

Draft Regulations laid before the Scottish Parliament under section 107(2) of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

REDRESS SCHEME

The Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022

<i>Made</i>	- - - -	2022
<i>Coming into force</i>	- -	2022

The Scottish Ministers make the following Regulations 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⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 107(2) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022 and come into force on the day after the day on which they are made.

(2) In these Regulations—

“the Act” means the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021,

“re-determination” means, except in regulation 20(8)(a), a re-determination made under section 75(5)(b) of the Act,

“relevant person” means—

- (a) in connection with a reconsideration—
 - (i) the person who was notified of the determination which is or was the subject of a referral under section 75(1) of the Act, or
 - (ii) if that person has died—
 - (aa) where a payment under the determination was made to the deceased person, the deceased person’s estate,
 - (bb) where a payment under the determination was, or is to be, made to another person (including the deceased person’s estate), that person,
 - (b) in connection with a review, a person who was notified of a determination under section 75 of the Act.
- (3) Unless the context otherwise requires, in these Regulations—
- “reconsideration” means reconsideration of a determination made under Part 4 of the Act in accordance with section 75 of that Act,
- “review” means a review of a reconsidered determination under section 76 of the Act.

PART 2

LEGAL FEES IN CONNECTION WITH RECONSIDERATION AND REVIEW

Payment of fees for legal work in connection with reconsideration and review

- 2.—(1) The Scottish Ministers must, on request, pay—
- (a) the relevant sum to a solicitor in respect of legal work reasonably undertaken for a relevant person in connection with—
 - (i) a reconsideration (whether or not the reconsideration resulted in a re-determination),
 - (ii) a review (irrespective of whether the determination under review was upheld, reversed or varied), and
 - (b) such additional sum as is specified by Redress Scotland in respect of the legal work mentioned in paragraph (a), where Redress Scotland’s assessment is that there are exceptional or unexpected circumstances which justify the payment of an additional sum.
- (2) Where the Scottish Ministers have cause to believe that the legal work to which a request relates may not have been reasonably undertaken in connection with a reconsideration or review, it is for Redress Scotland to decide the question.
- (3) The relevant sum for the corresponding description of legal work specified in the second column of the table of fees in Part 1 of the schedule of these Regulations is that specified in column A of that table, whether or not that work is conducted before or after the reconsideration and irrespective of its outcome.
- (4) Unless paragraph (5) applies, the relevant sum for the corresponding description of legal work specified in the second column of the table of fees in Part 2 of the schedule is that specified in column A of that table, whether or not that work is conducted before or after the review and irrespective of its outcome.
- (5) This paragraph applies if—
- (a) a request for a review is withdrawn in accordance with section 59(2) of the Act before a determination is made under section 77, or

- (b) the relevant person dies, or in the case of a person other than an individual, ceases to exist, after a request for a review is made under section 76 of the Act, but before the review is determined under section 77.

(6) Where paragraph (5) applies, the relevant sum for the corresponding description of legal work specified in the second column of the table of fees in Part 2 of the schedule is that specified in column B of that table.

(7) Where the work done by the solicitor constitutes a supply of services in respect of which value added tax is chargeable, an amount equal to the amount of value added tax chargeable will be added to the applicable sum payable by virtue of this regulation.

Fee payment requests

3. A fee payment request must—

- (a) be made by completing and submitting to the Scottish Ministers a form to be provided by the Scottish Ministers for that purpose,
- (b) specify the legal work undertaken and when that work was carried out,
- (c) in the case of a request for an additional sum under regulation 2(1)(b), provide information about the exceptional or unexpected circumstances which the solicitor considers may justify the payment of an additional sum,
- (d) contain or be accompanied by any other information the solicitor considers relevant to the request.

Time limit for fee payment requests

4.—(1) A fee payment request under regulation 3 must be submitted to the Scottish Ministers before the end of the period of 8 weeks beginning with the date on which the notice of the outcome of the reconsideration, or as the case may be, the review, was received by the relevant person.

(2) The Scottish Ministers may consider a fee payment request despite it not being made within the period specified in paragraph (1), if they are satisfied that the person had a good reason for not making the request sooner.

