

Education, Children and Young People Committee

26 January 2022

Consideration of subordinate legislation

This note provides information about—

[Draft SSI: The Redress for Survivors \(Historical Child Abuse in Care\) \(Reconsideration and Review of Determinations\) \(Scotland\) Regulations 2022.](#)

Timeline for considering the Draft SSI: The Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022—

1. These regulations were laid before the Scottish Parliament on **7 December 2021**.
2. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on [14 December 2021](#) and the Committee made no comment.
3. They will be considered by the Education, Children and Young People Committee at its meeting on **26 January 2022**.
4. If the committee wishes to produce a report on these regulations, it must do so by **31 January 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 Draft SSI: The Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022

12. The purpose of these Regulations is to make further provision about the reconsideration of a determination under section 75 of the Act and any review of it under section 76.
13. These Regulations make provision for the payment of legal fees and the reimbursement of costs and expenses in relation to reconsiderations and reviews.
14. They also set out procedures to be followed in connection with these payments and reimbursements and make provision for liability where they have been made in error.
15. These Regulations also amend the Act to make further provision in relation to what happens when a determination relating to the outcome of a redress application is reconsidered or reviewed.
16. The policy note published to accompany the statutory instrument is set out at [Annexe A](#) and a keeling schedule was sent by the Legal Directorate and is set out in [Annexe B](#)

For decision

- 1. The committee is invited to—**
 - **take evidence from the Minister and Scottish Government officials on the instrument (agenda item 1);**
 - **consider the instrument (agenda item 2); 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
19 January 2021

Annexe A**POLICY NOTE****The Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022**

SSI 2022/XXX

The above instrument is made in exercise of the powers conferred by sections 78(1), 107(1) and 108(1) of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the Act”). The instrument is subject to the *affirmative procedure*.

Summary Box

The purpose of these Regulations is to make further provision about the reconsideration of a determination under section 75 of the Act and any review of it under section 76.

These Regulations make provision for the payment of legal fees and the reimbursement of costs and expenses in relation to reconsiderations and reviews. They also set out procedures to be followed in connection with these payments and reimbursements and make provision for liability where they have been made in error. These Regulations also amend the Act to make further provision in relation to what happens when a determination relating to the outcome of a redress application is reconsidered or reviewed.

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 75 of the Act sets out a procedure for the reconsideration of determinations made under Part 4 of the Act which may have been materially affected by error (including as a result of fraudulent misrepresentations), while section 76 allows for a review of a determination reached under section 75.

Whilst it is not anticipated that the reconsideration and review process will be engaged frequently, as robust processes have been put in place to reduce the opportunity for error and potential fraud, it is necessary to build and maintain confidence that there are clear processes in place to deal with errors where they do arise.

The policy objectives of these Regulations are:

- to give support to applicants engaged in the reconsideration and review process by way of payment of legal fees and reimbursement of costs and expenses in certain circumstances,
- to set out clear procedures to be followed for requesting payment of legal fees and reimbursement of costs and expenses, as well as the procedures for considering these requests,
- to ensure fairness in making provision allowing for the review of the outcome of the consideration of a request for payment of legal fees or for reimbursement of costs and expenses,
- to make provision about liability where legal fees, costs and expenses are paid in error, and
- to amend the Act to make further provision in relation to the potential outcomes of a reconsideration or review where it is linked to the determination of a redress payment. This includes setting out how reconsiderations and reviews affect any offer of a redress payment already made or accepted (including any waivers already signed and returned).

Legal fees, costs and expenses

These Regulations make provision for the payment of legal fees and costs and expenses incurred in connection with a reconsideration or review under section 75 or section 76 of the Act.

The key policy objective in this regard is to give survivors, their representatives and next of kin applicants access to the support and advice that they need to allow them to fully understand and engage with the reconsideration and review processes. This is particularly important where the processes may impact on a previous offer of a redress payment or waiver. Recognising that access to legal advice is crucial to safeguard a person's rights, we have afforded the same level of legal fees as made available for reviews under The Redress for Survivors (Historical Child Abuse in Care) (Payment of Legal Fees) (Scotland) Regulations 2021. Whilst the fixed fee approach provides a level of certainty that legal work undertaken will be paid, a solicitor is able to apply for a bespoke assessment in relation to fees to be carried out in cases where there are exceptional or unexpected circumstances justifying the payment of an additional sum. This ensures that complex work undertaken in connection with reconsiderations and reviews with possible implications for offers and waivers can be recognised and remunerated fairly.

The Regulations also set out the circumstances in which costs and expenses can be claimed, as well as the level of legal fees payable in connection with reconsiderations and reviews of the following determinations under Part 4 of the Act:

- a determination under section 36 of the Act (determination of applications).
- a determination of a review under section 57 of the Act (outcome of a review).
- a determination made under section 60(4) of the Act (applicants etc. with convictions for serious offences).
- a determination of a review under section 63 of the Act (outcome of a section 62 review).

