



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

2021 asp 15

VALID FROM 28/06/2021

## PART 1

### OVERVIEW AND MEANING OF “REDRESS SCHEME”

#### **1 Overview of Act**

- (1) This Act is arranged as follows.
- (2) This Part provides an overview of all the redress-related activity provided for by this Act and defines the “redress scheme”.
- (3) Part 2 makes provision—
  - (a) establishing Redress Scotland,
  - (b) about the functions of Redress Scotland and the Scottish Ministers in relation to the redress scheme,
  - (c) requiring a list of contributors to the redress scheme to be established and maintained, and
  - (d) to facilitate charities becoming scheme contributors where they wish to do so.
- (4) Part 3 makes provision—
  - (a) about the core eligibility criteria which must be met for a person to apply for a redress payment, and
  - (b) about the further eligibility criteria which apply when the person who was abused has died and the person's next of kin wishes to make an application.
- (5) Part 4 makes provision—
  - (a) about the requirements which apply to applications for a redress payment and how Redress Scotland will determine such applications,

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- (b) about the different types of redress payments which can be offered (a fixed rate payment, an individually assessed payment or a next of kin payment),
  - (c) for certain previous payments made in respect of abuse to be deducted from any redress payment which is offered,
  - (d) for the signature of a waiver to be required where an applicant wishes to accept a redress payment,
  - (e) about how long an offer of a redress payment is to remain valid, and how payment is to be made where the offer is accepted,
  - (f) for a right to a review in respect of the determination of an application for a redress payment,
  - (g) about how applications will be determined where the person who would otherwise be offered the redress payment, or (if not the same person) the person who was abused, has a serious criminal conviction,
  - (h) about what will happen if the applicant dies,
  - (i) for the recovery of redress payments made in error and the reconsideration of determinations which may have been materially affected by error,
  - (j) about how information required or provided in relation to an application is to be obtained, shared, and kept confidential.
- (6) Part 5 makes provision—
- (a) about the provision of support in connection with applications,
  - (b) about the provision of support to certain persons following an application under this Act or under the advance payment scheme,
  - (c) requiring the making of regulations about the reimbursement of costs and expenses associated with an application,
  - (d) about the payment of fees for legal work in connection with applications,
  - (e) for the recovery of payments, other than redress payments, made in error.
- (7) Part 6 makes provision about the reporting that is or can be required of scheme contributors and certain other persons in relation to their redress activity.
- (8) Part 7 makes provision—
- (a) for the establishment of the Survivor Forum,
  - (b) for the dissolution of the National Confidential Forum,
  - (c) for the dissolution of Redress Scotland once the redress scheme has ended,
  - (d) about the interpretation of this Act,
  - (e) for the issuing of guidance and the making of regulations,
  - (f) for the commencement of this Act and about its short title.

## **2 Meaning of “redress scheme”**

In this Act, the “redress scheme” means the scheme established by this Act for financial redress and related support for and in respect of survivors of historical child abuse in relevant care settings in Scotland.

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## 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.

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### *Functions in relation to the redress scheme*

VALID FROM 07/12/2021

#### **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.

VALID FROM 07/12/2021

#### **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.

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- (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—

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- (a) the date on which the scheme contributor is included in the list,
  - (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.

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## **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.



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- (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.

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### PART 3

#### ELIGIBILITY AND KEY CONCEPTS

VALID FROM 07/12/2021

#### *Eligibility to apply for redress payments*

#### **18 Eligibility to apply for a redress payment**

- (1) A person may apply for a redress payment if the person or, in the case of an application for a next of kin payment, the person in respect of whom the application is made was abused while—
- (a) a child, and
  - (b) resident in a relevant care setting in Scotland.
- (2) The abuse must have occurred before 1 December 2004.
- (3) In this Act, “child” means a person under the age of 18 years.
- (4) But subsection (3) does not apply, in relation to an application for a next of kin payment, to a reference to a child of a deceased person.
- (5) This section is subject to section 23.

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#### *Meaning of “abuse”*

#### **19 Meaning of “abuse”**

- (1) In this Act, “abuse”, in relation to references to a person having been abused, includes—
- (a) sexual abuse,

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- (b) physical abuse,
- (c) emotional abuse,
- (d) abuse which takes the form of neglect.

(2) For the purpose of subsection (1)(b), “physical abuse” includes corporal punishment to the extent that, at the time it was administered, it was not permitted under or by virtue of any enactment or rule of law because it was—

- (a) excessive, arbitrary or cruel,
- (b) administered for an improper motive, or
- (c) not so permitted for another reason.

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*Meanings of “relevant care setting” and “resident”*

**20 Meaning of “relevant care setting”**

(1) In this Act, “relevant care setting” means—

- (a) a residential institution in which the day-to-day care of children was provided by or on behalf of a person other than a parent or guardian of the children resident there,
- (b) a place, other than a residential institution, in which a child resided while being—
  - (i) boarded-out,
  - (ii) fostered.

(2) But a place is not a relevant care setting by virtue of subsection (1)(b) where the child was boarded-out or fostered—

- (a) with a relative or guardian of the child, or
- (b) under arrangements between a parent or guardian of the child and another person unless that other person was either—
  - (i) a public authority, or
  - (ii) a voluntary organisation exercising functions in relation to the safeguarding or promotion of the welfare of the child or the protection or furthering of the child's interests.

(3) In this section and in section 22, “residential institution” means—

- (a) a children's home,
- (b) a penal institution,
- (c) a residential care facility,
- (d) school-related accommodation,
- (e) secure accommodation.

(4) The Scottish Ministers may by regulations—

- (a) modify the meaning of “residential institution” by—
  - (i) adding a description of establishment as a residential institution to those mentioned in subsection (3),

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- (ii) varying the description of a residential institution in that subsection,
  - (b) modify section 21(1) as Ministers consider appropriate in consequence of any modification of subsection (3) or otherwise.
- (5) The Scottish Ministers may make regulations under subsection (4) only if satisfied, so far as reasonably practicable, that doing so will not have the effect that persons who would otherwise be eligible to apply for redress payments will cease to be so eligible.

## 21 Meaning of “residential institution”: further provision

- (1) For the purpose of this section and section 20—
- “children's home” means a residential establishment which provided accommodation for children in order to safeguard or promote their welfare or otherwise to protect or further their interests,
- “penal institution” means an establishment in which children were detained or imprisoned on remand or in pursuance of a sentence imposed by a court of criminal jurisdiction (other than a court-martial),
- “personal care” means care which relates to—
- (a) the day-to-day physical tasks and needs of the person cared for (for example, but without prejudice to that generality, eating and washing), and
  - (b) the mental processes related to those tasks and needs (for example, but without prejudice to that generality, remembering to eat and wash),
- “personal support” means counselling, or other help, as part of a planned programme of care,
- “residential care facility” means an establishment, including a hospital—
- (a) which provided long-term residential accommodation for children for the purpose of meeting needs arising from a mental or physical condition, whether or not medical care or treatment, nursing, or personal care or support was also provided, and
  - (b) in which the child resided under arrangements made by or on behalf of—
    - (i) a public authority, or
    - (ii) a voluntary organisation exercising functions in relation to the safeguarding or promotion of the welfare of the child or the protection or furthering of the child's interests,
- “school” includes a school other than a public school only where the child's attendance at the school was arranged and paid for by or on behalf of—
- (a) a local authority or an education authority, or
  - (b) a voluntary organisation exercising functions in relation to the safeguarding or promotion of the welfare of the child or the protection or furthering of the child's interests,
- “school-related accommodation” means an establishment (not including domestic premises)—
- (a) provided by, or under arrangements made by, a person who provided or managed a school, and

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(b) which provided residential accommodation for children for the purpose of or in connection with their attendance at the school, “secure accommodation” means a residential establishment, other than a penal institution, provided for the purpose of restricting the liberty of children (whether or not the establishment was also provided in order to safeguard or promote the welfare or otherwise to protect or further the interests of children).

- (2) In subsection (1), references to an establishment include references to—
- (a) part of an establishment, and
  - (b) an establishment which forms part of another establishment.

## 22 Meaning of “resident”

- (1) A reference to being resident in a relevant care setting includes a reference to being absent from the care setting while under the care of—
- (a) the person who provided residential accommodation for the child in the residential institution or other place, or
  - (b) a person authorised by that person.
- (2) For the purpose of subsection (1), it is immaterial whether the child was within or outside Scotland during the period of absence from the relevant care setting.

### *Exceptions to eligibility*

## 23 Power to create exceptions to eligibility

- (1) The Scottish Ministers may by regulations provide that an application may not be made under section 18—
- (a) if the person who carried out the abuse was of a specified description,
  - (b) if the abuse was carried out in circumstances of a specified description,
  - (c) if the person who was abused came to be resident in the relevant care setting concerned in specified circumstances, or
  - (d) if the person who was abused was resident in the relevant care setting concerned for a specified purpose.
- (2) In subsection (1), “specified” means specified in the regulations.

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

## 24 Eligibility to apply for a next of kin payment

- (1) A person may apply for a redress payment under section 18 which takes the form of a next of kin payment only if—
- (a) the person meets the eligibility criteria to apply for a next of kin payment, or

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- (b) the person is granted permission to apply for a next of kin payment under section 25, or on a review under section 26, due to exceptional circumstances.
- (2) A person meets the eligibility criteria to apply for a next of kin payment where—
- (a) the person is the specified next of kin of someone who died on or after 1 December 2004 (“the deceased person”),
  - (b) the deceased person would, if alive, have been eligible to apply for a redress payment under section 18 (other than for a next of kin payment), and
  - (c) where the deceased person died on or after the day section 18 came into force, the condition in subsection (3) is met.
- (3) The condition referred to in subsection (2)(c) is that—
- (a) the deceased person had not applied for a fixed rate payment or an individually assessed payment, or
  - (b) the deceased person had applied for such a redress payment but—
    - (i) died while the application was ongoing,
    - (ii) where the application was for an individually assessed payment, had not previously been paid a fixed rate payment, and
    - (iii) either a nominated beneficiary is not taking over, or has not taken over, the application by virtue of section 71 or, if the application was so taken over, it was brought to an end in the circumstances described in section 73(2) without the nominated beneficiary having accepted any redress payment in respect of the application.
- (4) For the purpose of subsection (3)(b)(i), whether an application is ongoing is to be determined in accordance with section 66(6) and (7).

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

- (1) A person may apply for permission to apply for a next of kin payment due to exceptional circumstances where—
- (a) the person is the specified next of kin of someone who died (“the deceased person”),
  - (b) the deceased person had applied for, and been offered, a fixed rate payment or an individually assessed payment but the offer was not accepted during the period it was valid and the deceased person subsequently died, and
  - (c) if the application was for an individually assessed payment, the deceased person had not previously been paid a fixed rate payment.
- (2) An application under subsection (1) must—
- (a) be made to the Scottish Ministers,
  - (b) be made in such form, if any, as Ministers require,
  - (c) specify the exceptional circumstances due to which permission is being sought, and
  - (d) contain or be accompanied by any information the applicant considers relevant.
- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving an application under subsection (1), provide the application, and any information accompanying it, to Redress Scotland.

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- (4) The Scottish Ministers must publicise any requirements which are for the time being set under subsection (2)(b).
- (5) An application under subsection (1) is to be determined on behalf of Redress Scotland by a panel of at least 2 members of Redress Scotland appointed by the chairing member.
- (6) The procedure for determining an application under subsection (1) is to be determined by Redress Scotland.
- (7) The panel appointed under subsection (5) to determine the application may grant the applicant permission to apply for a next of kin payment only where it considers that there are exceptional circumstances which merit it.
- (8) Once the panel has determined whether or not to grant the applicant permission to apply for a next of kin payment due to exceptional circumstances, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
  - (a) notify the applicant of the determination, and
  - (b) provide the applicant with a summary, provided by Redress Scotland, of the panel's reasons for reaching that determination.

