

## POLICY NOTE

### THE REDRESS FOR SURVIVORS (HISTORICAL CHILD ABUSE IN CARE) (SCOTLAND) ACT 2021 (COMMENCEMENT NO. 2) REGULATIONS 2021

#### SSI 2021/419 (C. 29)

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 109(2) of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the 2021 Act”). The instrument is not subject to any parliamentary procedure.

#### Summary Box

These Regulations commence the remaining provisions of the 2021 Act in preparation for the opening of the scheme. This includes all of the remaining provisions which were not brought into force by The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Commencement No. 1) Regulations 2021. The provisions being commenced include those relating to the application process, payments, and waiver. These Regulations ensure that the scheme will be fully functional when it opens in December 2021.

#### Policy Objectives

The 2021 Act establishes a financial redress scheme for survivors of historical child abuse in care in Scotland, and, in some circumstances, their next of kin. The main purpose of the scheme is to acknowledge and provide tangible recognition of the harm suffered as a result of historical child abuse whilst residing in a relevant care setting in Scotland. The Act will also provide survivors with access to some non-financial elements of redress such as therapeutic support. The scheme will be open for applications for whichever is the longer of five years or the day falling 2 years after the Scottish Child Abuse Inquiry publishes its final report. This period may however be extended by the Scottish Ministers by regulations.

These Regulations are the second and last set of commencement regulations under the 2021 Act and will commence the following provisions on 7 December:

Section 7	Functions of Redress Scotland
Section 9	Duty with respect to ensuring individuals can make informed choices
Section 18	Eligibility to apply for a redress payment
Section 19	Meaning of abuse
Section 20	Meaning of relevant care setting
Section 21	Meaning of residential institution: further provision
Section 22	Meaning of resident
Section 24	Eligibility to apply for a next of kin payment
Section 25	Eligibility to apply for a next of kin payment: exceptional circumstances
Section 26	Review of determination made under section 25
Section 27	Outcome of a section 26 review
Section 28	Meaning of specified next of kin
Section 29	Application for a redress payment
Section 30	Cases where more than one application permitted

Section 31	Application period
Section 32	Pausing of an application
Section 33	Withdrawal of an application
Section 34	Prioritisation of applications
Section 35	Decision-making panels
Section 36	Determination of applications
Section 37	Assessment of amount of redress payment
Section 38	Fixed rate payment
Section 39	Individually assessed payment
Section 40	Next of kin payment
Section 41	Power to adjust redress payment amounts for inflation
Section 42	Deduction of previous payments from redress payment
Section 43	Deduction of previous payments: further provision
Section 44	Information about previous payments from applicant
Section 45	Information about previous payments: further provision
Section 46	Waiver
Section 48	Report on effect of waiver on participation in redress scheme
Section 49	Period for which offer valid
Section 50	Acceptance of offer and making of payments
Section 51	Payments to children
Section 52	Review of direction made under section 51
Section 53	Outcome of a section 52 review
Section 54	Right to a review
Section 55	Review panels
Section 56	Procedure for a review
Section 57	Outcome of a review
Section 58	Period for which offer valid following a review
Section 59	Withdrawal of a review request
Section 60	Applicants etc. with convictions for serious offences
Section 61	Applicants etc. with convictions for serious offences: definitions
Section 62	Review of determination made under section 60
Section 63	Outcome of a section 62 review
Section 64	Information about convictions for serious offences
Section 65	Nomination of a beneficiary
Section 66	Applicant's death while application ongoing
Section 67	Access to information and evidence by nominated beneficiary
Section 68	Review of determination made under section 66(3)
Section 69	Outcome of a section 68 review
Section 70	Applicant's death after offer accepted
Section 71	Invitation to nominated beneficiary to take over application
Section 72	Application taken over by nominated beneficiary
Section 73	Nominated beneficiary's death etc.
Section 74	Liability for redress payments made in error
Section 75	Reconsideration of determination where possible material error
Section 76	Review of reconsidered determination
Section 77	Outcome of a section 76 review
Section 79	Power of the Scottish Ministers to require the provision of evidence
Section 80	Power to obtain information about previous payments