- a determination under section 66(3) of the Act (determination of whether a nominated beneficiary is to be invited to take over application).
- a determination of the outcome of a review under section 69 of the Act (outcome of section 68 review).
- a determination made under section 75(5) of the Act (reconsideration of determination where possible material error).
- a determination made under section 77 of the Act (outcome of a section 76 review).

The Regulations set out the processes for making a fee payment request in respect of legal work undertaken as part of a reconsideration or review and for making a request for reimbursement of costs and expenses linked to a reconsideration or review. These requests will be considered by Redress Scotland and the person affected by the outcome may request a review if they are not content with it.

The Regulations also set out the procedure for reconsideration of a decision where Redress Scotland has, or the Scottish Ministers have, cause to believe that a decision to pay fees, or to reimburse costs and expenses under these Regulations has been made in error. In addition, they provide that a person is liable to repay the Scottish Ministers any fees, costs and expenses to the extent that they have been paid in error, as it is essential for the operation and integrity of the redress scheme that where errors are identified, monies are restored to the public purse where appropriate. The Regulations ensure a fair process which reinforces the mechanisms within the scheme to provide a robust system with sound financial controls.

Although the exercise of the recovery powers will sit with Scottish Ministers in their general administration of the scheme, consideration of whether decisions to make payments under the Regulations have been materially affected by error will be undertaken by Redress Scotland. The Regulations provide a process for these decisions to be reconsidered, for the persons affected by them to be notified and given the opportunity to make representations, and for the outcome of the reconsideration to be reviewed. This will ensure that process underpinning any potential recovery of payments is robust, effective and proportionate.

Modifications of the Act – outcomes of reconsideration and review relating to determination of redress application

The Act itself (sections 75 to 77) provides a 'reconsideration process' so that Redress Scotland can revisit a determination already made should a concern arise that it was materially affected by error (including because of fraudulent misrepresentations).

The Act (section 74) also provides that one consequence of the reconsideration process may be that an applicant is liable to repay a redress payment (or part of a redress payment). Discretion as to whether to recover those payments lies with the Scottish Ministers, recognising that there may be some circumstances in which it would not be appropriate to do so (e.g. if a considerable amount of time had passed).

The Act, however, does not currently set out what is to happen to waivers already signed, if the conclusion of the reconsideration process is that a different redress

payment ought to have been offered, or that no redress payment ought to have been offered. Waiver is a key aspect of the Act and it is essential that the way in which it operates is fair to applicants. So as envisaged by the regulation-making power in section 78 of the Act, it is necessary to make provision to ensure that there is a way to deal with waivers previously signed and returned in respect of redress payments that the applicant is no longer entitled to receive or no longer entitled to keep.

Provision is therefore made in the Regulations, to ensure that, where the reconsideration process requires it, there is a clear legal framework to address the consequences of the material error. This could result where appropriate in previous waivers being overturned or giving applicants another opportunity to consider the waiver they previously signed. For example:

- if the result of the reconsideration process is that an applicant should not have received a redress payment (and therefore the applicant is liable to the Scottish Ministers to repay any payment already received) it is not fair to that applicant for them to continue to have their right to raise civil action restricted by the waiver they previously signed.
- if the result of the reconsideration process is that an applicant should receive a lower redress payment than previously accepted (and again that would mean that the applicant is liable to the Scottish Ministers to repay the overpayment), then this is a fundamental change to the terms of the offer upon which they based their previous decision to sign the waiver. So in the interests of fairness they have the opportunity to consider whether the redress scheme, and the restriction on their rights to raise civil action, remains in their best interests.
- in some circumstances a reconsideration may actually result in a determination that the applicant is entitled to a higher payment, or a payment where they were previously determined ineligible.

The key policy objective in this regard is therefore to be as transparent and fair as possible, by setting out the potential outcomes and consequences of a reconsideration or review on the face of the Act. This will ensure that there is clarity for survivors, their representatives and next of kin applicants around what may happen to an offer of payment and any existing waiver where a material error has been made in the determination of a redress application. As mentioned above, funded legal advice will be available in connection with reconsiderations and reviews and provision has been made for reimbursement of reasonable costs and expenses in connection with these. Providing for this funding and support ensures people can make fully informed decisions regarding the most appropriate action to take following a reconsideration or review.

Where possible, existing waivers will remain unaffected by the outcome of a reconsideration or review. For example, where a person is given a higher or lower offer of payment than one which they have previously accepted, a previous waiver will only be affected where the new offer is actively rejected. In this case, the previous waiver will be rendered of no effect and the person will be liable to repay any redress payment made to them. If the person does accept the new offer, they will find themselves in the same position as they would have been, had an error not have been made.