## **26 Review of determination made under section 25**

- (1) Where an applicant is notified of a determination under section 25 that permission to apply for a next of kin payment due to exceptional circumstances is not being granted, the applicant may request a review of the determination.
- (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 applicant,
  - (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 applicant 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 applicant 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 27.

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## **27 Outcome of a section 26 review**

- (1) On a review under section 26, the review panel appointed under section 55 to conduct it—
  - (a) must consider—
    - (i) whether the panel appointed under section 25(5) to determine whether or not to grant permission to apply for a next of kin payment due to exceptional circumstances ought to have reached a different determination, and
    - (ii) 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,
  - (b) may uphold or reverse the determination.
- (2) 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 applicant of the review panel's determination, and
  - (b) provide the applicant with a summary, provided by Redress Scotland, of the review panel's reasons for reaching that determination.
- (3) The determination of the review panel under this section is final.

## **28 Meaning of “specified next of kin”**

- (1) In this Act, “specified next of kin”, in relation to a deceased person, means—
  - (a) the person who, immediately before the death of the deceased person, was—
    - (i) the spouse or civil partner of the deceased person, or
    - (ii) the cohabitant of the deceased person,
  - (b) where the condition in subsection (3) is met, a child of the deceased person.
- (2) In a case where there is or was both a person falling within subsection (1)(a)(i) and a person falling within subsection (1)(a)(ii), subsection (1)(a) is to be read as including only the person who was the cohabitant of the deceased person.
- (3) The condition referred to in subsection (1)(b) is that—
  - (a) there is nobody who falls within subsection (1)(a) (either because there was no such person or because the person has since died), and
  - (b) in a case where the person has since died, the person had not accepted an offer of a next of kin payment in respect of the deceased person.
- (4) In this section—

“child of the deceased person” includes—

  - (a) a stepchild of the deceased person, and
  - (b) a person who was treated by the deceased person as the deceased person's child,

“cohabitant of the deceased person” means a person who—

  - (a) was neither married to nor in a civil partnership with the deceased person, but

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- (b) was living with that person as if they were married to each other and had been so living for a period of at least 6 months.

VALID FROM 28/06/2021

## PART 4

### FINANCIAL REDRESS: REDRESS PAYMENTS

## CHAPTER 1

### DETERMINATION OF APPLICATIONS FOR REDRESS PAYMENTS

VALID FROM 07/12/2021

### *Applications*

#### **29 Application for a redress payment**

- (1) An application for a redress payment must—
  - (a) be made to the Scottish Ministers,
  - (b) be received during the application period,
  - (c) be an application for—
    - (i) a fixed rate payment,
    - (ii) an individually assessed payment, or
    - (iii) a next of kin payment,
  - (d) be made in such form, if any, as Ministers require, and
  - (e) contain or be accompanied by such information or evidence as Ministers require.
- (2) An application may relate to one or more relevant care settings in which abuse took place.
- (3) Other than as provided for in section 30, only one application may be made in respect of a person who was abused.
- (4) On receiving an application, the Scottish Ministers must provide the summary of options to the applicant.
- (5) The Scottish Ministers must provide any application received, and any information or evidence accompanying it, to Redress Scotland.
- (6) The Scottish Ministers must publicise any requirements which are for the time being set under subsection (1)(d) or (e).



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### **30 Cases where more than one application permitted**

- (1) This section makes provision about when a person who is eligible to apply for a redress payment may do so despite an application already having been made in respect of the person who was abused and to whom the application will relate.
- (2) An application for an individually assessed payment may be made by a person where—
  - (a) an application for a fixed rate payment has previously been made in respect of the person, and
  - (b) that application resulted in a determination that the person was eligible for a fixed rate payment.
- (3) An application for an individually assessed payment may be made by a person where—
  - (a) an application for an individually assessed payment has previously been made in respect of the person,
  - (b) that application resulted in the applicant accepting a redress payment other than a level 5 payment, and
  - (c) Redress Scotland is satisfied that allowing a further application is justified on the basis that—
    - (i) new evidence is available which the person had a reasonable excuse for not providing in connection with the previous application, or
    - (ii) regulations under section 20(4) have had the effect of modifying eligibility to apply for a redress payment.
- (4) An application for a next of kin payment may be made by a person where—
  - (a) a deceased person had previously applied for a fixed rate payment or an individually assessed payment, and
  - (b) the circumstances are such that the person is permitted to apply for a next of kin payment under section 24(1).
- (5) An application for a next of kin payment may be made by a child of a deceased person where an application for a next of kin payment has previously been made in respect of the deceased person by another child of the deceased person.
- (6) An application for a redress payment may be made by a person where—
  - (a) a previous application in respect of the person was withdrawn under section 33, and
  - (b) the new application is for a type of redress payment the person would have been able to apply for had the withdrawn application not been made.
- (7) An application for a redress payment may be made by a person where—
  - (a) an application for a redress payment has previously resulted in a determination under section 60 that the person was precluded from being offered a redress payment, and
  - (b) as a result of an appeal in respect of a conviction or sentence, section 60 will no longer apply in respect of an application by the person.
- (8) An application for a redress payment may be made in respect of a person where—

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- (a) the person has not previously received a redress payment of a particular type despite having made an application for it which has been brought to an end, but
  - (b) Redress Scotland is satisfied that special circumstances exist which justify allowing a further application.
- (9) For the purpose of subsection (8), special circumstances may include—
- (a) the person's individual circumstances,
  - (b) the availability of new evidence which the person had a reasonable excuse for not providing in connection with the original application,
  - (c) regulations under section 20(4) having had the effect of modifying eligibility to apply for a redress payment.

### **31 Application period**

- (1) For the purpose of this Act, the application period during which an application for a redress payment may be made—
- (a) begins on the day this section comes into force, and
  - (b) ends with whichever is the later of—
    - (i) the expiry of the period of 5 years beginning with that day,
    - (ii) the day falling 2 years after the Scottish Child Abuse Inquiry (established under the Inquiries Act 2005) publishes its final report.
- (2) The Scottish Ministers may by regulations modify paragraph (b) of subsection (1) so as to extend the application period for the time being specified in that subsection.
- (3) The Scottish Ministers must, within the period of 15 months ending with the day the application period is due to end under subsection (1)(b), carry out a review of whether the application period should be extended.
- (4) But subsection (3) does not apply if, at the beginning of the 15 month period—
- (a) the application period has already been extended by regulations under subsection (2), or
  - (b) a draft Scottish statutory instrument containing regulations under subsection (2) has been laid and is before the Scottish Parliament for approval.
- (5) As soon as reasonably practicable following completion of a review under subsection (3), the Scottish Ministers must—
- (a) publish the findings of the review,
  - (b) lay the findings of the review before the Scottish Parliament.

### **32 Pausing of application**

- (1) An application for a redress payment may, at the request of the applicant—
- (a) be paused, or
  - (b) having been paused, be resumed,
- at any time prior to a determination being made under section 36.
- (2) A request under subsection (1) must be made in writing to the Scottish Ministers.

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- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request under subsection (1), inform Redress Scotland of it.
- (4) Where Redress Scotland is informed of a request that an application be paused, Redress Scotland must pause any further determination of the application to which the request relates until such time as Redress Scotland is informed that—
  - (a) the applicant has requested that determination of the application be resumed, or
  - (b) the application has been withdrawn under section 33.
- (5) Where an application is paused under this section, it is to be treated as having been withdrawn on the final day of the application period unless the applicant, on or before that day, either requests that the application be resumed or requests that it be withdrawn.

### **33 Withdrawal of application**

- (1) An application for a redress payment may be withdrawn at the request of the applicant at any time prior to a determination being made under section 36.
- (2) A request under subsection (1) must be made in writing to the Scottish Ministers.
- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request under subsection (1), inform Redress Scotland of it.
- (4) Where Redress Scotland is informed of a request that an application be withdrawn, Redress Scotland must bring to an end any further determination of the application to which the request relates.
- (5) Where an application is withdrawn, it is to be treated for the purpose of section 24(3)(a) as never having been made.

VALID FROM 07/12/2021

## *Determination of applications*

### **34 Prioritisation of applications**

- (1) The chairing member of Redress Scotland must decide the order of priority in which applications for a redress payment are to be determined.
- (2) In making a decision under subsection (1), the chairing member must, in particular, have regard to—
  - (a) the age of the persons by whom applications are made, and
  - (b) to the extent that it is disclosed to Redress Scotland (in the application or otherwise), the health of those persons.

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### **35 Decision-making panels**

- (1) An application for a redress payment is to be determined on behalf of Redress Scotland by a panel of members of Redress Scotland appointed by the chairing member in accordance with this section.
- (2) A panel appointed to determine an application for a fixed rate payment or a next of kin payment is to consist of at least 2 members.
- (3) A panel appointed to determine an application for an individually assessed payment is to consist of at least 3 members.

### **36 Determination of applications**

- (1) On receipt of an application by Redress Scotland under section 29, the panel appointed under section 35 to determine the application must determine—
  - (a) whether, on the balance of probabilities, the applicant is eligible for the type of redress payment sought, and
  - (b) if so, the amount which the applicant is to be offered.
- (2) An application is to be determined on the basis of—
  - (a) the information provided in or with the application,
  - (b) any further information provided in response to a request by the panel, and
  - (c) any other information which the panel considers relevant.
- (3) In determining an application, the panel is to start with the presumption that any information provided by the applicant in respect of the application is true and accurate to the best of the applicant's knowledge and belief.
- (4) When determining an application, the panel must not rule on, and has no power to determine, any person's civil or criminal liability arising from any matter to which the application relates.
- (5) The procedure for determining an application is otherwise to be determined by Redress Scotland.
- (6) Once the panel has determined the application, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
  - (a) notify the applicant of the determination, and
  - (b) provide the applicant with—
    - (i) a summary, provided by Redress Scotland, of the panel's reasons for reaching that determination,
    - (ii) the summary of options, and
    - (iii) where an offer of a redress payment is made, information about the period for which the offer remains valid under section 49 and the options available to the applicant in respect of it.
- (7) For the purposes of other proceedings, neither the offer of a redress payment nor the failure to make an offer is to be taken as a finding as to whether or not a person who is referred to in an application acted, or failed to act, in a way suggested in the application.

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### **37 Assessment of amount of redress payment**

- (1) Where a panel is appointed under section 35 to determine an application for a redress payment, the amount of the redress payment (if any) to be offered in respect of the application is to be determined in accordance with this section.
- (2) An applicant is eligible for a redress payment where the panel is satisfied that—
  - (a) the applicant is eligible to apply for a redress payment by virtue of section 18,
  - (b) where the application is for a next of kin payment, the applicant is eligible to apply for a next of kin payment by virtue of section 24,
  - (c) the application satisfies the requirements of section 29 to the extent that they apply to the type of redress payment sought, and
  - (d) the applicant is not precluded from being offered a redress payment by virtue of section 60.
- (3) An applicant who is eligible for a redress payment is, subject to any deductions to be made in accordance with section 42, to be offered—
  - (a) on an application for a fixed rate payment, a fixed rate payment under section 38,
  - (b) on an application for an individually assessed payment, an individually assessed payment calculated in relation to the application under section 39 (which, in the case of an application made by virtue of section 30(2) or (3), may be zero), or
  - (c) on an application for a next of kin payment, a next of kin payment calculated in relation to the application under section 40.
- (4) In the case of an application which relates to more than one relevant care setting, only one determination of a redress payment may be made in respect of an application regardless of the number of care settings concerned.

VALID FROM 07/12/2021

#### *Payment levels*

### **38 Fixed rate payment**

A fixed rate payment is a payment of £10,000.

