

Draft Regulations laid before the Scottish Parliament under section 107(2) of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

REDRESS SCHEME

The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Form and Content of Waiver etc.) Regulations 2021

Made - - - - 2021
Coming into force - - 1st December 2021

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 47 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021(1) and all other powers enabling them to do so.

In accordance with section 107(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Form and Content of Waiver etc.) Regulations 2021 and come into force on 1 December 2021.

(2) In these Regulations “the Act” means the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021.

Form and Content of Waiver

2. The waiver signed and returned by an applicant under section 46 of the Act in order to accept an offer of a redress payment must be in the form and have the contents provided for in the schedule of these Regulations.

Information to be provided

3. The Scottish Ministers must provide information, or set out details of where to find such information, to a person to whom an offer of a redress payment is being made under section 36 (determination of applications) or, as the case may be, section 57 (outcome of a review) of the Act, about—

- (a) the relevant scheme contributors the waiver is to apply to,
- (b) the options a person has in relation to accepting an offer of a redress payment, including the timescales for so doing, and the effect of signing and returning a waiver,
- (c) the importance of obtaining independent legal advice before accepting an offer of a redress payment and signing and returning a waiver,
- (d) the availability, under the redress scheme, of payment of fees for legal work in relation to the provision of advice as mentioned in paragraph (c).

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

SCHEDULE

Regulation 2

Form and Content of Waiver Under Section 47 of the Act

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

WAIVER

This waiver relates to the redress scheme established by the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the Act”).

I [full name of applicant]

living at [address of applicant]

Agree that:

(1) I have been given a list of relevant scheme contributors. “Relevant scheme contributors” are the scheme contributors on the contributor list on the date that it was determined by a panel of Redress Scotland that I am eligible for the redress payment to which this waiver relates (“the relevant date”). If a scheme contributor is later removed from the contributor list with retrospective effect, the question of whether they were on the list on the relevant date is to be based on the list as retrospectively amended. “Scheme contributor” and “contributor list” have the meanings set out in section 14(2) of the Act.

(2) I have been given the information specified in regulation 3 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Form and Content of Waiver etc.) Regulations 2021.

(3) If I have already commenced civil proceedings, I will abandon them to the extent that they are relevant civil proceedings (within the meaning of section 46(6) of the Act).

(4) Where I have already commenced relevant civil proceedings, I acknowledge that under section 50(2)(b) of the Act my right to a redress payment will not arise until the Scottish Ministers are satisfied that I have abandoned or will abandon such relevant civil proceedings, and that they will require a copy of the order of the court which dismisses the case or such other document as they may specify in order to be satisfied of this.

(5) I waive and forever discharge any claim or right to bring any relevant civil proceedings against relevant scheme contributors and the Scottish Ministers in any jurisdiction. This applies whether or not any right of action currently exists or may exist in future (whether under common law, statute, contract, or otherwise). It also applies whether such claims or rights are, or could be, known to me or in my contemplation at the time I sign this waiver. However, it does not prevent me from bringing future civil proceedings against a scheme contributor who has been removed from the contributor list with retrospective effect, with the result that they are no longer a relevant scheme contributor.

Signed -----

Dated -----

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Form and Content of Waiver etc.) Regulations 2021 No. 414*

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the redress scheme established by the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the Act”).

Regulation 2 provides that the waiver to be signed and returned by an applicant under section 46 of the Act in order to accept an offer of a redress payment must be in the form and have the contents provided for in the schedule to the Regulations.

Regulation 3 requires that Scottish Ministers provide certain information, or set out details of where to find such information, to a person to whom an offer of a redress payment is being made under section 36 (determination of applications) or, as the case may be, section 57 (outcome of a review) of the Act.

Impact assessments have been prepared in relation to the Act and instruments under it and will be published online at www.gov.scot.