Where a person has accepted a previous offer of a redress payment and they do nothing in response to a new offer (that is, they neither accept nor reject it within the window within which they can do so), provision is made in the Regulations for the person to have been deemed to have accepted the new offer. We believe that this position causes least detriment to a person who has accepted a previous offer. First, it means that a person will automatically be paid an additional sum where the previous offer was higher than the sum they accepted before. Second, it means that where a person does nothing in response to a notification that they have been offered a lower payment than that which they previously accepted, they will not be liable to repay the whole redress payment which they have received and the waiver they previously signed will be unaffected.

There are however, some circumstances in which the Regulations provide for automatic consequences for a waiver. For example, where following a reconsideration, it is determined that a person is not eligible for a redress payment, any waiver signed to accept a payment offered in error will be rendered of no effect.

Consultation

A formal consultation was not considered appropriate, given previous consultations on the redress scheme and the recent Parliamentary passage of the Act. Due to the technical nature of these Regulations, stakeholder views were not sought during recent targeted engagement on redress secondary legislation.

Impact Assessments

Where necessary, the impact assessments for the Act and relevant secondary legislation enabled by it will be updated to reflect these draft Regulations in the near future.

Financial Effects

The Deputy First Minister and Cabinet Secretary for Covid Recovery confirms that no standalone BRIA is necessary for this instrument. Instead, the existing BRIA for the Act and other relevant secondary legislation will be updated to reflect the financial impact this instrument may have on the Scottish Government, local government or on business.

Scottish Government
Children and Families Directorate

7 December 2021

Annexe B

Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, Part 4,
as modified

PART 4

FINANCIAL REDRESS: REDRESS PAYMENTS

CHAPTER 1

DETERMINATION OF APPLICATIONS FOR REDRESS PAYMENTS

*Waiver***46 Waiver**

- (1) An applicant to whom an offer of a redress payment is made under section 36 or, as the case may be, 57 and who wishes to accept the offer must sign and return a waiver agreeing—
 - (a) to abandon any civil proceedings to the extent they are relevant civil proceedings, and
 - (b) to waive any right to bring relevant civil proceedings.
- (2) But an applicant to whom subsection (3) applies may accept an offer of a further sum (made by virtue of section 39(1)(b)) without signing and returning a waiver if the condition in subsection (4) is met.
- (3) This subsection applies to an applicant for an individually assessed payment who has previously been paid—
 - (a) a fixed rate payment under a previous application for one, or
 - (b) where the application is made by virtue of section 30(3), an individually assessed payment.
- (4) The condition referred to in subsection (2) is that no new scheme contributors have been included in the contributor list in the period—
 - (a) beginning with the effective date of the waiver signed and returned in respect of the fixed rate payment or, where subsection (3)(b) applies, the previous individually assessed payment, and
 - (b) ending with the date that, but for subsection (2), would be the effective date of a waiver signed and returned in respect of the further sum.
- (5) Where an applicant signs and returns a waiver in accordance with subsection (1)—
 - (a) no relevant civil proceedings may be brought by or on behalf of the applicant,
 - (b) section 3(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 does not apply in so far as it would entitle any person to recover from the Scottish Ministers or a relevant scheme contributor any contribution towards the payment by that person of any damages or expenses in respect of relevant abuse, and

- (c) any other right under any enactment or rule of law to recover any contribution from the Scottish Ministers or a relevant scheme contributor in relation to relevant abuse, and any right of relief or of indemnity against Ministers or a relevant scheme contributor in relation to relevant abuse, ceases to have effect.
- (6) For the purposes of this section—
- “effective date”, in relation to a waiver in respect of a redress payment, is—
- (a) in a case where a panel appointed under section 35 determines that the applicant is eligible for a redress payment, the date of that determination,
 - (b) in a case where a panel appointed under section 55 to conduct a review determines that the applicant is eligible for a redress payment, the date of that determination,
 - (c) in a case where a panel appointed under section 75 to reconsider a determination or, as the case may be, a panel appointed to conduct a review under section 76 determines that a person is or remains, eligible for a redress payment, the date on which it should have been determined that the applicant was eligible for a redress payment had the original determination not been materially affected by an error,
- “relevant abuse” means—
- (a) the abuse to which the application relates, and
 - (b) any other abuse of the person in respect of whom the application is made for which the applicant would have been eligible to apply for a redress payment by virtue of section 18,
- “relevant civil proceedings” are civil proceedings against the Scottish Ministers or any relevant scheme contributor (whether or not the proceedings are also against another person) in which the applicant seeks compensation or any other remedy in relation to relevant abuse,
- “relevant scheme contributor” is a scheme contributor who is included in the contributor list on the effective date of a waiver signed and returned in accordance with subsection (1).
- (7) For the purpose of subsection (6), where a scheme contributor is removed from the contributor list with retrospective effect in accordance with section 16, the question of whether the scheme contributor is a relevant scheme contributor on a particular date is to be determined by reference to the contributor list as retrospectively amended.