### **39 Individually assessed payment**

- (1) An individually assessed payment is a payment, based on an assessment of the matters raised by an application, of—
  - (a) the fixed rate payment, and
  - (b) if the panel appointed under section 35 to determine the application considers a further sum to be appropriate, the further sum of—
    - (i) £10,000,
    - (ii) £30,000,
    - (iii) £50,000,

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(iv) £70,000, or

(v) £90,000,

as the panel considers appropriate.

(2) Accordingly, depending on what (if any) further sum is considered appropriate, an individually assessed payment is a payment in total of—

- (a) £10,000 for a fixed rate payment,
- (b) £20,000 (a level 1 payment),
- (c) £40,000 (a level 2 payment),
- (d) £60,000 (a level 3 payment),
- (e) £80,000 (a level 4 payment), or
- (f) £100,000 (a level 5 payment).

(3) But where—

- (a) a fixed rate payment has previously been paid to an applicant, no further fixed rate payment is payable to that applicant when determining an application for an individually assessed payment made by virtue of section 30(2),
- (b) the application is an application for an individually assessed payment made by virtue of section 30(3), any redress payment (other than a next of kin payment) which has previously been paid to the applicant is to be deducted from the individually assessed payment for which the applicant is eligible.

(4) In considering what further sum, if any, is appropriate for the purpose of subsection (1)(b), the panel—

- (a) must have regard to the nature, severity, frequency and duration of the abuse to which the application relates, and
- (b) may have regard to any other matter it considers relevant.

#### **40 Next of kin payment**

(1) A next of kin payment is a payment of the relevant share of the fixed rate payment.

(2) For the purpose of subsection (1), the relevant share is—

- (a) in the case of an application by the spouse, civil partner or cohabitant of the person in respect of whom the application is made (“the deceased person”), the whole amount,
- (b) in the case of an application by a child of the deceased person, the whole amount divided by the total number of surviving children of the deceased person at the date that the first (or, as the case may be, only) application for a next of kin payment is made in respect of the deceased person by a child of the deceased person.

#### **41 Power to adjust redress payment amounts for inflation**

The Scottish Ministers may by regulations modify sections 38 and 39 to replace any amount for the time being set out in those sections with such higher amount as they consider to be appropriate in consequence of material changes in the value of money.

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VALID FROM 07/12/2021

### *Deduction of previous payments*

#### **42 Deduction of previous payments from redress payment**

- (1) This section and section 43 apply where—
  - (a) the panel appointed under section 35 to determine an application or, as the case may be, a review panel appointed under section 55 to conduct a review determines that an applicant is eligible for a redress payment, and
  - (b) before the date of the determination by virtue of which an offer of a redress payment is made, the applicant, or the person in respect of whom the application is made, received or became entitled to a payment mentioned in subsection (2) (a “relevant payment”).
- (2) A relevant payment is a payment, to the extent that it relates to relevant abuse, by way of any of the following—
  - (a) an award of damages or compensation by a court,
  - (b) a payment in settlement of a claim (whether or not court proceedings were commenced),
  - (c) an award of compensation under the Criminal Injuries Compensation Scheme,
  - (d) a payment under any other statutory scheme,
  - (e) a payment under the advance payment scheme or under any other non-statutory scheme,
  - (f) in so far as not falling within paragraphs (a) to (e), an ex gratia payment.
- (3) But a payment is not a relevant payment—
  - (a) to the extent that it relates to legal fees or other costs incurred in relation to any proceedings, application or other process by virtue of which the relevant payment, or the entitlement to it, was obtained, or
  - (b) if it is a redress payment or a payment of costs in relation to such a payment by virtue of section 91.
- (4) Subject to section 43—
  - (a) the relevant payment mentioned in subsection (1)(b) or, as the case may be, that payment as adjusted in accordance with subsection (5), or
  - (b) where more than one relevant payment has been made, the total of the relevant payments, or of the payments as so adjusted,is to be deducted from the redress payment for which the applicant is eligible.
- (5) A relevant payment which was received before the day this section comes into force is to be adjusted in accordance with this subsection by adjusting it using the ratio published by the Treasury and known as the Gross Domestic Product deflator by reference to the period—
  - (a) beginning with the date the relevant payment was made, and
  - (b) ending with the day this section comes into force.
- (6) The Scottish Ministers may by regulations—

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- (a) modify the meaning of “relevant payment” (by modifying this section or otherwise) to—
  - (i) add a description of a payment,
  - (ii) vary the description of a payment,
  - (iii) remove a description of a payment,
- (b) modify subsection (7) as Ministers consider appropriate in consequence of any modification made by virtue of paragraph (a) or otherwise.

(7) For the purposes of subsection (2)—

“the advance payment scheme” means the non-statutory scheme operated by the Scottish Ministers, for payment to certain persons who were abused as children in certain care settings, which opened for applications on 25 April 2019,

“the Criminal Injuries Compensation Scheme” means—

- (a) the schemes established by arrangements made under the Criminal Injuries Compensation Act 1995,
- (b) arrangements for compensation for criminal injuries which were made by the Secretary of State and in operation before the commencement of those schemes, or
- (c) the scheme established under the Criminal Injuries (Northern Ireland) Order 2002 (S.I. 2002/796 (N.I.1)),

“relevant abuse” means—

- (a) the abuse to which the application relates, and
- (b) any other abuse of the person in respect of whom the application is made for which the applicant would have been eligible to apply for a redress payment by virtue of section 18.

### 43 Deduction of previous payments: further provision

- (1) This section makes further provision about the deduction of relevant payments from redress payments under section 42(4) and the adjustment of relevant payments in accordance with section 42(5).
- (2) Where the applicant mentioned in section 42(1) is a child of a deceased person applying for a next of kin payment in respect of that person, the amount which is to be deducted from the redress payment for which the child is eligible is to be calculated in accordance with subsection (3).
- (3) The amount calculated under section 42(4) as the amount to be deducted is to be divided by the total number of surviving children of the deceased person at the date that the first (or, as the case may be, only) application for a next of kin payment is made in respect of the deceased person by a child of that person.
- (4) Where—
  - (a) the application being determined is an application for an individually assessed payment, and
  - (b) the applicant has previously been paid a redress payment,
 a relevant payment is not to be deducted under section 42(4) to the extent that it has already been deducted from the previous redress payment.
- (5) Where the panel appointed under section 35 to determine an application or, as the case may be, the review panel appointed under section 55 to conduct a review



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considers it appropriate, the panel need not deduct under section 42(4) a relevant payment to which the applicant or, as the case may be, the person in respect of whom the application is made, has only an entitlement.

- (6) A relevant payment which is a payment under the advance payment scheme is not to be adjusted in accordance with section 42(5).

#### **44 Information about previous payments from applicant**

- (1) An applicant for a redress payment must provide the Scottish Ministers with the information mentioned in subsection (2) about any relevant payment—
- (a) which the applicant, or the person in respect of whom the application is made, has received or become entitled to before the application is made, and
  - (b) which the applicant receives or becomes entitled to after the application is made but before the application is determined.
- (2) The information to be provided is—
- (a) the amount of the relevant payment,
  - (b) the date the relevant payment was made or, as the case may be, an entitlement to it arose,
  - (c) the name and, in so far as known, the address of the person who made or is due to make the relevant payment,
  - (d) the circumstances in which the relevant payment was made or an entitlement to it arose, and
  - (e) any other information about the relevant payment prescribed in regulations made by the Scottish Ministers.
- (3) Where an applicant provides information under subsection (1) in relation to a relevant payment, the Scottish Ministers must, as soon as reasonably practicable, provide that information to Redress Scotland.

#### **45 Information about previous payments: further provision**

- (1) This section applies where—
- (a) an applicant provides information about a relevant payment to the Scottish Ministers in accordance with section 44,
  - (b) the applicant has entered into a settlement or other agreement with any other person in relation to the relevant payment, and
  - (c) the settlement or other agreement prohibits the applicant from disclosing that information.
- (2) The disclosure of the information in accordance with section 44 is not to be treated as a breach of the settlement or other agreement.

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## Waiver

VALID FROM 07/12/2021

### 46 Waiver

- (1) An applicant to whom an offer of a redress payment is made under section 36 or, as the case may be, 57 and who wishes to accept the offer must sign and return a waiver agreeing—
  - (a) to abandon any civil proceedings to the extent they are relevant civil proceedings, and
  - (b) to waive any right to bring relevant civil proceedings.
- (2) But an applicant to whom subsection (3) applies may accept an offer of a further sum (made by virtue of section 39(1)(b)) without signing and returning a waiver if the condition in subsection (4) is met.
- (3) This subsection applies to an applicant for an individually assessed payment who has previously been paid—
  - (a) a fixed rate payment under a previous application for one, or
  - (b) where the application is made by virtue of section 30(3), an individually assessed payment.
- (4) The condition referred to in subsection (2) is that no new scheme contributors have been included in the contributor list in the period—
  - (a) beginning with the date the panel appointed under section 35 or, as the case may be, a review panel appointed under section 55 determined that the applicant was eligible for the fixed rate payment or, where subsection (3) (b) applies, the previous individually assessed payment, and
  - (b) ending with the date the panel appointed under section 35 or, as the case may be, a review panel appointed under section 55 determines that the applicant is eligible for the further sum.
- (5) Where an applicant signs and returns a waiver in accordance with subsection (1)—
  - (a) no relevant civil proceedings may be brought by or on behalf of the applicant,
  - (b) section 3(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 does not apply in so far as it would entitle any person to recover from the Scottish Ministers or a relevant scheme contributor any contribution towards the payment by that person of any damages or expenses in respect of relevant abuse, and
  - (c) any other right under any enactment or rule of law to recover any contribution from the Scottish Ministers or a relevant scheme contributor in relation to relevant abuse, and any right of relief or of indemnity against Ministers or a relevant scheme contributor in relation to relevant abuse, ceases to have effect.
- (6) For the purposes of this section—
 

“relevant abuse” means—

  - (a) the abuse to which the application relates, and

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(b) any other abuse of the person in respect of whom the application is made for which the applicant would have been eligible to apply for a redress payment by virtue of section 18,

“relevant civil proceedings” are civil proceedings against the Scottish Ministers or any relevant scheme contributor (whether or not the proceedings are also against another person) in which the applicant seeks compensation or any other remedy in relation to relevant abuse,

“relevant scheme contributor” is a scheme contributor who is included in the contributor list on the date the panel appointed under section 35 or, as the case may be, a review panel appointed under section 55 determines that the applicant is eligible for the redress payment.

(7) For the purpose of subsection (6), where a scheme contributor is removed from the contributor list with retrospective effect in accordance with section 16, the question of whether the scheme contributor is a relevant scheme contributor on a particular date is to be determined by reference to the contributor list as retrospectively amended.

#### 47 Form and content of waiver

The Scottish Ministers may by regulations make provision about—

- (a) the form and content of any waiver to be signed and returned under section 46,
- (b) the information to be provided to the applicant in relation to the waiver and its effects.

VALID FROM 07/12/2021

#### 48 Report on effect of waiver on participation in redress scheme

Before the end of the period of 18 months beginning with the day section 46 comes into force, the Scottish Ministers must lay before the Scottish Parliament a report setting out—

- (a) their assessment of—
  - (i) the impact (if any) of the waiver under section 46 on applications for a redress payment,
  - (ii) the effectiveness of the waiver in encouraging public authorities, voluntary organisations and other persons to become scheme contributors,
- (b) the steps (if any) they intend to take as a result of that assessment,
- (c) where they do not intend to take any such steps, their reasons for that.

