

# **Redress for Survivors (Historical Child Abuse In Care) (Scotland) Act 2021 statutory guidance**

**Applications Etc. with (Unspent) Convictions  
for Serious Offences – Updated August 2024**

# Applicants etc. with (Unspent) Convictions for Serious Offences

## Status of this Guidance

1. This guidance is issued under section 106 of the Redress for Survivors (Historical Child 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 Redress Scotland, survivor applicants to the redress scheme, nominated beneficiaries, applicants for next of kin payments ("next of kin applicant") and their legal representatives. All persons to whom this guidance applies must have regard to it.
3. This guidance covers:
  - The policy background to section 60 of the Act;
  - The disclosure of unspent relevant criminal convictions by survivor applicants and, where they die while the application is ongoing, the applicant's nominated beneficiary;
  - The disclosure of unspent relevant criminal convictions by next of kin applicants in respect of themselves and the deceased survivor in respect of whom an application is made;
  - How information about a relevant criminal conviction(s) will be verified (including where no conviction is disclosed) and how the information provided about relevant criminal convictions will be used;
  - What will happen where a relevant criminal conviction is disclosed and/or confirmed/brought to light through verification;
  - The process by which Redress Scotland will make a determination under section 60 of the Act, including the considerations it may take into account regarding a relevant criminal conviction(s);
  - What happens where Redress Scotland considers it is not in the public interest for a person to receive a redress payment due to a relevant criminal conviction(s);
  - How a person is notified of Redress Scotland's determination under section 60 of the Act; and
  - The process which should be followed where there is a change in circumstances of an applicant or nominated beneficiary with regard to a relevant criminal conviction(s).

## Background

4. Section 60 of the Act applies where an application for redress is made and the survivor applicant, nominated beneficiary, next of kin applicant or deceased survivor in respect of whom the next of kin application has been made has been convicted of certain serious offences. This applies whether the conviction occurred in the United Kingdom or elsewhere in the world. In such cases, before a panel can determine an

application for a redress payment, the panel must first determine whether it would be contrary to the public interest to make a redress payment in those circumstances. The convictions for serious offences which are relevant to a panel's determination under section 60 of the Act, are those which have occurred up until the date the panel makes its determination (or a review panel conducts a review).

5. All survivor applicants and/or nominated beneficiaries must provide the Scottish Ministers with information in relation to any conviction(s) relating to themselves which is or may be relevant for the purposes of section 60 of the Act. Next of kin applicants must provide this information both in relation to themselves and, to the best of their ability, in relation to the deceased survivor in respect of whom the redress application is made. In each case individuals are required to disclose whether there are any unspent relevant previous convictions for offences mentioned in section 60(1) of the Act.<sup>[1]</sup> Namely, this is convictions for:

- murder<sup>[2]</sup>
- rape<sup>[3]</sup>
- a relevant offence for which the person is sentenced to imprisonment<sup>[4]</sup> for a term of 5 years or more.
  - A "relevant offence" is defined in section 61 as:
    - a violent offence, being an offence inferring personal violence other than murder, rape or a sexual offence.
    - a sexual offence listed in schedule 3 of the Sexual Offences Act 2003 other than rape (but includes attempted rape and conspiracy to commit rape).
- an equivalent offence.
  - An "equivalent offence" is defined in section 60 of the Act to include an offence which is equivalent to murder or rape, which was committed outwith the UK. It also includes an offence equivalent to a "relevant offence" where it was committed outwith the UK, where a person was sentenced to imprisonment for a term of 5 years or more.

6. Applicants are only required to disclose convictions for the offences outlined above – whether such convictions relate to themselves, or to the deceased survivor in respect of whom the redress application is made – that are unspent. That is, convictions for which the “disclosure period” has not expired.

7. In recognition of the impact that abuse can have on an individual there is no automatic exclusion or presumption against the payment of redress to survivor applicants, nominated beneficiaries, next of kin applicants or in respect of deceased survivors with previous convictions for the serious offences mentioned in section 60 of the Act. However, all payments under the Scheme are funded in whole or in part by the Scottish Government through public funds. There is a legitimate public interest in being able to consider restricting the use of public funds where the survivor applicant, nominated beneficiary, next of kin applicant or deceased survivor in respect of whom the redress application is made, has an unspent conviction(s) for a serious offence. As such, the Scheme seeks to strike a fair and proportionate balance between the allocation of public resources and the private interests of survivors and their families.