...

*Payment of redress payment***49 Period for which offer valid**

- (1) An applicant to whom an offer of a redress payment is made under section 36 may—
 - (a) bring the application to an end by accepting the offer in accordance with section 50(1), or
 - (b) request a review of the offer in accordance with section 54.
- (2) If neither of the actions specified in subsection (1) is taken within the period for which the offer is valid, the application is to be treated as having been brought to an end by the offer being rejected unless it is continued by virtue of section 66(1).
- (3) The period for which the offer is valid is—
 - (a) the period of 6 months beginning with the date on which the offer was received by the applicant, or
 - (b) where the panel appointed under section 35 to determine the application is satisfied that there is a good reason why the applicant needs, or may need, longer to consider whether or not to accept the offer, such longer period as the panel determines.
- (4) Where an application is treated as having been brought to an end by virtue of subsection (2), the panel previously appointed under section 35 to determine it, or such other panel as the chairing member of Redress Scotland determines, may revive the application if it considers that there are exceptional circumstances which merit it.
- (5) Where an application is revived by virtue of subsection (4)—
 - (a) the offer of a redress payment previously made in relation to it is also revived, and
 - (b) the period for which the revived offer is valid is such period as the panel determines.

50 Acceptance of offer and making of payments

- (1) An offer of a redress payment is accepted—
 - (a) by the applicant to whom the offer is made signing and returning a waiver to the Scottish Ministers under section 46, or
 - (b) in a case where section 46(2) applies to the applicant, by the applicant giving the Scottish Ministers notice in writing that the offer is accepted.
- (2) Entitlement to a redress payment from the Scottish Ministers arises where—
 - (a) an offer of a redress payment is accepted in accordance with subsection (1), and

- (b) the Scottish Ministers are satisfied that the applicant has abandoned or will abandon any civil proceedings to the extent they are relevant civil proceedings in accordance with the waiver signed and returned under section 46.
- (3) A redress payment is to be paid by the Scottish Ministers—
 - (a) in such instalments as are agreed at the request of, or otherwise with the consent of, the applicant, or
 - (b) otherwise, as a single payment.
- (4) In this section, “relevant civil proceedings” has the meaning given by section 46.

51 Payments to children

- (1) This section applies where a panel appointed under section 35 to determine an application for a redress payment or, as the case may be, a review panel appointed under section 55 to conduct a review makes an offer of a redress payment to an applicant who is under the age of 18 years.
- (2) The panel may give such directions relating to the payment and management of the redress payment for the benefit of the applicant as it considers appropriate.
- (3) A direction under subsection (2) may, in particular, provide that the redress payment—
 - (a) is to be paid in instalments,
 - (b) is not to be paid until the applicant reaches the age of 18.
- (4) Where a direction under subsection (2) postpones the payment of the whole or part of the redress payment—
 - (a) Redress Scotland may at any time, at the request of or otherwise with the consent of the applicant, instruct the Scottish Ministers to make earlier payment to the applicant of the whole or part of the redress payment or, as the case may be, any remaining balance of it,
 - (b) on the applicant reaching the age of 18, the Scottish Ministers must pay the redress payment or, as the case may be, the balance of it (if any) to the applicant in accordance with paragraphs (a) and (b) of section 50(3).

52 Review of direction made under section 51

- (1) An applicant who is notified of a direction under section 51(2) relating to the payment and management of a redress payment may request a review of the direction.
- (2) A request for a review must—
 - (a) be made to the Scottish Ministers,
 - (b) be made before the end of the period of 8 weeks beginning with the date on which notice of the direction was received by the applicant,

- (c) be made in such form, if any, as Ministers require,
 - (d) specify why a review is being requested, and
 - (e) contain or be accompanied by any information the applicant considers relevant.
- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request for a review, provide the request, and any information accompanying it, to Redress Scotland.
 - (4) A review may be conducted despite the request for it not being made within the period specified in subsection (2)(b) if Redress Scotland is satisfied that the applicant has good reason for not requesting a review sooner.
 - (5) The Scottish Ministers must publicise any requirements which are for the time being set under subsection (2)(c).
 - (6) Sections 55, 56 and 59(1) to (5) apply for the purposes of a review under this section as they apply for the purposes of a review under section 54, subject to the modification that the reference in section 59(1) to a determination being made under section 57 is to be read as a reference to a determination being made under section 53.

53 Outcome of a section 52 review

- (1) On a review under section 52, the review panel appointed under section 55 to conduct it—
 - (a) must consider—
 - (i) whether the panel which gave the direction under section 51(2) relating to the payment and management of a redress payment ought to have done so,
 - (ii) in a case where additional evidence is provided to or obtained by the review panel, whether the question of what (if any) direction is given relating to the payment and management of a redress payment ought to be determined differently as a result,
 - (b) may uphold or reverse the direction.
- (2) Once the review panel has conducted the review, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
 - (a) notify the applicant of the review panel's determination, and
 - (b) provide the applicant with a summary, provided by Redress Scotland, of the review panel's reasons for reaching that determination.
- (3) The determination of the review panel under this section is final.

