

Stirling Council

Response to Scottish Parliament Call for Views.

The Committee welcomes views on any aspect of this Bill. However, the Committee is particularly interested to know your views on:

1) The people who are eligible to apply to the scheme.

The Bill, as framed currently, sets out fairly the criteria to be met for eligibility at Section 16 as noted below.

16 Eligibility to apply for a redress payment

(1) A person may apply for a redress payment if the person or, in the case of an application for a next of kin payment, the person in respect of whom the application is made was abused while— 35

(a) a child, and

(b) resident in a relevant care setting in Scotland.

(2) The abuse must have occurred before 1 December 2004.

*Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill 7 Part 3—
Eligibility and key concepts*

(3) In this Act, “child” means a person under the age of 18 years.

(4) But subsection (3) does not apply, in relation to an application for a next of kin payment, to a reference to a child of a deceased person.

(5) This section is subject to section 21.

2) The Bill’s definition of abuse.

Similarly, at Section 17, the Bill frames the definition of abuse broadly to incorporate both emotional abuse and neglect alongside physical and sexual abuse. It also clearly qualifies physical abuse relative to corporal punishment. It is expected that definitions of harm defined as abuse still operate to the assessed threshold of significant harm within child protection process and practice.

17 Meaning of “abuse”

(1) In this Act, “abuse”, in relation to references to a person having been abused, means—

(a) sexual abuse,

(b) physical abuse,

(c) emotional abuse,

(d) abuse which takes the form of neglect.

(2) For the purpose of subsection (1)(b), “physical abuse” does not include corporal punishment to the extent that it was permitted under or by virtue of any enactment or rule of law at the time it was administered.

3) The dates used in the Bill to define ‘historical abuse’.

The redress scheme defines ‘historical’ abuse as that which took place prior to 1 December 2004. We agree that relative to the then First Minister’s public apology on this

date and the endorsement of this by the Scottish Parliament as a whole, that this is appropriate

4) The Bill's definition of 'in care' and the places in which that care took place.

The Bill's definition of "in care" is captured at Sections 18 to 20 (incl) and this presents as appropriately broad in application to a range of residential care settings while applying a necessary degree of qualification to some boarding and fostering placements at Sect 18 (2).

18 Meaning of "relevant care setting"

(1) In this Act, "relevant care setting" means—

(a) a residential institution in which the day-to-day care of children was provided by or on behalf of a person other than a parent or guardian of the children resident there,

(b) a place, other than a residential institution, in which a child resided while being—

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(i) boarded-out,

(ii) fostered.

(2) But a place is not a relevant care setting by virtue of subsection (1)(b) where the child was boarded-out or fostered—

(a) with a relative or guardian of the child, or 25

(b) under arrangements between a parent or guardian of the child and another person unless that other person was either—

(i) a public authority, or

(ii) a voluntary organisation exercising functions in relation to the safeguarding or promotion of the welfare of the child or the protection or furthering of the 30 child's interests.

(3) In this section and in section 20, "residential institution" means—

(a) a children's home,

(b) a penal institution,

(c) a residential care facility,

(d) school-related accommodation,

(e) secure accommodation.

5) The process of applying for redress and what advice and support applicants might need, particularly in relation to the waiver scheme.

Part 4, Chapter 1, Sections 27 through to and including 45 set out the conditions for the "determination of applications for redress payments" including Waiver considerations. The financial redress scheme will be administered and governed independently of the Scottish Government ensuring that decisions on assessment of applications to the scheme will not be made by the Scottish Government. Redress Scotland is, as noted at Section 4, not an agent of the Crown nor are its staff regarded as civil servants.

Part 5 Sections 85 to 90 sets out the range and character of supports for survivors of abuse who may wish to make application for redress. This appears comprehensive in its commitment to include consideration of the emotional, psychological or practical support needs of survivors.

Part 6, Section 91 to 93 also captures the need to report on wider redress actions such as those noted at Section 91, (2), (a):

- (i) funding for emotional, psychological or practical support,
- (ii) advice and assistance on accessing historical records,
- (iii) advice and assistance on tracing and reuniting families,
- (iv) activity relating to the provision of an apology to such individuals,

6) The level of payments offered to survivors.

