

# **Redress For Survivors (Historical Child Abuse In Care) (Scotland) Bill**

**August 2020**



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**CRWIA title: Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill****Date of publication: 14 August 2020**

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| <b>Executive summary</b>   | <p>The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill seeks to establish a financial redress scheme for survivors of historical child abuse in relevant care settings in Scotland, and, where eligible, their next of kin. The main purpose of the scheme is to acknowledge and provide tangible recognition of the harm suffered as a result of historical child abuse whilst residing in relevant care settings in Scotland.</p> <p>The scheme will also provide access to some non-financial redress elements - such as acknowledgement, apology and support, and it will sit alongside existing measures that the Scottish Government has put in place for survivors of historical child abuse.</p> <p>Children under 18 will be eligible to apply to the scheme as next of kin on behalf of a deceased parent, who died on or after 17 November 2016, and was subjected to in-care abuse. Some children may be eligible to apply to the scheme as survivors (17 year olds who were abused in care in their first year of life).</p> |
| <b>Background</b>  | <p>The Deputy First Minister of Scotland made a statement to Parliament on 23 October 2018 in which he committed to establishing a financial redress scheme for survivors of historical abuse in care.<sup>1</sup></p> <p>This requires new legislation, which is to be passed by the Scottish Parliament before the end of this Parliamentary term in March 2021 (subject to Parliamentary approval).</p> <p>A pre-legislative public consultation was conducted by the Scottish Government seeking views on the detailed design of the scheme. This was launched on 2 September 2019 and remained open for a period of 12 weeks. This received 280 responses, with over 200 of the respondents identifying themselves as survivors. The responses to the public consultation and the independent analytical report of this, have been published and continue to inform policy decisions on the design of the redress scheme.</p>   |
| <b>Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising</b> | <b>Children and Young People Impacted</b> <p>There are two different groups of children who may be impacted by the redress scheme. These are:</p> <ul style="list-style-type: none"><li>• Children who are eligible to apply to the redress scheme – either as a 17 year old survivor or as a next of kin applicant who has a deceased parent who was a survivor of abuse in</li></ul>   |

<sup>1</sup> <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11722&mode=html>

the evidence base

a relevant care setting and where a spouse, civil partner or cohabitant has not applied.

- Children accessing services in the community.

The child applying to the scheme, as either a survivor or as a next of kin applicant, will need sufficient support throughout the application and payment process. We plan to do this by ensuring child applicants have an identified point of contact in the administrative body who can provide assistance and signposting to legal and financial advice throughout the application process and on receipt of payment, if necessary. We recognise the potential vulnerabilities for some child applicants, their particular needs and rights, and the complexity of ensuring their voice is heard, particularly when an adult is acting on their behalf. We will endeavour to promote rights and minimise risk in our further scheme design and development of operating procedures. However, we recognise that a 16 year old, who is independent may exert their right, similar to adult survivor applicants, not to take up any suggested supports.

The other group of children who may be indirectly impacted are those currently accessing services in the community. Relevant organisations may be faced with civil action on the part of survivors, the results of which could impact on the organisation through costs and damages, and upon services as a result. By making fair and meaningful financial contributions to the scheme, organisations may be able to mitigate the potential impact of action relating to historical abuse, and crystallise risk they may otherwise face. In an effort to make the delivery of the contribution fair, meaningful and manageable for the scheme and the organisation, it may be possible to tailor the delivery of the contribution in a way which seeks to protect the provision of services. The provision of fair and meaningful financial contributions therefore does not seek to directly affect the provision of services, but rather to offer an appropriate, proportionate and positive opportunity to address the harms of the past. This is a complex area which is considered further in the Policy Memorandum, Financial Memorandum and Business and Regulatory Impact Assessment.

**Evidence Base**

We do not have access to sufficient data on the number of children who may apply to the scheme as either survivors or as next of kin. This is due to the fact that we do not have strong evidence as to how many survivors of historical child abuse in care in Scotland there are. We have attempted to narrow down the potential number through various reports and modelling as mentioned below.

The Government Actuary's Department have conducted analysis to help refine our estimates of the potential number of applications we may receive. Our most recent analysis shows that we are working

to the estimate of 10,000-12,000 applicants. GAD's estimates show that we can expect to receive an estimate of 370-1270 next of kin applications. However, we will not have any further information on how many applications we may receive from those under the age of 18 due to the lack of data available.

We do not think the number of children who will apply to the scheme will be high, as it will only be available to children who are 17 and who were abused in care in their first year of life, or a next of kin where an eligible survivor passed away after 17 November 2016, and where there is not a spouse, civil partner, or cohabitant eligible to apply. Despite this lack of data, we recognise it is vital that we provide effective support for these children regardless of the number who may apply.

We did not feel it was proportionate to carry out a large-scale consultation exercise with children and young people specifically as this issue is likely to impact a small number of children and the subject matter is one of a highly sensitive nature.

Instead we chose to engage with professionals who currently provide legal support to children and who understand the law of trusts. This has given us good insight into the kind of support children and young people may need when applying to the scheme. We have also considered the responses received to the pre-legislative consultation exercise, which highlighted the importance of support during the application process and the complexities surrounding next of kin payments and family relationships.