...

CHAPTER 5

REDRESS PAYMENTS OR DETERMINATIONS MADE IN ERROR

74 Liability for redress payments made in error

- (1) A person is liable to pay the Scottish Ministers the value of any redress payment to the extent that it is paid to the person due to a relevant error.
- (2) A person's liability under subsection (1) is the difference in value between—
 - (a) the redress payments that are paid to the person, and
 - (b) the redress payments (if any) that would have been paid to the person had the relevant error not been made.
- (3) Where the Scottish Ministers seek to recover a sum due to them by a person under subsection (1), the sum may be paid—
 - (a) in such instalments as are agreed at the request of, or otherwise with the consent of, the person, or
 - (b) otherwise, as a single payment.
- (4) In this section, references to a relevant error are to—
 - (a) an error when making a payment of a redress payment,
 - (b) an error which Redress Scotland determines under section 75, or, as the case may be, on a review under section 76, led to a determination under this Part being made—
 - (i) incorrectly, or
 - (ii) correctly but on the basis of incorrect or misleading information, in a way which materially affected the determination.

75 Reconsideration of determination where possible material error

- (1) Where Redress Scotland has, or the Scottish Ministers have, cause to believe that a determination under this Part may have been materially affected by an error, it or they must refer the determination for reconsideration (regardless of whether or not payment has been made under it).
- (2) A determination which is referred for reconsideration is to be considered on behalf of Redress Scotland by a panel of at least 3 members of Redress Scotland appointed by the chairing member ("a reconsideration panel").
- (3) Where Redress Scotland refers a determination for reconsideration, it must, as soon as reasonably practicable, inform the Scottish Ministers of the referral.
- (4) Where a determination is referred for reconsideration by either Redress Scotland or the Scottish Ministers, the Scottish Ministers must, as soon as reasonably practicable—
 - (a) notify the relevant person—
 - (i) that the determination is to be reconsidered, and

- (ii) of the reasons, provided by the person who has made the referral, for the reconsideration,
 - (b) provide the relevant person with information about the implications of the determination being reconsidered, and
 - (c) allow the relevant person a period of at least 8 weeks, beginning with the date on which notice of the reconsideration was received by the person, for the person to make written representations in connection with the reconsideration.
- (5) After the period for the making of representations under subsection (4)(c) has ended, the reconsideration panel must—
 - (a) determine whether the original determination was materially affected by an error, and
 - (b) if it was so affected, re-determine it on the basis of how it would have been determined had the error not been made.
- (5A) Subsection (5B) applies where, in relation to an original determination which determined an application for a redress payment, the reconsideration panel determines under subsection (5)(b) that a person—
 - (a) is eligible for a redress payment, and
 - (b) is not precluded from being offered a redress payment by virtue of section 60 (as it applies by virtue of subsection (5)(b)).
- (5B) In assessing the amount of the redress payment (if any) to be offered, no account is to be taken of any redress payment which has previously been paid in respect of the original determination but no entitlement to any such amount arises by virtue of section 50(2).
- (6) For the purposes of other proceedings, nothing done under a reconsideration is to be taken as a finding as to whether or not a person who is referred to in the application to which the original determination relates acted, or failed to act, in a way suggested in the application.
- (7) Once the reconsideration panel has conducted the reconsideration, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
 - (a) notify the relevant person of the reconsideration panel's determination, and
 - (b) provide the relevant person with—
 - (i) a summary, provided by Redress Scotland, of the reconsideration panel's reasons for reaching that determination,
 - (ii) information in relation to the effect of the panel's determination on a previous offer of a redress payment made under the original determination,
 - (iii) where the panel's determination makes an offer of a redress payment, information about the period for which the offer remains valid by virtue of section 49(3) and the options available to the relevant person in respect of it.

- (8) Where the reconsideration panel makes a determination, in relation to an original determination in respect of which a right of review still exists, that the original determination was materially affected by an error—
- (a) the reconsideration panel's determination takes the place of the original determination, and
 - (b) any review of the reconsideration panel's determination is to be conducted under section 76.
- (9) In this section and in sections 75A to 78—
- “error” means an error which led to a determination under this Part being made—
- (a) incorrectly, or
 - (b) correctly but on the basis of incorrect or misleading information,
- “original determination” means the determination referred for reconsideration under subsection (1),
- “relevant person” means—
- (a) the person who was notified of the determination which is the subject of the referral, or
 - (b) if that person has died—
 - (i) where a payment under the determination was made to the deceased person, the deceased person's estate,
 - (ii) where a payment under the determination was, or is to be, made to another person (including the deceased person's estate), that person.

