STATUTORY INSTRUMENTS

2021 No. 1310

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

REDRESS SCHEME

The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Consequential Provisions) Order 2021

Made - - - -	*24th November 2021*
Laid before Parliament	*25th November 2021*
Coming into force - -	*17th December 2021*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(4) and (7) of the Scotland Act 1998(**a**).

PART 1

Introduction

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Consequential Provisions) Order 2021 and comes into force on 17th December 2021.

(2) Articles 2 and 3 extend to England and Wales only.

(3) In this Order—

(a) "the 2021 Act" means the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021(**b**),

(b) "the data protection legislation" has the meaning given by section 3(9) of the Data Protection Act 2018(**c**),

(c) "Redress Scotland" is the body corporate established by section 3 of the 2021 Act, and

(d) "relevant payment" is to be construed in accordance with section 42 of the 2021 Act.

(**a**) 1998 c. 46. There are amendments to sections 104 and 112 which are not relevant to this Order.
(**b**) 2021 asp 15.
(**c**) 2018 c. 12. Section 3(9) was amended by S.I. 2019/419.

PART 2

Provisions consequential on the 2021 Act

Financial contributions by charities

2.—(1) This article applies where a charity makes a financial contribution to the Scottish Ministers for the purpose of redress payments being made under Part 4 of the 2021 Act.

(2) The making of the financial contribution is to be treated for all purposes as—

(a) being in furtherance of the charity's charitable purposes and consistent with its constitution or trusts,

(b) providing public benefit,

(c) not being contrary to the interests of the charity, and

(d) being within the powers exercisable by the charity trustees of the charity.

(3) In this article—

(a) "charity" has the meaning given by section 1(1) of the Charities Act 2011(**a**),

(b) any other expression used in this article which is also used in the Charities Act 2011 is to be construed in accordance with that Act.

Disclosure of information about previous payments from applicants in a settlement or other agreement

3.—(1) This article applies where—

(a) an applicant for a redress payment under Part 4 of the 2021 Act provides information about a relevant payment to the Scottish Ministers in accordance with section 44 of the 2021 Act,

(b) the applicant has entered into a settlement or other agreement with any other person in relation to the relevant payment, and

(c) the settlement or other agreement prohibits the applicant from disclosing that information.

(2) The disclosure of the information in accordance with section 44 of the 2021 Act is not to be treated as a breach of the settlement or, as the case may be, other agreement.

Provision of information: requirement to provide evidence

4.—(1) Subject to paragraph (8), the Scottish Ministers may, for a purpose mentioned in paragraph (2), by notice in writing require a person, other than an applicant for a redress payment under Part 4 of the 2021 Act, to provide the Scottish Ministers on or before a specified date with—

(a) specified information, documents, objects, or other items of evidence,

(b) evidence in the form of a written statement.

(2) The purposes referred to in paragraph (1) are the determination of any matter by—

(a) a panel appointed under section 35 of the 2021 Act to determine an application,

(b) a review panel appointed under section 55 of the 2021 Act to conduct a review,

(c) a reconsideration panel appointed under section 75 of the 2021 Act to reconsider a determination.

(3) A person to whom a notice under paragraph (1) is given may, before the end of the period of 4 weeks beginning with the date on which the notice was received by the person, make a claim to the Scottish Ministers that—

(a) the person is unable to comply with the notice, or

(**a**) 2011 c. 25.

(b) it is not reasonable in all the circumstances to require the person to comply with the notice.

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

(5) Where a claim is made under paragraph (3), Redress Scotland may confirm, revoke or vary the notice to which the claim relates.

(6) A person who is required by a notice to provide documents must do so in a redacted form if—

(a) the documents contain information about another person which is irrelevant to the determination of the application to which the notice relates, and

(b) the disclosure of that information would breach an obligation of confidence.

(7) A notice does not have effect to the extent that—

(a) complying with the notice would involve the disclosure of information which would contravene the data protection legislation or any other enactment relating to the disclosure of information, or give rise to the commission of an offence, or

(b) the person to whom the notice applies would be entitled to refuse to comply with the notice in or for the purposes of proceedings in a court in England and Wales, Northern Ireland or, as the case may be, Scotland.

(8) A notice under paragraph (1) is of no effect to the extent that an equivalent notice could be served under section 79 of the 2021 Act.

(9) In this article, "person" does not include the Crown.

Power to obtain information about previous payments

5.—(1) Subject to paragraph (5), the Scottish Ministers may, for the purpose of calculating any relevant payment to be deducted from a redress payment in accordance with section 42 of the 2021 Act, by notice in writing require a person, other than an applicant, to provide the Scottish Ministers, on or before a specified date, with details of a relevant payment.

(2) A notice under paragraph (1) may, in particular, require the provision of the following details—

(a) the date on which the payment was made or, as the case may be, an entitlement to it arose,

(b) the amount of the payment,

(c) the matter to which the payment related.

(3) A notice under paragraph (1) must specify the name and date of birth of the applicant, or the person in respect of whom the application is made, to whom the relevant payment relates.

(4) A notice does not have effect to the extent that—

(a) complying with the notice would involve the disclosure of information which would contravene the data protection legislation or any other enactment relating to the disclosure of information, or give rise to the commission of an offence, or

(b) the person to whom the notice applies would be entitled to refuse to comply with the notice in or for the purposes of proceedings in a court in England and Wales, Northern Ireland or, as the case may be, Scotland.

(5) A notice under paragraph (1) is of no effect to the extent that an equivalent notice could be served under section 80 of the 2021 Act.