Part 4, Chapter 1, Sections 37 & 38 sets out Payment Levels rising from a Fixed Rate Payment of £10,000 through a tiered three level payment structure of £20,000, £40,000 & £80,000 as considered appropriate by the Redress Panel. This presents a reasonable framework within which to capture the differing types and consequences of harm experienced. It is expected, and papers around the Bill indicate, that clear criteria and evidential thresholds for payments will be specified, and applications appropriately assessed and subject to required scrutiny.

Payment levels

37 Fixed rate payment

A fixed rate payment is a payment of £10,000.

38 Individually assessed payment

(1) An individually assessed payment is a payment, based on an assessment of the matters raised by an application, of—

- (a) the fixed rate payment, and*
 - (b) if the panel appointed under section 33 to determine the application considers a further sum to be appropriate, the further sum of—*
 - (i) £10,000,*
 - (ii) £30,000, or 5*
 - (iii) £70,000,*
- as the panel considers appropriate.*

(2) Accordingly, depending on what (if any) further sum is considered appropriate, an individually assessed payment is a payment in total of—

- (a) £10,000 for a fixed rate payment,*
- (b) £20,000 (a level 1 payment),*
- (c) £40,000 (a level 2 payment), or*
- (d) £80,000 (a level 3 payment).*

(3) But where a fixed rate payment has previously been paid to an applicant, no further fixed rate payment is payable to that applicant when determining an application for an individually assessed payment made by virtue of section 28(2).

(4) In considering what further sum, if any, is appropriate for the purpose of subsection (1)(b), the panel—

- (a) must have regard to the nature, severity, frequency and duration of the abuse to which the application relates, and 20*
- (b) may have regard to any other matter it considers relevant.*

7) What you believe to be a ‘fair and meaningful’ contribution to the scheme from organisations responsible for abuse.

Last year’s Consultation noted that “*in line with international good practice, providers/institutions should contribute to reparations packages to the extent to which they are accountable*”. It also set out the expectation that all those responsible make a meaningful contribution to the costs of delivering a financial redress scheme in Scotland. While accepting of each position this is a matter that requires broader discussion and agreement to determine what a “fair and meaningful” level of contribution would be. Understanding is that, relative to Local Authorities, this matter is being addressed via COSLA currently.

8) The process for dealing with applications to the scheme from people who have serious convictions.

Part 4, Chapter 3 gives powers to the Redress Panel to consider if an applicant is precluded from consideration and if any payment award would be in line with or contrary to public interest in situations where applicants have been convicted of serious offences. Further adding to this are Sections 58 & 59 outlining the character of offences included and contextual circumstances taken into account relative to these. Applicants precluded from consideration also have entitlement through Section’s 60 and 61 to seek review of the Panel determination. The considerations and measures around applications from those with serious convictions within the Bill therefore seem appropriate.

9) The process for family members to make an application on behalf of a survivor who has since died.

Part 3, Section 22 to 26 sets out considerations in regard to the eligibility criteria which apply when the person who was abused has died and the person’s next of kin wishes to make an application. Part 4, Chapter 4, Sections 63 to 70 of the Bill also outlines criteria that would apply on the death of an applicant. These seem to give due consideration to matters of relevance for family members who make an application on behalf of a survivor who has since died, including opportunity for review of a decision determining ability to apply on behalf of the deceased

10) How to ensure that non-financial redress (e.g. an apology) meets the needs of survivors.

As per exploration of this area in the 2019 Scottish Government Consultation it is agreed that residential service providers and other professional groups in Scotland should view financial redress in the context of a broader reparation package. Whilst not every survivor will want or need any wider reparation, choice and access to a broad range of remedies is important. These remedies often include acknowledgment, apology and support and in 2019, at the time of the consultation exercise, opportunities for non-financial redress contributions were noted to include:

- Enabling supportive access to records;

- Financial support for counselling sessions;
- Signposting people to a range of relevant supports;
- Tracing and unifying families;
- Offering after-care support;
- Individual sessions to promote reconciliation;
- Individual apology;
- Ensuring that previous residents are aware of the scrutiny by current registration and inspection regimes.