

Redress For Survivors (Historical Child Abuse In Care) (Scotland) Act 2021: Statutory Guidance – Applicants with Convictions for Serious Offences

December 2021



Scottish Government
Riaghaltas na h-Alba
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Applicants with Convictions for Serious Offences

Status of this Guidance

1. This guidance is issued under section 106 of the Redress for Survivors (Historical Abuse in Care) (Scotland) Act 2021 (“the Act”).
2. This guidance applies to all those with an interest in connection with the making, or consideration of an application for redress. This includes applicants to the redress scheme, their legal representatives and Redress Scotland, who must have regard to the guidance.
3. This guidance covers:
 - The policy background of section 60 of the Act;
 - Applicants in respect of whom disclosure is required;
 - How information about relevant criminal convictions will be verified (including where no conviction is disclosed) and how the information provided about relevant criminal convictions will be used
 - What will happen where a relevant criminal conviction is disclosed and/or confirmed/brought to light through verification;
 - The process by which Redress Scotland will make a determination under section 60 of the Act, including the considerations it may take into account regarding a relevant criminal conviction(s);
 - What happens where Redress Scotland considers it is not in the public interest for a person to receive a redress payment owing to relevant criminal conviction(s);
 - How a person is notified of Redress Scotland’s determination under section 60 of the Act; and
 - The process which should be followed where there is a change in circumstances of an applicant or nominated beneficiary in regard to a relevant criminal conviction(s).

Background

4. Section 60 of the Act applies where an applicant (including an applicant for a next of kin payment) and/or a nominated beneficiary has been convicted of certain serious offences, whether in the United Kingdom or elsewhere in the world. In such cases, before a panel can determine an application for a redress payment, the panel must first determine whether it would be contrary to the public interest to make a payment to that person and, in consequence, whether that person should be precluded from being offered a redress payment. The convictions for serious offences which are relevant to a panel’s determination under section 60, are those which have occurred up until the date the panel makes its determination.

5. All applicants and nominated beneficiaries must provide the Scottish Ministers with information in relation to any conviction which is or may be relevant for the purposes of section 60 of the Act. They will be required to disclose whether they have any unspent relevant previous convictions for offences mentioned in section 60(1) of the Act,¹ namely convictions for:

- murder²
- rape³
- a relevant offence for which the person is sentenced to imprisonment⁴ for a term of 5 years or more. A “relevant offence” is defined in Section 61 as a violent offence, being an offence inferring personal violence other than murder, rape or a sexual offence. A “relevant offence” includes a sexual offence listed in schedule 3 of the Sexual Offences Act 2003 other than rape (but includes attempted rape and conspiracy to commit rape).
- an equivalent offence. This includes an offence which is equivalent to murder or rape, which was committed outwith the UK. It also includes an offence equivalent to a “relevant offence” where it was committed outwith the UK, where which a person was sentenced to imprisonment for a term of 5 years or more.

6. There is no automatic exclusion or presumption against the payment of redress to applicants or nominated beneficiaries with previous convictions for the serious offences mentioned in section 60.

7. A panel which is appointed to determine an application will have regard to a number of matters where an applicant or nominated beneficiary has a conviction for the serious offences specified above, in order to determine whether it would be contrary to the public interest to make a redress payment to them.

8. As detailed in section 60(6) of the Act, those matters are:

- the nature of the offence;
- the sentence imposed (and, where the sentence is or includes imprisonment, the term imposed);
- the length of time since the offence was committed;
- any rehabilitation activity undertaken by the person who committed the offence; and
- any other matter that the panel considers relevant.

9. If the panel decides that it is contrary to the public interest to make a redress payment, survivor applicants would, if they satisfy the general eligibility criteria of the scheme, still be entitled to receive access to non-financial redress elements of the scheme, such as apology and therapeutic support. Non-financial redress is not available to next of kin or nominated beneficiary applicants.

¹ Given the Rehabilitation of Offenders Act 1974, including sections 1 and 4

² Including, in relation to murder committed outside Scotland, aiding, abetting, counselling, procuring or inciting murder,

³ As defined in section 61 of the Act.

⁴ Under the Act, “imprisonment” means includes detention in a young offenders institution or detention centre, detention in a Borstal institution and penal servitude,

10. Applicants and nominated beneficiaries should not disclose any information about convictions which are not listed in section 60(6) and noted above, these are not relevant to the assessment of their redress application.

