

Redress For Survivors (Historical Child Abuse In Care) (Scotland) Act 2021: Statutory Guidance – Reviews

December 2021



Scottish Government
Riaghaltas na h-Alba
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Reviews

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”) and subsequent Regulations.
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.

Rights of Review

3. Rights of review exist in relation to a number of aspects of the redress scheme, and the Scottish Ministers have an obligation, under section 9 of the Act, to ensure that information is available to people on how to exercise those rights.
4. Applicants can submit a request for a review, as long as the request in question does not relate to a determination which has already been reviewed. Where a review has been determined, the decision is final.
5. Should a review be withdrawn, it is not capable of review again a later date. The only exception would be if a different reason is given for the later review.
6. Requests for reviews may be submitted under the following provisions of the Act and subsequent Regulations, where applicable:
 - A. Section 26, in respect of a determination under section 25 that permission to apply for a next of kin payment due to exceptional circumstances is not being granted;
 - B. Section 52, in respect of a determination under section 51(2), relating to the payment and management of a redress payment to a child;
 - C. Section 54, in respect of a determination under section 36¹, to the extent that it is a determination of the redress application of a type mentioned in section 54(2) and the condition in section 54(1)(b) is met²;

¹ i.e. the determination is that –

(a) an applicant is not eligible for a redress payment under section 37(2),
(b) an applicant is to be offered a particular amount by way of an individually assessed payment, or
(c) a particular amount is to be deducted in accordance with section 42 from the redress payment offered to an applicant (including where the amount to be deducted is such that the redress payment is reduced to zero).

² That is, where an offer of a redress payment was made under section 36, the applicant has not brought the application to an end by accepting the offer.

- D. Section 62, in respect of a determination under section 60, that a person with convictions for serious offences is precluded from being offered a redress payment, or that they would otherwise not have been eligible for a redress payment;
- E. Section 68, in respect of a determination under section 66(3), that a nominated beneficiary is not going to be invited to take over an application after the applicant's death;
- F. Section 95, in respect of a legal fee payment request referred to in section 95(4);
- G: Regulation 5 of The Redress for Survivors (Historical Child Abuse in Care) (Payment of Legal Fees) (Scotland) Regulations 2021, in respect of a request for review in connection with an assessment for prior approval to undertake legal work in exceptional or unexpected circumstances.

7. Further detail is set out in relation to each of these review processes below.

A: Section 26 - review of a determination under section 25 that permission to apply for a next of kin payment due to exceptional circumstances is not being granted

8. A person notified of a determination under section 25, that permission to apply for a next of kin payment due to exceptional circumstances is not being granted, has the right to request a review of that decision.

9. Under section 25, a person can request permission to apply for the payment if certain conditions are met:

- They must be the “specified next of kin” (as defined in section 28 of the Act) of someone who died.
- The deceased person must have applied for and been offered a redress payment (either a fixed rate or individually assessed payment) while they were alive, have not accepted this during the time it was valid, and have subsequently died.
- Where the application was for an individually assessed payment, the deceased person must have died without a fixed rate payment having already been paid (whether as a result of an earlier application for a fixed rate payment, or as an element of an earlier individually assessed payment).

10. The requirements for the applicant submitting a request for review are set out below:

- the applicant has up to 8 weeks, from the date they receive notification that permission to make a next of kin payment is not being granted, to request a review of that determination;
- should the request for review not be made within the 8 week window, the applicant must provide additional information setting out why they were

unable to make the request sooner. This will be used by Redress Scotland in determining whether the review will be permitted to go ahead outwith the normal timeframes;

- the request should be made to Scottish Ministers in writing. Applicants should access the relevant form through their case worker;
- the applicant must provide, in writing, an outline of the grounds for the review and any accompanying information they consider relevant to assist Redress Scotland in carrying out its review.

11. The review process and considerations for decision-making by Redress Scotland are set out below:

- all relevant information provided will be forwarded by the Scottish Ministers to Redress Scotland as soon as practicable;
- where a review has been submitted outwith the normal timeframes, Redress Scotland needs to be satisfied that the person had good reason for not requesting a review sooner. This may include circumstances where the person was seriously ill or had personal circumstances which prevented them from making a request within the prescribed time limit;
- the review will be determined on behalf of Redress Scotland by a panel of at least three members who are appointed by the chairing member;
- the panel members will not have been involved in making the initial determination which is under review;
- Redress Scotland will use all relevant information provided to it to decide the outcome of the review;
- Redress Scotland may, from time to time, ask Scottish Ministers to request further information from the applicant in order to support a fair and thorough examination of the review;
- upon Redress Scotland reaching its determination, the Scottish Ministers will notify the applicant of its decision in writing and provide a brief account of the reasons why it has been reached;
- a request to withdraw the review request must be made in writing to the Scottish Ministers;
- where a request for a review of a determination under the Act is withdrawn, no further request for a review may be made in respect of the determination to which the request related. The exception to this is when the further request is made for a different reason;
- the determination of the review by Redress Scotland is final, and there is no further right of review or appeal in respect of that determination.