75A Effect of referral for reconsideration on ongoing applications

- (1) This section applies where—
- (a) an offer of a redress payment was made under the original determination,
 - (b) at the point at which the original determination was referred for reconsideration, the offer had not been accepted and the period for which the offer (or, as the case may be, the offer as revived under section 49(4) or 58(4)) is valid had not ended.
- (2) From the point at which the original determination is referred for reconsideration—
- (a) the offer is suspended (and any purported acceptance of it while it is suspended is of no effect),
 - (b) where a request for a review of the original determination has been made but not determined, the review is paused.
- (3) Where the reconsideration panel determines under section 75(5)(a) that the original determination was not materially affected by an error—

- (a) the offer is revived,
 - (b) subsections (4) and (5) apply, and
 - (c) any review paused by virtue of subsection (2)(b) is resumed.
- (4) Where the original determination was made under section 36, sections 49 to 53 apply subject to the following modifications—
 - (a) references to the applicant are to be read as references to the relevant person,
 - (b) in section 49—
 - (i) in subsection (3)(a), for “the date on which the offer was received by the applicant” there is substituted “the date on which the relevant person received notification of the determination under section 75(5)(a)”, and
 - (ii) in subsections (3)(b) and (4), the references to the panel appointed under section 35 are to be read as references to the reconsideration panel,
 - (c) in section 51(1), the reference to the panel appointed under section 35 or, as the case may be, a review panel appointed under section 55 is to be read as a reference to the reconsideration panel.
- (5) Where the original determination was made on a review, sections 50 and 58 apply subject to the following modifications—
 - (a) references to the applicant are to be read as references to the relevant person,
 - (b) in section 58(3)(a), for “the date on which the offer was received by the applicant” there is substituted “the date on which the relevant person received notification of the determination under section 75(5)(a)”, and
 - (c) in section 58(3)(b) and (4), the references to the review panel are to be read as references to the reconsideration panel.

75B Effect of referral for reconsideration on unpaid redress payments

- (1) This section applies where—
 - (a) an offer of a redress payment was made under the original determination,
 - (b) at the point at which the original determination was referred for reconsideration, the offer had been accepted but payment (in whole or in part) had not been made.
- (2) From the point at which the original determination is referred for reconsideration any entitlement to the redress payment (or any unpaid part of it) under section 50(2) is suspended.
- (3) Where the reconsideration panel determines under section 75(5)(a) that the original determination was not materially affected by an error any entitlement to the redress payment (or any unpaid part of it) under section 50(2) is restored.

75C Effect of redetermination: no eligibility or no offer made

- (1) This section applies where a reconsideration panel determines under section 75(5)(b) that a person—
 - (a) is not eligible for a redress payment,
 - (b) is so eligible but no redress payment is to be offered (for example, due to the deduction of relevant payments), or
 - (c) is precluded from being offered a redress payment by virtue of section 60 (as it applies by virtue of section 75(5)(b)).
- (2) Any waiver signed and returned in accordance with section 46 in respect of an offer made under the original determination is of no effect.

75D Effect of redetermination: offer made where no previous offer or previous offer not accepted

- (1) This section applies where the reconsideration panel determines under section 75(5)(b) that an offer of a redress payment is to be made and—
 - (a) no offer of a redress payment was made under the original determination, or
 - (b) such an offer was made but, at the point at which the original determination was referred for reconsideration, the offer had not been accepted.
- (2) Subject to subsection (3), sections 46, 47 and 49 to 53 apply to the offer made under section 75(5)(b) as they apply to an offer made under a determination under section 36 but subject to the modification that references in those sections to—
 - (a) the applicant (other than the reference in the definition of “relevant abuse” in section 46(6)) are to be read as references to the relevant person, and
 - (b) the panel appointed under section 35 or, as the case may be, a review panel appointed under section 55 are to be read as references to the reconsideration panel.
- (3) Sections 46, 47 and 49 to 53 are subject to the following further modifications—
 - (a) in section 46(2), for “an applicant to whom subsection (3) applies” substitute “, where subsection (3) applies, the relevant person”,
 - (b) in section 46(3), for “to an applicant for an individually assessed payment who” substitute “where the application to which the original determination relates is an application for an individually assessed payment and the applicant in relation to that application”,
 - (c) for section 49(1), substitute—

- “(1) A relevant person to whom an offer of a redress payment is made under section 75(5)(b) may—
- (a) accept the offer in accordance with section 50(1),
 - (b) reject the offer in accordance with subsection (1A), or
 - (c) request a review of the offer in accordance with section 76.
- (1A) An offer of a redress payment made under section 75(5)(b) is rejected by the relevant person giving the Scottish Ministers notice in writing that the offer is rejected.”,
- (d) in section 49(2), for “neither” substitute “none”,
 - (e) in section 49(3)(a), for “the date on which the offer was received by the applicant” there is substituted “the date on which the relevant person received notification of the determination under section 75(5)(b)”.

