

*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.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2021 No.**

**REDRESS SCHEME**

**The Redress for Survivors (Historical Child Abuse in Care) (Payments Materially Affected by Error) (Scotland) Regulations 2021**

*Made* - - - - 2021  
*Coming into force* - - 1st January 2022

The Scottish Ministers make the following Regulations in exercise of the power conferred by section 98(1) 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 these Regulations has been laid before and approved by resolution of the Scottish Parliament.

**Citation, interpretation and commencement**

1.—(1) These Regulations may be cited as the Redress for Survivors (Historical Child Abuse in Care) (Payments Materially Affected by Error) (Scotland) Regulations 2021 and come into force on 1 January 2022.

(2) In these Regulations—

“the Act” means the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021,

“error” means an error which led to a decision to make a relevant payment being made—

(a) incorrectly, or

(b) correctly but on the basis of incorrect or misleading information,

in a way which materially affected the decision; but an error in making a redress payment under Part 4 of the Act in relation to which a relevant payment was made is not an error for the purpose of these Regulations,

“reconsideration panel” means a panel appointed by the chairing member of Redress Scotland under regulation 2(2),

“relevant payment” means a payment as mentioned in section 97(2) of the Act,

“relevant person” means a person—

- (a) to whom a relevant 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 as part of a relevant payment,

“review panel” means a panel appointed by the chairing member of Redress Scotland under regulation 3(5).

### **Reconsideration of decision to make a relevant payment where possible error**

2.—(1) Where Redress Scotland has, or the Scottish Ministers have, cause to believe that a decision to make a relevant payment may have been affected by error, it or they may refer the decision for reconsideration (regardless of whether or not the payment has been made).

(2) A decision which is referred for reconsideration is to be considered on behalf of Redress Scotland by a panel of at least 2 members of Redress Scotland appointed by the chairing member.

(3) Where Redress Scotland refers a decision for reconsideration, it must, as soon as reasonably practicable, inform the Scottish Ministers of the referral.

(4) Where a decision 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 decision is to be reconsidered, and
  - (ii) of the reasons, provided by Redress Scotland or, as the case may be, the Scottish Ministers, for the reconsideration,
- (b) provide the relevant person with information about the implications of the decision being reconsidered, and
- (c) allow the relevant person a period of at least 8 weeks, beginning with the date on which the notice of the reconsideration was received by the person, for the person to make written representations in connection with the reconsideration.

(5) A reconsideration panel may consider written representations made later than the period mentioned in paragraph (4)(c), if satisfied that the person had a good reason for not making those representations sooner.

(6) After the period of making representations under paragraph (4)(c) has ended or, where paragraph (5) applies, representations are considered later than that period, the reconsideration panel must—

- (a) determine whether the original decision was affected by error, and
- (b) if it was so affected, re-determine it on the basis of how it would have been decided had the error not been made.

(7) Once the reconsideration panel has conducted its reconsideration under paragraph (6), 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 under paragraph (6) (a) and, where appropriate, its re-determination under paragraph (6)(b),
- (b) provide the relevant person with a summary, provided by Redress Scotland, of the reconsideration panel’s reasons for reaching this outcome.

### **Review of outcome of reconsideration under regulation 2(6)**

3.—(1) A relevant person who is notified of the outcome of a reconsideration under regulation 2(7) may request a review of it.

(2) A request for a review must—

- (a) be made in writing 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 outcome was received by the relevant person under regulation 2(7),
- (c) specify why a review is being requested, and
- (d) 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 paragraph (2)(b) if Redress Scotland is satisfied that the relevant person requesting the review had a good reason for not requesting a review sooner.

(5) A review 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 and must not include any member of the reconsideration panel which determined the outcome which is the subject of a request for a review.

(6) The review panel is to determine the review on the basis of—

- (a) the evidence on which the outcome which is the subject of the request for a review was determined, and
- (b) 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.

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

### **Determination of result of a review under regulation 3**

4.—(1) The review panel is to consider—

- (a) whether the reconsideration panel which made the determination under regulation 2(6)(a) and, where appropriate, a re-determination under regulation 2(6)(b), ought to have reached a different outcome, and
- (b) in a case where further relevant evidence is provided to or obtained by the review panel, whether the outcome ought to be determined differently as a result.

(2) The review panel may uphold, reverse or vary any part of the outcome of the reconsideration (whether the request for a review relates to that part of it or not).

(3) 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 the review 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.

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

(5) For the avoidance of doubt, paragraph (4) does not prevent the determination of the review panel being the subject of a referral under regulation 2 provided that the referral relates to a different error from the one which previously led to the review.

### **Withdrawal of review request**

5.—(1) A request for a review may be withdrawn by the person who requested it under regulation 3(1), at any time prior to the review being determined under regulation 4.

(2) A request under paragraph (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 paragraph (1), inform Redress Scotland of it.

(4) Where Redress Scotland is informed of a request made under paragraph (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 relates unless the further request is made for a different reason.

St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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## 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 (asp 15) (“the Act”).

Section 97 of the Act makes provision for the recovery by the Scottish Ministers of payments, other than redress payments, which were made due to a “relevant error” as defined in section 97(7) (as read with section 97(8)). Recovery of redress payments which were paid due to error is provided for in section 74 of the Act.

The payments recoverable under section 97 are payments made in respect of reports commissioned under or by virtue of section 83(1) of the Act, payments made in relation to the provision of support by virtue of arrangements made under section 89 or 90 of the Act, payments made by way of reimbursement of costs and expenses by virtue of regulations made under section 91 of the Act, and payments of fees for legal work in making a redress application or in connection with a proposed application under sections 92 or 93 of the Act. Section 98(1) of the Act enables the Scottish Ministers to make regulations about or in connection with the consideration by them as to whether decisions to make payments to which section 97 of the Act applies were materially affected by error.

Regulation 1(2) defines terms for the purposes of these Regulations, including the definition of “error” and “relevant payment”.

Regulation 2 sets out the procedure for the reconsideration of decisions where Redress Scotland has, or the Scottish Ministers have, cause to believe that a decision to make a relevant payment may have been affected by error. The reconsideration is to be undertaken by a reconsideration panel comprising at least 2 members of Redress Scotland appointed by the chairing member.

Regulation 3 makes provision for the review of the outcome of the reconsideration panel’s reconsideration. This is to be determined by a review panel of at least 2 members of Redress Scotland appointed by the chairing member, but the members undertaking the review must be different to those who undertook the reconsideration.

Regulation 4 sets out the review panel’s powers on determination of the review.

Regulation 5 enables a review request to be withdrawn at any point prior to its determination by the review panel.

Impact assessments have been prepared in relation to the Act and instruments under it and will be published online at [www.gov.scot](http://www.gov.scot).