Section 81	Redress Scotland's power in relation to information and evidence
Section 82	Applicant access to information and evidence
Section 83	Power to commission reports
Section 84	Offences of failure to provide, and of tampering with, information or evidence
Section 85	Individual culpability where an organisation commits an offence under section 84
Section 86	Crown application in relation to offences under section 84
Section 88	Power to share information with third parties
Section 92	Duty on the Scottish Ministers to pay fee for legal work in making an application
Section 93	Duty on Scottish Ministers to pay certain fees for legal work in exceptional cases
Section 94(1) and 94(2)	Sections 92 and 93: further provision
Section 95(1), (2), (3) and (4)	Assessment, notification and review of certain fee payment requests
Section 96	Restriction on additional legal fees
Section 97	Liability for payments, other than redress payments, made in error
Section 99	Annual report on wider redress actions
Section 100	Power of the Scottish Ministers to require production of report
Section 101	Power to make provision about additional redress reporting
Section 104	Dissolution of Redress Scotland

Further policy detail on the sections which are being commenced by the Regulations are set out below.

Section 7 of the Act sets out the functions of Redress Scotland, the decision making body established under the Act.

Section 9 of the Act requires the Scottish Ministers to use their best endeavours to ensure that individuals who are or may be considering applying or who have made such an application have the opportunity to make informed choices. This is to be done by publishing a "summary of options".

Sections 18 to 22 set out the eligibility criteria for a person to apply for a redress payment, including the meaning of "abuse" and a "relevant care setting". Sections 24 to 28 are also commenced under the Regulations and these provisions set out the eligibility criteria relating to a person applying for a next of kin payment.

Section 29 to 41 set out the application process for the scheme including the payment types and levels, requirements for applying, the time period of the scheme, provisions about pausing and withdrawing applications, and the function of prioritising applications by Redress Scotland.

Sections 42 to 45 set out the requirements in regards to deducting relevant previous payments and the disclosure of this information by applicants.

Sections 46 and 48 to 50 set out the requirements in regards to the waiver. This includes that an applicant must sign a waiver to accept a redress payment. These provisions also set out the time period available to consider an offer of payment. Section 48 requires Scottish Ministers to lay before the Scottish Parliament a report (within 18 months of the commencement of section 46) on their assessment of the effect of waiver on applications for a redress payment and the effectiveness of waiver in encouraging financial contributions.

Section 51 makes provision for directions to be made by Redress Scotland in relation to redress payments to applicants who are children. Section 52 and 53 set out the review process for applicants who may wish to request a review of a direction made in relation to their redress payment.

Sections 54 to 59 set out the roles, requirements and procedures regarding the review process under the scheme, including required number of panel members and timescales to request a review or accept a determination following a review.

Sections 60 to 64 set out the provisions relating to the requirement for applicants to provide the scheme with information regarding any criminal convictions for serious offences they may have. Section 60 sets out that applicants etc. with convictions for certain serious offences may be precluded in certain circumstances from being offered a redress payment. These offences are defined in section 61. Sections 62 and 63 set out the review process relating to a decision made under section 60.

Sections 65 to 73 set out the requirements for nominated beneficiaries and the procedures for a nominated beneficiary being invited to take over an application. Section 65 provides for an applicant to nominate a beneficiary to take over their application in the event of their death while an application is ongoing. Sections 68 and 69 set out the review processes for decisions made in relation to a nominated beneficiary being invited to taken over an application.

Sections 74 to 77 and section 97 provide for the reconsideration of any errors made in relation to a redress payment or any other payment made under the scheme and for any such payments to be repaid by the person it concerns. These provisions also set out the review process for an applicant who has had a decision reconsidered.

Sections 79 to 82 and section 88 relate to the information sharing provisions within the Act. Section 79 gives Scottish Ministers the power to require the provision of evidence for the purposes of determination of any matter by Redress Scotland panels. Section 80 gives Scottish Ministers the power to obtain information from others about previous payments. Section 81 gives Redress Scotland the power to require that Scottish Ministers obtain information under section 79 or 80. Section 82 requires Redress Scotland and the Scottish Ministers to provide an applicant on request with access to information and evidence held in connection with an application. Section 88 provides the Scottish Ministers and Redress Scotland with the power to share information with third parties in certain circumstances.