75E Effect of redetermination: offer made where previous offer accepted

- (1) This section applies where the reconsideration panel determines under section 75(5)(b) that an offer of a redress payment is to be made (“the new offer”) and—
 - (a) an offer of a redress payment was made under the original determination (“the original offer”), and
 - (b) at the point at which the original determination was referred for reconsideration, the original offer had been accepted.
- (2) Where the new offer is an offer of the same amount as the original offer—
 - (a) the new offer is deemed to have been accepted in accordance with section 50(1),
 - (b) any waiver signed and returned in accordance with section 46 in respect of the original offer continues to have effect,
 - (c) subject to modification in subsection (3), sections 50(2) to (4) and 51 to 53 apply to the new offer as they apply to an offer made under a determination under section 36, and
 - (d) references in those sections to—
 - (i) the applicant are to be read as references to the relevant person, and
 - (ii) the panel appointed under section 35 or, as the case may be, a review panel appointed under section 55 are to be read as references to the reconsideration panel.
- (3) The modification referred to in subsection (2)(c) is, in section 50(4), after “section 46” insert “(as modified by section 75D(2)(a))”.
- (4) Where the new offer is not an offer of the same amount as the original offer, sections 49 to 53 apply to the new offer as they apply to an offer made under a determination under section 36 but subject to the modification that references in those sections to—

- (a) the applicant are to be read as references to the relevant person, and
 - (b) the panel appointed under section 35 or, as the case may be, review panel appointed under section 55 are to be read as references to the reconsideration panel.
- (5) Where subsection (4) applies, sections 49 and 50 are subject to the following further modifications—
 - (a) for section 49(1), substitute—
 - “(1) A relevant person to whom an offer of a redress payment is made under section 75(5)(b) may—
 - (a) accept the offer in accordance with section 50(1),
 - (b) reject the offer in accordance with subsection (1A), or
 - (c) request a review of the offer in accordance with section 76.
 - (1A) An offer of a redress payment made under section 75(5)(b) is rejected by the relevant person giving the Scottish Ministers notice in writing that the offer is rejected.”,
 - (b) in section 49(2)—
 - (i) for “neither” substitute “none”, and
 - (ii) for “rejected” substitute “accepted”,
 - (c) in section 49(3)(a), for “the date on which the offer was received by the applicant” there is substituted “the date on which the relevant person received notification of the determination under section 75(5)(b)”.
 - (d) for section 50(1) substitute—
 - “(1) An offer of a redress payment made under a determination under section 75(5)(b) is accepted by the relevant person giving the Scottish Ministers notice in writing that the offer is accepted.”,
 - (e) in section 50(2)(a), after “subsection (1)” insert “or, as the case may be, treated as accepted under section 49(2)”,
 - (f) in section 50(4), after “section 46” insert “(as modified by section 75D(2)(a))”.
- (6) Where the relevant person accepts the new offer or is treated as having accepted the new offer under section 49(2), any waiver signed and returned in accordance with section 46 in respect of the original offer continues to have effect.
- (7) Where the relevant person rejects the new offer, any waiver signed and returned in accordance with section 46 in respect of the original offer is of no effect.
- (8) For the avoidance of doubt, in a case where the original offer relates to an application for an individually assessed payment made by virtue of section 30(2) or, as the case may be, (3), subsection (7) does not apply to any waiver signed in relation to an offer of a redress payment made previously to or in respect of the applicant.

76 Review of reconsidered determination

- (1) A person who is notified of a determination under section 75 may request a review of it.
- (2) A request for a review must—
 - (a) be made to the Scottish Ministers,
 - (b) be made before the end of the period of 8 weeks beginning with the date on which notice of the determination was received by the person requesting the review,
 - (c) be made in such form, if any, as Ministers require,
 - (d) specify why a review is being requested, and
 - (e) contain or be accompanied by any information the person requesting the review considers relevant.
- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request for a review, provide the request, and any information accompanying it, to Redress Scotland.
- (4) A review may be conducted despite the request for it not being made within the period specified in subsection (2)(b) if Redress Scotland is satisfied that the person requesting the review has a good reason for not requesting a review sooner.
- (5) The Scottish Ministers must publicise any requirements which are for the time being set under subsection (2)(c).
- (6) Sections 55, 56 and 59(1) to (5) apply for the purposes of a review under this section as they apply for the purposes of a review under section 54, subject to the modification that the reference in section 59(1) to a determination being made under section 57 is to be read as a reference to a determination being made under section 77.