Prior approval to undertake legal work in exceptional or unexpected circumstances

5.—(1) A solicitor must, prior to undertaking legal work in exceptional or unexpected circumstances as referred to in regulation 2(1)(b)—

- (a) make a request in writing to the Scottish Ministers for authority in principle to undertake the legal work, and
- (b) specify the additional sum which the solicitor considers is likely to be requested in respect of the legal work.

(2) The Scottish Ministers must, as soon as reasonably practicable after receiving a request under paragraph (1), provide the request and any information accompanying it to Redress Scotland.

(3) On receipt of a request under paragraph (2), Redress Scotland must as soon as reasonably practicable—

- (a) assess whether there are exceptional or unexpected circumstances which justify the solicitor reasonably undertaking the legal work so that authority in principle ought to be given, and
- (b) where satisfied that there are exceptional or unexpected circumstances which justify the legal work being reasonably undertaken, indicate if the additional sum specified under paragraph (1)(b) or such other sum is appropriate.

(4) Once Redress Scotland has carried out its assessment, it must inform the Scottish Ministers who must, as soon as reasonably practicable, provide the solicitor who made the request with—

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

(5) Redress Scotland may dispense with any of the requirements under this regulation if satisfied that the solicitor had a good reason for not having obtained authority in principle to undertake the legal work prior to undertaking it.

Review of assessment of prior approval

6.—(1) A solicitor may request that Redress Scotland review the assessment made under regulation 5, where the outcome of the assessment is that Redress Scotland—

- (a) is not satisfied, in accordance with regulation 5(3)(a), that authority in principle to undertake the legal work ought to be given, or
- (b) considers that an additional sum lower than that specified by the solicitor under regulation 5(1)(b) is appropriate.

(2) A request under paragraph (1) must be made in writing to the Scottish Ministers and contain or be accompanied by any information that the solicitor considers relevant to the review requested.

(3) The Scottish Ministers must, as soon as reasonably practicable after receiving a request for a review under paragraph (1), provide the request and any information accompanying it, to Redress Scotland.

(4) On receipt of a request under paragraph (3), Redress Scotland must assess it.

(5) Once Redress Scotland has carried out its assessment, it must inform the Scottish Ministers who must, as soon as reasonably practicable, provide the solicitor who made the request with—

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

Assessment and notification of certain fee payment requests

7.—(1) The Scottish Ministers must, as soon as reasonably practicable after receiving it, send Redress Scotland—

- (a) any fee payment request made under regulation 2(1)(a) which gives rise to a requirement for a decision of the type mentioned in regulation 2(2), and
- (b) any fee payment request made under regulation 2(1)(b).

(2) On receipt of a request under paragraph (1), Redress Scotland must assess it and inform the Scottish Ministers of the outcome of that assessment.

(3) Once the Scottish Ministers have been informed of the outcome of Redress Scotland's assessment under paragraph (2), they must, as soon as reasonably practicable—

- (a) notify the solicitor who made the request of the outcome, and
- (b) provide the solicitor with a summary, provided by Redress Scotland, of Redress Scotland's reasons for its assessment.

Reviews of assessments of fee payment requests

8.—(1) A solicitor may request that Redress Scotland review its assessment of a fee payment request under regulation 7(2) where—

- (a) in the case of a fee payment request mentioned in regulation 2(1)(a), the outcome is that no sum is to be paid,
- (b) in the case of a fee payment request mentioned in regulation 2(1)(b), the outcome is that—
 - (i) no additional sum is to be paid, or
 - (ii) the additional sum to be paid is lower than the sum requested.
- (2) A request to Redress Scotland to review its assessment of a fee payment request must—
 - (a) be made by completing and submitting to the Scottish Ministers a form to be provided by the Scottish Ministers for that purpose,
 - (b) 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,
 - (c) specify why a review is being requested, and
 - (d) contain or be accompanied by any information the solicitor considers relevant to the review requested.
- (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 mentioned in paragraph (2)(b) if Redress Scotland is satisfied that the person had good reason for not requesting a review sooner.
- (5) Where a request for a review is submitted in a case mentioned in paragraph (1)(b)(ii), payment of the additional sum, so far as not already made, is to be suspended pending the determination of the review.