Applicants in respect of whom disclosure is required

11. Applicants may wish to contact a case worker to discuss their previous convictions, particularly when they are unsure if the previous convictions are relevant, before submitting their application form.

12. Applicants are entitled to obtain funded, independent legal advice on their application, see the [guidance on legal fees](#) for more information. We strongly recommend that applicants obtain legal advice on the disclosure of their previous convictions for serious offences.

Survivor applicant

13. Survivor applicants must provide details of their own relevant previous convictions at the initial stages of the application process. Where applicants disclose within the application form that they have, or are not sure if they have, a relevant previous conviction, their case worker will get in touch with them to outline the next steps.

Nominated beneficiary applicant

14. Nominated beneficiaries must provide information on their own relevant previous convictions. The disclosure of convictions by the deceased survivor will have been submitted by them at the point of making the initial application. Information on the previous convictions of the nominated beneficiary will not be required until the point at which the nominated beneficiary has accepted an invitation to take over the application, following the death of the survivor. At that point, the nominated beneficiary must disclose any relevant previous convictions they have.

Next of kin applicant

15. Next of kin applicants must, on making their application, provide details of any relevant convictions that they have. The next of kin must also, to the best of their knowledge and belief, provide details of any known relevant convictions of the deceased survivor.

16. In the case of next of kin applicants, it is recognised that they may not have knowledge about whether or not the deceased survivor had relevant previous convictions.

17. There is no expectation that next of kin applicants should carry out any investigations in this regard – information is only required to be provided insofar as known to the applicant.

18. In the event of a next of kin application being submitted for more than one child of a deceased survivor, the previous convictions of each child would be assessed independently of the other. In the event of a determination that one child is precluded from being offered a redress payment on the basis of an assessment under section 60, this has no effect on the relevant share of the fixed rate payment that the remaining eligible children would be entitled to.

Verification and use of information provided about previous convictions (including where no conviction is disclosed)

19. Any information provided to the Scottish Ministers relating to previous convictions for serious offences will be retained and processed as outlined in our Privacy Notice.

20. As outlined in the notice, the Scottish Ministers may verify any information provided to them, including that provided about relevant criminal convictions. A random selection of applications will be selected for “spot check” audit verification of whether or not an individual has previous relevant convictions and where this happens, a case worker will get in touch with the applicant or nominated beneficiary to explain what this means for them.

21. Where a “spot check” audit identifies a failure to disclose a relevant conviction, consideration will be given to referring the matter to the police to investigate whether there has been any criminality involved in making a false declaration.

22. In addition, where a failure to disclose a relevant criminal conviction is identified after a redress payment has been paid to an applicant or nominated beneficiary, the Act provides for a process of referral for a re-determination where the Scottish Ministers or Redress Scotland consider that a determination has been affected by error, fraudulent or otherwise. This process may result in the person who has received the payment being liable to repay it in whole or in part, under section 74 of the Act.

Where a relevant conviction is disclosed or confirmed

23. The applicant or nominated beneficiary will be contacted by their case worker and advised of the further information that they must provide in relation to their relevant conviction(s):

24. In accordance with section 64 of the Act, this is information on:

- the nature of the offence;
- the sentence imposed (and, where the sentence is or includes imprisonment, the term imposed);

- the length of time since the offence was committed; and
- any rehabilitation activity undertaken by the person who committed the offence.

25. The applicant or nominated beneficiary may wish to provide supporting documentation on any of these matters.

26. This information will be passed to Redress Scotland to assist the panel with its assessment under section 60 as to whether it would be contrary to the public interest to make a redress payment to the applicant or nominated beneficiary.

Determinations by Redress Scotland under section 60

27. Redress Scotland will consider the relevant conviction(s) based on the information provided and may request further information or clarification from the applicant or nominated beneficiary in order to assist it in its determination.

28. The Scottish Ministers may also require information to be provided to them by any other person who they consider may have information relevant to the determination, by issuing a notice under section 79 of the Act. Redress Scotland can also trigger a notice by asking the Scottish Ministers to issue one. Information which the Scottish Ministers receive in response to the notice can then be shared with Redress Scotland to assist it in making a determination.

29. Redress Scotland may choose to invite the applicant to make oral representations to assist in the assessment process. It should be noted that attendance is voluntary and this mechanism would not routinely be applied when considering previous relevant convictions, only where necessary. Further information on making oral representations to Redress Scotland can be found in [the relevant guidance](#).

