



Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021

2021 asp 15

PART 2

OPERATION OF THE REDRESS SCHEME

Redress Scotland

3 Establishment

- (1) Redress Scotland (in Gaelic, Ceartaich Alba) is established.
- (2) Redress Scotland is a body corporate.
- (3) Redress Scotland has the functions conferred on it under or by virtue of this Act and any other enactment.

4 Status

- (1) Redress Scotland—
 - (a) is not a servant or agent of the Crown,
 - (b) does not enjoy any status, immunity or privilege of the Crown.
- (2) Redress Scotland's members and staff are not to be regarded as civil servants.

5 Membership, procedures and powers etc.

Schedule 1 makes provision—

- (a) about the membership, staffing, procedures, powers and duties of Redress Scotland,
- (b) for the modification of other Acts so that their provisions apply to Redress Scotland.

6 Independence

- (1) In performing the functions conferred on it under or by virtue of this Act, Redress Scotland is not subject to the direction or control of any member of the Scottish Government.
- (2) Subsection (1) is subject to any contrary provision in this or any other enactment.

Functions in relation to the redress scheme

7 Functions of Redress Scotland

Redress Scotland has the general function of making determinations in connection with applications by individuals under the redress scheme, including determining—

- (a) applications for redress payments,
- (b) requests for a review of a determination,
- (c) referrals for reconsideration of a determination where the determination may have been materially affected by an error.

8 Functions of the Scottish Ministers

The Scottish Ministers have, in relation to the redress scheme, the general functions of—

- (a) making administrative arrangements for the establishment and operation of the redress scheme,
- (b) providing information, guidance and support to individuals in connection with applications under the redress scheme.

9 Duty with respect to ensuring individuals can make informed choices

- (1) In exercising their functions under paragraph (b) of section 8, the Scottish Ministers must use their best endeavours to ensure that persons who—
 - (a) are, or may be, considering making an application for a redress payment, or
 - (b) have decided to make, or have made, such an application,have the opportunity to make informed choices.
- (2) Accordingly, the Scottish Ministers must prepare and publish a statement setting out information about—
 - (a) the options available to such persons at each stage of the process of making an application for a redress payment,
 - (b) the support and other assistance available to such persons under the redress scheme, and
 - (c) the redress for survivors of historical child abuse in care in Scotland, including financial redress, which may be available to such persons otherwise than under the redress scheme.
- (3) The statement (the “summary of options”) must include, or set out details of where to find, information about—
 - (a) the options a person has in relation to—
 - (i) making, pausing and withdrawing an application for a redress payment,

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- (ii) accepting an offer of a redress payment, including the timescales for so doing, and the effect of signing and returning a waiver,
 - (iii) requesting a review of a determination made by Redress Scotland,
 - (b) the sources and types of information or evidence that an application for a redress payment may or must contain or be accompanied by,
 - (c) how such information and evidence may be obtained and shared, in particular the assistance available under the scheme in connection with obtaining such information and evidence,
 - (d) the importance of obtaining independent legal advice, in particular before accepting an offer of a redress payment and signing and returning a waiver,
 - (e) the availability, under the redress scheme, of payment of fees for legal work in connection with applications, and
 - (f) the support available under the scheme in connection with applications for redress payments.
- (4) The summary of options may include such other information as the Scottish Ministers consider appropriate.
- (5) The Scottish Ministers must keep the summary of options under review and may modify it from time to time.
- (6) In complying with their duty under subsection (5), the Scottish Ministers must have regard to any recommendations included, by virtue of paragraph 17(2) of schedule 1, in an annual report prepared by Redress Scotland.
- (7) If the Scottish Ministers modify the summary of options, they must publish the modified summary.

10 Provision of administrative support to Redress Scotland

The Scottish Ministers must provide such administrative support to Redress Scotland as they consider necessary to enable Redress Scotland to perform the functions conferred on it under or by virtue of this Act.

11 Duty on the Scottish Ministers and Redress Scotland to co-operate

- (1) The Scottish Ministers and Redress Scotland must co-operate with one another in exercising the functions in relation to the redress scheme conferred on them or on it under or by virtue of this Act.
- (2) Subsection (1) is subject to section 12.

12 Sharing of information between the Scottish Ministers and Redress Scotland

- (1) The Scottish Ministers and Redress Scotland may, in the circumstances mentioned in subsection (2), disclose information to each other.
- (2) The circumstances are that disclosure of the information is—
 - (a) necessary to enable the Scottish Ministers or Redress Scotland to perform a function conferred on them or on it under or by virtue of this Act, or
 - (b) otherwise necessary for or in connection with the operation of the redress scheme.

- (3) Nothing in this section authorises a disclosure of any information that would be in contravention of the data protection legislation.
- (4) In this section, “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.

13 Principle of dignity, respect and compassion

- (1) The Scottish Ministers, Redress Scotland, scheme contributors and other relevant persons must, in exercising functions conferred on them under or by virtue of this Act, have regard to the principle that the following persons should be treated with dignity, respect and compassion—
 - (a) persons who have made, or have decided to make, an application for a redress payment,
 - (b) persons who are, or may be, considering making such an application,
 - (c) persons who are being or are eligible to be provided with support by virtue of arrangements made under section 90,
 - (d) persons who have requested or may be considering requesting reimbursement of costs and expenses by virtue of regulations under section 91,
 - (e) nominated beneficiaries.
- (2) For the purpose of subsection (1), “other relevant persons” are persons on whom functions are conferred under or by virtue of this Act, other than—
 - (a) the Scottish Ministers, Redress Scotland and scheme contributors, and
 - (b) persons mentioned in paragraphs (a) to (e) of subsection (1).