Fee review panels

- 9.—(1) A review requested under regulation 8 is to be determined on behalf of Redress Scotland by a panel consisting of at least 2 members of Redress Scotland appointed by the chairing member (“a fee review panel”).
- (2) A fee review panel must not include any member of Redress Scotland whose assessment is the subject of the request for a review.

Procedure for a fee review

- 10.—(1) The fee review panel appointed under regulation 9 to conduct the review is to determine it on the basis of—
 - (a) the information on which the assessment which is the subject of the request for a review was made, and
 - (b) 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.
- (2) The procedure for conducting a review is otherwise to be determined by Redress Scotland.

Outcome of a fee review

- 11.—(1) On a review, the fee review panel appointed under regulation 9 to conduct the review must consider—
 - (a) whether Redress Scotland ought to have assessed the fee payment request differently, and
 - (b) in the case where additional information is provided to or obtained by the review panel, whether the fee payment request ought to be determined differently as a result.

(2) The fee review panel 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).

(3) Once the fee review panel has conducted the review, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—

- (a) notify the solicitor of the fee review panel’s assessment, and
- (b) provide the solicitor with a summary, provided by Redress Scotland, of the fee review panel’s reasons for reaching that assessment.

(4) The assessment of the fee review panel under this regulation is final.

Withdrawal of request for review made under regulation 8

12.—(1) A request for a review may be withdrawn by a solicitor making a withdrawal request at any time prior to the outcome of the review assessment made under regulation 11.

(2) A withdrawal request under paragraph (1) must be made in writing to the Scottish Ministers.

(3) The Scottish Ministers must, as soon as reasonably practicable after receiving the withdrawal request under paragraph (1), inform Redress Scotland of it.

(4) Where Redress Scotland is informed of a withdrawal request made under paragraph (1), Redress Scotland must bring to an end any further assessment of the review which is the subject of the withdrawal request.

(5) Where a request for a review is withdrawn, no further request for a review may be made in respect of the assessment to which the request relates, unless the further request is made for a different reason.

PART 3

COSTS AND EXPENSES IN CONNECTION WITH RECONSIDERATION AND REVIEW

Reimbursement of costs and expenses in connection with reconsideration and review

13.—(1) Subject to any appropriate limit specified in paragraph (3), the Scottish Ministers must, following a request in writing on a form provided by them for that purpose, reimburse a person in respect of a relevant cost and expense reasonably incurred by or in respect of a relevant person in connection with—

- (a) a reconsideration (whether or not the reconsideration resulted in a re-determination),
- (b) a review (irrespective of whether the determination under review was upheld, reversed or varied).

(2) In this regulation, “a relevant cost and expense” is a cost and expense incurred on or after 7 December 2021—

- (a) in relation to—
 - (i) obtaining information or evidence in connection with a reconsideration or, as the case may be, a review,
 - (ii) verifying such information for the purposes of a reconsideration or, as the case may be, a review,
- (b) in relation to a relevant person who has been invited by a review panel in accordance with section 56(1) of the Act, to make oral representations for the purposes of a review—
 - (i) the travel, subsistence and accommodation costs and expenses of—

- (aa) the relevant person, and
 - (bb) a person accompanying the relevant person,
 - (ii) the costs and expenses of making arrangements for the care of children or other dependants of—
 - (aa) the relevant person, and
 - (bb) a person accompanying the relevant person, or
 - (c) in relation to any other cost and expense which the Scottish Ministers are satisfied was incurred in connection with the reconsideration or, as the case may be, the review.
- (3) For the purposes of these Regulations, “the appropriate limit” in relation to a relevant cost and expense mentioned in paragraph (2)(a) means—
- (a) £50, or
 - (b) a sum greater than £50, where the Scottish Ministers consider that there are exceptional or unexpected circumstances which justify this.
- (4) Where a reimbursement request relates to a cost or expense incurred in a currency other than Sterling, the person making the request must calculate the value of the cost and expense by reference to the Sterling equivalent on the date that the cost and expense was incurred.
- (5) A reimbursement request must be made before the end of the period of 8 weeks beginning with the date on which notice of the outcome of the reconsideration or, as the case may be, the review, was received by the relevant person.
- (6) A reimbursement request may be assessed by the Scottish Ministers despite the request for it not being made within the period mentioned in paragraph (5) if the Scottish Ministers are satisfied that the person had a good reason for not making the request sooner.
- (7) On receipt of a reimbursement request, the Scottish Ministers must as soon as reasonably practicable decide—
- (a) whether any cost and expense mentioned in the request was reasonably incurred in connection with the reconsideration or review, and
 - (b) in relation to a relevant cost and expense mentioned in paragraph (2)(a), the appropriate limit of that cost and expense.
- (8) The Scottish Ministers must as soon as reasonably practicable—
- (a) notify the person who made the request of the Scottish Ministers’ decision under paragraph (7), and
 - (b) provide the person with a summary of the reasons for the decision.

