

Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 101
Schedule 2

Schedule 1
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

John Swinney

- 1 In section 1, page 2, line 18, after first <of> insert <redress>

John Swinney

- 2 In section 1, page 2, line 28, leave out <legal fees> and insert <fees for legal work>

John Swinney

- 3 In section 1, page 2, line 28, at end insert—
<() for the recovery of payments, other than redress payments, made in error.>

John Swinney

- 4 In section 1, page 2, line 31, at end insert—
<() for the establishment of the Survivor Forum,>

After section 8

Jamie Greene

- 5 After section 8, insert—
<**Duty with respect to ensuring individuals can make informed choices**
(1) In exercising their functions under paragraph (b) of section 8, the Scottish Ministers must use their best endeavours to ensure that persons who—
5 (a) are, or may be, considering making an application for a redress payment, or
(b) have decided to make, or have made, such an application,
have the opportunity to make informed choices.

- (2) Accordingly, the Scottish Ministers must prepare and publish a statement setting out information about—
- 10 (a) the options available to such persons at each stage of the process of making an application for a redress payment,
- (b) the support and other assistance available to such persons under the redress scheme, and
- 15 (c) the redress for survivors of historical child abuse in care in Scotland, including financial redress, which may be available to such persons otherwise than under the redress scheme.
- (3) The statement (the “summary of options”) must include, or set out details of where to find, information about—
- (a) the options a person has in relation to—
- 20 (i) making, pausing and withdrawing an application for a redress payment,
- (ii) accepting an offer of a redress payment, including the timescales for so doing, and the effect of signing and returning a waiver,
- (iii) requesting a review of a determination made by Redress Scotland,
- 25 (b) the importance of obtaining independent legal advice, in particular before accepting an offer of a redress payment and signing and returning a waiver,
- (c) the availability, under the redress scheme, of payment of fees for legal work in connection with applications,
- (d) the support available under the scheme in connection with applications for redress payments.
- 30 (4) The summary of options may include such other information as the Scottish Ministers consider appropriate.
- (5) The Scottish Ministers must keep the summary of options under review and may modify it from time to time.
- (6) In complying with their duty under subsection (5), the Scottish Ministers must have regard to any recommendations included, by virtue of paragraph 17(1A) of schedule 1, in an annual report prepared by Redress Scotland.
- 35 (7) If the Scottish Ministers modify the summary of options, they must publish the modified summary.>

Daniel Johnson

5A As an amendment to amendment 5, line 23, at end insert—

- <() the sources and types of information or evidence that an application for a redress payment may or must contain or be accompanied by,
- () how such information and evidence may be obtained and shared, in particular the assistance available under the scheme in connection with obtaining such information and evidence,>

Section 11A

John Swinney

- 6 In section 11A, page 4, leave out lines 28 and 29 and insert—
- <(a) persons who have made, or have decided to make, an application for a redress payment,
 - (b) persons who are, or may be, considering making such an application,>

Section 12

Daniel Johnson

- 7 In section 12, page 5, line 10, at end insert—
- <(c) who, in making or agreeing to make such a contribution, acknowledge the wrongfulness of, and the harm caused by, the historical child abuse which took place in relevant care settings.>

Daniel Johnson

- 8 In section 12, page 6, line 5, at end insert—
- <() For the purposes of other proceedings—
 - (a) the fact of a public authority, voluntary organisation or other person becoming a scheme contributor, and
 - (b) the giving, by that authority, voluntary organisation or other person, of the acknowledgement required by subsection (1)(c) in order to become such a scheme contributor,
- are not to be taken as evidence of anything relevant to the determination of any question of liability in connection with an allegation of abuse.>

Section 13

Iain Gray

- 9 In section 13, page 6, line 19, after <include> insert <—
()>

Iain Gray

- 10 In section 13, page 6, line 21, at end insert—
- <() the circumstances in which a contribution that takes into account the sustainability of any services provided by the authority, organisation or other person can be a fair and meaningful one.>

