



EQUALITY IMPACT ASSESSMENT – RECORD OF RESULTS

Title of Policy	Redress for Survivors (Historical Child Abuse In Care) (Scotland) Bill
Summary of aims and desired outcomes of policy	<p>The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill (“the 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.</p> <p>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. The scheme will also provide access to some non-financial redress such as acknowledgement, apology and support. This will sit alongside existing measures that the Scottish Government has put in place for survivors of historical child abuse.</p> <p>The design of the redress scheme has been guided by engagement and consultation with survivors and others to ensure that it is trauma-informed and takes into consideration, as far as possible, the needs of survivors.</p> <p>The Scottish Government is committed to seeking financial contributions towards the cost of the scheme from those who were responsible for the care of children where abuse occurred, whether providing care directly or otherwise involved in the decision-making processes and arrangements by which the child came to be in care. The scheme provides an opportunity for those organisations to participate meaningfully in the national, collective endeavour to recognise the harms of the past.</p>
Directorate/division/team	Directorate for Children and Families Redress, Relations and Response Division

Executive Summary

An equality impact assessment (EQIA) was undertaken in relation to the Redress for Survivors (Historical Child Abuse In Care) (Scotland) Bill to consider the potential impacts the Bill provisions may have on protected characteristics.

Key aspects of the design and delivery of the financial redress scheme include:

- Independent decision making: a Non-Departmental Public Body, Redress Scotland, will be created to independently assess and determine applications for redress.
- Administration and processing: a division of the Scottish Government will carry out the administration of the scheme, the processing of applications and the making of redress payments.
- Eligibility: the scheme is for survivors of historical child abuse in relevant care settings in Scotland. Historical in this context means abuse which took place before 1 December 2004.
- Time period: the scheme will be open to accept applications for five years, although the Scottish Ministers will have the power to extend the scheme if appropriate and with Parliament's approval.
- Payment structure: the scheme will adopt a combination payment approach and will offer survivors the choice to apply for a fixed rate redress payment or an individually assessed redress payment.
- Payment levels:

Payment Level	Payment Amount
Fixed rate payment and next of kin payment	£10,000
Individually assessed payment (Level 1)	£20,000
Individually assessed payment (Level 2)	£40,000
Individually assessed payment (Level 3)	£80,000

- Assessment: the level of each individually assessed redress payment will be determined following consideration of the nature, severity, frequency and duration of abuse along with other relevant facts and circumstances. An assessment framework will be published as guidance to provide transparency and consistency in decision making.
- Evidence: the scheme will be robust and credible to ensure that survivors, care providers and others can have confidence in its processes and outcomes. This will be achieved through the production of comprehensive guidance on evidentiary matters, transparency in the appointment process of decision-makers with suitable skills, knowledge and expertise, as well as the statutory safeguard of a reconsideration process to allow fraud to be dealt with.
- Waiver: redress payments will be conditional upon the applicant signing a waiver, relinquishing their right to continue or raise civil actions in respect

- of the abuse, against the Scottish Government or those organisations that have made fair and meaningful financial contributions to the scheme.
- Contributions: Financial contributions to the redress scheme are sought from those organisations who were responsible for the care of children at the time of the abuse, whether providing care directly or otherwise involved in the decision-making processes and arrangements by which the child came to be in care.
- Legal costs: subject to appropriate limits, the legal costs for applicants will be funded by the redress scheme.
- Next-of-kin: a restricted category of next of kin of deceased survivors will be eligible to apply for the fixed rate redress payment where the survivor died after 17 November 2016, the date on which the Deputy First Minister made a statement to Parliament committing to consult on the provision of financial redress to survivors.
- Non-financial redress: the scheme will offer access to acknowledgment, apology and support in addition to redress payments.

There are many barriers which historical abuse survivors face in accessing existing routes to justice, either in the criminal or civil courts. For those who were abused before 1964, raising an action in the civil courts is not an option available to them because of the operation of the law of prescription. Many other survivors of historical abuse cannot, or would choose not to, pursue financial compensation through the civil courts for a number of reasons including concerns over a lack of evidence, cost, and the nature of the adversarial process. The redress scheme will improve the choices and access to justice for many survivors. Those who meet the eligibility criteria will have the opportunity to apply for financial redress and other elements of non-financial redress offered by the scheme.

The eligibility criteria of the scheme may impact upon people who share the protected characteristics of age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These are listed in the Equality Act 2010. However the eligibility criteria will likely have a greater impact upon certain characteristics, namely age and disability.

The Bill may also have an impact upon care providers who contribute to the scheme. Historically, religious organisations were a large care provider. The opportunity to contribute to the redress scheme will provide relevant religious organisations an opportunity to be part of the collective solution to the systemic failings of the Scottish care system of the past.