Review of a decision in relation to a reimbursement request

14.—(1) This regulation applies where a person has received notice of a decision under regulation 13(8).

- (2) The person may request a review of the decision to the extent that it is a decision that—
 - (a) the person is not entitled to reimbursement of a cost and expense specified in the reimbursement request, or
 - (b) the cost and expense to be reimbursed is less than the sum requested.
- (3) A request for a review must—
 - (a) be made in writing 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 decision was received by the person,

- (c) specify why a review is being requested, and
 - (d) contain or be accompanied by any information the person considers relevant.
- (4) 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.
- (5) A review may be conducted despite the request for it not being made within the period mentioned in paragraph (3)(b) if Redress Scotland is satisfied that the person had good reason for not requesting a review sooner.

Reimbursement review panels

15. A review requested under regulation 14 is to be determined on behalf of Redress Scotland by a panel of at least 2 members of Redress Scotland appointed by the chairing member of Redress Scotland (“a reimbursement review panel”).

Procedure for a reimbursement review

- 16.—**(1) The reimbursement review panel appointed under regulation 15 is to determine the review on the basis of—
- (a) the evidence on which the decision which is the subject of the request for a review was made, and
 - (b) any further relevant evidence 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.
- (2) The procedure for conducting a review is otherwise to be determined by Redress Scotland.

Outcome of a reimbursement review

- 17.—**(1) On a review, the reimbursement review panel appointed under regulation 15 to conduct it must consider—
- (a) whether the Scottish Ministers ought to have reached a different decision, and
 - (b) in the case where additional evidence is provided to or obtained by the review panel, whether the reimbursement request ought to be determined differently as a result.
- (2) The review panel may uphold, reverse or vary any part of the decision (whether the request for a review relates to that part of it or not).
- (3) 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 the review of the review panel’s determination, and
 - (b) provide the person with a summary, provided by Redress Scotland, of the review panel’s reasons for reaching that determination.
- (4) The determination of the review panel under this regulation is final.

Withdrawal of reimbursement review request

- 18.—**(1) A request for a review made under regulation 14 may be withdrawn by a person making a withdrawal request at any time prior to the determination of the review under regulation 17.
- (2) A withdrawal request under paragraph (1) must be made in writing to the Scottish Ministers.
- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving a withdrawal request under paragraph (1), inform Redress Scotland of it.

(4) Where Redress Scotland is informed of a withdrawal request made under paragraph (1), Redress Scotland must bring to an end any further determination of the review which is the subject of the withdrawal request.

(5) Where a request for a review is withdrawn, no further request for a review may be made in respect of the determination to which the request relates unless the further request is made for a different reason.

PART 4

PAYMENTS AND REIMBURSEMENTS MADE IN ERROR

Liability for payments made and costs and expenses reimbursed due to error

19.—(1) A person is liable to pay the Scottish Ministers the value of any payment of fees or, as the case may be, any costs and expenses reimbursed under these Regulations to the extent that the payment or reimbursement was due to a relevant error.

(2) A person’s liability under paragraph (1) is the difference in value between—

- (a) the payment made, or as the case may be, the costs and expenses reimbursed to the person, and
- (b) the payment or, as the case may be, the costs and expenses (if any) that would have been paid or reimbursed 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 paragraph (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 regulation, “relevant error” means—

- (a) an error when making a payment of fees or reimbursing costs and expenses under these Regulations, or
- (b) an error which the Scottish Ministers consider led to a decision to make a payment or to reimburse costs and expenses under these Regulations—
 - (i) incorrectly, or
 - (ii) correctly but on the basis of incorrect or misleading information,

in a way which materially affected the decision.