8. Where a survivor applicant, nominated beneficiary, next of kin applicant, or deceased survivor in respect of whom the redress application is made has an unspent conviction for the serious offences specified above, the panel will first determine whether it would be contrary to the public interest to make a redress payment.

9. As detailed in section 60(6) of the Act, in reaching that determination the panel will have regard to the following matters:

- the nature of the offence;
- the sentence imposed (and, where the sentence is or includes imprisonment, the term imposed);
- the length of time since the offence was committed;
- any rehabilitation activity undertaken by the person who committed the offence; and
- any other matter that the panel considers relevant.

10. If the panel decides that it is contrary to the public interest to make a redress payment, survivor applicants would, if they satisfy the general eligibility criteria of the scheme, still be entitled to receive access to non-financial redress elements of the scheme, such as an apology and therapeutic support. Non-financial redress is not available to nominated beneficiaries or next of kin applicants.

11. Survivor applicants, nominated beneficiaries and next of kin applicants should not disclose any information about convictions which are not listed in section 60(1) of the Act and noted above, as these are not relevant to the assessment of their redress application.

### **Applicants in respect of whom disclosure is required**

12. Survivor applicants, nominated beneficiaries and next of kin applicants may wish to contact a case worker to discuss previous convictions (including those of deceased survivors), particularly when they are unsure if the previous convictions are relevant, before submitting their application form.

13. Survivor applicants, nominated beneficiaries and next of kin applicants are entitled to obtain funded, independent legal advice on their applications, see the [guidance on legal fees](#) for more information. We strongly recommend that all applicants and nominated beneficiaries obtain legal advice on the disclosure of previous convictions for serious offences (including those of deceased survivors).

### ***Survivor applicant***

14. Survivor applicants must provide details of their own relevant previous convictions at the initial stages of the application process. Where applicants disclose within the application form that they have, or are not sure if they have, a relevant previous conviction, their case worker will get in touch with them to outline the next steps.

### ***Nominated beneficiary applicant***

15. Nominated beneficiaries must provide information about their own relevant previous convictions. The disclosure of convictions by the deceased survivor will have been submitted by them at the point of making the initial application. Information about the previous convictions of the nominated beneficiary will not be required until the point at which the nominated beneficiary has accepted an invitation to take over the application, following the death of the survivor. At that point, the nominated beneficiary must disclose any relevant previous convictions they have. For further information on this point see paragraph 10 (Change in circumstances of the applicant or nominated beneficiary)

### ***Next of kin applicant***

16. Next of kin applicants must, on making their application, provide details of any relevant convictions that they have. The next of kin applicant should also, to the best of their ability and knowledge, provide documentation and/or disclose convictions that the deceased survivor in respect of whom the redress application is made.

17. In the case of next of kin applicants, it is recognised that they may not have knowledge about whether or not the deceased survivor had relevant previous convictions.

18. There is no expectation that next of kin applicants should carry out any investigations in this regard – information is only required to be provided insofar as known to the applicant.

19. In the event of a next of kin application being submitted for more than one child of a deceased survivor, the previous convictions of each child would be assessed independently of the other. In the event of a determination that one child is precluded from being offered a redress payment based on an assessment under section 60 of the Act, this has no effect on the relevant share of the fixed rate payment that the remaining eligible children would be entitled to.

### **Verification and use of information provided about previous convictions (including where no conviction is disclosed)**

20. Any information provided to the Scottish Ministers relating to previous convictions for serious offences will be retained and processed as outlined in our Privacy Notices for [Survivor](#) and [Next of Kin](#) Applicants.

21. As outlined in the Notice, the Scottish Ministers may verify any information provided to them, including that provided about relevant criminal convictions. To provide an assurance that applicants are not failing to declare relevant serious criminal convictions and to ensure the scheme is robust and credible a random selection of applications will be selected for "spot check" audit verification of whether an individual has previous relevant convictions and where this happens, a case worker will get in touch with the survivor applicant, nominated beneficiary or next of kin applicant to explain what this means for them. A "check" may also be conducted where there is reason to suspect that the survivor applicant, nominated beneficiary,

next of kin applicant or deceased survivor in respect of whom the redress application is made may have an undeclared relevant conviction.

22. Where a "spot check" audit identifies a failure to disclose a relevant conviction, consideration will be given to referring the matter to the police to investigate whether there has been any criminality involved in making a false declaration.

