

# Education, Children and Young People Committee

**27 October 2021**

## Consideration of subordinate legislation

This note provides information about—

### [Draft SSI: The Redress for Survivors \(Historical Child Abuse in Care\) \(Scotland\) Act 2021 \(Form and Content of Waiver etc.\) Regulations 2021](#)

Timeline for considering the Draft SSI: The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Form and Content of Waiver etc.) Regulations 2021—

1. These regulations were laid before the Scottish Parliament on **6 September 2021**.
2. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on [14 September 2021](#) and the Committee made no comment.
3. The SSI will be considered by the Education, Children and Young People Committee at its meeting on **27 October 2021**.
4. If the committee wishes to produce a report on these regulations, it must do so by **31 October 2021**.

## Formal Procedure

5. As the draft regulations (also known as draft Scottish Statutory Instruments or draft SSIs) are being considered under the affirmative procedure, usual practice is for the committee to hear evidence from the Minister in charge, prior to the committee formally considering the draft regulations.
6. The committee may also hear evidence from Scottish Government officials who have been working on the draft regulations.
7. After taking evidence from the Scottish Government, the committee will formally consider the SSI.
8. The Minister responsible for the draft regulations will propose, by motion, that the lead committee recommend that the instrument or draft instrument be approved.
9. The committee then has up to 90 minutes to debate the motion, before voting whether or not to approve the draft regulations.
10. The lead committee must report its recommendation to the Parliament.
11. Where the lead committee recommends the instrument be approved, the Parliamentary Bureau will propose a motion for agreement by the whole Parliament that the instrument be agreed.

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

12. The Regulations set out the form and content of the waiver that applicants must sign if they want to accept an offer of a redress payment under the redress scheme created by the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. The Regulations also set out information that is to be provided to applicants in relation to waiver.
13. The policy note published to accompany the statutory instrument is set out at [Annexe A](#) and the waiver is in [Annexe B](#).

### **For decision**

#### **14. The committee is invited to—**

- **take evidence from the Minister and Scottish Government officials on the instrument (agenda item 2);**
- **consider the instrument (agenda item 3); and then**
- **delegate authority to the Convener and Deputy Convener to sign off the Committee's report to Parliament on the instrument.**

**Jane Davidson  
Committee Assistant Clerk  
Education, Children and Young People Committee  
22 October 2021**

## POLICY NOTE

### THE REDRESS FOR SURVIVORS (HISTORICAL CHILD ABUSE IN CARE) (SCOTLAND) ACT 2021 (FORM AND CONTENT OF WAIVER ETC.) REGULATIONS 2021

#### SSI 2021/XXX

The above instrument was made in exercise of the powers conferred by section 47 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. The instrument is subject to affirmative procedure.

#### Summary Box

The Regulations set out the form and content of the waiver that applicants must sign if they want to accept an offer of a redress payment under the redress scheme created by the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. The Regulations also set out information that is to be provided to applicants in

#### Policy Objectives

The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the Act”) creates a redress scheme for survivors, and in some circumstances their next of kin, in relation to historical child abuse in eligible care settings in Scotland. The scheme is designed to be a national, collective endeavour to recognise the harms of the past, and provides an alternative to the current civil court process; one designed to be non-adversarial, faster and sensitive to survivors’ needs.

In accordance with section 46 of the Act, a person who wishes to accept an offer of a redress payment must sign and return a waiver agreeing to abandon any civil proceedings to the extent they are “relevant civil proceedings” and waive any right to bring such proceedings. “Relevant civil proceedings” are proceedings against the Scottish Ministers and any “relevant scheme contributor” in relation to abuse suffered which is eligible under the scheme. “Relevant scheme contributor” is a scheme contributor included in the list maintained by Ministers under section 14 of the Act. To be included in the list under section 14, a contributor must be making a financial contribution to the scheme which in the opinion of Ministers is fair and meaningful.

The purpose of these Regulations is to make further provision about the form and content of the waiver and Regulation 2, which incorporates the Schedule, does this by prescribing the text of the waiver that will require to be signed by applicants who wish to accept an offer of a redress payment.

It is in the interests of fairness and transparency to all applicants and contributors that the waiver is in a prescribed form rather than negotiated on a case by case basis.

The Regulations also make provision about what information is to be provided to applicants in relation to waiver and its effect including information about the relevant

scheme contributors the waiver is to apply to, the importance of obtaining independent legal advice before accepting an offer of a redress payment and signing and returning a waiver, and the availability, under the redress scheme, of payment of fees for legal work in connection such independent legal advice. Therefore, it is absolutely clear and transparent that, under these Regulations, applicants must be given this important information to enable them to make informed choices about the offer of redress and the waiver.

The information set out in the Regulations is not the only information that will be provided to applicants considering whether to accept an offer of a redress payment and sign a waiver.

Section 9 of the Act also places a duty on the Scottish Ministers to use their best endeavours to ensure that applicants, and potential applicants, to the redress scheme have the opportunity to make informed choices, and in particular to publish a 'summary of options' setting out, in an accessible format, information about the options available to individuals in connection with applications, the support and other assistance available under the scheme and alternatives to the scheme (which could, for example, include raising an action for damages). Section 36 of the Act requires the summary of options to be sent at the same time as notifying the applicant the outcome of their redress application.

### **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 general approach to Regulation 3 and will continue to inform the guidance that is being drafted for applicants.

### **Impact Assessments**

The legislative impact assessments for the relevant Act were 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**

**September 2021**

**Annexe B**

**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 -----