Reconsideration of decisions to pay fees for legal work, costs and expenses

20.—(1) Where Redress Scotland has, or the Scottish Ministers have, cause to believe that a decision error has occurred, it or they may refer the decision in question for reconsideration (regardless of whether or not a payment or reimbursement has been made).

(2) The decision in question is to be considered on behalf of Redress Scotland by a panel of at least 2 members of Redress Scotland appointed by the chairing member (“a reconsideration panel”).

(3) Where Redress Scotland refers a decision for reconsideration under paragraph (1), it must, as soon as reasonably practicable, inform the Scottish Ministers of the referral.

(4) Where a decision is referred for reconsideration under paragraph (1) by either Redress Scotland or the Scottish Ministers, the Scottish Ministers must, as soon as reasonably practicable—

- (a) notify the appropriate person that the decision is to be reconsidered,
 - (b) notify the appropriate person of the reasons for the reconsideration, and
 - (c) provide the appropriate person with information about the implications of the decision being reconsidered.
- (5) The Scottish Ministers must allow the appropriate person a period of at least 8 weeks, beginning with the date on which the notice of the reconsideration was received by them, to make written representations in connection with the reconsideration.
- (6) A reconsideration panel may consider written representations made later than the period mentioned in paragraph (5), if it is satisfied that the appropriate person had a good reason for not making those representations sooner.
- (7) After the period of making representations under paragraph (5) has ended or, where paragraph (6) applies and representations are considered later than that period, the reconsideration panel must—
- (a) determine whether the decision in question was affected by a decision error, and
 - (b) if so, re-determine it on the basis of how it would have been decided had the error not been made.
- (8) 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 appropriate person of the reconsideration panel’s determination under paragraph (7)(a) and where, appropriate, its re-determination under paragraph (7)(b), and
 - (b) provide the appropriate person with a summary, provided by Redress Scotland, of the reconsideration panel’s reasons for reaching that outcome.
- (9) In this regulation—
- (a) “the appropriate person” means the person to whom payment was, or was due to be, made as a result of the decision in question,
 - (b) “decision error” means an error which led to a decision to make a payment or to reimburse costs and expenses under these Regulations being made—
 - (i) incorrectly, or
 - (ii) correctly but on the basis of incorrect or misleading information,
 - in a way which materially affected the decision,
 - (c) “the decision in question” means a decision to make a payment of fees or, as the case may be, to reimburse costs and expenses to the appropriate person under these Regulations.

Review of a reconsideration outcome

21.—(1) Where the appropriate person has received notice of the outcome of a reconsideration under regulation 20(8), they may request a review of it.

- (2) A request for a review must—
- (a) be made in writing 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 outcome was received by the person,
 - (c) specify why a review is being requested, and
 - (d) contain or be accompanied by any information the appropriate person 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 mentioned in paragraph (2)(b) if Redress Scotland is satisfied that the appropriate person had a good reason for not requesting a review sooner.

(5) A request for a review is to be determined on behalf of Redress Scotland by a panel (“an error review panel”) of at least 2 members of Redress Scotland appointed by the chairing member and must not include any member of the panel which made the determination which is subject to the review.

(6) The error review panel appointed under paragraph (5) to conduct the review is to determine it on the basis of—

- (a) the evidence on which the outcome which is the subject of the request for a review was determined, and
- (b) any further relevant evidence which is provided to it or obtained by the panel, including any information contained in or accompanying the request for a review and any written representations which are made to the panel.

(7) The procedure for conducting a review is otherwise to be determined by Redress Scotland.

(8) On a review, the error review panel appointed under paragraph (5) must consider—

- (a) whether the reconsideration panel ought to have reached a different outcome under regulation 20(7)(a), and
- (b) in the case where additional evidence is provided to or obtained by the error review panel, whether the outcome of the review ought to be determined differently as a result.

(9) The error review panel may uphold, reverse or vary any part of the outcome of a reconsideration (whether the request for a review relates to that part of it or not).

(10) Once the error review panel has conducted the review, Redress Scotland must inform the Scottish Ministers who must, as soon as reasonably practicable—

- (a) notify the appropriate person of the error review panel’s determination, and
- (b) provide the appropriate person with a summary, provided by Redress Scotland, of the error review panel’s reasons for reaching that determination.