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VALID FROM 07/12/2021

### *Payment of redress payment*

#### **49 Period for which offer valid**

- (1) An applicant to whom an offer of a redress payment is made under section 36 may—
  - (a) bring the application to an end by accepting the offer in accordance with section 50(1), or
  - (b) request a review of the offer in accordance with section 54.
- (2) If neither of the actions specified in subsection (1) is taken within the period for which the offer is valid, the application is to be treated as having been brought to an end by the offer being rejected unless it is continued by virtue of section 66(1).
- (3) The period for which the offer is valid is—
  - (a) the period of 6 months beginning with the date on which the offer was received by the applicant, or
  - (b) where the panel appointed under section 35 to determine the application is satisfied that there is a good reason why the applicant needs, or may need, longer to consider whether or not to accept the offer, such longer period as the panel determines.
- (4) Where an application is treated as having been brought to an end by virtue of subsection (2), the panel previously appointed under section 35 to determine it, or such other panel as the chairing member of Redress Scotland determines, may revive the application if it considers that there are exceptional circumstances which merit it.
- (5) Where an application is revived by virtue of subsection (4)—
  - (a) the offer of a redress payment previously made in relation to it is also revived, and
  - (b) the period for which the revived offer is valid is such period as the panel determines.

#### **50 Acceptance of offer and making of payments**

- (1) An offer of a redress payment is accepted—
  - (a) by the applicant to whom the offer is made signing and returning a waiver to the Scottish Ministers under section 46, or
  - (b) in a case where section 46(2) applies to the applicant, by the applicant giving the Scottish Ministers notice in writing that the offer is accepted.
- (2) Entitlement to a redress payment from the Scottish Ministers arises where—
  - (a) an offer of a redress payment is accepted in accordance with subsection (1), and
  - (b) the Scottish Ministers are satisfied that the applicant has abandoned or will abandon any civil proceedings to the extent they are relevant civil proceedings in accordance with the waiver signed and returned under section 46.

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- (3) A redress payment is to be paid by the Scottish Ministers—
  - (a) in such instalments as are agreed at the request of, or otherwise with the consent of, the applicant, or
  - (b) otherwise, as a single payment.
- (4) In this section, “relevant civil proceedings” has the meaning given by section 46.

## **51 Payments to children**

- (1) This section applies where a panel appointed under section 35 to determine an application for a redress payment or, as the case may be, a review panel appointed under section 55 to conduct a review makes an offer of a redress payment to an applicant who is under the age of 18 years.
- (2) The panel may give such directions relating to the payment and management of the redress payment for the benefit of the applicant as it considers appropriate.
- (3) A direction under subsection (2) may, in particular, provide that the redress payment—
  - (a) is to be paid in instalments,
  - (b) is not to be paid until the applicant reaches the age of 18.
- (4) Where a direction under subsection (2) postpones the payment of the whole or part of the redress payment—
  - (a) Redress Scotland may at any time, at the request of or otherwise with the consent of the applicant, instruct the Scottish Ministers to make earlier payment to the applicant of the whole or part of the redress payment or, as the case may be, any remaining balance of it,
  - (b) on the applicant reaching the age of 18, the Scottish Ministers must pay the redress payment or, as the case may be, the balance of it (if any) to the applicant in accordance with paragraphs (a) and (b) of section 50(3).

## **52 Review of direction made under section 51**

- (1) An applicant who is notified of a direction under section 51(2) relating to the payment and management of a redress payment may request a review of the direction.
- (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 direction was received by the applicant,
  - (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 applicant 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.

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- (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 applicant 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 53.

### **53 Outcome of a section 52 review**

- (1) On a review under section 52, the review panel appointed under section 55 to conduct it—
  - (a) must consider—
    - (i) whether the panel which gave the direction under section 51(2) relating to the payment and management of a redress payment ought to have done so,
    - (ii) in a case where additional evidence is provided to or obtained by the review panel, whether the question of what (if any) direction is given relating to the payment and management of a redress payment ought to be determined differently as a result,
  - (b) may uphold or reverse the direction.
- (2) 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 applicant of the review panel's determination, and
  - (b) provide the applicant with a summary, provided by Redress Scotland, of the review panel's reasons for reaching that determination.
- (3) The determination of the review panel under this section is final.

VALID FROM 07/12/2021

## **CHAPTER 2**

### **REVIEW OF REDRESS PAYMENT DETERMINATIONS**

### **54 Right to a review**

- (1) This section applies where—
  - (a) an applicant has received notification of a determination under section 36, and
  - (b) where an offer of a redress payment was made under that section, the applicant has not brought the application to an end by accepting the offer.

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- (2) The applicant may request a review of the determination to the extent that it is a determination that—
  - (a) the applicant is not eligible for a redress payment under section 37(2),
  - (b) the applicant is to be offered a particular amount by way of an individually assessed payment, or
  - (c) a particular amount is to be deducted in accordance with section 42 from the redress payment offered to the applicant (including where the amount to be deducted is such that the redress payment is reduced to zero).
- (3) 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 applicant,
  - (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 applicant considers relevant.
- (4) 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.
- (5) A review may be conducted despite the request for it not being made within the period mentioned in subsection (3)(b) if Redress Scotland is satisfied that the applicant has a good reason for not requesting a review sooner (whether or not the application to which it relates is one which has been brought to an end by virtue of section 49(2)).
- (6) The Scottish Ministers must publicise any requirements which are for the time being set under subsection (3)(c).

## **55 Review panels**

- (1) A request for a review is to be determined on behalf of Redress Scotland by a panel of members of Redress Scotland appointed by the chairing member in accordance with this section (“a review panel”).
- (2) A review panel—
  - (a) is to consist of at least 3 members,
  - (b) must not include any member of the panel whose determination is the subject of the request for a review.

## **56 Procedure for a review**

- (1) The review panel appointed under section 55 to conduct the review—
  - (a) may invite oral representations to be made if the panel considers it necessary,
  - (b) otherwise, is to determine the review on the basis of—
    - (i) the evidence on which the determination which is the subject of the request for a review was made, and

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- (ii) any further relevant evidence which is provided to or obtained by the review panel, including any information contained in or accompanying the request for a review and any written representations which are made to the review panel.

- (2) The procedure for conducting a review is otherwise to be determined by Redress Scotland.

## 57 Outcome of a review

- (1) On a review, the review panel appointed under section 55 to conduct it must consider—
  - (a) whether the panel appointed under section 35 to determine the application in question ought to have reached a different determination, and
  - (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 36 that an applicant is eligible for a redress payment,
  - (b) determine that an applicant is to be offered a lower amount by way of an individually assessed payment than the applicant was offered under section 36, or
  - (c) determine that more is to be deducted in accordance with section 42 from the redress payment offered to the applicant than was determined under section 36.
- (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 appointed under section 55 to conduct the review.
- (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 applicant of the review panel's determination, and
  - (b) provide the applicant with—
    - (i) a summary, provided by Redress Scotland, of the review panel's reasons for reaching that determination, and
    - (ii) where an offer of a redress payment is made (whether by upholding, reversing or varying the determination of the panel appointed under section 35), information about the period for which the offer remains valid under section 58 and the options available to the applicant in respect of it.
- (6) The determination of the review panel under this section is final.
- (7) In this section, the “application in question” means the application under section 29, the determination of which is the subject of the request for a review.



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## **58 Period for which offer valid following a review**

- (1) An applicant to whom an offer of a redress payment is made on a review (whether by upholding, reversing or varying the determination of the panel appointed under section 35) may bring the application to an end by accepting the offer in accordance with section 50(1).
- (2) If the offer is not so accepted within the period for which the offer is valid, the application is to be treated as having been brought to an end by the offer being rejected unless it is continued by virtue of section 66(1).
- (3) The period for which the offer is valid is—
  - (a) the period of 6 months beginning with the date on which the offer was received by the applicant, or
  - (b) where the review panel appointed under section 55 to conduct the review is satisfied that there is a good reason why the applicant needs, or may need, longer to consider whether or not to accept the offer, such longer period as the review panel determines.
- (4) Where an application is treated as having been brought to an end by virtue of subsection (2), the review panel previously appointed under section 55 to conduct the review in relation to it, or such other panel as the chairing member of Redress Scotland determines, may revive the application if it considers that there are exceptional circumstances which merit it.
- (5) Where an application is revived by virtue of subsection (4)—
  - (a) the offer of a redress payment previously made on a review of the application is also revived, and
  - (b) the period for which the revived offer is valid is such period as the panel determines.

## **59 Withdrawal of review request**

- (1) A request for a review may be withdrawn at the request of the applicant at any time prior to a determination being made under section 57.
- (2) A request under subsection (1) must be made in writing to the Scottish Ministers.
- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request under subsection (1), inform Redress Scotland of it.
- (4) Where Redress Scotland is informed of a request made under subsection (1), Redress Scotland must bring to an end any further determination of the review to which the request relates.
- (5) Where a request for a review is withdrawn, no further request for a review may be made in respect of the determination to which the request related unless the further request is made for a different reason.
- (6) Subsection (7) applies where the withdrawn request relates to the review of a determination where an offer of a redress payment had been made under section 36.
- (7) The 6 month period for which the offer remains valid under section 49(3), or any longer period which had been determined under that section prior to the request for a review being made, is to be extended by the number of days in the period—

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- (a) beginning with the date on which the request for a review was made, and
- (b) ending with the date on which the request is withdrawn.

VALID FROM 07/12/2021

## CHAPTER 3

### APPLICATIONS AFFECTED BY CONVICTIONS FOR SERIOUS OFFENCES

#### 60 Applicants etc. with convictions for serious offences

- (1) This section applies where, at any time before a panel appointed under section 35 to determine an application, or, as the case may be, a review panel appointed under section 55 to conduct a review, does so, a person mentioned in subsection (2) is—
  - (a) convicted of—
    - (i) murder,
    - (ii) rape, or
    - (iii) a relevant offence for which the person is sentenced to imprisonment for a term of 5 years or more, or
  - (b) convicted of an equivalent offence and, in the case of an offence equivalent to a relevant offence, is sentenced to imprisonment for a term of 5 years or more.
- (2) The person referred to in subsection (1) is—
  - (a) in the case of an application for a fixed rate payment or an individually assessed payment—
    - (i) the applicant, or
    - (ii) where the applicant dies while the application is ongoing, the applicant or the applicant's nominated beneficiary,
  - (b) in the case of an application for a next of kin payment, the applicant or the person in respect of whom the application is made.
- (3) For the purpose of subsection (2)(a)(ii), whether an application is ongoing is to be determined in accordance with section 66(6) and (7).
- (4) Before the panel mentioned in subsection (1) determines the application or, as the case may be, the request for a review, it must determine, in accordance with subsection (5), whether or not the applicant or, as the case may be, the nominated beneficiary (“the relevant person”) is precluded from being offered a redress payment.
- (5) The relevant person is precluded from being offered a redress payment where the panel, having regard to the matters mentioned in subsection (6), considers that it would be contrary to the public interest to make a redress payment to that person.
- (6) The matters referred to in subsection (5) are—
  - (a) the nature of the offence,
  - (b) the sentence imposed (and, where the sentence is or includes imprisonment, the term imposed),

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- (c) the length of time since the offence was committed,
  - (d) any rehabilitation activity undertaken by the person who committed the offence, and
  - (e) any other matter that the panel considers relevant.
- (7) Where the panel mentioned in subsection (1) determines under subsection (4) that a relevant person is precluded from being offered a redress payment, it may also determine whether or not the relevant person would otherwise have been eligible for a redress payment.
- (8) Once the panel has determined whether or not the relevant person is precluded from being offered a redress payment and, where applicable, whether or not the person would otherwise have been eligible for such a payment, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
- (a) notify the relevant person of the determination, and
  - (b) provide the relevant person with a summary, provided by Redress Scotland, of the panel's reasons for reaching that determination.
- (9) In this section, “equivalent offence” means an offence under the law in force in a country outside the United Kingdom at the time of the offence where the acts or omissions which constitute the offence would, if committed in the United Kingdom, have constituted an offence mentioned in subsection (1)(a).