B: Section 52 - review of a direction under section 51(2), relating to the payment and management of a redress payments to a child

12. This review process concerns directions made under section 51(2) about the payment and management of redress payments in respect of applicants who are under the age of 18 years when they are offered a payment. Section 51(3) provides that, in particular, a direction may provide that payment should be withheld until the

person reaches 18 years of age, or that it be paid in instalments. Further information on this process is detailed in the [payments to children guidance](#).

13. A review of such a direction may be sought where it is not to the applicant's satisfaction.

14. The requirements for the applicant submitting a request for review are set out below:

- the applicant has up to 8 weeks from receiving notice of the direction to raise a request for review;
- should the request for review not be made within the 8 week window, the applicant must provide additional information setting out why they were unable to make the request sooner. This will be used by Redress Scotland in determining whether the review will be permitted to go ahead outwith the normal timeframes;
- the request should be made to Scottish Ministers. Applicants should access the relevant form through their case worker.
- the applicant must provide, in writing, an outline of the grounds for the review and any accompanying information they consider relevant to assist Redress Scotland to carry out its review.

15. The review process and considerations for decision-making are set out below:

- all relevant information provided will be forwarded by the Scottish Ministers to Redress Scotland as soon as practicable;
- where a review has been submitted outwith the normal timeframes, Redress Scotland needs to be satisfied that the person had good reason for not requesting a review sooner. This may include circumstances where the person was seriously ill or had personal circumstances which prevented them from making a request within the prescribed time limit;
- the review will be determined on behalf of Redress Scotland by a panel of at least three members who are appointed by the chairing member;
- the review panel members will not have been involved in making the initial determination which is under review;
- based on the information available to Redress Scotland, they will determine if the payment arrangements are appropriate, and will either uphold or reverse the decision;
- Redress Scotland may, from time to time, ask Scottish Ministers to request further information from the applicant in order to support a fair and thorough examination of the review;
- if considered necessary by Redress Scotland, an applicant may be invited to provide oral representations;
- upon Redress Scotland reaching its determination, the Scottish Ministers will notify the applicant of this in writing and provide a brief account of the reasons why it has been reached;
- the applicant is entitled, at any point during the review process prior to a determination being made, to withdraw their request for a review;

- a request to withdraw a review request must be made in writing to the Scottish Ministers; where a request for a review of a determination under the Act is withdrawn, no further request for a review may be made in respect of the determination to which the request related. The exception to this is when the further request is made for a different reason;
- the determination of the review by Redress Scotland is final, and there is no further right of review or appeal in respect of that determination.

C: Section 54 - right to review of a determination under section 36, to the extent that it is a determination of the redress application of a type mentioned in section 54(2) and the condition in section 54(1)(b) is met

16. A review of a determination made under section 36 can be requested if it is a determination that:

- an applicant was not eligible for a redress payment under section 37(2);
- an applicant is to be offered a particular amount by way of an individually assessed payment, or
- a particular amount is to be deducted in accordance with section 42 from the redress payment offered to an applicant (including where the amount to be deducted is such that the redress payment is reduced to zero).

17. This is subject to the condition that where an offer of a redress payment was made under section 36, the applicant has not brought the application to an end by accepting the offer.

18. The requirements for the applicant submitting a request for review are set out below:

- the applicant has up to 8 weeks from receiving notification of the original determination to raise a request for review;
- should the request for review not be made within the 8 week window, the applicant must provide additional information setting out why they were unable to make the request sooner. This will be used by Redress Scotland in determining whether the review will be permitted to go ahead outwith the normal timeframes;
- In cases where an offer has been made but has since expired, the applicant can request a late review on the grounds that there are exceptional circumstances, without having to apply first to revive the application under section 49(4);
- the request should be made to Scottish Ministers in writing. Applicants should access the relevant form through their case worker;
- the applicant must provide, in writing, an outline of the grounds for the review and any accompanying information they consider relevant to assist Redress Scotland to carry out its review.