(11) The determination of the error review panel under this regulation is final.

(12) The definitions in regulation 20(9)(a) and (c) apply for the purposes of this regulation.

Withdrawal of review request

22.—(1) A request for a review made under regulation 21(2) may be withdrawn by an appropriate person making a withdrawal request at any time prior to the determination of the review under regulation 21(9).

(2) A withdrawal request under paragraph (1) must be made in writing to the Scottish Ministers.

(3) The Scottish Ministers must, as soon as reasonably practicable after receiving a withdrawal request under paragraph (1), inform Redress Scotland of it.

(4) Where Redress Scotland is informed of withdrawal request made under paragraph (1), Redress Scotland must bring to an end any further determination of the review which is the subject of the withdrawal request.

(5) Where a request for a review is withdrawn, no further request for a review may be made in respect of the determination to which the request relates, unless the further request is made for a different reason.

PART 5

MODIFICATIONS OF THE ACT

Amendment of section 46 of the Act - waiver

- 23.**—(1) Section 46 of the Act is amended as follows.
- (2) In subsection (4), for paragraphs (a) and (b) substitute—
- “(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.”.
- (3) In subsection (6)—
- (a) before the definition of “relevant abuse” insert—
- ““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,”,
- (b) for the definition of “relevant scheme contributor” substitute—
- ““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).”.

Amendment of section 75 of the Act – reconsideration of determination where possible material error

- 24.**—(1) Section 75 of the Act is amended as follows.
- (2) After subsection (5) insert—
- “(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).”.
- (3) In subsection (7), for paragraph (b) substitute—

- “(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.”.
- (4) For subsection (8) substitute—
 - “(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.”.
- (5) In subsection (9)—
 - (a) for “this section” substitute “this section and in sections 75A to 78”,
 - (b) after the definition of “error” insert—
 - ““original determination” means the determination referred for reconsideration under subsection (1),”.

Effect of reconsideration on ongoing applications etc.

25. After section 75 of the Act, insert—

“Effect of referral for reconsideration on ongoing applications

- 75A.—**(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),
 - (a) 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.

Effect of referral for reconsideration on unpaid redress payments

- 75B.**—(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.

Effect of redetermination: no eligibility or no offer made

- 75C.**—(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.

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

- 75D.**—(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)”.

Effect of redetermination: offer made where previous offer accepted

- 75E.—**(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 the 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.”

Amendment of section 77 of the Act – outcome of a section 76 review

26.—(1) Section 77 of the Act is amended as follows.

(2) In subsection (2)(a), after “person” insert “is or”.

(3) After subsection (4) insert—

“(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.”.

(4) In subsection (5), for paragraph (b) substitute—

“(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.”.

Withdrawal of section 76 review request etc.

27. After section 77 of the Act, insert—

“Withdrawal of review request

77A.—(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.

Liability for redress payment where offer on redetermination rejected

77B.—(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.”

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

SCHEDULE

Regulation 2

Table of Fees

Part 1 – reconsiderations

	<i>Column A</i>
1. For all work in connection with the reconsideration of a determination under section 36 of the Act (determination of applications).	£250
2. For all work in connection with the reconsideration of a determination under section 57 of the Act (outcome of a section 54 review).	£250
3. For all work in connection with the reconsideration of a determination under section 60 of the Act (applicants etc. with convictions for serious offences).	£250
4. For all work in connection with the reconsideration of a determination under section 63 of the Act (outcome of a section 62 review).	£250
5. For all work in connection with the reconsideration of a determination under section 66(3) of the Act (determination of whether a nominated beneficiary is to be invited to take over an application).	£250
6. For all work in connection with the reconsideration of a determination under section 69 of the Act (outcome of a section 68 review).	£250
7. For all work in connection with the reconsideration of a determination under section 75(5) of the Act (reconsideration of determination where possible material error).	£250
8. For all work in connection with the reconsideration of a determination under section 77 of the Act (outcome of a section 76 review).	£250

Part 2 - reviews

	<i>Column A</i>	<i>Column B</i>
11. For all work in connection with a review insofar as it relates to a determination made following a reconsideration as mentioned in any of paragraphs 1 to 8 of Part 1 this schedule, so far as applicable.	£250	£190

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the redress scheme established by the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 ([asp 15](#)) (“the Act”).

