

Education, Children and Young People Committee

27 October 2021

Consideration of subordinate legislation

This note provides information about—

[Draft SSI: The Redress for Survivors \(Historical Child Abuse in Care\) \(Exceptions to Eligibility\) \(Scotland\) Regulations 2021](#)

Timeline for considering the Draft SSI: The Redress for Survivors (Historical Child Abuse in Care) (Exceptions to Eligibility) (Scotland) Regulations 2021—

1. These regulations were laid before the Scottish Parliament on **22 September 2021**.
2. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on [29 September 2021](#) and the Committee made no comment.
3. They 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 **16 November 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) (Exceptions to Eligibility) (Scotland) Regulations 2021 (Draft)

12. The Regulations provide that an application for redress cannot be made to the extent that it relates to abuse that occurred when a person was resident in a relevant care setting for the purpose of short-term respite or holiday care, under arrangements made by their parent or guardian and another person.
13. The policy note published to accompany the statutory instrument is set out at [Annexe A](#).

For decision

14. The committee is invited to—
 - take evidence from the Minister and Scottish Government officials on the instrument (agenda item 4);
 - consider the instrument (agenda item 5); 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
7 October 2021

POLICY NOTE**THE REDRESS FOR SURVIVORS (HISTORICAL CHILD ABUSE IN CARE)
(EXCEPTIONS TO ELIGIBILITY) (SCOTLAND) REGULATIONS 2021****SSI 2021/XXX**

The above instrument was made in exercise of the powers conferred by section 23 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. The instrument is subject to the affirmative procedure.

Summary Box

The Regulations provide that an application for redress cannot be made to the extent that it relates to abuse that occurred when a person was resident in a relevant care setting for the purpose of short-term respite or holiday care, under arrangements made by their parent or guardian and another person.

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 relevant 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.

Part 3 of the Act sets out the eligibility criteria for the scheme. It provides that a person may apply for a redress payment if they were abused when they were a child and resident in a relevant care setting in Scotland, where that abuse took place before 1 December 2004. The definition of “abuse” in section 19 of the Act follows that in section 17A of the Prescription and Limitation (Scotland) Act 1973 (as inserted by section 1 of the Limitation (Childhood Abuse) (Scotland) Act 2017). It is a broad definition, and provides that abuse “includes sexual abuse, physical abuse, emotional abuse and abuse that takes the form of neglect”.

Section 23 of the Act permits the Scottish Ministers to create exceptions to eligibility by way of regulations, with reference to certain factors such as the circumstances in which the abuse was carried out, or the purpose for which the person who was abused was resident in the relevant care setting. Given the broad and inclusive terms in which the eligibility requirements for the scheme are framed, this power is intended to allow for further refinement, where creating such exceptions would be in-keeping with the overall purpose of the scheme.

The Regulations provide that an application for redress may not be made by or in respect of a person to the extent that it relates to abuse that occurred when that person was resident in a relevant care setting for the purpose of being provided with short-term respite or holiday care, where that care was arranged by a parent or guardian and another person.

The abuse of children in all circumstances and settings is wrong and harmful. However, we believe that the exclusion of those abused in short-term respite or

holiday care is in-keeping with the core purpose of the redress scheme, which is primarily for those vulnerable children who were in long- term care, often isolated with limited or no contact with their families.

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.

Respondents were divided as to whether these types of short-term care should be excluded or not. Some also noted the need for a definition of short-term or temporary in this context. We propose to cover this in the statutory guidance for the scheme to be issued under section 106 of the Act, and it is likely to mean, as a broad rule, stays of 14 days or less. The guidance will also provide further detail on the meaning of “abuse” and the definitions of the various categories of relevant care setting included within the Act.

Impact Assessments

The legislative impact assessments for the Act are being 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