## **61 Applicants etc. with convictions for serious offences: definitions**

- (1) For the purposes of section 60—
- “imprisonment” includes detention in a young offenders institution or detention centre, detention in a Borstal institution and penal servitude,
- “murder” includes, in relation to murder committed outside Scotland, aiding, abetting, counselling, procuring or inciting murder,
- “rape”—
- (a) means rape—
    - (i) at common law,
    - (ii) under section 1 of the Sexual Offences Act 1956,
    - (iii) under section 1 of the Sexual Offences Act 2003,
    - (iv) of a child under 13 (under section 5 of that Act),
    - (v) by virtue of article 18 of the Criminal Justice (Northern Ireland) Order 2003 (SI 2003/1247 (N.I. 13)),
    - (vi) under article 5 of the Sexual Offences (Northern Ireland) Order 2008 (SI 2008/1769 (N.I. 2)),
    - (vii) of a child under 13 (under article 12 of that Order),
    - (viii) under section 1 of the Sexual Offences (Scotland) Act 2009,
    - (ix) of a young child (under section 18 of that Act), and
  - (b) includes, in relation to rape committed outside Scotland, aiding, abetting, counselling, procuring or inciting rape,
- “relevant offence” means—
- (a) a violent offence, being an offence inferring personal violence other than—
    - (i) murder,
    - (ii) rape, or

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- (iii) a sexual offence,
  - (b) a sexual offence listed in schedule 3 of the Sexual Offences Act 2003 other than rape (but including attempted rape and conspiracy to commit rape).
- (2) The Scottish Ministers may by regulations modify subsection (1) to—
- (a) add an offence,
  - (b) vary the description of an offence,
  - (c) remove an offence.

## **62 Review of determination made under section 60**

- (1) A relevant person who is notified of a determination under section 60 that the person is precluded from being offered a redress payment or, as the case may be, that the person would otherwise not have been eligible for such a payment may request a review of the determination.
- (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 relevant person,
  - (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 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 relevant person 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 63.

## **63 Outcome of a section 62 review**

- (1) On a review under section 62, the review panel appointed under section 55 to conduct it—
- (a) must consider—
    - (i) whether the panel which determined, under section 60, that the relevant person is precluded from being offered a redress payment, or, as the case may be, would not otherwise have been eligible for a

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redress payment, ought to have reached a different determination, and

(ii) 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,

(b) may uphold or reverse the determination.

(2) 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 relevant person of the review panel's determination,

(b) provide the person with a summary, provided by Redress Scotland, of the review panel's reasons for reaching that determination.

(3) Where the review panel reverses a determination that the relevant person is precluded from being offered a redress payment, the Scottish Ministers must refer the application or, as the case may be, the request for a review under section 54 to the panel which made the determination under section 60(4), to determine it.

(4) The determination of the review panel under this section is final.

#### **64 Information about convictions for serious offences**

(1) An applicant or, as the case may be, an applicant's nominated beneficiary (“a relevant person”) must provide the Scottish Ministers with the information mentioned in subsection (2) in relation to any conviction which is or may be relevant for the purposes of section 60.

(2) The information to be provided in relation to a conviction is—

(a) the nature of the offence,

(b) the sentence imposed (and, where the sentence is or includes imprisonment, the term imposed),

(c) the length of time since the offence was committed, and

(d) any rehabilitation activity undertaken by the person who committed the offence.

(3) Where the relevant person provides information in relation to a conviction under subsection (1), the Scottish Ministers must, as soon as reasonably practicable, provide that information to Redress Scotland.

VALID FROM 07/12/2021

## **CHAPTER 4**

### **DEATH OF APPLICANT**

#### **65 Nomination of a beneficiary**

(1) An applicant for a fixed rate payment or an individually assessed payment may, as part of the application or by other notice in writing to the Scottish Ministers, nominate a person (a “nominated beneficiary”) whom the applicant would like to

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be invited to take over the application in the event that the applicant dies while the application is ongoing.

- (2) A nomination under subsection (1) remains in force unless—
- (a) the nomination is withdrawn by the applicant giving notice in writing to the Scottish Ministers, or
  - (b) the person who is nominated dies or, in the case of a person other than an individual, ceases to exist.
- (3) In this section and in sections 66 to 73, the “application” includes, in relation to an application for a redress payment, a request for a review of the determination of that application.

## **66 Applicant's death while application ongoing**

- (1) Where an applicant for a redress payment dies while the application is ongoing, it brings the application to an end unless—
- (a) there is a nomination in force in relation to the application under section 65, and
  - (b) the nominated beneficiary is to be invited to take over the application by virtue of subsection (2) or (3).
- (2) Where the applicant dies—
- (a) after the panel appointed under section 35 to determine the application has all the information that it requires in order to do so, but
  - (b) while the application is ongoing,
- the nominated beneficiary is to be invited to take over the application.
- (3) Where the applicant dies—
- (a) after making the application, but
  - (b) before the panel appointed under section 35 to determine the application has all the information that it requires in order to do so,
- the panel must determine, in accordance with subsection (4), whether or not the nominated beneficiary is to be invited to take over the application.
- (4) The panel may determine under subsection (3) that the nominated beneficiary is to be invited to take over the application only if it considers that there are exceptional circumstances which merit it.
- (5) Once the panel has reached a determination under subsection (3), Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
- (a) notify the nominated beneficiary of the determination, and
  - (b) provide the nominated beneficiary with a summary, provided by Redress Scotland, of the panel's reasons for reaching that determination.
- (6) For the purpose of this section, an application is ongoing from the time it is made until—
- (a) it is withdrawn under section 33,
  - (b) in a case where a determination is made under section 36 or 60 that the applicant is not eligible for, or is precluded from being offered, a redress payment, either—

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- (i) the period within which a review may be requested expires, no review of the determination having been requested, or
  - (ii) a review of the determination having been requested, the determination is upheld on review or the request for a review of the determination is withdrawn, or
  - (c) in a case where a determination is made (whether under section 36 or on a review) that the applicant is eligible for a redress payment, the application is brought to an end under section 49 or, as the case may be, 58.
- (7) An application is also ongoing from the time either—
- (a) a request to revive it is made by virtue of section 49(4) or 58(4) or it is revived under either of those sections without such a request being made, or
  - (b) a late request for a review is made in relation to it,
- until the time any such request is rejected or withdrawn, or the application is brought to an end as mentioned in subsection (6)(b)(ii) or (c).

#### **67 Access to information and evidence by nominated beneficiary**

- (1) This section applies where a nominated beneficiary—
- (a) has been invited to take over an application by virtue of section 66 and the period specified in section 71(3) has not expired, or
  - (b) has requested a review under section 68.
- (2) Redress Scotland and the Scottish Ministers must, on request, provide the nominated beneficiary with access to any information or evidence held by it or them which has been obtained by or provided to it or them in connection with the application to which the invitation or, as the case may be, the review relates.
- (3) Nothing in this section authorises the disclosure of any information or evidence—
- (a) that would be likely to identify any person other than the nominated beneficiary or the person in respect of whom the application to which the invitation or, as the case may be, review relates,
  - (b) 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.

#### **68 Review of determination made under section 66(3)**

- (1) A nominated beneficiary who is notified of a determination under section 66(3) that the nominated beneficiary is not going to be invited to take over the application may request a review of the determination.
- (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 nominated beneficiary,
  - (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 nominated beneficiary considers relevant.

**Status:** Point in time view as at 24/04/2021. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

- (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 nominated beneficiary 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 69.

#### **69 Outcome of a section 68 review**

- (1) On a review under section 68, the review panel appointed under section 55 to conduct it—
  - (a) must consider—
    - (i) whether the panel which determined, under section 66(3), whether or not to invite the nominated beneficiary to take over the application ought to have reached a different determination, and
    - (ii) 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,
  - (b) may uphold or reverse the determination.
- (2) 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 nominated beneficiary of the review panel's determination, and
  - (b) provide the nominated beneficiary with a summary, provided by Redress Scotland, of the review panel's reasons for reaching that determination.
- (3) Where the review panel reverses the determination in respect of which the review was requested, the Scottish Ministers must invite the nominated beneficiary to take over the application.
- (4) Where the review panel determines that the nominated beneficiary is to be invited to take over the application, the application is to be treated as having been continued by virtue of section 66(3).
- (5) The determination of the review panel under this section is final.

#### **70 Applicant's death after offer accepted**

Where an applicant for a redress payment dies—

- (a) after accepting an offer of a redress payment in accordance with section 50(1), but
  - (b) before the redress payment is paid,
- the redress payment is to be paid to the applicant's estate.



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## **71 Invitation to nominated beneficiary to take over application**

- (1) This section applies where, by virtue of section 66, a nominated beneficiary is to be invited to take over an application after an applicant's death.
- (2) On becoming aware that a nominated beneficiary is to be invited to take over an application, the Scottish Ministers must—
  - (a) notify the nominated beneficiary of the invitation to take over the application, and
  - (b) provide the nominated beneficiary with information about the effect of taking over the application.
- (3) The nominated beneficiary has a period of 8 weeks, beginning with the date on which notice of the invitation was received by the nominated beneficiary, to—
  - (a) accept the invitation by giving notice in writing to the Scottish Ministers, and
  - (b) in a case where the nominated beneficiary is being invited to take over the application by virtue of section 66(3), provide any remaining information that the panel appointed under section 35 to determine the application requires from the nominated beneficiary in order to do so.
- (4) The Scottish Ministers must—
  - (a) as soon as reasonably practicable after receiving notification of acceptance in accordance with subsection (3)(a), inform Redress Scotland of that acceptance, and
  - (b) as soon as reasonably practicable after receiving any information provided in accordance with subsection (3)(b), provide Redress Scotland with that information.
- (5) Where the actions specified in subsection (3) are not taken within the period specified in that subsection, the application is to be treated as having been brought to an end by the invitation being rejected.
- (6) Where the actions specified in subsection (3) are taken within the period specified in that subsection, the nominated beneficiary takes over the application.
- (7) A nominated beneficiary must, on request by the Scottish Ministers, provide Ministers with such evidence as they require as to—
  - (a) the applicant's death,
  - (b) the nominated beneficiary's identity.

## **72 Application taken over by nominated beneficiary**

- (1) Where a nominated beneficiary takes over an application by virtue of section 71—
  - (a) the application and any review of it is, subject to section 60, to be determined by the panel on the basis of the eligibility of the applicant,
  - (b) any relevant payments to be deducted from a redress payment are to be based on payments made to the applicant or to which the applicant was entitled, and
  - (c) the question of whether a fixed rate payment or, in the case of an application made by virtue of section 30(3), an individually assessed payment has previously been paid is to be determined based on payment to the applicant or the applicant's estate,

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but the nominated beneficiary is otherwise, subject to section 70 and the exceptions in subsection (3), to be treated for the purposes of this Act as taking the place of the applicant in relation to the application.

- (2) Accordingly, subject to section 70 and the exceptions in subsection (3)—
- (a) the nominated beneficiary is, subject to section 60, to be offered any redress payment which the applicant would, if alive, have been offered in respect of the application,
  - (b) the nominated beneficiary may do anything under this Act in relation to the determination of the application which the applicant could have done if alive (including seeking costs and expenses in connection with it), and
  - (c) any requirement imposed by this Act on the applicant in relation to the application is to be treated as being imposed on the nominated beneficiary.
- (3) The exceptions referred to in subsections (1) and (2) are—
- (a) for the purpose of Part 3, the nominated beneficiary is not to be treated as having applied for a redress payment,
  - (b) in relation to the waiver required in order to accept an offer of a redress payment, section 46(2) is not to be treated as applying to the nominated beneficiary by reason of the applicant having previously signed a waiver,
  - (c) the nominated beneficiary may not make a further nomination under section 65,
  - (d) the nominated beneficiary may not, in that capacity, apply for emotional or psychological support under any arrangements which may be made under section 90.
- (4) Where a nominated beneficiary takes over an application after a panel appointed under section 35 to determine the application or, as the case may be, a review panel appointed under section 55 to conduct a review, has already done so, section 60 applies as if—
- (a) subsection (4) of that section required the panel to make a determination under that subsection as soon as reasonably practicable after the nominated beneficiary takes over the application, and
  - (b) subsection (1) of that section applied to a conviction which occurred or a sentence which was imposed before the date of the determination to take place by virtue of paragraph (a).