Section 75 of that Act sets out a procedure for the reconsideration of determinations made under Part 4 of the Act. Such reconsideration must be undertaken where Redress Scotland (the body established under the Act to make determinations in relation to the redress scheme) has, or the Scottish Ministers have, cause to believe that a determination under that Part (“the original determination”) may have been materially affected by an error (as defined in section 75(9)). A person who is notified of the outcome of the reconsideration under section 75 of the Act may request a review in accordance with section 76.

These Regulations make provision for the payment of fees and reimbursement of costs and expenses in connection with reconsiderations and reviews of reconsidered determinations, and for a person’s liability to repay to the Scottish Ministers any fees or expenses which are paid or reimbursed due to error. The Regulations also make provision in relation to the effect of any reconsideration or review on any offer of a redress payment which has already been made or accepted.

Regulation 2 requires the Scottish Ministers, on request, to pay the relevant sum (as defined in that regulation with reference to the schedule) to a solicitor in respect of the legal work reasonably undertaken in connection with a reconsideration or review.

Regulations 3 and 4 outline how and when a fee payment request can be made.

Regulation 5 requires Redress Scotland to give prior authorisation before legal work is undertaken in exceptional or unexpected circumstances.

Regulation 6 sets out a review process which can be invoked where a solicitor has not been given such prior authorisation or where Redress Scotland considers that a lower sum than that which a solicitor has specified as their likely fee is appropriate.

Regulation 7 makes provision in relation to assessment and notification of fee payment requests.

Regulation 8 provides that a solicitor may make a request for Redress Scotland to review its assessment of a fee payment request in certain circumstances, and sets out how and when this can be done.

Regulations 9 to 11 outline how a panel appointed to conduct a review of a fee payment request should be constituted, set out procedural requirements for that panel and make provision for the panel’s powers in determining the outcome of a fee review.

Regulation 12 enables a request for a review of the assessment of a fee payment request to be withdrawn at any time prior to its consideration by the review panel of Redress Scotland.

Regulation 13 requires the Scottish Ministers to reimburse costs and expenses reasonably incurred by or in respect of a relevant person (as defined in regulation 1) in connection with a reconsideration under section 75 of the Act or a review under section 76 of the Act. The regulation sets out what can be claimed for, how a request for reimbursement can be made and provides that, on receipt of a request for reimbursement, the Scottish Ministers must assess it as soon as practicable.

Regulations 14 to 17 make provision for the review of decisions by the Scottish Ministers in relation to reimbursement requests, and the timescales and procedures for such review.

Regulation 18 enables a request for a review of a fee payment request to be withdrawn at any time prior to its consideration by the review panel of Redress Scotland.

Regulation 19 provides that a person is liable to pay the Scottish Ministers any sum paid or costs and expenses reimbursed under the Regulations insofar as the payment or reimbursement was due to a “relevant error” (as defined in regulation 19(4)).

The definition of “relevant error” includes an error which the Scottish Ministers consider led to a decision to make a payment or to reimburse costs and expenses under the Regulations being made incorrectly, or correctly but on the basis of incorrect or misleading information, in a way which materially affected the decision. Regulation 20 sets out the process that must be followed where the Scottish Ministers or Redress Scotland have cause to believe that this kind of error – defined in regulation 20(9)(b) as a “decision error” - has occurred.

Regulation 21 makes provision for review of the outcome of the regulation 20 process. A request for such a review can be withdrawn in accordance with regulation 22 at any time prior to the review determination being made.

Regulation 23 amends provisions in section 46 of the Act to ensure that they operate effectively where entitlement to a redress payment arises following a reconsideration under section 75 or a review under section 76. In these cases, the effective date of the waiver will be 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.

Regulation 24 makes amendments to section 75 of the Act (reconsideration of determination where possible material error) in consequence of the new provisions inserted into the Act by regulation 25.

Regulation 25 inserts new sections 75A to 75F into the Act.

The effect of new section 75A is that where an offer of a redress payment which is still valid has not been accepted when the underlying determination is referred for reconsideration under section 75(1) of the Act, the offer is suspended. The offer is revived if, following the reconsideration, it is determined under section 75(5)(a) that a determination referred for reconsideration was not materially affected by error. Sections 49 to 53 or, as the case may be, sections 50 to 58, apply to the revived offer with certain modifications.