Section 16

Daniel Johnson

34 In section 16, page 7, line 25, at end insert—

- <() For the avoidance of doubt, a person who has previously brought unsuccessful relevant civil proceedings may still apply for a redress payment.
- () In this section, “relevant civil proceedings” has the same meaning as in section 45(6) of this Act.>

Section 22

John Swinney

11 In section 22, page 11, leave out lines 3 and 4

Section 27

Jamie Greene

12 In section 27, page 14, line 6, at end insert—

- <() On receiving an application, the Scottish Ministers must provide the summary of options to the applicant.>

John Swinney

13 In section 27, page 14, line 7, after <information> insert <or evidence>

Section 28

John Swinney

14 In section 28, page 14, line 25, after <that> insert <allowing a further application is justified on the basis that—

()>

John Swinney

15 In section 28, page 14, line 26, leave out <and which justifies allowing a further application.> and insert <, or

- () regulations under section 18(4) have had the effect of modifying eligibility to apply for a redress payment.>

John Swinney

16 In section 28, page 15, line 14, at end insert—

- <() regulations under section 18(4) having had the effect of modifying eligibility to apply for a redress payment.>

Section 29

Daniel Johnson

- 35 In section 29, page 15, line 19, at beginning insert <subject to subsection (2A),>

Daniel Johnson

- 36 In section 29, page 15, line 24, at end insert—
<(2A) If the Scottish Ministers do not lay a draft Scottish statutory instrument containing regulations under subsection (2) within the period specified in subsection (3), then the application period is extended by 2 years.>

Daniel Johnson

- 37 In section 29, page 15, line 25, leave out <15> and insert <6>

Daniel Johnson

- 38 In section 29, page 15, line 28, leave out <15> and insert <6>

Section 34

Jamie Greene

- 17 In section 34, page 17, line 28, at end insert—
<() the summary of options, and>

Section 45

Neil Findlay

- 39 In section 45, page 22, line 33, leave out <a redress> and insert <an individually assessed>

Neil Findlay

- 40 In section 45, page 22, line 34, after <waiver> insert <either—
()>

Neil Findlay

- 41 In section 45, page 22, line 38, at end insert <, or
() where the applicant brings relevant proceedings, agreeing to make a repayment in accordance with section (*Repayment of redress payment*).>

After section 45

Ross Greer

42 After section 45, insert—

<Disapplication of the waiver in relation to claims against the Scottish Ministers and local authorities

- (1) A waiver signed by virtue of section 45 does not prevent an applicant from continuing or bringing civil proceedings against any organisation listed in subsection (2).
- (2) The organisations to which subsection (1) applies are—
 - (a) the Scottish Ministers,
 - (b) a local authority.
- (3) The Scottish Ministers may by regulations modify subsection (2) for the purpose of adding to the list of organisations to which this section applies.>

Ross Greer

43 After section 45, insert—

<Waiver: further provision

- (1) A waiver signed by virtue of section 45 does not prevent an applicant from continuing or bringing civil proceedings unless the conditions in subsection (2) are met.
- (2) The conditions referred to in subsection (1) are—
 - (a) the applicant has received advice from a solicitor on the offer of a redress payment made under section 34 or, as the case may be, 55 and the consequences of signing a waiver on the applicant's right to continue or bring civil proceedings, and
 - (b) the solicitor providing the advice has signed a solicitor declaration form confirming the advice has been given.
- (3) The Scottish Ministers must by regulations make provision about—
 - (a) the form and content of the solicitor declaration form,
 - (b) the information to be provided as advice to the applicant by the solicitor in relation to the waiver and its effects.>

Alex Neil

18* After section 45, insert—

<Circumstances in which the waiver must be disapplied

- (1) Where subsection (2) applies, an applicant may apply to the Scottish Ministers for a waiver signed by the applicant under section 45 to be disapplied.
- (2) This subsection applies where—
 - (a) there has been a change in circumstances after an applicant has signed a waiver under section 45 such that it would not be fair, just and reasonable for the applicant to continue to be bound by the waiver, or

