
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 312

REDRESS SCHEME

The Redress for Survivors (Historical Child Abuse in Care) (Reimbursement of Costs and Expenses) (Scotland) Regulations 2021

Made - - - - *13th September 2021*
Laid before the Scottish
Parliament - - - - *15th September 2021*
Coming into force - - *1st December 2021*

The Scottish Ministers make the following Regulations, in exercise of the powers conferred by section 91 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021⁽¹⁾ and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Redress for Survivors (Historical Child Abuse in Care) (Reimbursement of Costs and Expenses) (Scotland) 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,

“application” means an application for a redress payment under Part 4 of the Act,

“reimbursement request” means a request made in accordance with regulation 2(1) or (4).

Reimbursement of costs incurred in connection with applications or proposed applications

2.—(1) The Scottish Ministers must, following a request in writing on a form provided by them for that purpose, reimburse a person in respect of a relevant cost and expense reasonably incurred by or in respect of an applicant in connection with an application (whether or not the application was successful, and whether or not it was subsequently withdrawn), subject to any appropriate limit specified in paragraph (3).

(2) In this regulation, “a relevant cost and expense” is a cost and expense incurred on or after 11 March 2021—

- (a) in relation to—
 - (i) obtaining information or evidence in connection with the application, or
 - (ii) verifying such information or evidence for the purposes of the application.
- (b) in relation to an applicant who has been invited by Redress Scotland in relation to the determination of an application, or by a review panel in accordance with section 56(1) of the Act, to make oral representations for the purposes of that determination or, as the case may be, a review of that determination—
 - (i) the travel, subsistence and accommodation costs and expenses of—
 - (aa) the applicant, and
 - (bb) a person accompanying the applicant,
 - (ii) the costs and expenses of making arrangements for the care of children or other dependants of—
 - (aa) the applicant, and
 - (bb) a person accompanying the applicant, or
- (c) in relation to any other cost and expense which the Scottish Ministers are satisfied was incurred in connection with the application.

(3) For the purposes of these Regulations, “the appropriate limit” in relation to a relevant cost and expense mentioned in paragraph (2)(a) means—

- (a) £50, or
- (b) a sum greater than £50, where the Scottish Ministers consider that there are exceptional or unexpected circumstances which justify this.

(4) The Scottish Ministers may reimburse a person in respect of costs and expenses reasonably incurred on or after 11 March 2021 in connection with a proposed application by a person who did not subsequently apply where—

- (a) the person seeking reimbursement makes a request in writing on a form to be provided by the Scottish Ministers for that purpose, and
- (b) the Scottish Ministers are satisfied that the request discloses exceptional or unexpected circumstances which justify the reimbursement of those costs and expenses.

(5) For the purposes of paragraph (4), “exceptional or unexpected circumstances” includes the case where a person did not subsequently apply for a redress payment because of death or serious illness.

(6) Where a reimbursement request relates to a cost or expense incurred in a currency other than Sterling, the person making the request must calculate the value of the cost and expense by reference to the Sterling equivalent on the date that the cost and expense was incurred.

(7) A reimbursement request must be made—

- (a) in the case where it relates to an application, before the end of the period of 8 weeks beginning with the date on which the notice of a determination under section 36 of the Act or, as the case may be, the outcome of any review of that determination under section 57 of the Act, was received by the applicant,
- (b) in the case where it relates to a proposed application by a person who did not subsequently apply, before the end of the period of 6 months beginning with the date on which the cost and expense was incurred by that person.

(8) A reimbursement request may be assessed by the Scottish Ministers despite the request for it not being made within the applicable period mentioned in paragraph (7) if the Scottish Ministers are satisfied that the person had a good reason for not making the request sooner.

(9) On receipt of a reimbursement request, the Scottish Ministers must as soon as reasonably practicable—

- (a) in the case of a request under paragraph (1), assess—
 - (i) whether any cost and expense mentioned in the request was reasonably incurred in connection with the application, and
 - (ii) in relation to a relevant cost and expense mentioned in paragraph (2)(a), the appropriate limit of that cost and expense,
- (b) in the case of a request under paragraph (4)—
 - (i) consider whether the request discloses exceptional or unexpected circumstances which justify the reimbursement of costs and expenses, and
 - (ii) where satisfied that the request discloses such circumstances, assess whether any cost and expense mentioned in the request was reasonably incurred in connection with the proposed application.

(10) The Scottish Ministers must as soon as reasonably practicable—

- (a) notify the person who made the request of the Scottish Ministers' decision under paragraph (9), and
- (b) provide the person with a summary of the reasons for the decision.

Review of a decision in relation to a reimbursement request

3.—(1) This regulation applies where a person has received notification of a decision about the assessment of a reimbursement request under regulation 2(10).

(2) The person may request a review of the decision to the extent that it is a decision that—

- (a) the person is not entitled to reimbursement of a cost and expense specified in the reimbursement request or that the cost and expense to be reimbursed is less than the sum requested, or
- (b) where regulation 2(4) applies, there are no exceptional or unexpected circumstances which justify the reimbursement of those costs and expenses.

(3) 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 decision was received by the person,
- (c) specify why a review is being requested, and
- (d) contain or be accompanied by any information the person 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 paragraph (3)(b) if Redress Scotland is satisfied that the person had good reason for not requesting a review sooner.

Review panels

4. A review requested under regulation 3 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 of Redress Scotland (“a review panel”).

Procedure for a review

5.—(1) The review panel appointed under regulation 4 to conduct the review is to determine it on the basis of—

- (a) the evidence on which the decision which is the subject of the request for a review was made, and
 - (b) any further relevant evidence which is provided to it 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.

Outcome of a review

6.—(1) On a review, the review panel appointed under regulation 4 to conduct the review must consider—

- (a) whether the Scottish Ministers ought to have reached a different decision, and
 - (b) in the case where additional evidence is provided to or obtained by the review panel, whether the reimbursement request ought to be determined differently as a result.
- (2) The review panel may uphold, reverse or vary any part of the decision (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 requesting 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.

Withdrawal of review request

7.—(1) A request for a review may be withdrawn at the request of the person at any time prior to a determination being made under regulation 6.

- (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
13th September 2021

JOHN SWINNEY
A member of the Scottish Government

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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 91 of the Act requires the Scottish Ministers to make regulations to make provision for the reimbursement by them, on request, of the costs and expenses incurred by a person in connection with an application to the redress scheme provide those costs were reasonably incurred. The regulations must provide for reimbursement of reasonably incurred costs regardless of whether or not the application was successful, and regardless of whether or not it was later withdrawn. The regulations must also make provision to permit the reimbursement by the Scottish Ministers, on request, of the costs and expenses reasonably incurred in connection with a proposed application by a person who did not subsequently apply where there are exceptional or unexpected circumstances which justify reimbursement.

These Regulations make provision for the purposes of section 91 of the Act.

Regulation 2 makes provision for the submission by a person to, and determination of, reimbursement requests by, the Scottish Ministers, subject to certain limits, as well as the timescales for those requests.

Regulations 3 to 6 make provision for the review of decisions by the Scottish Ministers in relation to reimbursement requests, and the timescales and procedures for those reviews. Reviews will be carried out by a review panel consisting of at least 2 members of Redress Scotland (the body established under the Act to make determinations in relation to the redress scheme) and the determination of the review panel is final.

Regulation 7 enables a request for a review to be withdrawn at any time prior to its consideration by the review panel of Redress Scotland.

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