

Consideration of subordinate legislation by the Education, Children and Young People Committee

This note provides information about the [Redress for Survivors \(Historical Child Abuse in Care\) \(Reimbursement of Costs and Expenses\) \(Scotland\) Regulations 2021](#)

1. Subordinate legislation can be used to make changes to an existing Act of the Scottish Parliament, to amend current regulations or to commence (start) powers in other legislation.
2. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2021/312
3. These regulations are being considered under the negative procedure.

Timeline for considering these regulations

4. These regulations were laid before the Scottish Parliament on **15 September 2021**
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on **21 September 2021**. The Committee had no comments and the report produced by the Committee is [available here](#).
6. They will be considered by the Education, Children and Young People Committee at its meeting on **27 October 2021**.
7. If the committee wishes to produce a report on these regulations, it must do so by **8 November 2021**.

Is there a requirement to hear evidence from the Cabinet Secretary on these regulations?

8. No.

Purpose of the regulations

9. 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.
10. 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.

11. 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.
12. A copy of the Scottish Government's Policy Note is included in [Annexe A](#).
13. An extract from the DPLRC report on the regulations is provided in [Annexe B](#). DPLRC had no comments to make on the Instrument.

Consultation

14. 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.

Impact Assessment

15. The policy note states that the legislative impact assessments have been updated to reflect the impact of these regulations.

Financial Impact

16. The Scottish Government concluded that there will be no financial impact from the instrument.

Procedure

17. These regulations are being considered by Education, Children and Young People Committee under the negative procedure.
18. This means that the regulations become law immediately, i.e. as soon as they have been laid before the Scottish Parliament. These regulations can, however, be annulled up to 40 days after this has happened.
19. Rule 10.4 of the Scottish Parliament's standing orders states that any Member of the Scottish Parliament can lodge a Parliamentary motion within the 40 day time period seeking an annulment of regulations.
20. All regulations considered under the negative procedure are scrutinised by both the Delegated Powers and Law Reform Committee (on various technical grounds) and by a lead committee (on policy grounds).

21. If a motion to annul is tabled, the lead committee will consider this and then hold a vote. If the motion is disagreed to (i.e. MSPs believe the regulations are OK as they are), then the regulations will remain in their current form.
22. If, however, the majority of MSPs on the lead committee agrees the regulations should be annulled, then a further motion is lodged by the Parliamentary Bureau. This is then voted on by the whole Parliament.
23. If that is also agreed to (i.e. the majority of MSPs agree with it), then Scottish Ministers must revoke (withdraw) the instrument. It will no longer be law and the Scottish Government must lay a new set of regulations before the Scottish Parliament.
24. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence.
25. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
26. The Committee is invited to consider the instrument'

Jane Davidson

Committee Assistant

Education, Children and Young People Committee

22 October 2021

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

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

September 2021

Annexe B

Extract from the Delegated Powers and Law Reform Committee's 6th Report of 2021

Redress for Survivors (Historical Child Abuse in Care) (Reimbursement of Costs and Expenses) (Scotland) Regulations 2021 (SSI 2021/312)

The Committee also determined that it did not need to draw the Parliament's attention to the instruments and documents set out at the end of this report.