Consideration of relevant conviction(s) by the panel

30. The panel must have regard to the matters set out in section 60(6) of the Act in determining whether it would be contrary to the public interest to make a redress payment to the applicant or nominated beneficiary. These matters are:

- The nature of the offence – section 60(6)(a)
 - the panel should look to the facts and circumstances of the disclosed relevant conviction.
 - the panel may wish to consider if the nature of the offence committed is incompatible with the purpose of the redress scheme, e.g. the offence involved the abuse of children.
- The sentence imposed – section 60(6)(b)
 - the panel should have regard to whether the sentence imposed was of imprisonment, as opposed to a community based disposal, and if so, the length of the sentence.

- The length of time since the offence was committed– section 60(6)(c)
 - the panel should look at the age of the offence and date of conviction. It may be that the crime was committed many years prior to the offence being prosecuted and the applicant convicted. This is not uncommon in offences of a sexual nature.
- Rehabilitation undertaken – section 60(6)(d)
 - consideration should be given to any rehabilitation undertaken by the applicant or nominated beneficiary, and any information about their engagement with this process.
- Any other matters which the panel considers relevant.– section 60(6)(e)
 - the applicant or nominated beneficiary may wish to provide information which they feel demonstrates their commitment and contribution to society. For example, this could include their chosen vocation or activities demonstrating their commitment in the period following their conviction for the offence.
 - The applicant or nominated beneficiary may wish to provide this information in writing or, in the absence of written evidence, may be invited to make oral representations. Attendance to provide oral evidence is entirely voluntary and is intended to ensure that the panel has sufficient information to make a fair determination. As noted above, further information on oral representations can be found in the [guidance on making oral representations](#).

Determination of eligibility

31. Where a determination is made to preclude a person from being offered a redress payment, section 60(7) of the Act allows the panel to determine whether the person would otherwise have been eligible for such a payment.

32. This is to ensure that where a survivor applicant is precluded from receiving a redress payment, but is otherwise eligible for the redress scheme, the applicant is still entitled to and able to access non-financial redress. However, to do so, the applicant would have to complete the relevant parts of the application form (as if applying for a fixed rate redress payment) which Redress Scotland would assess against the eligibility criteria for a fixed rate application. More information is found in the [Help to Apply guidance](#).

33. Whether the applicant would then be entitled to non-financial redress would be subject to the panel's assessment on the basis of the application and information provided to Redress Scotland as to whether, but for the previous serious conviction(s), the applicant would have satisfied the eligibility criteria for a redress payment.

Notification of determination

34. Section 60(8) of the Act provides that the Scottish Ministers must, as soon as reasonably practicable, notify the applicant or nominated beneficiary of the panel's

determination and provide a summary of reasons from Redress Scotland for reaching that determination. The Scottish Ministers will also ensure the applicant is aware of their right to a review of the determination made under section 62 of the Act. Further information on the reviews process can be found in the [guidance on reviews](#).

Change in circumstances of the applicant or nominated beneficiary

35. It is possible that a change in circumstances in respect of criminal convictions could arise before a determination is made under section 60 of the Act.

36. If an applicant is convicted of a relevant offence in the intervening period between submitting their application and Redress Scotland's determination under section 60, the applicant must disclose this. Similarly, a nominated beneficiary must provide information about any relevant convictions which may have arisen between their disclosure to Redress Scotland and a section 60 determination being made.

37. Applicants and nominated beneficiaries will be required to disclose where there are any sentencing or appeal proceedings pending or ongoing in respect of offences which are or may be relevant to a panel's determination under section 60. Where at all possible, Redress Scotland should seek to defer making a determination until after the applicant or nominated beneficiary has been sentenced or any appeal has been dealt with. However, it is accepted that this may not always be appropriate, given the length of time court processes can take. Panel members will exercise their judgement on how to approach these cases, within the parameters of the Act.

38. As noted above, given the potential length of time for any sentence or appeal to be determined, Redress Scotland may simply have to make a determination. Following a determination that the person is precluded in the public interest from receiving a redress payment (including where this was upheld on a review), no payment would be given. However, the conviction of an applicant or nominated beneficiary is overturned on appeal or, the sentence for a relevant offence is reduced to below 5 years, it would then be open to the person to submit another application for a redress payment under section 30(7) of the Act.

39. Applicants and nominated beneficiaries are required to sign a declaration confirming they will notify the Scottish Government of a change in circumstances. Failure to do so may result in referral to the police for investigation and potential recovery of any payments made.



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80201-653-6 (web only)

Published by The Scottish Government, December 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS977126 (12/21)

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