### **73 Nominated beneficiary's death etc.**

- (1) This section applies where a nominated beneficiary who has taken over an application dies or, as the case may be, ceases to exist.
- (2) Where the nominated beneficiary dies or, in the case of a person other than an individual, ceases to exist while the application in relation to which the person is nominated is ongoing, it brings the application to an end.
- (3) Where an individual is the nominated beneficiary and the individual dies—
  - (a) after accepting an offer of a redress payment in accordance with section 50(1), but
  - (b) before the redress payment is paid,
 the redress payment is to be paid to the individual's estate.

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- (4) For the purpose of this section, the question of whether an application is ongoing is to be determined in accordance with section 66(6) and (7).

## CHAPTER 5

### REDRESS PAYMENTS OR DETERMINATIONS MADE IN ERROR

VALID FROM 07/12/2021

#### 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.

VALID FROM 07/12/2021

#### 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”).

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**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

- (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—

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- (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.

VALID FROM 07/12/2021

## 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.

VALID FROM 07/12/2021

## 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—

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**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

- (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
  - (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,

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- (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).

## CHAPTER 6

### PROVISION OF INFORMATION AND EVIDENCE

VALID FROM 07/12/2021

#### 79 Power of the Scottish Ministers to require the provision of evidence

- (1) The Scottish Ministers may, for a purpose mentioned in subsection (2), by notice in writing require a person, other than an applicant, to provide the Scottish Ministers on or before a specified date with—
- (a) specified information, documents, objects, or other items of evidence,
  - (b) evidence in the form of a written statement.
- (2) The purposes referred to in subsection (1) are the determination of any matter by—
- (a) a panel appointed under section 35 to determine an application,
  - (b) a review panel appointed under section 55 to conduct a review,
  - (c) a reconsideration panel appointed under section 75 to reconsider a determination.
- (3) A person to whom a notice under subsection (1) is given may, before the end of the period of 4 weeks beginning with the date on which the notice was received by the person, make a claim to the Scottish Ministers that—
- (a) the person is unable to comply with the notice, or
  - (b) it is not reasonable in all the circumstances to require the person to comply with the notice.
- (4) The Scottish Ministers must, as soon as reasonably practicable after receiving a claim made under subsection (3), provide the claim, and any information accompanying it, to Redress Scotland.
- (5) Where a claim is made under subsection (3), Redress Scotland may confirm, revoke or vary the notice to which the claim relates.
- (6) A person who is required by a notice to provide documents must do so in a redacted form if—
- (a) the documents contain information about another person which is irrelevant to the determination of the application to which the notice relates, and
  - (b) the disclosure of that information would breach an obligation of confidence.

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**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

- (7) A notice does not have effect to the extent that—
- (a) complying with the notice would involve the disclosure of information which would contravene the data protection legislation, or
  - (b) the person to whom the notice applies would be entitled to refuse to comply with the notice in or for the purposes of proceedings in a court in Scotland.
- (8) In this section, “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.

VALID FROM 07/12/2021

## **80 Power to obtain information about previous payments**

- (1) The Scottish Ministers may, for the purpose of calculating any relevant payments to be deducted from a redress payment in accordance with section 42, by notice in writing require a person, other than an applicant, to provide the Scottish Ministers, on or before a specified date, with details of a relevant payment.
- (2) A notice under subsection (1) may, in particular, require the provision of the following details—
- (a) the date on which the payment was made or, as the case may be, an entitlement to it arose,
  - (b) the amount of the payment,
  - (c) the matter to which the payment related.
- (3) A notice under subsection (1) must specify the name and date of birth of the applicant, or the person in respect of whom the application is made, to whom the relevant payment relates.
- (4) A notice does not have effect to the extent that—
- (a) complying with the notice would involve the disclosure of information which would contravene the data protection legislation, or
  - (b) the person to whom the notice applies would be entitled to refuse to comply with the notice in or for the purposes of proceedings in a court in Scotland.
- (5) In this section, “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.

VALID FROM 07/12/2021

## **81 Redress Scotland's power in relation to information and evidence**

- (1) Redress Scotland may ask the Scottish Ministers to—
- (a) issue a notice under section 79,
  - (b) issue a notice under section 80,
  - (c) provide Redress Scotland with specified information, documents, objects, other items of evidence or evidence in the form of a written statement.



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- (2) The Scottish Ministers must comply with a request under subsection (1)(a) or (b) before the end of the period of 4 weeks beginning with the date on which the request was received by them.
- (3) The Scottish Ministers must comply with a request under subsection (1)(c) before the end of such period as Redress Scotland specifies in relation to the request (which may not be less than 4 weeks beginning with the date on which the request was received by them).

VALID FROM 07/12/2021

## 82 Applicant access to information and evidence

- (1) Redress Scotland and the Scottish Ministers must, on request, provide a person with access to any information or evidence held by it or them which has been obtained by or provided to it or them in connection with the person's application for a redress payment.
- (2) Where the person making the request is a nominated beneficiary who has taken over the application by virtue of section 71, the information or evidence to be provided under subsection (1) includes information or evidence which has been obtained or provided in connection with the application prior to it being taken over.
- (3) Nothing in this section authorises the disclosure of any information or evidence—
  - (a) that would be likely to identify any person other than the person making the request or the person in respect of whom the application is made,
  - (b) 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.

VALID FROM 07/12/2021

## 83 Power to commission reports

- (1) The Scottish Ministers may commission or arrange the commission of such reports as they consider to be reasonably necessary for the purposes of—
  - (a) progressing an application for a fixed rate payment or an individually assessed payment,
  - (b) the determination of such an application by a panel appointed under section 35,
  - (c) the conducting of a review in relation to such an application by a panel appointed under section 55, or
  - (d) the reconsideration of a determination in relation to such an application by a panel appointed under section 75.
- (2) But no report may be commissioned under subsection (1) without the applicant's consent.

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**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

VALID FROM 07/12/2021

#### **84 Offences of failure to provide, and of tampering with, information or evidence**

- (1) A person who is required by a notice under section 79 or 80, or asked under section 81(1)(c), to provide information, documents, objects, other items of evidence, or evidence in the form of a written statement, commits an offence if the person fails, without reasonable excuse, to comply with the notice or, as the case may be, the request.
- (2) A person commits an offence if, without reasonable excuse, the person conceals, destroys, distorts or alters, or arranges for the concealment, destruction, distortion or alteration of, anything that the person knows to be required, or has reasonable grounds for believing might be required, to be provided—
  - (a) to the Scottish Ministers by virtue of a notice under section 79 or 80,
  - (b) to Redress Scotland by virtue of a request under section 81(1)(c).
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to imprisonment for a term not exceeding six months, a fine not exceeding level 3 on the standard scale, or both.

VALID FROM 07/12/2021

#### **85 Individual culpability where an organisation commits an offence under section 84**

- (1) This section applies where—
  - (a) an offence under section 84 is committed by a relevant organisation, and
  - (b) the commission of the offence involves the connivance or consent of, or is attributable to the neglect of—
    - (i) a responsible individual of the organisation, or
    - (ii) an individual purporting to act in the capacity of a responsible individual.
- (2) The responsible individual (or, as the case may be, the individual purporting to act in that capacity), as well as the relevant organisation, commits the offence.
- (3) “Relevant organisation” means—
  - (a) a company,
  - (b) a partnership (including a limited liability partnership),
  - (c) another body or association.
- (4) “Responsible individual” means—
  - (a) in the case of a company—
    - (i) a director, secretary, manager or similar officer, or
    - (ii) where the affairs of the company are managed by its members, a member,
  - (b) in the case of a limited liability partnership, a member,

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- (c) in the case of a partnership other than a limited liability partnership, a partner,
- (d) in the case of another body or association, a person who is concerned in the management or control of its affairs.

VALID FROM 07/12/2021

## 86 Crown application in relation to offences under section 84

- (1) Nothing in section 84 makes the Crown criminally liable.
- (2) The Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).
- (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.

## 87 Confidentiality of information

- (1) This subsection applies to—
  - (a) Redress Scotland,
  - (b) a person who is a member of Redress Scotland,
  - (c) a person who is a member of staff of Redress Scotland,
  - (d) the Scottish Ministers,
  - (e) a person who is a member of staff of the Scottish Ministers,
  - (f) a person who has been given relevant information for the purpose of storing or preserving it.
- (2) A person to whom subsection (1) applies (or applied at the time the relevant information was provided to that person) must not disclose relevant information.
- (3) Subsection (2) does not prevent disclosure of relevant information by the person to the extent that—
  - (a) the disclosure is to another person to whom subsection (1) applies and is necessary for the purpose of enabling or assisting the carrying out by Redress Scotland or the Scottish Ministers of any of the functions conferred on it or on them under or by virtue of this Act,
  - (b) the disclosure is made with the consent of the person from whom the relevant information was obtained, or
  - (c) the disclosure is reasonably required by and done in accordance with a provision of, or made under, this Act.
- (4) A person to whom subsection (1) applies (or applied at the time the relevant information was provided to that person) must disclose relevant information to a constable to the extent that the disclosure is, in the opinion of that person acting in good faith—
  - (a) reasonably necessary to allow the investigation of an offence involving the abuse of a child, and
  - (b) in the public interest.

**Status:** Point in time view as at 24/04/2021. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

- (5) A court may order disclosure of relevant information in, or for the purposes of, civil or criminal proceedings (including for the purposes of an investigation of any offence or suspected offence).
- (6) In this section, “relevant information” means any information which—
- (a) has been provided to a person in connection with the carrying out of—
    - (i) Redress Scotland's functions, or
    - (ii) the Scottish Ministers' functions in relation to the redress scheme, and
  - (b) is not otherwise in the public domain.

VALID FROM 07/12/2021

## 88 Power to share information with third parties

- (1) The Scottish Ministers or Redress Scotland may, where the disclosure of relevant information is necessary for a purpose mentioned in subsection (2), disclose relevant information.
- (2) The purposes are—
- (a) the verification or authentication of information, documents, objects or other items of evidence provided in connection with an application,
  - (b) the provision by the person to whom the disclosure is made of information, documents, objects, other items of evidence or evidence by written statement in relation to an application or the determination of an application,
  - (c) the provision by the person to whom the disclosure is made of details of any relevant payment that has been made to an applicant, or to the person in respect of whom the application is made, or to which the applicant or that person is entitled,
  - (d) the determination by the person to whom the disclosure is made as to whether civil proceedings commenced against the person have been commenced in contravention of section 46.
- (3) Where relevant information is disclosed under this section—
- (a) the person to whom the disclosure is made may only use the information or subsequently disclose it to any other person as is necessary for or in connection with a purpose mentioned in subsection (2) (including, in particular, contesting any civil proceedings commenced in contravention of section 46), and
  - (b) any other person to whom the information is subsequently disclosed may only use it for the purpose for which it was disclosed to that person under paragraph (a).
- (4) In this section, “relevant information” means such information as the Scottish Ministers consider, or, as the case may be, Redress Scotland considers, reasonably necessary for a purpose mentioned in subsection (2), which may, in particular, include—
- (a) the name and date of birth of an applicant,

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**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

- (b) the name and date of birth of a person in respect of whom an application is made (where not the applicant),
  - (c) the relevant care setting to which an application relates,
  - (d) the approximate dates that an applicant or, as the case may be, a person in respect of whom the application is made was resident in the relevant care setting to which an application relates,
  - (e) whether an applicant has signed a waiver under section 46 and, if so, the information contained in that waiver.
- (5) Nothing in this section authorises a disclosure of any information that would be in contravention of the data protection legislation.
- (6) In this section, “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.

