

## **Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1933](#): Allow the Fornethy Survivors to access Scotland's redress scheme, lodged by Iris Tinto on behalf of Fornethy Survivors Group**

### **Brief overview of issues raised by the petition**

The petition relates to allegations of the abuse of children who attended Fornethy House Residential School for short periods from the 1960s onwards.

The petition argues that this abuse is unfairly excluded from the scope of the redress scheme set up by the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021. It also states that victims of abuse are not being given access to relevant records held by Glasgow City Council.

### **The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021**

The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Redress Act) sets up [a scheme](#) for the provision of financial and non-financial redress to survivors of historical child abuse in care settings in Scotland.

The scheme, which opened in December 2021, and which is provided by the Scottish Government and [Redress Scotland](#), is aimed at providing survivors with a choice of how to pursue redress payments and is an alternative route to civil litigation.

To be provided with financial redress, applicants have to give up the right to bring court cases against the bodies responsible for the abuse (i.e. religious bodies, charities, various arms of the state etc.) who have provided "fair and meaningful" financial contributions to the scheme.

### **Eligibility for redress payments**

The Redress Act provides eligibility criteria for redress payments. Under section 18, redress payments are limited to abuse to children in "relevant care settings" in Scotland which occurred before 1 December 2004.

Section 20(1) of the Act defines "relevant care setting" as:

“(a) a residential institution in which the day-to-day care of children was provided by or on behalf of a person other than a parent or guardian of the children resident there,

(b) a place, other than a residential institution, in which a child resided while being—

(i) boarded-out,

(ii) fostered.”

Section 20(3) of the Act defines a “residential institution” as:

- a children’s home
- a penal institution
- a residential care facility
- school-related accommodation
- secure accommodation.

The Scottish Ministers can exclude certain situations from the scheme by regulation. Regulations which came into force on 1 December 2021<sup>1</sup> exclude applications where a person was resident in a relevant care setting:

1. for the purpose of being provided with short-term respite or holiday care, **and**
2. this was due to arrangements made between the parent or guardian of that person and another person.

The regulations were approved by the [Scottish Parliament’s Education, Children and Young People Committee](#) on 27 October 2021. During the Committee’s meeting, the Deputy First Minister, John Swinney, explained the rationale for the regulations as follows:

“The abuse of children in all circumstances and settings is wrong and harmful. However, the purpose of the scheme has been to respond to survivors who, when they were placed in care, lost the oversight and protection of their parents and families. As a result, they were often isolated and had limited or no contact with their families. By contrast, respite or holiday care was intended to be and always was short term, and the parental rights and responsibilities were not affected. That has been reflected on by some survivors whose parents had their rights removed, who have referred to themselves as “children of the state”, the state being charged with their care and protection when they were stripped of access to their families. Children who were resident on a short-term respite or holiday basis were not in that position.”

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<sup>1</sup> [The Redress for Survivors \(Historical Child Abuse in Care\) \(Exceptions to Eligibility\) \(Scotland\) Regulations 2021](#)

Section 106 of the Act allows the Scottish Ministers to issue guidance on the operation of the Act, including eligibility for redress payments. The Scottish Government has published [statutory guidance](#) which includes more details on the exception for short-term respite or holiday care.

[On 28 January 2020, the Deputy First Minister, John Swinney, provided a response to a parliamentary question asking what discussions the Scottish Government has had with the victims of the Fornethy House abuse case.](#) The response stated that:

“To date, Scottish Ministers have had no formal discussions with the survivors or stakeholders involved in the allegations of abuse at Fornethy House Residential School. The abuse of children in all circumstances and settings is wrong, and the Scottish Government takes this abuse very seriously.

Scottish Government officials have exchanged correspondence with a number of members of the Fornethy House Residential School Survivors Group in relation to the eligibility criteria of Scotland’s Redress Scheme. As the circumstances in which individuals came to be at Fornethy may vary, it is not possible to determine eligibility for the group as a whole ...”

## **Accessing information and evidence**

The Redress Act contains rules on the provision of information and evidence (Chapter 6). This includes a power for the Scottish Ministers to compel individuals or bodies (other than the applicant) to provide information and evidence for the determination of applications. Redress Scotland can direct the Scottish Ministers to exercise this power.

The Scottish Government has also published [statutory guidance on the evidential requirements for applying to the Redress Scheme](#). This includes information on the support which case-workers from the Scottish Government can offer applicants as regards accessing information (see paras 21-31). The guidance states in particular that:

“31. The Scottish Government has engaged with the organisations most likely to hold records relevant to an application for redress (including local authorities, care providers and Police Scotland) and will continue to do so throughout the life of the scheme. Opportunities for improving or streamlining the processes for applicants accessing records are being fully explored.”

The recovery of documents in the civil courts (e.g. in the context of a damages action alleging abuse) is governed by separate procedural rules commonly known as “commission and diligence”.

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**17/5/2022**

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot)

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