- (b) new information is obtained by the applicant which, if had been known at the time of the signing the waiver, would have been a material consideration by the applicant in deciding whether to abandon or bring civil proceedings.
- (3) An application under subsection (1) is to be determined on behalf of Redress Scotland by a panel of members of Redress Scotland appointed by the chairing member in accordance with sections 33 and 34.
- (4) An applicant who is dissatisfied with the determination under subsection (3) may request a review of the determination in accordance with section 52.
- (5) Where a waiver has been disapplied under this section—
 - (a) an applicant may bring civil proceedings, and
 - (b) section 45(5) does not apply to the applicant.>

After section 46

Ross Greer

19 After section 46, insert—

<Report on effect of waiver on participation in redress scheme

Before the end of the period of 18 months beginning with the day section 45 comes into force, the Scottish Ministers must lay before the Scottish Parliament a report setting out—

- 5 (a) their assessment of the impact (if any) of the waiver under section 45 on applications for a redress payment,
- (b) the steps (if any) they intend to take as a result of that assessment,
- (c) where they do not intend to take any such steps, their reasons for that.>

John Swinney

19A As an amendment to amendment 19, line 5, after first <of> insert <—

()>

John Swinney

19B As an amendment to amendment 19, line 6, at end insert—

<() the effectiveness of the waiver in encouraging public authorities, voluntary organisations and other persons to become scheme contributors,>

Ross Greer

19C As an amendment to amendment 19, line 6, at end insert—

<() whether there is any evidence to suggest that applicants who have accepted a redress payment would have received a higher amount in an award of damages or compensation by a court or other payment in settlement of a claim had they pursued relevant civil proceedings (within the meaning given by section 45(6)),>

Brian Whittle

20 After section 46, insert—

<Report on effectiveness of waiver

Before the end of the period of 3 years beginning with the day of Royal Assent, the Scottish Ministers must lay before the Scottish Parliament a report setting out—

- (a) their assessment of the effectiveness of the waiver under section 45 in encouraging public authorities, voluntary organisations and other persons to become scheme contributors,
- (b) the steps (if any) they intend to take as a result of that assessment,
- (c) where they do not intend to take any such steps, their reasons for that.>

Section 47

Ross Greer

44 In section 47, page 24, line 21, leave out <or> and insert—

- <() where the applicant has commenced civil proceedings, until the civil proceedings are concluded by settlement, abandonment of proceedings or final determination by the court, or>

After section 51

Neil Findlay

45 After section 51 insert—

<Repayment of redress payment

Repayment of redress payment

An applicant to whom a redress payment is made under section 34 or, as the case may be, 55 and who subsequently receives a relevant payment mentioned in paragraph (a) or (b) of section 41(2), must repay to Redress Scotland an amount representing whichever is the lower of—

- (a) the redress payment, and
- (b) the relevant payment.>

Section 52

Alex Neil

46 In section 52, page 26, line 35, at end insert—

- <() This section also applies where an applicant has received notification of a determination under section (*Circumstances in which the waiver must be disapplied*).>

Alex Neil

- 47 In section 52, page 27, line 5, at end insert <, or
() the waiver is not to be disapplied under section (*Circumstances in which the waiver must be disapplied*).>

After section 64

Daniel Johnson

- 21 After section 64, insert—
- <Access to information and evidence by nominated beneficiary**
- (1) This section applies where a nominated beneficiary—
- (a) has been invited to take over an application by virtue of section 64 and the period specified in section 68(3) has not expired, or
 - (b) has requested a review under section 65.
- (2) Redress Scotland and the Scottish Ministers must, on request, provide the nominated beneficiary with access to any information or evidence held by it or them which has been obtained by or provided to it or them in connection with the application to which the invitation or, as the case may be, the review relates.
- (3) Nothing in this section authorises the disclosure of any information or evidence—
- (a) that would be likely to identify any person other than the nominated beneficiary or the person in respect of whom the application to which the invitation or, as the case may be, review relates,
 - (b) that would be in contravention of the data protection legislation.
- (4) In this section, “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.>