(6) In this article, "person" does not include the Crown.

Redress Scotland's power in relation to information and evidence

6.—(1) Redress Scotland may ask the Scottish Ministers to—

(a) issue a notice under article 4,

(b) issue a notice under article 5.

(2) The Scottish Ministers must comply with a request under paragraph (1)(a) or (b) before the end of the period of 4 weeks beginning with the date on which the request was received by them.

Offences of failure to provide evidence and of tampering with evidence

7.—(1) A person who is required by a notice under article 4 or 5 to provide information, documents, objects, other items of evidence, or evidence in the form of a written statement, commits an offence if the person fails, without reasonable excuse, to comply with the notice.

(2) A person commits an offence if, without reasonable excuse, the person conceals, destroys, distorts or alters, or arranges for the concealment, destruction, distortion or alteration of, anything that the person knows to be required, or has reasonable grounds for believing might be required, to be provided to the Scottish Ministers by virtue of a notice under—

(a) article 4 or 5, or

(b) section 79 or 80 of the 2021 Act.

(3) A person who commits an offence under paragraph (1) or (2) is liable on summary conviction to imprisonment for a term not exceeding three months, a fine not exceeding level 3 on the standard scale, or both(**a**).

Alister Jack
Secretary of State
Office of the Secretary of State for Scotland

24th November 2021

(**a**) See section 113(9A) to (10) of the Scotland Act 1998 (c. 46) for the limits on criminal penalties. Section 113 was relevantly amended by section 39(2) of the Scotland Act 2012 (c. 11).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (asp 15) ("the 2021 Act").

The 2021 Act establishes a scheme of financial redress and related support for and in respect of survivors of historical child abuse in certain residential care settings in Scotland.

Article 1 provides that articles 2 and 3 of the Order extend to England and Wales only. The remainder of the Order extends to England and Wales, Northern Ireland and Scotland.

Article 2 applies where a charity subject to the control of the High Court in England and Wales makes a financial contribution to the redress scheme established by the 2021 Act. It provides that financial contributions made by such charities will be treated as being in furtherance of the charity's charitable purposes and consistent with the charity's constitution or trusts (section 353(1) of the Charities Act 2011 (c. 25) defines "trusts"), providing public benefit, not being contrary to the interests of the charity, and being within the powers exercisable by the charity trustees of the charity.

Article 3 makes provision in consequence of section 44 of the 2021 Act. Section 44 of the 2021 Act sets out that an application for a redress payment must provide the Scottish Ministers with information about relevant payments which the applicant (or the person to whom the application relates) has received or becomes entitled to before their application is determined. This article provides that, where the applicant has entered into a settlement or other agreement relating to a relevant payment that forbids them from disclosing information about relevant payments and which is governed by the law of England and Wales, the disclosure of that information will not be regarded as a breach under the law of England and Wales of the settlement or other agreement.

Article 4 makes provision in consequence of section 79 of the 2021 Act, and provides that the Scottish Ministers may by notice in writing compel individuals or organisations (other than an applicant for a redress payment or the Crown) to provide information, documents, objects, other items of evidence or evidence in the form of a written statement, which may be relevant to an application for such a payment. An individual or organisation may challenge the requirement to provide the information where they are unable to comply with the notice, or it is not reasonable in all the circumstances to require them to comply with it. A notice does not have effect to the extent that complying with it would involve disclosure of information which would breach data protection legislation or any other statutory requirement relating to the disclosure of information, or give rise to the commission of an offence, or where the individual or organisation would be permitted to refuse to comply with it in connection with court proceedings in England and Wales or Northern Ireland or, as the case may be, Scotland.

Article 5 makes provision in consequence of section 80 of the 2021 Act, and provides the Scottish Ministers with a power to obtain information from third parties for the purposes of section 42 of the 2021 Act (which relates to the deduction of relevant payments from redress payments). The Scottish Ministers may by notice, in writing, require a person (other than the applicant or the Crown) to provide information to the panel with details of relevant payments. However, a notice does not have effect to the extent that complying with it would involve disclosure of information which would breach data protection legislation or any other statutory requirement relating to the disclosure of information, or give rise to the commission of an offence, or where the person would be permitted to refuse to comply with it in connection with court proceedings in England and Wales or Northern Ireland or, as the case may be, Scotland.

Articles 4 and 5 only apply in Scotland to the extent that it would not be possible to require a person to provide information, documents, objects or other evidence, or details of a relevant payment, under section 79 or, as the case may be, section 80 of the 2021 Act.

Article 6 makes provision in consequence of section 81 of the 2021 Act and provides that Redress Scotland may ask the Scottish Minsters to issue a notice to provide evidence or issue a notice to

provide details regarding previous payments which a person has received in relation to relevant abuse.

Article 7(1) makes provision in consequence of section 84(1) of the 2021 Act and provides that any person who fails to comply with a notice under article 4 or 5 to provide evidence, and does so without reasonable excuse, commits a criminal offence. Article 7(2) provides that any such individual or organisation also commits a criminal offence if, without reasonable excuse, they take action to conceal, destroy, alter, or distort evidence which either they know is required, or they have reasonable grounds for believing might be required, under a notice given by the Scottish Ministers under article 4 or 5 or under section 79 or 80 of the 2021 Act. The maximum penalty for either of the aforementioned offences is imprisonment for up to three months or a fine up to the value of level 3 on the standard scale, or both. The value of level 3 on the standard scale is currently £1,000.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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