

POLICY NOTE

THE REDRESS FOR SURVIVORS (HISTORICAL CHILD ABUSE IN CARE) (REIMBURSEMENT OF COSTS AND EXPENSES) (SCOTLAND) REGULATIONS 2021

SSI 2021/312

The above instrument was made in exercise of the powers conferred by section 91 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the Act”). The instrument is subject to negative procedure.

Summary Box

The Regulations set out the types of costs incurred in connection with an application or proposed application which may be reimbursed by the Scottish Ministers under the redress scheme established by the Act. This includes the cost limits for particular types of costs and the time limits for making a request for reimbursement. The Regulations also set out the process for reviewing decisions in relation to the reimbursement of costs incurred.

Policy Objectives

The Act creates a redress scheme for survivors, and in some circumstances their next of kin, in relation to historical child abuse in relevant care settings in Scotland.

Section 91 of the Act requires the Scottish Ministers to make provision by way of regulations requiring the reimbursement by them of costs and expenses reasonably incurred by a person in connection with an application for a redress payment under section 29 of the Act, where the applicant requests this.

It is important that applicants are not financially disadvantaged when making an application to the scheme. These regulations allow applicants to understand what they will and won't be reimbursed for – allowing them to be fully informed when making a decision about spending money in relation to the application.

The purpose of these Regulations is to set out the types of costs and expenses reasonably incurred in connection with an application, or proposed application, which may be reimbursed by the Scottish Ministers. To be considered reasonable, costs must have been incurred on or after 11 March 2021 (the date when the legislation for the scheme was approved by the Parliament) and must concern obtaining or verifying information or evidence in relation to an application. Other costs considered reasonable include making oral representations to Redress Scotland (the new independent public body which is being set up to determine applications under the redress scheme) and the travel, accommodation, subsistence and care costs associated with attending such a meeting. The Regulations also set out some cost limits in relation to these types of costs.

As well as these explicit types of cost and cost limits, the Regulations also enable reimbursement of any other cost considered reasonable by the Scottish Ministers will be reimbursed. In relation to proposed applications, the Regulations set out for the purposes of section 91(1)(b) of the Act the exceptional or unexpected circumstances which must apply before a person can seek reimbursement of costs and expenses in cases where application were not subsequently made under the redress scheme. These include cases where a person died or

had a serious illness which prevented them from being able to submit an application under the scheme.

The Regulations set out the time limits of a request which allows applicants to know when they have to submit a request for reimbursement. In addition to this, the Regulations also set out how an applicant can request a review by Redress Scotland of a decision made in relation to their reimbursement, and how they can withdraw a review request.

Consultation

A formal consultation on the Regulations was not carried out and instead stakeholder views were obtained through a targeted engagement exercise with survivor organisations, representatives of the legal profession, care providers and others. Their views have been taken on board in terms of the costs and expenses to be considered for reimbursement under the Regulations. Their views will continue to inform the guidance that is being drafted for applicants.

Impact Assessments

The legislative impact assessments under the Act have been updated to reflect the impact of these Regulations.

Financial Effects

The Deputy First Minister and Cabinet Secretary for Covid Recovery confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Children and Families Directorate

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