77 Outcome of a section 76 review

- (1) On a review under section 76, the review panel appointed under section 55 to conduct it must consider—
 - (a) whether the reconsideration panel which determined, under section 75 whether the original determination was materially affected by error and, if so, how it ought to be re-determined ought to have reached a different determination, and
 - (b) in a case where additional evidence is provided to or obtained by the review panel, whether the application ought to be determined differently as a result.
- (2) The review panel may not—
 - (a) reverse or vary a determination under section 75 that a person is or remains eligible for a redress payment,

- (b) determine that a person is to be entitled to or, as the case may be, offered a lower amount by way of an individually assessed payment than the person was entitled to or offered under section 75, or
 - (c) determine that more is to be deducted in accordance with section 42 from the person's redress payment than was determined under section 75.
- (3) But the review panel may otherwise uphold, reverse or vary any part of the determination (whether the request for a review relates to that part of it or not).
- (4) Subsections (4) and (7) of section 36 apply to a determination as upheld, reversed or varied as they apply to a determination made under section 36, subject to the modification that references to the panel appointed under section 35 to determine the application are to be read as references to the review panel.
- (4A) Subsections (4B) [and] (4C) apply where the review panel determines under this section that an offer of a redress payment is to be made (whether or not an offer of a redress payment was made under the determination under section 75(5)(b) which was the subject of the request for a review).
- (4B) In assessing the amount of the redress payment (if any) to be offered, no account is to be taken of any redress payment which has previously been paid in respect of the original determination which was referred for reconsideration under section 75 but no entitlement to any such amount arises by virtue of section 50(2).
- (4C) Section 75D or, as the case may be, 75E applies to an offer made under a determination under this section as it applies to an offer made under a determination under section 75(5)(b) subject to the following modifications—
 - (a) references to the relevant person are to be read as references to the person who requested the review,
 - (b) references to the reconsideration panel are to be read as references to the review panel appointed to conduct the review under section 76.
- (5) Once the review panel has conducted the review, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—
 - (a) notify the person who requested it of the review panel's determination, and
 - (b) provide the person with—
 - (i) a summary, provided by Redress Scotland, of the review panel's reasons for reaching that determination,
 - (ii) information in relation to the effect of the panel's determination on a previous offer of a redress payment made under the determination under section 75(5)(b),
 - (iii) where the panel's determination makes an offer of a redress payment, information about the period for which the offer remains valid by virtue of section 49(3) and the options available to the person in respect of it.
- (6) The determination of the review panel under this section is final.

- (7) For the avoidance of doubt, subsection (6) does not prevent the determination of the review panel being the subject of a referral under section 75 provided that the referral relates to a different error from the one which previously led to the review.

77A Withdrawal of review request

- (1) This section applies where—
 - (a) a request for a review under section 76 is withdrawn in accordance with section 59 (as applied by section 76(6)), and
 - (b) the request relates to a review of a determination under section 75(5)(b) under which an offer of a redress payment was made.
- (2) The period for which the offer remains valid under section 49(3), or any longer period which had been determined under that section prior to the request for a review being made, is to be extended by the number of days in the period—
 - (a) beginning with the date on which the request for a review was made, and
 - (b) ending with the date on which the request was withdrawn.

77B Liability for redress payment where offer on redetermination rejected

- (1) This section applies where—
 - (a) an offer of a redress payment was made under the original determination (“the original offer”),
 - (b) the offer had been accepted in accordance with section 50(1) and payment (in whole or in part) had been made,
 - (c) the reconsideration panel determines under section 75(5)(b) or, as the case may be, a review panel determines under section 77 that an offer of a redress payment is to be made (“the new offer”), and
 - (d) the relevant person or, as the case may be, the person who requested the review rejects the new offer.
- (2) The person is liable to pay the Scottish Ministers the value of any redress payment paid in respect of the original offer (whether or not that person is also liable to pay any amount by virtue of section 74).
- (3) Where the Scottish Ministers seek to recover a sum due to them by a person under subsection (2), the sum may be paid—
 - (a) in such instalments as are agreed at the request of, or otherwise with the consent of, the person, and
 - (b) otherwise, as a single payment.

78 Power to make further provision about reconsiderations

- (1) The Scottish Ministers may by regulations make further provision about or in connection with the reconsideration of a determination under section 75 and any review of it under section 76.
- (2) Regulations under subsection (1) may, in particular—
 - (a) make provision requiring or enabling the payment by the Scottish Ministers of fees for legal work and other costs and expenses reasonably incurred by a person who is a relevant person under section 75(9) in connection with a reconsideration,
 - (b) make provision for the recovery of such fees for legal work and other costs and expenses where payment of those fees, costs and expenses was due to an error,
 - (c) make provision allowing material changes which have occurred since the date of the original determination to be taken into account, or taken into account in particular cases, in any re-determination under section 75(5)(b),
 - (d) make provision in relation to the interaction of the reconsideration panel's determination with any offer that has already been accepted (including any waiver signed and returned in order to do so).
- (3) Regulations under subsection (1) may modify any enactment (including this Act).