Section 78A

Daniel Johnson

- 22 In section 78A, page 44, line 5, leave out subsection (1) and insert—
- <(1) Redress Scotland and the Scottish Ministers must, on request, provide a person with access to any information or evidence held by it or them which has been obtained by or provided to it or them in connection with the person’s application for a redress payment.
- (1A) Where the person making the request is a nominated beneficiary who has taken over the application by virtue of section 68, the information or evidence to be provided under subsection (1) includes information or evidence which has been obtained or provided in connection with the application prior to it being taken over.>

Daniel Johnson

- 23 In section 78A, page 44, line 7, leave out <a disclosure of any information> insert <the disclosure of any information or evidence>

Daniel Johnson

- 24 In section 78A, page 44, line 8, leave out <applicant> and insert <person making the request or the person in respect of whom the application is made>

Section 83

Daniel Johnson

- 25 In section 83, page 45, line 29, leave out <Subject to section 78A,>

Section 93A

Daniel Johnson

- 26 Leave out section 93A and insert—

<The Survivor Forum

- (1) The Scottish Ministers must establish and maintain a forum, known as the Survivor Forum, consisting of—
 - (a) survivors of historical child abuse in care in Scotland,
 - (b) such other persons as Ministers consider appropriate.
- (2) The purpose of the Forum is to provide feedback to the Scottish Ministers and Redress Scotland on the exercise of the functions conferred on them or on it under or by virtue of this Act.
- (3) But the Forum may not provide feedback on the determinations made in relation to redress payments in individual cases.
- (4) The Scottish Ministers may pay Forum members such allowances and expenses as they consider appropriate.
- (5) The Scottish Ministers may by regulations—
 - (a) make further provision about or in connection with the Forum,
 - (b) make provision for the dissolution of the Forum in connection with or following the dissolution of Redress Scotland under section 95.
- (6) Regulations under subsection (5) may modify any enactment (including this Act).>

Section 96

Jamie Greene

- 27 In section 96, page 57, line 18, at end insert—

<“summary of options” is to be construed in accordance with section (*Duty with respect to ensuring individuals can make informed choices*)(3),>

Section 97

Daniel Johnson

- 48 In section 97, page 58, line 3, at end insert—
<() the length of time that should be taken to consider an application before providing a determination and, where relevant, an offer of a redress payment,>

Jamie Greene

- 28 In section 97, page 58, line 13, at end insert—
<() In issuing guidance under subsection (1), the Scottish Ministers must have regard to any recommendations included, by virtue of paragraph 17(1A) of schedule 1, in an annual report prepared by Redress Scotland.>

Section 98

Daniel Johnson

- 29 In section 98, page 58, line 39, leave out <93A> and insert <(The Survivor Forum)(5)(b)>

Ross Greer

- 49 In section 98, page 59, line 4, at end insert—
<() section (*Disapplication of the waiver in relation to claims against the Scottish Ministers and local authorities*),>

Ross Greer

- 50 In section 98, page 59, line 4, at end insert—
<() section (*Waiver: further provision*),>

Daniel Johnson

- 30 In section 98, page 59, line 11, after <88C(3)> insert <, (The Survivor Forum)(5)(a)>

Schedule 1

Jamie Greene

- 31 In schedule 1, page 65, line 17, at end insert—
<(ca) an assessment of whether applicants for redress payments appear to have had the opportunity to make informed choices,>

Daniel Johnson

51 In schedule 1, page 65, line 17, at end insert—

<(cb) an assessment of the accessibility and suitability of guidance available to applicants on the sources and types of information or evidence that applications for redress payments may or must contain or be accompanied by, with reference to the information and evidence considered by it in determining applications,>

Jamie Greene

32 In schedule 1, page 65, line 18, at end insert—

<(1A) The report may include recommendations, including in relation to the assessments which Redress Scotland has carried out by virtue of sub-paragraph (1)(c) and (ca).>

Daniel Johnson

32A As an amendment to amendment 32, line 3, leave out <and (ca)> and insert <, (ca) and (cb)>

Long Title

John Swinney

33 In the long title, page 1, line 4, after <for> insert <the establishment of the Survivor Forum and>

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