VALID FROM 28/06/2021

## PART 5

### OTHER SUPPORT FOR SURVIVORS OF ABUSE

#### *Provision of support*

#### **89 Provision of support to persons in connection with an application**

- (1) The Scottish Ministers may make arrangements (contractual or otherwise) for or in connection with the provision of support to 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.
- (2) In this section, “support” means such emotional, psychological or practical support as the Scottish Ministers consider necessary given the person's needs in connection with—
- (a) the decision whether to make an application,
  - (b) the making of an application.

#### **90 Provision of support to certain persons eligible for a payment etc.**

- (1) The Scottish Ministers may make arrangements (contractual or otherwise) for or in connection with the provision of support to persons who meet one or more of the following—
- (a) the conditions in subsection (2),
  - (b) the conditions in subsection (3), or
  - (c) the condition in subsection (4).
- (2) The conditions in this subsection are that—
- (a) the person has applied for a redress payment other than a next of kin payment,

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- (b) the panel appointed under section 35 to determine the application or, as the case may be, the review panel appointed under section 55 to conduct a review has determined that the person is eligible for a redress payment, and
  - (c) either of the following sub-paragraphs applies—
    - (i) the person has accepted an offer of a redress payment by signing and returning a waiver under section 46, or
    - (ii) the person is not receiving a payment only because of the deduction of a relevant payment in accordance with section 42(4).
- (3) The conditions in this subsection are that—
- (a) the person has applied for a redress payment other than a next of kin payment,
  - (b) the panel appointed under section 35 to determine the application or, as the case may be, the review panel appointed under section 55 to conduct a review has determined under section 60 that the person is precluded from being offered a redress payment, and
  - (c) that panel or, as the case may be, a review panel appointed to conduct a review under section 62 has determined that the person would otherwise have been eligible for a redress payment.
- (4) The condition in this subsection is that the person has previously received a payment under the advance payment scheme.
- (5) In this section, “support” means such emotional or psychological support in connection with the abuse to which the application relates as the Scottish Ministers consider necessary, given the person's needs, and for such period as they consider appropriate.

#### *Payment of costs and expenses*

### **91 Reimbursement of costs incurred in connection with applications**

- (1) The Scottish Ministers must by regulations make provision—
- (a) requiring the reimbursement by them, on request, of the costs and expenses reasonably incurred by an applicant in connection with an application for a redress payment under section 29 (whether or not the application was successful, and whether or not it was subsequently withdrawn),
  - (b) enabling the reimbursement by them, on request, of the costs and expenses reasonably incurred in connection with a proposed application by a person who did not subsequently apply, where Ministers' assessment (or the assessment on a review) is that the request discloses exceptional or unexpected circumstances which justify the reimbursement of those costs and expenses.
- (2) Regulations under subsection (1) must make provision requiring the Scottish Ministers to—
- (a) notify the person who made the request of Ministers' assessment of the amount (if any) to be reimbursed in response to the request, and
  - (b) provide the person with a summary of the reasons for their assessment.
- (3) Regulations under subsection (1) may, in particular, make provision about—
- (a) the types of costs and expenses which may be reimbursed,

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**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

- (b) limits on the amount that may be reimbursed in respect of specified types of costs and expenses,
- (c) any process by which confirmation that anticipated costs and expenses are reasonable can be obtained before they are incurred,
- (d) the time limit for making a request,
- (e) the required content and form of a request,
- (f) the information and evidence to be provided in or with a request,
- (g) the factors to be considered by the Scottish Ministers in assessing the reasonableness of the costs and expenses for which reimbursement is requested,
- (h) reviews by Redress Scotland of assessments made by the Scottish Ministers by virtue of this section.

*Payment of fees for legal work*

VALID FROM 07/12/2021

**92 Duty on the Scottish Ministers to pay fee for legal work in making an application**

- (1) The Scottish Ministers must, on request, pay the prescribed sum to a solicitor in respect of the legal work reasonably undertaken in making an application for a redress payment on behalf of a person (whether or not the application was successful, and whether or not it was subsequently withdrawn).
- (2) Where the Scottish Ministers have cause to believe that the legal work to which a request relates may not have been reasonably undertaken in making an application for a redress payment, it is for Redress Scotland to decide the question.
- (3) For the purpose of subsection (1), where legal work is undertaken in connection with advice and assistance on whether to pursue litigation as an alternative to making an application for a redress payment, that work is not to be treated as having been undertaken in making an application for a redress payment unless advice and assistance was also given on any of the matters mentioned in subsection (4).
- (4) Those matters are—
  - (a) a person's eligibility to make an application for a redress payment,
  - (b) which type of redress payment to apply for,
  - (c) the application process,
  - (d) whether to accept an offer of a redress payment and sign a waiver under section 46,
  - (e) whether to request a review of the offer under section 54,
  - (f) the review process.

**Status:** Point in time view as at 24/04/2021. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

VALID FROM 07/12/2021

### **93 Duty on the Scottish Ministers to pay certain fees for legal work in exceptional cases**

- (1) The Scottish Ministers must, on request, pay the prescribed sum to a solicitor in respect of the legal work mentioned in subsection (2) where Redress Scotland's assessment is that there are exceptional or unexpected circumstances which justify the payment of the prescribed sum.
- (2) That legal work is the legal work Redress Scotland considers is reasonably undertaken in connection with a proposed application by a person who sought legal advice on the person's eligibility to apply for a redress payment, but did not subsequently apply.
- (3) The Scottish Ministers must, on request, pay to a solicitor such additional sum as is specified by Redress Scotland in respect of the legal work reasonably undertaken in making an application for a redress payment, or in connection with a proposed application, where Redress Scotland's assessment is that there are exceptional or unexpected circumstances which justify the payment of an additional sum.

### **94 Sections 92 and 93: further provision**

- (1) A request under section 92(1) or 93(1) or (3) is referred to in this Act as a “fee payment request”.
- (2) A fee payment request may be made only by a solicitor who has acted for a person in relation to an application for a redress payment, or a proposed application, submitting a request to the Scottish Ministers.
- (3) The Scottish Ministers may by regulations—
  - (a) make further provision about fee payment requests, including about—
    - (i) the time limit for making a request,
    - (ii) any steps that must be taken prior to making a request (including any assessment of whether those steps have been taken and notification and review of the outcome of that assessment),
    - (iii) the required content and form of a request,
    - (iv) the information and evidence to be provided in or with a request,
  - (b) make provision about legal work, undertaken in connection with particular types of advice and assistance, which is or is not to be regarded as reasonably undertaken for the purpose of assessing whether a sum is to be paid.
- (4) For the purpose of sections 92(1) and 93(1), “prescribed”, in relation to a sum, means prescribed by the Scottish Ministers in regulations under this subsection.
- (5) Regulations under subsection (3) may modify any enactment (including this Act).
- (6) Regulations under subsection (4) may prescribe sums or scales of sums and the conditions under which such sums will be payable.



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**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

## **95 Assessment, notification and review of certain fee payment requests**

- (1) The Scottish Ministers must, as soon as reasonably practicable after receiving it, send Redress Scotland—
  - (a) any fee payment request made under section 92(1) which gives rise to a requirement for a decision of the type mentioned in section 92(2),
  - (b) any fee payment request made under section 93(1),
  - (c) any fee payment request made under section 93(3).
- (2) On receipt of a request under subsection (1), Redress Scotland must assess it and inform the Scottish Ministers of the outcome of that assessment.
- (3) Once the Scottish Ministers have been informed of the outcome of Redress Scotland's assessment under subsection (2), they must, as soon as reasonably practicable—
  - (a) notify the solicitor who made the request of the outcome, and
  - (b) provide the solicitor with a summary, provided by Redress Scotland, of Redress Scotland's reasons for its assessment.
- (4) A solicitor may ask Redress Scotland to review its assessment where—
  - (a) in the case of a fee payment request mentioned in subsection (1)(a), the outcome is that no sum is to be paid,
  - (b) in the case of a fee payment request mentioned in subsection (1)(b), the outcome is that no sum is to be paid,
  - (c) in the case of a fee payment request mentioned in subsection (1)(c), the outcome is that—
    - (i) no additional sum is to be paid, or
    - (ii) the additional sum to be paid is lower than the sum requested.
- (5) The Scottish Ministers may by regulations make further provision about reviews by Redress Scotland of assessments of fee payment requests, including about—
  - (a) the time limit for requesting a review,
  - (b) the required content and form of a request for a review,
  - (c) the outcome of a review and the powers available to a review panel,
  - (d) the notification of the outcome of a review,
  - (e) the suspension of the payment of a sum in respect of the work until a request for a review is determined,
  - (f) the payment of a sum in respect of the work where the outcome of a review is that the sum is to be paid.

VALID FROM 07/12/2021

## **96 Restriction on additional legal fees**

- (1) This section applies where a solicitor receives a payment under section 92 or 93 in respect of the legal work reasonably undertaken—
  - (a) in making an application for a redress payment on behalf of a person, or
  - (b) in connection with a proposed application by a person who sought legal advice on the person's eligibility to apply for a redress payment, but did not subsequently apply.

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**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

- (2) Other than a payment made under or by virtue of this Act, the solicitor may not accept any payment (directly or indirectly) in respect of the legal work undertaken in making the application for a redress payment or, as the case may be, in connection with the proposed application for one.
- (3) But subsection (2) does not prevent payment being accepted for any legal work undertaken in connection with advice and assistance on whether to pursue litigation as an alternative to making an application for a redress payment to the extent that such advice and assistance goes beyond that which is necessary or appropriate as part of the legal work undertaken in making an application or, as the case may be, in connection with a proposed application.

#### *Liability for certain payments made in error*

VALID FROM 07/12/2021

### **97 Liability for payments, other than redress payments, made in error**

- (1) This section applies where a payment mentioned in subsection (2) is made by the Scottish Ministers due to a relevant error.
- (2) The payment referred to in subsection (1) is a payment made—
  - (a) in respect of a report commissioned under or by virtue of section 83(1),
  - (b) by virtue of arrangements made under section 89 or 90 for or in connection with the provision of support,
  - (c) by virtue of regulations under section 91 providing for the reimbursement of costs and expenses incurred in connection with the making of an application for a redress payment or a proposed application for such a payment, or
  - (d) under section 92 or 93 in respect of fees for legal work undertaken in making an application for a redress payment or in connection with a proposed application for such a payment.
- (3) A person—
  - (a) to whom the payment was made, or
  - (b) who received payment in respect of the report, support or, as the case may be, the matter in relation to which costs or expenses were reimbursed,
 is liable to pay the Scottish Ministers the value of the payment to the extent that it is paid due to a relevant error.
- (4) A person's liability under subsection (3) is the difference in value between—
  - (a) the payment made to or received by the person, and
  - (b) the payment (if any) that would have been made or received had the relevant error not been made.
- (5) Where the Scottish Ministers seek to recover a sum due to them by a person under subsection (3), 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.

**Status:** Point in time view as at 24/04/2021. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

- (6) But the Scottish Ministers may not seek to recover any sum—
- (a) where the payment is in respect of a report commissioned under or by virtue of section 83(1), from the applicant in relation to whom the report was obtained,
  - (b) where the payment is in respect of support provided by virtue of arrangements made under section 89 or 90, from the person to whom the support was provided,
  - (c) where the payment is in respect of reimbursement of costs or expenses by virtue of regulations under section 91, from the person who requested the reimbursement,
  - (d) where the payment is in respect of fees for legal work paid under section 92 or 93, from the applicant or other person on whose behalf the work was undertaken.
- (7) In this section, references to a relevant error are to—
- (a) an error when making the payment,
  - (b) an error which the Scottish Ministers consider led to the decision to make the payment being made—
    - (i) incorrectly, or
    - (ii) correctly but on the basis of incorrect or misleading information, in a way which materially affected the decision.
- (8) But an error in making a redress payment in relation to which a payment mentioned in subsection (1) was made is not a relevant error for the purpose of this section.