19. The review process and considerations for decision-making are set out below:

- all relevant information provided will be forwarded by the Scottish Ministers to Redress Scotland as soon as practicable;
- where a review has been submitted outwith the normal timeframes, Redress Scotland needs to be satisfied that the person had good reason for not requesting a review sooner. This may include circumstances where the person was seriously ill or had personal circumstances which prevented them from making a request within the prescribed time limit;
- the review will be determined on behalf of Redress Scotland by a panel of at least three members who are appointed by the chairing member;
- the review panel members will not have been involved in making the initial determination which is under review;
- Redress Scotland will use all relevant information available to it to decide the outcome of the review;
- Redress Scotland may, from time to time, ask Scottish Ministers to request further information from the applicant in order to support a fair and thorough examination of the review;
- Redress Scotland may change any part of the initial determination, whether or not it formed part of the grounds for review;
- however, the applicant cannot be placed in a worse position as a result of a review, and the panel's remit does not extend to reversing a decision that an applicant is eligible for a redress payment, reducing the amount originally awarded, or increasing the amount of previous payments to be deducted;
- upon Redress Scotland reaching their decision, Scottish Ministers will notify the applicant in writing of the decision and provide a brief account of the reasons for the decision reached;
- if an offer of a redress payment is made on a review, the applicant will have 6 months beginning with the date on which they received the offer to accept or refuse it;
- the applicant may request an extension of the 6 month timescale for them to make a decision on whether to accept the offer. Applicants should submit this request in writing to Scottish Ministers who will then pass this request to Redress Scotland. Redress Scotland will make a decision and extend the timescale if it is satisfied that there is a good reason why the applicant needs, or may need, longer than 6 months to consider the offer;
- the applicant is entitled, at any point during the review process prior to a determination being made, to withdraw their request for a review;
- a request to withdraw the review request must be made in writing to the Scottish Ministers;
- where a request for a review of a determination under the Act is withdrawn, no further request for a review may be made in respect of the determination to which the request related. The exception to this is when the further request is made for a different reason;
- the determination of the review by Redress Scotland is final, and there is no further right of review or appeal in respect of that determination.

D: Section 62 - request for review of a determination made under section 60, that a person with convictions for serious offences is precluded from being offered a

redress payment or that they would not otherwise not have been eligible for a redress payment

20. This section allows a person who has been notified of a determination under section 60 that they are precluded from being offered a redress payment, or that they would otherwise not have been eligible for a payment, to request a review of that determination. Such a determination may have been made in the context of either considering an application for redress under section 35 or in the context of a review to which section 55 applies.

21. The requirements for the applicant submitting a request for review are set out below:

- the applicant has up to 8 weeks from receiving notification of the original determination to raise a request for review;
- should the request for review not be made within the 8 week window, the applicant must provide additional information setting out why they were unable to make the request sooner. This will be used by Redress Scotland in determining whether the review will be permitted to go ahead outwith the normal timeframes;
- the request should be made to Scottish Ministers in writing. Applicants should access the relevant form through their case worker;
- the applicant must provide, in writing, an outline of the grounds for the review and any accompanying information they consider relevant to assist the panel to carry out its review.

22. The review process and considerations for decision-making are set out below:

- all relevant information provided will be forwarded by the Scottish Ministers to Redress Scotland as soon as practicable;
- where a review has been submitted outwith the normal timeframes, Redress Scotland needs to be satisfied that the person had good reason for not requesting a review sooner. This may include circumstances where the person was seriously ill or had personal circumstances which prevented them from making a request within the prescribed time limit;
- the review will be determined on behalf of Redress Scotland by a panel of at least three members who are appointed by the chairing member;
- the review panel members will not have been involved in making the initial determination which is under review;
- Redress Scotland will use all relevant information available to it to decide the outcome of the review;
- Redress Scotland may, from time to time, ask Scottish Ministers to request further information from the applicant in order to support a fair and thorough examination of the review;
- if considered necessary by Redress Scotland, an applicant may be invited to provide oral representations to a review panel. Further information is provided in the [guidance on oral representations](#);
- the review panel must consider whether the initial panel should have reached a different decision on the question of whether the applicant was precluded

from applying due to previous convictions, or would not have otherwise been eligible; or having received new information, whether the application ought to be decided differently as a result;

- upon Redress Scotland reaching their decision, Scottish Ministers will notify the applicant in writing of the decision and provide a brief account of the reasons for the decision reached;
- upon Redress Scotland reaching a decision to reverse the decision that the applicant is precluded from being offered a redress payment, the application, or as the case may be, the request for a review under section 54, will be returned to the panel which made the initial determination under section 60(4);
- the applicant is entitled, at any point during the review process prior to a determination being made, to withdraw their request to a review;
- a request to withdraw must be made in writing to the Scottish Ministers; where a request for a review of a determination under the Act is withdrawn, no further request for a review may be made in respect of the determination to which the request related. The exception to this is when the further request is made for a different reason;
- the determination of the review by Redress Scotland is final, and there is no further right of review or appeal in respect of that determination.