We have engaged with The Scottish Child Law Centre to gain an understanding of the standards our policy must meet when interacting with a child applying to the scheme. We gained an understanding of difficult legal situations previously faced by solicitors and advocacy workers who were representing children. Through this engagement we have learned what kind of support children will need in relation to accessing legal advice.

We have engaged with an academic on the subject of trusts. This engagement has been crucial in informing our understanding and policy on children and vulnerable adults applying to the scheme. To remain inclusive and responsible, we will consider making payments to child applicants in trust, or in other alternative ways. To ensure there are appropriate safeguards in place, the panel will make decisions on the appropriate payment method for the applicant and children applying to the scheme will have the opportunity to receive appropriate legal advice before a payment is made.

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| <p><b>Children and young people's views and experiences</b></p>   | <p>We did not feel it was proportionate to carry out a consultation exercise specifically with children and young people as this issue is likely to impact a small number of children and the subject matter is one of a highly sensitive nature.</p> <p>We have used the research that was undertaken in the report, "Literature Review: Better Outcomes for Children and Young People Experiencing Domestic Abuse - Directions for Good Practice" to inform us of the kind of support that children find useful and not useful. We recognise that not all children applying to the scheme will have been in an abusive home but we thought this research would represent a similar kind of support that would help children applying.</p> <p>From this research we understand that children want a space where their voices and needs are heard and respected. They also find it useful to have one point of contact that does not change, which helps them to build trust and understanding with the one person. We have also learned from this research that children will have different experiences with support services, therefore we recognise that it is important to give children the choice, where possible. The administrative body will provide support to applicants. Operational guidance will be provided for staff which will make them aware of the distinct needs and rights of children.</p> <p>We also utilised research that was carried out by Scottish Government colleagues who were developing a new benefit (Young Carers Grant) for those aged 16-18. We have used the learning from their user research sessions, which gave us an idea of what makes an application accessible to young people. We will incorporate the findings of this research into the development of our own application forms and guidance.</p> |
| <p><b>Key Findings, including an assessment of the impact on children's rights, and how the measure will contribute to children's wellbeing</b></p> | <p><b>Children's Rights</b></p> <p>The policy complies with UNCRC requirements and seeks to actively improve the wellbeing of children applying to the scheme, for those who are still in care, and for those accessing services currently in the community. We believe this policy will have a positive impact on children's rights as it will give children access to remedy for their own experience or on behalf of a deceased parent.</p> <p>Article 3 is relevant to the Bill because we will seek to protect child applicants whilst fulfilling their rights if they are eligible to a redress payment as next of kin or as a 17 year old applying in their own right. We will ensure that children are offered funded independent legal advice if they choose to apply to the scheme. Payment methods for child applicants will be considered carefully throughout the development of operational procedures and guidance. Safeguarding and inclusivity will be key considerations. Given the nature of the scheme and the potential additional vulnerabilities of</p>  |

the children who may apply, we will consider, as appropriate, their potential access to broader supports that may be necessary to support their application.

Article 5 is relevant to the Bill as we will be engaging with those who are applying to the scheme on behalf of a child. This may happen where a child who is eligible for a next of kin payment does not have the legal capacity to apply themselves. The legal guardian, or other relevant adult legally responsible for the child, will represent the child's best interests in this instance. We will have safeguards in place to ensure consideration of the status of the adult, the context of their relationship with the child, and how they are ensuring the views and interests of the child are represented.

Article 12 is relevant to the Bill in many ways. We are setting the age of those children who can apply on their own behalf as 16, matching the age at which the capacity to enter legal transactions is obtained, as is set out in the Age of Legal Capacity (Scotland) Act 1991. We felt that raising the age to 18 would limit the opportunity for children to represent themselves and their own views in this circumstance.

We will require that those eligible and under 16 will need an adult to apply on their behalf. We will require that any adult applying on behalf of a child must seek the views and interests of the child. We will take account of the child's age and maturity and will, as far as possible, give the child an opportunity to express their views and have those views taken in to account. Issues of consent and rights for child applicants are central in our considerations, but this will be balanced with any consideration that a vulnerable young person who is, or may be, at risk of significant harm is offered support and protection. The United Nations Convention on the Rights of the Child applies to anyone under the age of 18 and the National Child Protection Guidance (2014) provides guidance for older children who are vulnerable and potentially at risk.

With regard to Article 19, we recognise that those children applying in their own right as a survivor of in-care abuse and those applying as child next of kin applicants have already experienced trauma and/or bereavement at a young age and that for some, there may be additional vulnerabilities. Some children may be care-experienced themselves at the time of application. It is essential that the scheme recognises the potential to identify possible risk of harm, including financial harm or other types of exploitation.

Where possible, the redress scheme will give the child choice throughout the application process, either directly or through the adult acting in their interests. We envisage that all applicants, including next of kin, will be provided with an identified point of contact within the administration to offer application advice through

the process. The approach taken will include, where relevant, working closely with legal guardians and at times signposting to necessary support services, including legal and financial advice.