**98 Power to make further provision about payments, other than redress payments, made in error**

- (1) The Scottish Ministers may by regulations make further provision about or in connection with the consideration by them as to whether decisions to make payments to which section 97 applies were materially affected by error.
- (2) Regulations under subsection (1) may, in particular, make provision about—
- (a) the procedure for such consideration,
  - (b) review of decisions following such consideration,
  - (c) requiring or enabling the payment by the Scottish Ministers of fees for legal work and other costs and expenses reasonably incurred by a person in connection with such consideration or review,
  - (d) 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.
- (3) Regulations under subsection (1) may modify any enactment (including this Act).

**Status:** Point in time view as at 24/04/2021. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

VALID FROM 07/12/2021

## PART 6

### REPORTING ON WIDER REDRESS ACTIONS

#### 99 Annual report on wider redress actions

- (1) Before the end of the period of 2 months beginning with the last day of each reporting period, a relevant person must prepare and send to the Scottish Ministers a report on the actions which the person has taken during the reporting period to redress the historical abuse of children (a “redress report”).
- (2) A redress report must, in particular, include—
  - (a) information about any support which the relevant person has provided for individuals who were abused as children, for example—
    - (i) funding for emotional, psychological or practical support,
    - (ii) advice and assistance on accessing historical records,
    - (iii) advice and assistance on tracing and reuniting families,
    - (iv) activity relating to the provision of an apology to such individuals,
  - (b) such information as the relevant person considers appropriate about any other support which the relevant person has provided for individuals who were abused as children,
  - (c) where no support as described in paragraphs (a) and (b) has been provided by the relevant person, the reasons why.
- (3) But a redress report must not, unless and to the extent that subsection (4) applies, include—
  - (a) the name of any individual, or
  - (b) any other information which could reasonably be used to identify any individual.
- (4) This subsection applies where—
  - (a) the relevant person consults an individual, and
  - (b) that individual gives the relevant person notification of the individual's consent to be identified in the report.
- (5) The Scottish Ministers must—
  - (a) collate the information from the redress reports sent to them under subsection (1) into a combined report for the year to which the reports relate, and
  - (b) publish the combined report.
- (6) Where a person prepares a redress report and sends it to the Scottish Ministers despite not having a duty under subsection (1) to do so, the Scottish Ministers may collate the information from that report into the combined report to be published under subsection (5).
- (7) In this section—

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**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

“relevant person” means, in relation to a reporting period, a person included in the contributor list during the first 9 months of the reporting period,

“reporting period” means—

- (a) in the case of the first redress report, the period of 12 months beginning with the day this section comes into force,
- (b) each successive period of 12 months until a date specified in regulations made by the Scottish Ministers.

### **100 Power of the Scottish Ministers to require production of report**

(1) This section applies where—

- (a) the Scottish Ministers consider that a person has a duty under section 99(1) to prepare a redress report and send it to Ministers, and has failed to comply with that duty, or
- (b) an application for a redress payment which results in an offer of a redress payment involves a person (other than an individual) who is not included in the contributor list on the date the panel appointed under section 35 or, as the case may be, a review panel appointed under section 55 determines that the applicant is eligible for the redress payment.

(2) The Scottish Ministers may give a direction (a “reporting direction”) requiring the person to prepare a redress report and send it to Ministers before the end of—

- (a) the period of 3 months beginning with the date on which the direction was given, or
- (b) such longer period as Ministers specify in the direction.

(3) A person to whom a reporting direction is given must comply with it.

(4) If the Scottish Ministers consider that a person to whom a reporting direction is given has failed to comply with it, they may publish the fact that the person has failed to do so.

(5) The Scottish Ministers may revise or revoke a reporting direction.

### **101 Power to make provision about additional redress reporting**

The Scottish Ministers may by regulations make provision requiring a person who is a relevant person for the purpose of section 99 to include an additional statement in—

- (a) the person's annual report, or
- (b) an equivalent document,

on the support as described in paragraphs (a) and (b) of section 99(2) which the person has provided during a period specified in the regulations or, where no such support has been provided, that fact and the reasons why.

**Status:** Point in time view as at 24/04/2021. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

## PART 7

### GENERAL AND MISCELLANEOUS

VALID FROM 28/06/2021

#### 102 The Survivor Forum

- (1) The Scottish Ministers must establish and maintain a forum, known as the Survivor Forum, consisting of—
  - (a) survivors of historical child abuse in care in Scotland,
  - (b) such other persons as Ministers consider appropriate.
- (2) The purpose of the Forum is to provide feedback to the Scottish Ministers and Redress Scotland on the exercise of the functions conferred on them or on it under or by virtue of this Act.
- (3) But the Forum may not provide feedback on the determinations made in relation to redress payments in individual cases.
- (4) The Scottish Ministers may pay Forum members such allowances and expenses as they consider appropriate.
- (5) The Scottish Ministers may by regulations—
  - (a) make further provision about or in connection with the Forum,
  - (b) make provision for the dissolution of the Forum in connection with or following the dissolution of Redress Scotland under section 104.
- (6) Regulations under subsection (5) may modify any enactment (including this Act).

VALID FROM 28/06/2021

#### 103 Dissolution of the National Confidential Forum

- (1) The committee known as the National Confidential Forum (“NCF”) provided for under section 4ZA(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 is dissolved.
- (2) Schedule 2 makes further provision in consequence of subsection (1).

VALID FROM 07/12/2021

#### 104 Dissolution of Redress Scotland

- (1) The Scottish Ministers may by regulations make provision for the dissolution of Redress Scotland.
- (2) Regulations under subsection (1) may be made only if—
  - (a) the application period has ended,

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**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

- (b) the Scottish Ministers are satisfied that there are no ongoing—
    - (i) applications for redress payments,
    - (ii) fee payment requests under section 92 or 93, and
  - (c) Redress Scotland no longer has, or no longer will have as a result of the regulations, any of the functions mentioned in section 7.
- (3) Regulations under subsection (1) may make provision—
- (a) modifying or bringing to an end any function of Redress Scotland,
  - (b) transferring any function of Redress Scotland to—
    - (i) the Scottish Ministers, or
    - (ii) any other body.
- (4) Before making regulations under subsection (1), the Scottish Ministers must consult—
- (a) Redress Scotland,
  - (b) such other persons as they consider appropriate.
- (5) Regulations under subsection (1) may modify any enactment (including this Act).

## 105 Interpretation

### (1) In this Act—

- “abuse” has the meaning given by section 19,
- “advance payment scheme” has the meaning given by section 42(7),
- “application period” is to be construed in accordance with section 31,
- “child” is to be construed in accordance with section 18(3) and (4),
- “child of the deceased person” has the meaning given by section 28(4),
- “contributor list” has the meaning given by section 14(2)(a),
- “fee payment request” is to be construed in accordance with section 94(1),
- “fixed rate payment” is to be construed in accordance with section 38,
- “individually assessed payment” is to be construed in accordance with section 39,
- “NCF” is to be construed in accordance with section 103(1),
- “next of kin payment” is to be construed in accordance with section 40,
- “nominated beneficiary” has the meaning given by section 65(1),
- “notify” means doing so by giving notice in writing,
- “reconsideration panel” has the meaning given by section 75(2),
- “redress payment” means a payment made under Part 4 of this Act,
- “redress report” has the meaning given by section 99(1),
- “redress scheme” has the meaning given by section 2,
- “Redress Scotland” means the body established under section 3(1),
- “relevant care setting” is to be construed in accordance with section 20,
- “relevant payment” is to be construed in accordance with section 42(2),
- “resident” has the meaning given by section 22,
- “review panel” has the meaning given by section 55(1),
- “scheme contributor” has the meaning given by section 14(2)(b),
- “specified next of kin” is to be construed in accordance with section 28,

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**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

“summary of options” is to be construed in accordance with section 9(3),  
 “voluntary organisation” means a body (other than a public authority) the activities of which are carried on otherwise than for profit.

- (2) In this Act, in construing references to a person having previously received or, as the case may be, been paid a redress payment—
- (a) the deduction from that payment of a relevant payment in accordance with section 42 is to be ignored,
  - (b) a person who has accepted a redress payment which is still to be paid (in instalments or otherwise) is to be treated as having received it or been paid it, as the case may be.

VALID FROM 28/06/2021

## 106 Guidance

- (1) The Scottish Ministers may issue guidance about the operation of this Act.
- (2) A person to whom guidance issued under subsection (1) applies must have regard to it.
- (3) Guidance issued under subsection (1) may, in particular, include provision about—
  - (a) the exercise of a function of Redress Scotland under or by virtue of this Act,
  - (b) eligibility to apply for redress payments, and the meaning of any expression used in Part 3,
  - (c) the sources and types of information or evidence that an application for a redress payment under section 29 may or must contain or be accompanied by, and the circumstances where it might be appropriate for Redress Scotland to seek information or evidence in determining an application,
  - (d) the determination of applications under section 36, including the standard of proof to be applied and the operation of the presumption mentioned in subsection (3) of that section,
  - (e) the length of time that should be taken to consider an application before providing a determination and, where relevant, an offer of a redress payment,
  - (f) the assessment of applications for individually assessed payments for the purpose of section 39,
  - (g) the assessment under section 60 of whether or not applicants or other persons with convictions for serious offences are precluded from being offered a redress payment,
  - (h) the meaning of “exceptional circumstances” for the purpose of section 66(4),
  - (i) the meaning of “exceptional or unexpected circumstances” for the purposes of sections 91(1)(b) and 93(1) and (3),
  - (j) the duty in relation to reporting on wider redress actions imposed on relevant persons under section 99.
- (4) In issuing guidance under subsection (1), 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.
- (5) As soon as reasonably practicable after issuing guidance under subsection (1), the Scottish Ministers must lay a copy of the guidance before the Scottish Parliament.



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**Changes to legislation:** There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. (See end of Document for details)

- (6) The Scottish Ministers must make guidance issued under subsection (1) publicly available.
- (7) The power to issue guidance under subsection (1) includes the power to—
  - (a) issue guidance which varies guidance issued under that subsection,
  - (b) revoke guidance issued under that subsection.
- (8) For the purpose of this section, guidance about the operation of this Act issued before the day this section comes into force is to be regarded as guidance issued under subsection (1).

## 107 Regulation-making powers

- (1) Any power of the Scottish Ministers to make regulations under this Act includes the power to make—
  - (a) different provision for different purposes,
  - (b) incidental, supplementary, consequential, transitional, transitory or saving provision.
- (2) Regulations under the following provisions are subject to the affirmative procedure—
  - (a) section 20(4),
  - (b) section 23(1),
  - (c) section 31(2),
  - (d) section 42(6),
  - (e) section 47,
  - (f) section 61(2),
  - (g) section 78(1),
  - (h) section 98(1),
  - (i) section 102(5)(b),
  - (j) section 104(1).
- (3) Regulations under the following provisions are subject to the negative procedure—
  - (a) section 41,
  - (b) section 44(2)(e),
  - (c) section 91(1),
  - (d) section 94(4),
  - (e) section 95(5),
  - (f) section 99(7),
  - (g) section 101,
  - (h) paragraph 2(5) of schedule 1.
- (4) Regulations under sections 94(3), 102(5)(a) and 108—
  - (a) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
  - (b) otherwise, are subject to the negative procedure.
- (5) This section does not apply to section 109.

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## **108 Ancillary provision**

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under this section may modify any enactment (including this Act).

## **109 Commencement**

- (1) This section and sections 105, 107, 108 and 110 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section may—
  - (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.
- (4) Regulations under this section bringing section 31 into force may amend subsection (1) (a) of that section so that, instead of referring to the day that section comes into force, it specifies the date that section actually came into force.

## **110 Short title**

The short title of this Act is the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021.

**Status:**

Point in time view as at 24/04/2021. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021.