POLICY NOTE

THE REDRESS FOR SURVIVORS (HISTORICAL CHILD ABUSE IN CARE) (PAYMENTS MATERIALLY AFFECTED BY ERROR) (SCOTLAND) REGULATIONS 2021

SSI 2021/479

The above instrument was made in exercise of the powers conferred by sections 98(1) of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 ("the Act"). The instrument is subject to the *affirmative procedure*.

Summary Box

The purpose of these Regulations is to set out further provision about procedure, review and other matters enabling the recovery of payments, other than redress payments, under section 97 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 ("the Act"), where those payments may have been materially affected by error.

Policy Objectives

The Act creates a redress scheme for survivors, and in some circumstances their next of kin, in relation to historical child abuse in relevant care settings in Scotland.

Section 97 of the Act allows for the recovery of payments made in connection with redress applications, other than the redress payments themselves (which are covered by section 74 of the Act), where those payments were made due to a material error. This could include payments made in respect of expert reports, payments made by way of reimbursement of costs and expenses, and payment of fees for legal work in making a redress application or in connection with a proposed application. A material error could arise in relation to an error in the making of the payment (e.g. the incorrect amount was paid) and one in which there was an error in the decision to make the payment, including where the decision was based on incorrect or misleading information (e.g. a fraudulent invoice where services were not actually provided).

Section 98 of the Act allows the Scottish Ministers to make regulations, subject to the affirmative procedure, to set out further provision about or relating to the consideration of whether decisions to make payments (other than redress payments) were materially affected by error, and therefore a right of recovery arises in respect of them.

The Regulations:

- set out the procedure for considering payment decisions where Redress Scotland has, or the Scottish Ministers have, cause to believe that a decision to make a relevant payment may have been materially affected by error. The reconsideration is to be undertaken by a reconsideration panel comprising of at least 2 members of Redress Scotland appointed by the chairing member;
- make provision for the review of the outcome of the reconsideration panel's reconsideration by a separately appointed review panel of at least 2 members of Redress Scotland appointed by the chairing member, and set out the review panel's powers on determination of the review;

- enables a review request to be withdrawn at any point prior to its determination by the review panel.

It is essential for the operation and integrity of the redress scheme established by the Act that this process is subject to sound financial controls. The Regulations provide technical details setting out the process for considering and reviewing decisions about material errors in relevant payments under the scheme, for the purpose of the potential recovery of such payments under section 97 of the Act. This ensures that the process underpinning any potential recovery of those payments is effective and proportionate as provided for by the Act, in relation to professionals who have provided services under the scheme in return for those payments.

The intention is not to focus on recovering fees paid out to those professionals where the redress payment itself is deemed to have been made in error, or where they have otherwise acted in good faith. Likewise, the Scottish Ministers may decide not to pursue recovery, for example, where the sums paid in error are relatively low and would be outweighed by the costs of pursuing those.

Consultation

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

Impact Assessments

The legislative impact assessments under the Act will be updated to reflect the impact of these Regulations.

Financial Effects

The Deputy First Minister and Cabinet Secretary for Covid Recovery confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Children and Families Directorate

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