23. In addition, where a failure to disclose a relevant criminal conviction is identified after a redress payment has been paid to an applicant or nominated beneficiary, the Act provides for a process of referral for a re-determination where the Scottish Ministers or Redress Scotland consider that a determination has been affected by error, fraudulent or otherwise. This process may result in the person who has received the payment being liable to repay it in whole or in part, under section 74 of the Act.

### **Where a relevant conviction is disclosed or confirmed**

24. The survivor applicant, nominated beneficiary or next of kin applicant will be contacted by their case worker and advised of the further information that they must provide in relation to relevant conviction(s) (including those of deceased survivors).

25. In accordance with section 64 of the Act, this is information about:

- the nature of the offence;
- the sentence imposed (and, where the sentence is or includes imprisonment, the term imposed);
- the length of time since the offence was committed; and
- any rehabilitation activity undertaken by the person who committed the offence.

26. The survivor applicant, nominated beneficiary or next of kin applicant may wish to provide supporting documentation on any of these matters. They may also wish to provide any other information they consider relevant to the application of the public interest test.

27. This information will be passed to Redress Scotland to assist the panel with its assessment under section 60 of the Act as to whether it would be contrary to the public interest to make a redress payment to the survivor applicant, nominated beneficiary or next of kin applicant. Applicants will have the opportunity to approve the finalised application pack prior to it being shared with Redress Scotland.

### **Determinations by Redress Scotland under section 60 of the Act**

28. Redress Scotland will consider the relevant conviction(s) based on the information provided and may request further information or clarification from the survivor applicant, nominated beneficiary or next of kin applicant to assist its determination.

29. The Scottish Ministers may also require information to be provided to them by any other person who they consider may have information relevant to the determination, by issuing a notice under section 79 of the Act. Under section 81 of the Act Redress Scotland can also ask the Scottish Ministers to issue a notice. Information which the Scottish Ministers receive in response to the notice can then be shared with Redress Scotland to assist it in making a determination.

30. Redress Scotland may choose to invite the survivor applicant, nominated beneficiary or next of kin applicant to make oral representations to assist in the assessment process. It should be noted that attendance is voluntary and this mechanism would not routinely be applied when considering previous relevant convictions, only where necessary. Further information on making oral representations to Redress Scotland can be found in [guidance on making oral representation](#).

### **Consideration of relevant conviction(s) by the panel**

31. All payments under the Scheme are funded in whole or in part by the Scottish Government through public funds. As such, it is important that the Scheme is credible and retains the confidence of the public. Where an application is affected by convictions for serious offences the panel must have regard to the matters set out in section 60(6) of the Act in determining whether it would be contrary to the public interest to make a redress payment to the survivor applicant, nominated beneficiary or next of kin applicant. All of these factors should be considered.

The Act does not define "the public interest", and currently no 'fixed' legal definition exists. The concept, however, is generally considered to relate to something which is of interest and importance to the public in general and not merely of individual interest. Whilst what is of interest to the public in general may align with any given individual's rights and needs, it cannot be said that the rights of any one individual can be taken to represent the interest of the public as whole. In any given instance, the interest in question must be real rather than hypothetical

When assessing whether it would be contrary to the public interest to make a redress payment the panel must have regard to:

- The nature of the offence – section 60(6)(a)
  - the panel should have regard to the seriousness of the offence, including the facts and circumstances of the disclosed relevant conviction in assessing whether the nature of the offence committed is such that a redress payment would be contrary to the public interest.
  - the panel should have regard to whether the nature of the offence committed is incompatible with the purpose of the redress scheme. Offences involving the abuse of children may be considered to be incompatible with the purposes of the redress scheme.
  - Where multiple convictions for serious offences are disclosed, the panel should have regard to the number of convictions. The presence of multiple convictions may indicate that it is not in the public interest to offer a redress payment.
- The sentence imposed – section 60(6)(b)