E: Section 68 - review of a determination under section 66(3) that a nominated beneficiary is not going to be invited to take over an application following an applicant's death

23. If a person who has submitted their application to the redress scheme dies before the panel appointed under section 35 has all the information it needs to determine the application, a determination must be made under section 66(3) about whether a nominated beneficiary is to be invited to take over the application. "Nominated beneficiary" is defined in section 65(1) of the Act and such a person can be nominated in respect of both a fixed rate and individually assessed payment.

24. Where Redress Scotland has determined that the nominated beneficiary is not to be invited to take forward the application, a right of review for the nominated beneficiary exists.

25. The requirements for the nominated beneficiary submitting a request for review are set out below:

- the nominated beneficiary has up to 8 weeks from receiving the original determination to raise a request for review;
- should the request for review not be made within the 8 week window, the nominated beneficiary must provide additional information setting out why they were unable to make the request sooner. This will be used by Redress Scotland in determining whether the review will be permitted to go ahead outwith the normal timeframes;
- the request should be made to Scottish Ministers in writing. Applicants should access the relevant form through their case worker;

- the nominated beneficiary must provide, in writing, an outline of the grounds for the review and any accompanying information they consider relevant to assist the panel to carry out its review.
26. The review process and considerations for decision-making are set out below:
- all relevant information provided will be forwarded by the Scottish Ministers to Redress Scotland as soon as practicable;
 - where a review has been submitted outwith the normal timeframes, Redress Scotland needs to be satisfied that the person had good reason for not requesting a review sooner. This may include circumstances where the person was seriously ill or had personal circumstances which prevented them from making a request within the prescribed time limit;
 - the review will be determined on behalf of Redress Scotland by a panel of at least three members who are appointed by the chairing member;
 - the review panel members will not have been involved in making the initial determination which is under review;
 - Redress Scotland will use all relevant information available to it to decide the outcome of the review;
 - Redress Scotland may, from time to time, ask Scottish Ministers to request further information from the nominated beneficiary in order to support a fair and thorough examination of the review;
 - the review panel must consider whether:
 - the panel which determined, under section 66(3), not to invite the nominated beneficiary to take over the application ought to have reached a different determination (i.e. whether the nominated beneficiary should, in fact, have been asked to take over the application); and
 - where there is new information before the review panel which was unknown to the previous panel, if this new information indicates that the nominated beneficiary should now be invited to take over the application.
 - upon Redress Scotland reaching their decision, Scottish Ministers will notify the nominated beneficiary in writing of the decision and provide a brief account of the reasons for the decision reached;
 - the nominated beneficiary is entitled, at any point during the review process prior to a determination being made, to withdraw their request to a review;
 - a request to withdraw the review request must be made in writing to the Scottish Ministers;
 - where a request for a review of a determination under the Act is withdrawn, no further request for a review may be made in respect of the determination to which the request related. The exception to this is when the further request is made for a different reason;
 - the determination of the review by Redress Scotland is final, and there is no further right of review or appeal in respect of that determination.

F: Section 95, in respect of a legal fee payment request referred to in section 95(4)

27. Section 92(1) sets out a duty for Scottish Ministers to make payment of a prescribed sum to a solicitor in respect of legal work reasonably undertaken in connection with making an application for a redress payment on behalf of a person. Section 93(1) sets out a similar duty, which applies where legal work is reasonably undertaken in connection with a proposed application by a person who sought legal advice on their eligibility to apply for a redress payment, but did not subsequently apply. Finally, section 93(3) requires Ministers to pay a solicitor such additional sum as is specified by Redress Scotland in respect of the legal work reasonably undertaken in making an application for a redress payment, or in connection with a proposed application, where Redress Scotland's assessment is that there are exceptional or unexpected circumstances which justify the payment of that sum.

28. Further information on the legal fees processes, procedures and limits can be found within the [guidance on legal fees](#).

29. Having received notification of the outcome of their fee request, a solicitor has a right to request a review under section 95 where their request has been refused (i.e. no payment is to be made, for example, because it has been determined that the work was not reasonably undertaken in connection with the redress application), or in a case of where an additional sum is requested under section 93(3), Ministers have determined that the additional sum to be paid is to be lower than that which the solicitor has asked for.