Contributions to the redress scheme

14 Scheme contributors

- (1) The Scottish Ministers must establish and maintain a list of public authorities, voluntary organisations and other persons (other than individuals)—
 - (a) who exercise or have exercised functions in relation to the safeguarding or promotion of the welfare of children or the protection or furthering of their interests,
 - (b) who, in the opinion of Ministers, are making or have agreed to make a fair and meaningful financial contribution towards the funding of redress payments under this Act, and
 - (c) who, in making or agreeing to make such a contribution, acknowledge the wrongfulness of, and the harm caused by, the historical child abuse which took place in relevant care settings.
- (2) In this Act—
 - (a) the list established and maintained under subsection (1) is the “contributor list”, and
 - (b) a public authority, voluntary organisation or other person (other than an individual) included from time to time in the list is a “scheme contributor”.
- (3) The contributor list must record, in relation to each scheme contributor—
 - (a) the date on which the scheme contributor is included in the list,

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- (b) the financial contribution the scheme contributor is making or has agreed to make,
 - (c) where a scheme contributor is removed from the list, the date on which the removal takes effect, and
 - (d) where a scheme contributor is removed from the list with retrospective effect in accordance with section 16, that fact.
- (4) The contributor list may include such other information as the Scottish Ministers consider appropriate, including, in so far as known in relation to each scheme contributor—
 - (a) the relevant care settings the scheme contributor was involved with (whether as owner, manager or otherwise) or in which the contributor placed children for whom the contributor was responsible, and
 - (b) the dates between which the scheme contributor was involved with or placed children in those care settings.
- (5) The Scottish Ministers must ensure that applicants for redress payments are made aware of the contributor list and of the effect of signing and returning a waiver under section 46.
- (6) The Scottish Ministers may revise the contributor list by—
 - (a) including a public authority, voluntary organisation or other person (other than an individual) in the list as a scheme contributor,
 - (b) varying the description of a scheme contributor,
 - (c) removing a scheme contributor from the list (whether with retrospective effect or otherwise),
 - (d) including information in the list about payments made by a scheme contributor in respect of the financial contribution the contributor is making or has agreed to make,
 - (e) modifying such information,
 - (f) modifying other information in the list, including information relating to the relevant care settings recorded in it.
- (7) The Scottish Ministers must publish the contributor list (including the list as revised) at such intervals, and in such form, as they consider appropriate.
- (8) Removal of a scheme contributor from the contributor list by virtue of subsection (6) (c) does not affect any waiver signed and returned under section 46 in relation to that scheme contributor unless and to the extent that the removal has retrospective effect.
- (9) For the purposes of other proceedings—
 - (a) the fact of a public authority, voluntary organisation or other person becoming a scheme contributor, and
 - (b) the giving, by that authority, organisation or other person, of the acknowledgement required by subsection (1)(c) in order to become such a scheme contributor,

are not to be taken as evidence of anything relevant to the determination of any question of liability in connection with an allegation of abuse.

15 Statement of principles in relation to contributor list

- (1) The Scottish Ministers must prepare and publish a statement of the principles according to which they will determine whether to—
 - (a) include a public authority, voluntary organisation or other person (other than an individual) in the contributor list,
 - (b) remove a scheme contributor from the list,
 - (c) remove a scheme contributor from the list with retrospective effect in accordance with section 16.
- (2) For the purpose of subsection (1)—
 - (a) the statement of principles must include the matters which the Scottish Ministers will take into account in determining whether a financial contribution that a public authority, voluntary organisation or other person is making or proposing to make is fair and meaningful, and
 - (b) those matters must include—
 - (i) the circumstances in which a contribution that the authority, organisation or other person proposes to make over a period of time for reasons of affordability can be a fair and meaningful one,
 - (ii) the circumstances in which a contribution that takes into account the sustainability of any services provided by the authority, organisation or other person can be a fair and meaningful one.
- (3) For the purpose of this section, it is immaterial that the preparation or publication of a statement of principles took place before the day this section comes into force.

16 Retrospective removal of scheme contributor from contributor list

- (1) The Scottish Ministers may remove a scheme contributor from the contributor list with retrospective effect only where the removal is a result of the contributor failing to make the financial contribution mentioned in section 14(1)(b) which the contributor had agreed to make.
- (2) Where the Scottish Ministers intend to remove a scheme contributor with retrospective effect, they must carry out an assessment of any contribution made by the contributor under the agreement and allocate it against redress payments as they consider appropriate.
- (3) The allocation must—
 - (a) be carried out in accordance with any statement published under section 15 about how a fair and meaningful financial contribution is to be calculated, and
 - (b) allow the Scottish Ministers to determine the date on which they consider any contribution made by the scheme contributor to be exhausted.
- (4) In determining the date on which a retrospective removal is to take effect, the Scottish Ministers must have regard to the date on which they consider that any contribution made by the scheme contributor is exhausted.

17 Financial contributions by charities

- (1) This section applies where a charity makes a financial contribution to the Scottish Ministers for the purpose of redress payments being made under this Act.

- (2) The making of the financial contribution is to be treated for all purposes as—
 - (a) being in furtherance of the charity’s charitable purposes and consistent with its constitution,
 - (b) providing public benefit,
 - (c) not being contrary to the interests of the charity, and
 - (d) being within the powers exercisable by the charity trustees of the charity.
- (3) Expressions used in this section which are also used in the Charities and Trustee Investment (Scotland) Act 2005 are to be construed in accordance with that Act.