Background

The InterAction Review Group was established to oversee the Scottish Human Rights Commission InterAction on Historical Abuse of Children in Care. The Review Group is a national stakeholder group which includes representation from survivors, survivor organisations, the Scottish Human Rights Commission, the Scottish Government, the Centre for Excellence for Looked After Children in Scotland (CELCIS) and care providers from all sectors. When this work concluded in October 2014, with commitments to implement the Action Plan on Justice for Victims of Historical Abuse of Children in Care, the Review Group continued with a revised

remit and membership in order to monitor and review the implementation of the commitments to the Action Plan.

Following an extensive survivor consultation and engagement exercise conducted in 2017, in partnership with CELCIS, the Review Group made recommendations for the establishment of a financial redress scheme. In light of these recommendations, on 23 October 2018, the Deputy First Minister made a statement to Parliament committing to establishing a financial redress scheme for survivors of historical child abuse in care in Scotland.¹

The advance payment scheme was launched on 25 April 2019 in accordance with the Review Group's recommendation that arrangements should be put in place to allow priority groups of survivors, those with a terminal illness or applicants aged 70 years and over, access to financial redress. In December 2019, the age criteria was lowered to those aged 68 and over following a review. The advance payment scheme will remain open until the statutory redress scheme is operational.

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 analysis of the responses have been published. They continue to inform policy decisions on the delivery of the redress scheme.

Scope of EQIA

A variety of sources have been used to help understand the likely impact of the proposed policies upon each of the protected characteristics and to refine those policies accordingly. In addition to ongoing engagement with a wide range of stakeholders, the sources of information that informed the EQIA includes:

- The InterAction Review Group, which was established to oversee the Scottish Human Rights Commission InterAction on Historical Abuse of Children in Care and subsequently to monitor the Action Plan. The Review Group, whose members include survivors, groups representing survivors, a care provider representative, Social Work Scotland, the Scottish Human Rights Commission, CELCIS and the Scottish Government, continue to monitor and review the commitment towards the implementation of the redress scheme.
- The 2017 CELCIS survivor consultation and engagement exercise on financial redress for adult survivors of abuse, which received over 180 responses. The CELCIS initial engagement exercise gathered views from residential and foster care providers and other relevant professional groups, as well as, a review of available information about other financial redress schemes in other countries.

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

- The Scottish Government has seconded two members of staff from CELCIS to help utilise their expertise in the area of historical abuse and survivor engagement.
- Scottish Government officials have communicated and held meetings with international counterparts to share knowledge and experience to inform our legislation and scheme design.
- A public consultation on Financial Redress for Historical Child Abuse in Care, based on the recommendations of the InterAction Review Group, was conducted by the Scottish Government. This ran from 2 September 2019 until 25 November 2019. 280 responses were received, the majority of which were from survivors. Independent analysis of the responses was carried out and a report of the results was published on 23 March 2020.
- The advance payment scheme has provided quantitative and qualitative data that has helped shape the redress scheme. This was launched on 25 April 2019. Advance payments have since been made to more than 400 survivors.
- Modelling for financial redress for survivors of historical abuse in care has been carried out by the Directorate for Education Analytical Services (EAS) within Scottish Government and by the Government Actuary's Department (GAD). GAD have provided estimates of the current surviving population of children who were in care during the relevant time period, analysed claims experience under the advance payment scheme to extrapolate likely numbers of claims at ages below 70 years, and considered evidence from other schemes in order to estimate an appropriate distribution of likely claims in consultation with the Scottish Government.
- Scoping work from the Scottish Commission for Learning Disability (carried out for the National Confidential Forum) has been considered in respect of estimating the number of children with learning disabilities who experienced residential care within the time period covered by the Scottish Child Abuse Inquiry (SCAI).
- Information from the Scottish Government Scottish Health Survey (2017) assisted in estimating how many adults had disabilities in 2017 and on the disability rates in different age groups.
- The Scottish Government's Children's Social Work Statistics (2016–2017) provided information about the number of looked after children with disabilities.
- The Mid Year Population Estimates (2018) from the National Records of Scotland provided information on the percentages of males and females of adults aged 18 and over in that year.
- The Children in the Care of Local Authorities in Scotland (1958) report provided information around the percentage of boys in care in that year.

- Gender Identity Research and Education Society (GIRES) provided the percentage of transgender people in the UK population in 2011.
- Scotland's Census (2011), from the National Records of Scotland, has also been considered and provides information on the ethnicity and religious status of the general population in 2011.
- There has been engagement with a broad range of voices including the Scottish Child Law Centre, The Rivers Centre, The Anchor, care provider organisations, survivor groups, Deaf Scotland, local authorities and other interested and relevant stakeholders.

