

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

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## **EXPLANATORY NOTES**

### **DETAILED PROVISIONS**

#### **Part 3: Eligibility and key concepts**

##### **Eligibility to apply for next of kin payments**

###### ***Section 25: Eligibility to apply for a next of kin payment: exceptional circumstances***

56. This section provides that a person may apply for permission to apply for a next of kin payment due to exceptional circumstances.
57. This type of permission can only be sought where the person making the application is the specified next of kin of the deceased person (see section 28). In addition, it must be the case that the deceased person had applied for and been offered a redress payment (either a fixed rate or individually assessed payment) but the offer had not been accepted during the time it was valid and the person then died. Further, where the application was for an individually assessed payment, the deceased person must have died without a fixed rate payment having already been paid (whether under a previous application for one or, in the case of a second application for an individually assessed payment due to new evidence, by virtue of having received the fixed rate payment as an element of the individually assessed payment paid under that first application).
58. In these circumstances, section 25 provides that an application can be made to the Scottish Ministers, in such form as the Scottish Ministers may require, setting out the exceptional circumstances as a result of which permission is being sought and including any relevant information. The Scottish Ministers must then pass on the application and any accompanying information to Redress Scotland for a determination.
59. Any application submitted under subsection (1) must be determined by a panel of at least two members of Redress Scotland. The procedure for this will be determined by Redress Scotland. The panel may grant the applicant permission to apply for a next of kin payment only where it considers there are exceptional circumstances which merit it. For example, this might be because the deceased person allowed the offer to expire because they were in hospital and then died shortly thereafter. Once the panel has determined the application, the Scottish Ministers must notify the applicant of the outcome and the panel's reasons for the decision.
60. In accordance with the definition of “notify” in section 105, this notification – as with other determination processes in the Act – must be given in writing. However, in accordance with schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 (in these Notes, “ILRA”), that requirement could be satisfied using electronic communication such as email.