

Redress For Survivors (Historical Child Abuse In Care) (Scotland) Act 2021: Statutory Guidance – Pausing, Withdrawing and Making More Than One Application

December 2021



Scottish Government
Riaghaltas na h-Alba
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Pausing, Withdrawing and Making More Than One Application

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 details below the process for an applicant when considering:
 - pausing and resuming an application submitted to the scheme under section 32 of the Act;
 - withdrawing an application to the scheme under section 33 of the Act;
 - submitting more than one application to the scheme under Section 30 of the Act.

Pausing and resuming an application

4. All applicants have the right to request the pausing of their application at any time prior to a determination of the application being made under section 36 of the Act. Similarly, an applicant can request that their application is resumed following the pausing of an application.
5. Applicants who want to pause or resume their application must inform the Scottish Ministers of this request in writing. Once the Scottish Ministers receive this request, they must inform Redress Scotland as soon as possible.
6. Where Redress Scotland have been informed of a request to pause an application, Redress Scotland must pause any further determination of the application to which the request relates. Any information received in the interim will be collated and held until such time as the application has been resumed or withdrawn. Redress Scotland will only take further action where they are informed that the applicant has requested that their application be resumed, or where the application has been withdrawn.
7. An application that has been paused will be treated as having been withdrawn on the final day of the “application period” (defined later in this section) unless the applicant, on or before that day, either requests that the application be resumed or requests that it be withdrawn. This provides a longstop date in the event that there is no further engagement by the applicant with the paused application. The application period begins on the date that section 31 of the Act comes into force, 7 December

2021, and ends on whichever is the later of (a) the expiry of 5 years beginning with that day; or (b) the day falling 2 years after the Scottish Child Abuse Inquiry publishes its final report.

Withdrawal of an application

8. All applicants have the right to request the withdrawal of their application at any time prior to a determination being made under section 36. This section refers to the determination of the redress payment offered to the applicant.

9. Requests to withdraw an application must be made in writing, by email or post, to the Scottish Ministers. Once the Scottish Ministers receive this request, they must inform Redress Scotland as soon as possible. When Redress Scotland is informed of such a request, they must bring to an end any further determinations in relation to that application. Any information held, in relation to the application, will not be retained and the application will be treated as never having been made. In relation to pending information, intimation will be provided to the relevant parties that any requested information is no longer required.

10. Where an applicant withdraws their application, section 30(6) provides that they may submit a further application. This provision is permitted where that further application is for a type of redress payment they would have been able to apply for had the withdrawn application request not been made. For example, an applicant may apply for and receive a fixed rate redress payment, then apply for but withdraw an application for an individually assessed payment. Section 30(6) permits them to submit a further application for an individually assessed payment.

Cases where more than one application may be permitted

11. Section 30 provides that, under certain circumstances, applicants to the scheme may be able to submit more than one application. These are set out below.

Where a survivor has already received a fixed rate payment (S.30(2))

12. An application for an individually assessed payment may be made by a person who has already made an application for, and accepted, a fixed rate payment (£10,000). This is however subject to the rule under section 39(3)(a) which ensures that any fixed payment previously paid is taken into account in determining the subsequent application for an individually assessed payment.

Where a survivor has already received an individually assessed payment (S.30(3))

13. An application for an individually assessed payment may also be made where an application for an individually assessed payment has previously been made and the applicant was offered and accepted a redress payment lower than a level 5 payment (£100,000).

14. A second application can be made where Redress Scotland is satisfied that allowing a further application is justified on the basis that:

- new evidence is available which the person had a reasonable excuse for not providing in connection with the previous application. This may include circumstances in which subsequent findings of the Scottish Child Abuse Inquiry have been published, or a subsequent relevant criminal conviction secured, or new records have come to light; or
- that regulations have been made to modify the meaning of 'residential institution'. Redress Scotland may permit a further application where a residential institution at which an applicant had been abused, and which was not covered by the scheme at the point of the initial determination, then comes within the scope of the scheme as a consequence of regulations being made under section 20(4) to expand the definition of "residential institution".

15. Any redress payment which was previously paid under the first application is taken into account in determining the subsequent application and is deducted from any new offer (see section 39(3)(b)).

Where no redress payment has been offered following a previous application (S.30(8))

16. An application for a redress payment may be made where the applicant has not previously received a redress payment of a particular type despite having made an application for it, but Redress Scotland is satisfied that special circumstances exist which justify allowing a further application.

17. These special circumstances may include:

- the person's individual circumstances,
- the availability of new evidence which the person had a reasonable excuse for not providing in connection with the original application,
- the eligibility criteria has been modified by regulations.

18. Section 30(8) would, for example, apply, subject to the presence of special circumstances, to a case where someone was previously determined to be ineligible for a redress payment or where they simply chose not to accept the redress payment which was previously offered to them. It would also cover where they had applied for an individually assessed payment but received nothing because they had already previously received a fixed rate payment under an application for one and the determination was that the payment of a further sum was not appropriate.

Where an application has been withdrawn (S.30(6))

19. As noted above, section 30(6) provides that where an applicant has withdrawn an application, they may submit a further application where that further application is for a type of redress payment they would have been able to apply for had the withdrawn application not been made. For example, an applicant may apply for and receive a fixed rate redress payment, then apply for but withdraw an

application for an individually assessed payment. Section 30(6) permits them to submit a further application for an individually assessed payment.

Next of kin application where an application for a redress payment has previously been made by the survivor (S.30(4))

20. An application for a next of kin payment may be made where:
 1. a survivor had previously applied for a fixed rate payment or an individually assessed payment but died while the application was ongoing and without any redress payment being paid; and
 2. the eligibility requirements for next of kin payments detailed in section 24 are met.

21. Where the application was for an individually assessed payment, the deceased applicant must have died without a fixed rate payment having previously been paid – whether under a previous application for a fixed rate payment, or as an element of an individually assessed payment previously paid.

22. The naming of a nominated beneficiary in relation to the application would preclude a next of kin application from being made unless:
 - the nominated beneficiary did not take over the application; or
 - the nominated beneficiary, whom was invited to take over the application and accepted the invitation, died while the application was still ongoing. An application would not be ongoing, for example, if the application withdrawn, or if the period of time for a review of a determination had expired, or where an offer is accepted.

23. A person can apply for permission to apply for a next of kin payment due to exceptional circumstances under section 25. This type of permission can only be sought where the deceased survivor had applied for and been offered a redress payment (either a fixed rate or individually assessed payment) but the offer had not been accepted during the time it was valid and the person then died.

Where there is more than one child as next of kin (S.30(5))

24. Multiple children can apply as next of kin for the one deceased survivor and section 30(5) provides that separate applications may be made. In this scenario, the £10,000 payment is split equally by the number of surviving children, as at the date of the first child's application. Further information can be found in the [guidance on next of kin](#).

Where an applicant's status in relation to their previous convictions has changed (S.30(7))

25. A further application can be made where Redress Scotland has previously determined that an applicant was precluded from being offered a redress payment

due to criminal convictions for serious offences as described in section 60 and 62 of the Act. However, as the result of a successful appeal against a conviction or sentence, or the convictions become spent, section 60 of the Act no longer applies. This applies to applicants for a fixed rate payment, individually assessed payment and a next of kin payment.



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