During the EQIA process, the potential impact on each of the protected characteristics was considered. However, our assessment identified that the policy was only likely to have a direct impact in relation to age and disability. This impact is discussed in more detail below.

The other protected characteristics - maternity and pregnancy, sexual orientation, race, religion or belief, gender reassignment, and marriage and civil partnership - do not have a direct bearing on the implementation of a financial redress scheme for survivors of historical child abuse in care in Scotland. We have not encountered evidence that suggests people in these groups would be disproportionately affected by the introduction of the Bill.

Key Findings

Age

Older survivors, in particular those who experienced abuse in care prior to 1964, are excluded from accessing compensation via the civil justice route due to the law of prescription. They are therefore denied a route to justice that is open to other survivors. The redress scheme will provide an opportunity to apply for financial redress that otherwise would not exist.

Eligible abuse under the scheme means abuse which took place before 1 December 2004, the date of the then First Minister Jack McConnell's public apology in Parliament, when Scotland began to face up to the systemic failings which led to harm being done to children in care in the past.² This cut-off date will result in younger abuse victims being ineligible to apply to the scheme and therefore being excluded from financial redress via this route. We note that the purpose of the scheme is in relation to survivors of "historical" child abuse. By December 2004, there had been significant changes in child protection legislation, policy and practice in relation to children in care. Therefore we consider that it is legitimate to say that only abuse pre-December 2004 can be considered to be "historical". We therefore consider that it is proportionate to limit eligibility to abuse occurring before 1 December 2004.

There will be some survivors in older and younger age groups who will be excluded from applying for a redress payment because the abuse occurred whilst at a

² <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=4546&mode=pdf>

residential independent school where the fees were not paid by an Education Authority or care provider. There will also be people who were in a long-term healthcare establishment for reasons related to surgical and medical treatment – primarily in general or local hospitals - who will not be eligible to receive a redress payment under the scheme. However, children who stayed in all other healthcare establishments where the function was primarily long-term care, and not treatment, are eligible.

The purpose of the statutory redress scheme is to provide financial redress to survivors of “in care” abuse. Excluding the groups above is in line with the purpose of the scheme.

We consider that exclusion of these groups is rationally connected to the purpose of the scheme and there are proportionate reasons for doing so. Therefore, we do not consider there to be any unlawful discrimination.

Disability

A positive impact of the redress scheme is that it will extend to disabled survivors of abuse in relevant care settings including those who were in long term care in hospitals and others who were in care due to disability. Prior to the Community Care and Health Act (2002), many survivors lived in large institutions currently within the remit of the Scottish Child Abuse Inquiry (SCAI). The redress scheme recognises the specific impact of their experiences and the nature of those types of institutions. It will offer a form of remedy to those survivors who were victimised when they were vulnerable children in care.

Applicants with disabilities may have different accessibility requirements when making an application to the scheme. The redress scheme will have various support mechanisms in place to ensure that all applicants, regardless of disability, will have an equal and fair opportunity to apply.

Some survivors may have a physical or mental health condition and if they are invited to attend meetings or provide oral evidence in relation to their application, there would be a requirement to provide appropriate supports and ensure that accessibility of venue and transport is considered in line with their needs.

Gender reassignment

The redress scheme will have a positive effect on transgender people given that they will be able to benefit from the scheme.

Race

The redress scheme will have a positive effect on people, regardless of race, given that they will be able to benefit from the scheme if eligible.

Religion or Belief

No specific impact is expected with regard to religion or belief. However, the redress scheme will give any relevant religious organisations an opportunity to be part of the collective solution to the systemic failings of the Scottish care system of the past.

Marriage and Civil Partnership

No specific impact is expected with regard to marriage and civil partnership.

Pregnancy and Maternity

No specific impact is expected with regard to pregnancy and maternity.

Sex

The redress scheme will have a positive effect on people regardless of their sex given that they will be able to benefit from the scheme if eligible.

Sexual Orientation

The redress scheme will have a positive effect on people regardless of their sexual orientation given that they will be able to benefit from the scheme if eligible.

Recommendations and Conclusion

The EQIA process has not identified any issues which would have a serious, detrimental impact on any of the protected groups.

The redress scheme will have a positive impact on those with the protected characteristics of gender reassignment, race, sex and sexual orientation in that all survivors who meet the eligibility criteria will be able to benefit from the redress scheme.

It will also have a positive impact in relation to the protected characteristics of both age and disability. The scheme will provide the opportunity of financial redress to survivors of child abuse in care pre-1964, who would otherwise be unable to access compensation through the civil justice system. It will also provide the opportunity for redress to those who were abused whilst in a relevant care setting due to disability or disadvantage.

Finally, it will afford religious, voluntary and other organisations, which were providing care for children during the time period covered by the scheme, the opportunity to financially contribute towards the redress scheme.