



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

2021 asp 15

PART 4

FINANCIAL REDRESS: REDRESS PAYMENTS

CHAPTER 5

REDRESS PAYMENTS OR DETERMINATIONS MADE IN ERROR

74 Liability for redress payments made in error

- (1) A person is liable to pay the Scottish Ministers the value of any redress payment to the extent that it is paid to the person due to a relevant error.
- (2) A person's liability under subsection (1) is the difference in value between—
 - (a) the redress payments that are paid to the person, and
 - (b) the redress payments (if any) that would have been paid to the person had the relevant error not been made.
- (3) Where the Scottish Ministers seek to recover a sum due to them by a person under subsection (1), the sum may be paid—
 - (a) in such instalments as are agreed at the request of, or otherwise with the consent of, the person, or
 - (b) otherwise, as a single payment.
- (4) In this section, references to a relevant error are to—
 - (a) an error when making a payment of a redress payment,
 - (b) an error which Redress Scotland determines under section 75, or, as the case may be, on a review under section 76, led to a determination under this Part being made—
 - (i) incorrectly, or
 - (ii) correctly but on the basis of incorrect or misleading information, in a way which materially affected the determination.

75 Reconsideration of determination where possible material error

- (1) Where Redress Scotland has, or the Scottish Ministers have, cause to believe that a determination under this Part may have been materially affected by an error, it or they must refer the determination for reconsideration (regardless of whether or not a payment has been made under it).
- (2) A determination which is referred for reconsideration is to be considered on behalf of Redress Scotland by a panel of at least 3 members of Redress Scotland appointed by the chairing member (“a reconsideration panel”).
- (3) Where Redress Scotland refers a determination for reconsideration, it must, as soon as reasonably practicable, inform the Scottish Ministers of the referral.
- (4) Where a determination is referred for reconsideration by either Redress Scotland or the Scottish Ministers, the Scottish Ministers must, as soon as reasonably practicable—
 - (a) notify the relevant person—
 - (i) that the determination is to be reconsidered, and
 - (ii) of the reasons, provided by the person who has made the referral, for the reconsideration,
 - (b) provide the relevant person with information about the implications of the determination being reconsidered, and
 - (c) allow the relevant person a period of at least 8 weeks, beginning with the date on which notice of the reconsideration was received by the person, for the person to make written representations in connection with the reconsideration.
- (5) After the period for the making of representations under subsection (4)(c) has ended, the reconsideration panel must—
 - (a) determine whether the original determination was materially affected by an error, and
 - (b) if it was so affected, re-determine it on the basis of how it would have been determined had the error not been made.
- (6) For the purposes of other proceedings, nothing done under a reconsideration is to be taken as a finding as to whether or not a person who is referred to in the application to which the original determination relates acted, or failed to act, in a way suggested in the application.
- (7) Once the reconsideration panel has conducted the reconsideration, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
 - (a) notify the relevant person of the reconsideration panel’s determination, and
 - (b) provide the relevant person with a summary, provided by Redress Scotland, of the reconsideration panel’s reasons for reaching that determination.
- (8) Where, or to the extent that, the determination which was referred for reconsideration relates to a payment which has not yet been made—
 - (a) the reconsideration panel’s determination takes the place of the original determination,
 - (b) where the original determination is one in respect of which a right of review still exists, any review of the reconsideration panel’s determination is to be conducted under section 76.
- (9) In this section—

“error” means an error which led to a determination under this Part being made—

- (a) incorrectly, or
 - (b) correctly but on the basis of incorrect or misleading information,
- “relevant person” means—
- (a) the person who was notified of the determination which is the subject of the referral, or
 - (b) if that person has died—
 - (i) where a payment under the determination was made to the deceased person, the deceased person’s estate,
 - (ii) where a payment under the determination was, or is to be, made to another person (including the deceased person’s estate), that person.

76 Review of reconsidered determination

- (1) A person who is notified of a determination under section 75 may request a review of it.
- (2) A request for a review must—
 - (a) be made to the Scottish Ministers,
 - (b) be made before the end of the period of 8 weeks beginning with the date on which notice of the determination was received by the person requesting the review,
 - (c) be made in such form, if any, as Ministers require,
 - (d) specify why a review is being requested, and
 - (e) contain or be accompanied by any information the person requesting the review considers relevant.
- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request for a review, provide the request, and any information accompanying it, to Redress Scotland.
- (4) A review may be conducted despite the request for it not being made within the period specified in subsection (2)(b) if Redress Scotland is satisfied that the person requesting the review has a good reason for not requesting a review sooner.
- (5) The Scottish Ministers must publicise any requirements which are for the time being set under subsection (2)(c).
- (6) Sections 55, 56 and 59(1) to (5) apply for the purposes of a review under this section as they apply for the purposes of a review under section 54, subject to the modification that the reference in section 59(1) to a determination being made under section 57 is to be read as a reference to a determination being made under section 77.

77 Outcome of a section 76 review

- (1) On a review under section 76, the review panel appointed under section 55 to conduct it must consider—
 - (a) whether the reconsideration panel which determined, under section 75, whether the original determination was materially affected by error and, if so, how it ought to be re-determined ought to have reached a different determination, and

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- (b) in a case where additional evidence is provided to or obtained by the review panel, whether the application ought to be determined differently as a result.
- (2) The review panel may not—
 - (a) reverse or vary a determination under section 75 that a person remains eligible for a redress payment,
 - (b) determine that a person is to be entitled to or, as the case may be, offered a lower amount by way of an individually assessed payment than the person was entitled to or offered under section 75, or
 - (c) determine that more is to be deducted in accordance with section 42 from the person’s redress payment than was determined under section 75.
- (3) But the review panel may otherwise uphold, reverse or vary any part of the determination (whether the request for a review relates to that part of it or not).
- (4) Subsections (4) and (7) of section 36 apply to a determination as upheld, reversed or varied as they apply to a determination made under section 36, subject to the modification that references to the panel appointed under section 35 to determine the application are to be read as references to the review panel.
- (5) Once the review panel has conducted the review, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
 - (a) notify the person who requested it of the review panel’s determination, and
 - (b) provide the person with a summary, provided by Redress Scotland, of the review panel’s reasons for reaching that determination.
- (6) The determination of the review panel under this section is final.
- (7) For the avoidance of doubt, subsection (6) does not prevent the determination of the review panel being the subject of a referral under section 75 provided that the referral relates to a different error from the one which previously led to the review.

78 Power to make further provision about reconsiderations

- (1) The Scottish Ministers may by regulations make further provision about or in connection with the reconsideration of a determination under section 75 and any review of it under section 76.
- (2) Regulations under subsection (1) may, in particular—
 - (a) make provision requiring or enabling the payment by the Scottish Ministers of fees for legal work and other costs and expenses reasonably incurred by a person who is a relevant person under section 75(9) in connection with a reconsideration,
 - (b) make provision for the recovery of such fees for legal work and other costs and expenses where payment of those fees, costs and expenses was due to an error,
 - (c) make provision allowing material changes which have occurred since the date of the original determination to be taken into account, or taken into account in particular cases, in any re-determination under section 75(5)(b),
 - (d) make provision in relation to the interaction of the reconsideration panel’s determination with any offer that has already been accepted (including any waiver signed and returned in order to do so).
- (3) Regulations under subsection (1) may modify any enactment (including this Act).