New section 75A of the Act also makes provision for what happens when a request for a review has been made, but not determined, in respect of a determination which is referred for reconsideration under section 75(1).

New section 75B of the Act applies where a determination is referred for reconsideration under section 75(1) if an offer has been accepted, but payment has not been made (in whole or in part). The effect of the new section is that any entitlement to the payment under section 50(2) of the Act is suspended following referral for reconsideration, but is restored where it is determined under section 75(5)(a) that the original determination was not materially affected by an error.

New section 75C provides that a waiver signed and returned in accordance with section 46(1) of the Act in respect of an offer made under the original determination is of no effect in three scenarios. Those are where the reconsideration panel determines, under section 75(5)(b) of the Act, that a person is not eligible for a redress payment; they are so eligible, but no payment is to be offered; or that a person is precluded from being offered a redress payment.

New section 75D makes provision for scenarios where a reconsideration panel determines under section 75(5)(b) that an offer of a redress payment is to be made, both where a previous offer was not made as a result of the original determination and where such an offer was made, but was not yet accepted when the determination was referred for reconsideration. In these cases, the reconsideration panel will make a fresh offer to a person and sections 46, 47, 49 and 53 of the Act will apply to that offer as they apply to an offer made under a determination under section 36. New section 75D(2)(b) and (3) make certain modifications to those sections so that they operate effectively in the context of a fresh offer made following a review. The options available to a person receiving such an offer are to accept it, reject it or request a review of the reconsideration outcome, in accordance with section 76 of the Act.

New section 75E applies in scenarios where three conditions are met. The first is that a reconsideration panel determines under section 75(5)(b) that an offer of a redress payment is to be made. The second is that an offer of a redress payment was made under the original determination reconsidered by a reconsideration panel (“the original offer.”) The third is that, at the point the original determination was referred for reconsideration, the original offer had been accepted.

There are two possible outcomes where these three conditions are met. First, the reconsideration panel may determine that the same amount as the original offer is to be offered to a relevant person following reconsideration. In this case, section 75E(2) and (3) will apply, to the effect that the new offer will be deemed to be accepted and the previous waiver signed and returned to accept it previous

offer will remain in place. Second, the reconsideration panel may determine that a higher or lower offer than the original offer is to be given to a relevant person. In this case, section 75E(4) to (8) will apply, with the effect that the relevant person can accept it, reject it or request a review of the offer in accordance with section 76. If none of these things is done within the period for which the offer is valid, the relevant person will be deemed to have accepted the offer. By virtue of new section 75E(6) of the Act, where that person accepts the new offer or is treated as having accepted it, any waiver signed and returned in accordance with section 46(1) in respect of the original offer continues to have effect. Under new section 75E(7) of the Act, if a relevant person rejects the new offer, any waiver signed and returned in accordance with section 46(1) is of no effect. Section 75(8) clarifies that this does not, however, apply 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) of the Act and the waiver signed is in relation to an offer of a redress payment made previously to or in respect of the applicant.

Section 75F applies when an original offer of a redress payment has been accepted and payment in respect of it has been made (in whole or in part); a reconsideration panel considers that a new offer is to be made; and a relevant person rejects that new offer. In this scenario, a 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).

Regulation 26 amends section 77 of the Act to make provision about the information that Redress Scotland should give a person when a review under section 76 has been completed. Regulation 26 also inserts new provisions into section 77 of the Act to provide for what should happen when a review panel under section 76 determines that an offer of a redress payment should be made.

Regulation 27 inserts new sections 77A and 77B into the Act. Section 77A applies where a request for review is made in relation to a determination under section 75(5)(b) under which an offer of payment was made and that review is withdrawn. In this case, the offer is extended by the number of days in the period beginning on the date on which the request for a review was made, and ending on the date on which the request was withdrawn. Section 77B applies where an offer which was previously accepted has been replaced with a new offer following a reconsideration or review and a person decides to reject the new offer. In this case, the person is liable to pay the Scottish Ministers the value of any redress payment paid in respect of the original offer.

Impact assessments have been prepared in relation to the Act and instruments made under it and will be published online at www.gov.scot.