30. [The Redress for Survivors \(Historical Child Abuse in Care\) \(Payment of Legal Fees\) \(Scotland\) Regulations 2021](#) make further provision about the review processes for decisions made in connection with fee payment requests from solicitors.

31. Regulation 7 of those Regulations applies where a solicitor requests a review by Redress Scotland of an assessment of a fee payment request in accordance with section 95(4) of the Act.

32. The requirements for a solicitor submitting a request for review of a fee payment request are set out below:

- Requests for review must be made in writing to the Scottish Ministers. Solicitors should do this by completing the relevant form provided by Scottish Ministers for that purpose;
- Requests must be made before the end of the period of 8 weeks beginning with the date on which notice of the outcome of the fee payment request was received by the solicitor;
- Where the request is submitted outwith the 8 week timescale, Redress Scotland may still conduct the review if it is satisfied that the person had good reason for not requesting a review sooner;
- The solicitor must specify why a review is being requested;
- The solicitor's request must contain or be accompanied by any information the solicitor considers relevant to the review requested;
- Where a request for a review is submitted in a case mentioned in section 95(4)(c)(ii) of the Act, payment of the additional sum, so far as not already

made, is to be suspended pending the determination of the request for a review.

The review process and considerations for decision-making are set out below:

- the Scottish Ministers must send the review request form and any accompanying information, as soon as reasonably practicable, to Redress Scotland;
- the review will be determined on behalf of Redress Scotland by a panel consisting of at least 2 panel members.
- The review panel must not include any member of Redress Scotland whose assessment is the subject of the request for a review.
- Redress Scotland will consider the information contained within the solicitor's request;
- Redress Scotland will consider any further relevant information which is provided to it or obtained by the review panel, including any information contained in or accompanying the request for a review and any written representations which are made to the review panel;
- the review panel must consider whether Redress Scotland ought to have assessed the fee payment request differently, and in the case where additional information is provided to or obtained by the review panel, whether the fee payment request ought to be assessed differently as a result;
- Redress Scotland may uphold, reverse or vary any part of the assessment of the fee payment request (whether the request for a review relates to that part of it or not);
- once Redress Scotland has made a determination, it will notify Scottish Ministers of the outcome of that request;
- upon receipt of the outcome, the Scottish Ministers will, as soon as reasonably practicable, provide this to the solicitor, along with a summary of the reasons for it;
- the solicitor is entitled, at any point during the review process prior to the outcome of the assessment being made, to withdraw their request for a review;
- a request to withdraw the review request must be made in writing to the Scottish Ministers;
- following the withdrawal of a request, no further request for a review may be made in respect of the same determination, unless it is made for a different reason;
- the decision of the review panel is final, and there is no further right of review or appeal in respect of this decision.

G: Regulation 5 of The Redress for Survivors (Historical Child Abuse in Care) (Payment of Legal Fees) (Scotland) Regulations 2021, in respect of a request for review in connection with an assessment for prior approval to undertake legal work in exceptional or unexpected circumstances

33. Section 93(3) of the Act requires the Scottish Ministers, on request, to pay a solicitor such additional sum as is specified by Redress Scotland in respect of the

legal work reasonably undertaken in making an application for a redress payment, or in connection with a proposed application, where Redress Scotland's assessment is that there are exceptional or unexpected circumstances which justify the payment of an additional sum.

34. Regulation 4 of the above-named Regulations sets out the process for a solicitor to request prior approval to undertake such legal work and requires the solicitor to specify the additional sum they are likely to request under section 93(3) of that Act in respect of that work. This prior approval will only be granted where Redress Scotland has assessed that there are exceptional or unexpected circumstances which justify the solicitor reasonably undertaking the legal work.

35. Regulation 5 of the Regulations set out the review process regarding decisions made in relation to the assessment of prior approval.

36. A solicitor may request Redress Scotland review the assessment for prior approval where the outcome of the assessment is that Redress Scotland:

- is not satisfied that authority in principle to undertake the legal work ought to be given; or
- considers that an additional sum lower than that specified by the solicitor is appropriate.

37. A solicitor who wishes to make a request for review of the assessment for prior approval must make the request in writing to the Scottish Ministers. This should contain or be accompanied by any information the solicitor considers relevant to the review requested.

38. As soon as reasonably practicable after the review request has been received, the Scottish Ministers will provide this to Redress Scotland, which must then assess the request.

39. Once the assessment has been undertaken, Redress Scotland will inform the Scottish Ministers of this. In turn, Ministers will provide the solicitor with:

- the outcome of the request; and
- a summary, provided by Redress Scotland, of the reasons for that.



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