of the Mental Welfare Commission’s annual report. Paragraph 1(4) sets out that a court may order disclosure of relevant information in, or for the purposes of, civil and criminal proceedings, including for the purposes of the investigation of any offence or suspected offence, where this is necessary and to the extent necessary in the interests of justice.

Public records

349. Paragraph 2 ensures that the Mental Welfare Commission for Scotland must continue to have a separate records management plan for the records related to the Forum following its closure.

Part 2 - Consequential modifications

350. Part 2 of the schedule makes consequential modifications to other pieces of legislation to take account of the Forum's dissolution. References to the Forum are therefore removed from other enactments where they appear. The number of members of the Mental Welfare Commission is returned to between six and eight to take account of the fact that it is no longer necessary to have one person with skills relevant to the Forum's functions (which was the reason for increasing the number to between seven and nine).