

Redress For Survivors (Historical Child Abuse In Care) (Scotland) Act 2021: Statutory Guidance – Nominated Beneficiaries

December 2021

Nominated Beneficiaries

Status of this Guidance

1. This guidance is issued under section 106 of the Redress for Survivors (Historical Abuse in Care) (Scotland) Act 2021 (“the Act”).
2. This guidance applies to all those with an interest in connection with the making, or consideration of an application for redress. This includes applicants to the redress scheme, their legal representatives and Redress Scotland, who must have regard to the guidance.
3. This guidance covers:
 - Who can be nominated as a beneficiary
 - The process for nominating a beneficiary or changing the nominated beneficiary part-way through the application
 - The circumstances in which a nominated beneficiary may be invited to take over the application where Redress Scotland has all the information required
 - The circumstances in which a nominated beneficiary may be invited to take over the application where Redress Scotland does not have all the information required
 - The circumstances which may be considered exceptional for the purposes of a section 66(4) determination
 - The review process for a determination made under section 66(4)
 - The procedure for what happens to an application where a nominated beneficiary does not take over the application

Background

4. When a survivor of historical child abuse submits an application for financial redress, they will be given the opportunity to nominate a beneficiary, if they choose to do so. Subject to satisfactory assessment of the applicant’s eligibility, the nominated beneficiary should receive any payment in the event that the applicant dies before a redress payment is made. However, this will depend upon how far the application has been progressed at the time of the applicant’s death.
5. The rules around the consideration of serious criminal convictions would also apply in relation to any such convictions of the nominated beneficiary. Further information can be found in the [applicants with convictions for serious offences guidance](#).
6. A nominated beneficiary can be any person of the applicant’s choosing. In this context, “person” means an individual or an organisation such as a charity, trust, partnership or company.

The Act

7. Under section 65(1) of the Act, an applicant for a fixed rate payment or an individually assessed payment may, as part of the application or by other notice in writing to the Scottish Ministers, nominate a person (a “nominated beneficiary”) whom the applicant would like to be invited to take over the application in the event that the applicant dies while the application is ongoing. Any such nomination remains in force unless it is subsequently withdrawn by the applicant by notice in writing or the nominated beneficiary dies or, in the case of a person other than an individual (for example, a corporate body), ceases to exist. Applicants may wish to change their nominated beneficiary part-way through the application process. They must give notice to Scottish Ministers in writing to do this. Applicants can read more about the process of nominating a beneficiary as part of their application within the [“Help to Apply” guidance](#).

Circumstances in which a nominated beneficiary may be invited to take over the application

Where Redress Scotland has all the information required

8. Where the applicant dies while the application is ongoing and the panel has all of the information required to determine the application, an existing nominated beneficiary can, in accordance with section 66(2) of the Act, simply be invited to take over the application by Redress Scotland.

9. Section 66(6) and (7) outline when an application is ongoing for the purposes of that section. That is, from the time it is made until whichever of the following occurs:

1. the application is withdrawn;
2. a determination is made that the applicant is not eligible for a redress payment or is precluded from being offered one and either:
 - a) the period for seeking a review expires without one being sought; or
 - b) if a review is sought, the determination under review stands or the review request is withdrawn; or
3. where a determination is made that the applicant is eligible for a redress payment, the application is brought to an end under section 49, or as the case may be, 58 (i.e. an offer made under the application is either accepted or allowed to expire).

10. In exceptional circumstances, a request to revive an application may be made after it has been brought to an end, or the application could be revived without such a request being made (see sections 49(4) and 58(4) of the Act). Late requests for reviews of determinations of applications can also be made outwith the usual 8-week period for seeking a review, where Redress Scotland are satisfied that an applicant had a good reason for not requesting a review sooner. Where this happens, section 66(7) of the Act outlines that an application will be ongoing once again, until such time as:

- a request for an application to be revived or a late review request is rejected or withdrawn, or
- the application is brought to an end in the way mentioned at point 2(b) or 3 above.

11. The following situations are examples of where an applicant dies when an application is ongoing for the purposes of section 66 of the Act:

- where an applicant dies after submitting an application for redress but before Redress Scotland has made a determination on their application;
- where the applicant dies after being offered, but before accepting, the redress payment (so long as the offer hadn't expired under section 49); or
- where the applicant dies after submitting a request for a review of an offer of a redress payment under section 54, but before receiving notification of the outcome of that review.

Where Redress Scotland does not have all the information required

12. As per section 66(3) of the Act, in the case where the applicant has died after making an application but before the panel has all of the information required to determine the application, the panel must make a determination in accordance with section 66(4) as to whether or not the nominated beneficiary should be invited to take over the application. The panel may only invite the nominated beneficiary to take over the application where satisfied that there are exceptional circumstances which merit it.

13. Exceptional circumstances may include circumstances where there was an administrative matter still to be attended to or some other identifiable piece of information that the nominated beneficiary would be capable of providing to assist with determination of the application. Exceptional circumstances could also exist where the remaining paperwork required in respect of the application is minimal, and not fundamental to the determination of eligibility of the applicant.

14. Missing information which may be considered minimal and not fundamental to the determination of eligibility could include information to confirm bank details, addresses and previous payments received by the applicant.

15. However, the following situations would not qualify as exceptional circumstances for the purposes of a section 66(4) determination:

- Where supporting documentation confirming the applicant was resident in a relevant care setting as a child is not included within the application.
- Where there is an incomplete statement of the abuse suffered by the applicant, to the extent that Redress Scotland cannot assess whether the applicant suffered abuse which would render them eligible under the scheme.
- Where there is missing information in respect of the applicant's residence in a relevant care setting at the time of the abuse, to the extent that Redress Scotland cannot assess this aspect of eligibility.

16. Where a nominated beneficiary is invited to take over an application, they have a period of 8 weeks to accept the invitation by giving notice in writing to the Scottish Ministers and, if necessary, to provide any outstanding information required from by the panel appointed to determine the application. If they fail to do so, the application will be treated as having been brought to an end in accordance with section 72(5) of the Act.

17. Payment of any sum following the outcome of the application will be subject to the deduction of previous relevant payments made to the deceased survivor (in accordance with section 42 of the Act) and conditional upon the nominated beneficiary signing a waiver in accordance with section 46 of the Act.

Review of a determination under section 66(4)

18. A nominated beneficiary has the right to review a decision that there were no exceptional circumstances which would allow them to 'take over' the application. The processes for requesting and determining a review are outlined in sections 68 and 69 of the Act respectively. Further information on the reviews process can be found in the [guidance on reviews](#).

Where a nominated beneficiary does not take over the application

19. If the nominated beneficiary does not take over the application, then a next of kin will be able to apply on behalf of the deceased applicant for a next of kin payment where the relevant conditions in section 24 of the Act are met.

20. These provisions on nominated beneficiaries do not apply in relation to applications for next of kin payments. Where a next of kin dies during the application process, the application will simply be treated as terminated and no payment will be made. If, however, a next of kin dies after accepting an offer of a redress payment in accordance with section 50(1), but before the redress payment is paid, the redress payment will be paid to their estate. Where a next of kin application is made by a spouse, civil partner or cohabitant of a survivor, who dies before accepting a next of kin payment, it would be open to a child of the original survivor of the abuse to apply for a next of kin payment.



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
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EH1 3DG

ISBN: 978-1-80201-650-5 (web only)

Published by The Scottish Government, December 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS977127 (12/21)

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