### **Contribution to Children's Wellbeing**

We intend the redress scheme to contribute to a range of other measures relating to abuse in care, the care and protection of children and the development of services for children who may require to be cared for outwith their family. The Scottish Child Abuse Inquiry and the National Confidential Forum are both recording survivors' testimonies to help contribute to the understanding of what went wrong in the past and identify areas requiring improvement. In addition to financial payments, the redress scheme will provide access to important non-financial elements such as acknowledgement and apology, building on the cultural change intended by the Apologies (Scotland) Act 2016.

The recent publication of the Care Review reflected a full range of care-experienced views, and going forward, we would envisage that relevant learning from the redress scheme, will play a part in developments for children in care now and in the future.<sup>2</sup> We also intend that following the establishment of a redress scheme, we will be able to look at commemoration and memorial, which are important additional considerations to help acknowledge the past and further contribute to reconciliation.

We believe our Bill will have a positive impact on the following Wellbeing indicators:

- Safe
  - Our scheme will be shining a light on the issue of historical child abuse in care, building on the ongoing work of the Scottish Child Abuse Inquiry. We hope that the lessons learned from this scheme and from survivors sharing their experiences will prevent this systemic failure from happening again to children in care. We will consider the age, stage and potential vulnerability of child applicants, minimising potential risk where it arises and where possible, working closely with relevant legal guardians identified by applicants.
- Healthy
  - We recognise the holistic nature of children's needs and the need to consider age and stage of development. We will consider appropriate support needs through the application process, such as legal and financial advice.
- Respected
  - We are permitting children to apply to the scheme as survivors (where an application meets the eligibility criteria) and next of kin, where no spouse claims,

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<sup>2</sup> <https://www.carereview.scot/conclusions/independent-care-review-reports/>

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|                                     | <p>because we believe it is important that children have their voices heard, that they have autonomy, and that they have access to redress that they are eligible for. Where possible, we will promote choice through out the process.</p> <ul style="list-style-type: none"> <li>• Responsible <ul style="list-style-type: none"> <li>○ We want children to be involved in the decisions that affect them in relation to a survivor or next of kin payment and will endeavour to make sure they have access to the appropriate support and guidance to help inform their decisions. It is important that we balance the right to self-determination and the child’s autonomy, whilst recognising that there is the potential for risk. This is why we are offering all applicants funding for legal advice to ensure they are as informed as possible about their options in regards to redress. We will also signpost to financial advice so that the child can access advice to help them manage their redress payment if they choose to apply and are successful.</li> </ul> </li> <li>• Included <ul style="list-style-type: none"> <li>○ We hope that by receiving a redress payment, the children applying to the scheme will be able to more actively participate in society through acknowledgment of either their own experience, or of their parent’s experience in care, and the societal and government recognition of the harm caused. The financial payment, may for some, provide options and choices that would otherwise not have been in place, creating a reduction in their socioeconomic inequalities.</li> </ul> </li> </ul> |
| <p><b>Monitoring and review</b></p> | <p>The policy will be monitored throughout the parliamentary passage of the Bill and through the implementation of the scheme. We will continue to engage with relevant experts representing children and young people to ensure the best support possible for all applicants, including those under 18.</p>  |

| <b>Bill - Clause</b>   | <b>Aims of measure</b>  | <b>Likely to impact on . . .</b>                  | <b>Compliance with UNCRC requirements</b>          | <b>Contribution to local duties to safeguard, support and promote child wellbeing</b> |
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| <b>Section 49: Payments to vulnerable persons</b>  | To ensure that children can receive their payment whilst protecting their best interests.<br><br>This allows the panel to authorise payments in alternative ways. | Children applying as a survivor or as next of kin | Article 3<br>Article 5<br>Article 12<br>Article 19 | Safe<br>Respected<br>Responsible<br>Included  |
| <b>Section 85: Provision of support to persons in connection with an application</b>                                 | To give all applicants access to support through the application process  | Children applying as a survivor or as next of kin | Article 3<br>Article 5<br>Article 12<br>Article 19 | Safe<br>Respected<br>Responsible<br>Included  |
| <b>Section 86: Provision of support to persons eligible to receive a payment</b>                                     | To give applicants the opportunity to access emotional and psychological support  | Children applying as a survivor                   | Article 3<br>Article 5<br>Article 12<br>Article 19 | Safe<br>Respected<br>Responsible<br>Included  |
| <b>Section 88: Duty on Scottish Ministers to pay certain legal fees in connection with applications</b>              | To give all applicants access to funding for appropriate legal advice   | Children applying as a survivor or as next of kin | Article 3<br>Article 5<br>Article 12<br>Article 19 | Safe<br>Respected<br>Responsible<br>Included  |
| <b>CRWIA Declaration</b>   |   |   |  |   |
| <b>Authorisation</b>   |   |   |  |   |
| <b>Policy lead</b><br>Patsy Kay - Bill Officer, Redress, Relations and Response Division                             |   |   |  | <b>Date</b><br>5 August 2020  |
| <b>Deputy Director or equivalent</b><br>Donald Henderson - Deputy Director, Redress, Relations and Response Division |   |   |  | <b>Date</b><br>5 August 2020  |



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