Section 83 gives Scottish Ministers the power to commission reports reasonably necessary for applications for redress, with the applicant's consent.

Sections 84 to 86 create offences for a person failing to comply with a request for information under sections 79, 80 or 81(1)(c). Sections 85 and 86 set out further details in regards to who these offences apply to.

Sections 92, 93, 94(1) and (2), 95(1) to (4), and 96 set out provisions relating to legal fees. Sections 92 and 93 set out the duty on the Scottish Ministers to pay fees for legal work reasonably undertaken in connection with an application for redress. Sections 94(1) and (2) and sections 95(1) to (4) provide for the making of payment requests by solicitors in relation to fees for legal work in connection with applications (“fee payment requests”), and for receipt and assessment of fee payment requests, and for the review of assessments in certain circumstances. Section 96 sets out that where a solicitor receives a payment of legal fees under section 92 or 93, the solicitor may not accept any additional payment (directly or indirectly) in respect of the legal work in making the application or the proposed application.

Section 99 sets out the responsibility of those included in the contributor list during the first 9 months of the reporting period to send to the Scottish Ministers an annual report on wider redress actions they are taking. Section 100 gives the Scottish Ministers the power to require production of a report from a person that has failed to comply with section 99 and where an application for redress involving a person who is not included in the contributor list results in an offer of redress. Section 101 gives the Scottish Ministers the power to make provision by regulations about additional redress reporting in an annual report or equivalent document.

Section 104 gives the Scottish Ministers the power by regulations to provide for dissolution of Redress Scotland after the application period in respect of redress payments (as set out in section 31) has ended.

## **Consultation**

The policy objectives of the 2021 Act were subject to parliamentary scrutiny as a part of the legislative process. The Policy Memorandum for the Bill that preceded the 2021 Act outlines the consultation undertaken on the proposals for the redress scheme.<sup>1</sup> There was an initial survivor consultation in 2017, and following the commitment to develop a statutory scheme, the Scottish Government launched a pre-legislative consultation in September 2019 inviting views on specific proposals for the establishment of the redress scheme, building on the findings of the earlier survivor consultation.<sup>2</sup> As these Regulations bring into force provisions of the Act, no further consultation has been carried out in relation to this instrument.

## **Impact Assessments**

These Regulations are commencing legislation, and it is considered that no further impact assessments are required. The impact assessments for the Bill were recently updated and published, reflecting the 2021 Act and relevant secondary legislation.<sup>3</sup>

## **Financial Effects**

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<sup>1</sup> <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/redress-for-survivors-historical-child-abuse-in-care-scotland-bill/introduced/policy-memorandum-redress-for-survivors-historical-child-abuse-in-care-scotland-bill.pdf>

<sup>2</sup> An independent analysis of the consultation responses can be found online: <https://www.gov.scot/publications/financial-redress-historical-child-abuse-care-analysis-consultation-responses/>

<sup>3</sup> <https://www.gov.scot/collections/financial-redress-for-survivors-of-child-abuse-in-care/#impactassessments>

The financial effects of the 2021 Act are detailed in the Financial Memorandum prepared in respect of the Bill that preceded the 2021 Act and the revised Financial Memorandum which was prepared after stage 2 of the Bill.<sup>4</sup> The BRIA also contains details of the financial effects of the 2021 Act.<sup>5</sup> This was recently updated to reflect the changes made to the legislation during the parliamentary passage of the Bill and to reflect the impact of the relevant secondary legislation.

Scottish Government  
Children and Families Directorate

*November 2021*

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<sup>4</sup> Financial memorandum at introduction of the Bill: <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/redress-for-survivors-historical-child-abuse-in-care-scotland-bill/introduced/financial-memorandum-redress-for-survivors-historical-child-abuse-in-care-scotland-bill.pdf>  
Revised financial memorandum: <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/redress-for-survivors-historical-child-abuse-in-care-scotland-bill/stage-2/revised-financial-memorandum.pdf>

<sup>5</sup> <https://www.gov.scot/publications/redress-survivors-historical-child-abuse-care-scotland-act-2021-relevant-secondary-legislation-business-regulatory-impact-assessment/>