- the panel should have regard to whether the sentence imposed was of imprisonment, and if so, the length of the sentence.
- the panel should have regard to whether the sentence for the relevant previous conviction has been served. It may be less likely to be in the public interest to deem a survivor applicant, nominated beneficiary or next of kin applicant who is still serving a sentence as eligible for a redress payment.
- The length of time since the offence was committed– section 60(6)(c)
  - the panel should look at the age of the offence and date of conviction. It may be that the crime was committed many years prior to the offence being prosecuted and the applicant or nominated beneficiary was convicted;
  - A longer intervening period between the date of the offence and the application may mean that the public interest would not preclude that applicant or nominated beneficiary from being offered a redress payment (subject though to other factors including the nature of the offence and the sentence imposed).
- Rehabilitation undertaken – section 60(6)(d)
  - consideration should be given to any rehabilitation undertaken by the applicant or nominated beneficiary. This could include engagement with voluntary work, mental health supports or addictions treatment programmes. This may involve evaluating the extent of their engagement in rehabilitation activities, any learning and insight gained from the process, examining expressions of remorse and accountability, and reviewing efforts towards remediation (i.e. efforts to make amends with victims, engage in community service, or participate in restorative justice initiatives). Rehabilitation efforts may be a mitigating factor in the panel's decision, striking a balance between recognising individual growth and the broader public interest.
- Any other matters which the panel considers relevant – section 60(6)(e)
  - whether the panel consider there are any other relevant matters having regard to the public interest.
  - the applicant or nominated beneficiary may wish to provide information which they feel demonstrates their commitment and contribution to society and serving the public interest. For example, this could include their chosen vocation or activities demonstrating their commitment in the period following their conviction for the offence.
  - The applicant or nominated beneficiary may wish to provide this information in writing or, in the absence of written evidence, may be invited to make oral representations. Attendance to provide oral evidence is entirely voluntary and is intended to ensure that the panel has sufficient information to make a fair determination. As noted above, further information on oral representations can be found in the [guidance on making oral representations](#).

### **Determination of eligibility**

32. Where a determination is made to preclude a person from being offered a redress payment, section 60(7) of the Act allows the panel to determine whether the person would otherwise have been eligible for such a payment.



33. This is to ensure that where a survivor applicant is precluded from receiving a redress payment, but is otherwise eligible for the redress scheme, the applicant is still entitled to and able to access non-financial redress. More information is found in the [Help to Apply guidance](#).

34. Whether the survivor applicant would then be entitled to non-financial redress would be subject to the panel's assessment based on the application and information provided to Redress Scotland as to whether, but for the serious conviction(s), the applicant would have satisfied the eligibility criteria for a redress payment.

### **Notification of determination**

35. Section 60(8) of the Act provides that the Scottish Ministers must, as soon as reasonably practicable, notify the survivor applicant, nominated beneficiary or next of kin applicant of the panel's determination and provide a summary of reasons from Redress Scotland for reaching that determination. Redress Scotland will set out the reasoning behind its decision in the determination letter issued to the applicant. The Scottish Ministers will also ensure the applicant is aware of their right to a review of the determination made under section 62 of the Act. Further information on the reviews process can be found in the [guidance on reviews](#).

### **Change in circumstances of the applicant or nominated beneficiary**

36. It is possible that a change in circumstances in respect of criminal convictions could arise before a determination is made by a panel appointed under sections 35 or 55 of the Act.

37. If a survivor applicant or next of kin applicant is convicted of a relevant offence in the period between submitting their application and determination by a panel appointed under sections 35 or 55 of the Act, the applicant must disclose this. Similarly, a nominated beneficiary must provide information about any relevant convictions which may have arisen between their disclosure to Redress Scotland and their application being determined by a panel appointed under sections 35 or 55 of the Act.

38. Survivor applicants, nominated beneficiaries and next of kin applicants will be required to disclose where there are any sentencing or appeal proceedings pending or ongoing in respect of offences which are or may be relevant to a panel's determination under section 60 of the Act. Where at all possible, Redress Scotland should seek to defer making a determination until after the survivor applicant, nominated beneficiary or next of kin applicant has been sentenced or any appeal has been dealt with. However, it is accepted that this may not always be appropriate, given the length of time court processes can take. Panel members will exercise their judgement on how to approach these cases, within the parameters of the Act.

39. As noted above, given the potential length of time for any sentence or appeal to be determined, Redress Scotland may simply have to make a determination. Following a determination that the person is precluded in the public interest from receiving a redress payment (including where this was upheld on a review), no payment would be given. However, where the conviction of an applicant or

nominated beneficiary is overturned on appeal or, the sentence for a relevant offence is reduced to below 5 years, it would then be open to the person to submit another application for a redress payment under section 30(7) of the Act.

40. Applicants and nominated beneficiaries are required to sign a declaration confirming they will notify the Scottish Government of a change in circumstances. Failure to do so may result in referral to the police for investigation and potential recovery of any payments made.



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