Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 5	Schedule 1
Sections 6 to 94	Schedule 2
Section 95 to 101	Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Iain Gray

1   In section 1, page 2, leave out lines 8 and 9

Schedule 1

John Swinney

34   In schedule 1, page 59, line 9, at end insert—

    <( )   Redress Scotland is to appoint, as a member of staff, a chief executive.

    ( )   Redress Scotland is to appoint each chief executive with the approval of the Scottish Ministers.

    ( )   The chief executive may not be a member of Redress Scotland.>

John Swinney

35   In schedule 1, page 59, line 10, after <appoint> insert <other>

John Swinney

36   In schedule 1, page 59, line 11, leave out <Those> and insert <The chief executive and other>

After section 11

Clare Adamson

20   After section 11, insert—

        <**Principle of dignity, respect and compassion**

(1)   The Scottish Ministers, Redress Scotland, scheme contributors and other relevant persons must, in exercising functions conferred on them under or by virtue of this Act, have regard to the principle that the following persons should be treated with dignity, respect and compassion—

   (a) applicants for redress payments,

   (b) persons who may be considering making applications for such payments,

   (c) persons who are being or are eligible to be provided with support by virtue of arrangements made under section 86,

   (d) persons who have requested or may be considering requesting reimbursement of costs and expenses by virtue of regulations under section 87,

   (e) nominated beneficiaries.

(2)   For the purpose of subsection (1), "other relevant persons" are persons on whom functions are conferred under or by virtue of this Act, other than—

   (a) the Scottish Ministers, Redress Scotland and scheme contributors, and

   (b) persons mentioned in paragraphs (a) to (e) of subsection (1).>

Section 12

Daniel Johnson

21   In section 12, page 4, line 32, at end insert—

   <( ) who, in making or having agreed to make a contribution under this Act, acknowledge the wrongfulness of historical child abuse in care settings charged with a child's safeguard, welfare and protection and their actions (or lack thereof) in contributing to this wrongful abuse.>

Jamie Greene

37   In section 12, page 4, line 38, at end insert—

   <( ) the financial contribution the scheme contributor is making or has agreed to make,>

John Swinney

38   In section 12, page 5, line 1, leave out <that date> and insert <the date on which the removal takes effect, and

   ( ) where a scheme contributor is removed from the list with retrospective effect in accordance with section (*Retrospective removal of scheme contributor from contributor list*), that fact.>

Jamie Greene

39   In section 12, page 5, leave out line 10

Iain Gray

2   In section 12, page 5, line 11, leave out from <and> to end of line 12

John Swinney

40   In section 12, page 5, line 17, at end insert <(whether with retrospective effect or otherwise),>

Jamie Greene

41   In section 12, page 5, line 17, at end insert—

        <( ) including information in the list about payments made by a scheme contributor in respect of the financial contribution the contributor is making or has agreed to make,

        ( ) modifying such information,>

Jamie Greene

42   In section 12, page 5, line 19, at end insert—

        <( ) The Scottish Ministers must publish the contributor list (including the list as revised) at such intervals, and in such form, as they consider appropriate.>

Iain Gray

3   In section 12, page 5, line 20, leave out subsection (7)

John Swinney

43   In section 12, page 5, line 22, at end insert <unless and to the extent that the removal has retrospective effect.>

John Swinney

44   In section 12, page 5, line 23, leave out subsections (8) and (9)

Section 13

John Swinney

45   In section 13, page 5, line 34, at end insert—

        <( ) remove a scheme contributor from the list with retrospective effect in accordance with section (*Retrospective removal of scheme contributor from contributor list*).>

Jamie Greene

46   In section 13, page 5, line 34, at end insert—

        <( ) For the purpose of subsection (1)—

           (a) the statement of principles must include the matters which the Scottish Ministers will take into account in determining whether a financial contribution that a public authority, voluntary organisation or other person is making or proposing to make is fair and meaningful, and

           (b) those matters must include the circumstances in which a contribution that the authority, organisation or other person proposes to make over a period of time for reasons of affordability can be a fair and meaningful one.>

Jamie Greene

47   In section 13, page 5, line 35, leave out <subsection (1)> and insert <this section>

After section 13

John Swinney

48   After section 13, insert—

<**Retrospective removal of scheme contributor from contributor list**

(1)   The Scottish Ministers may remove a scheme contributor from the contributor list with retrospective effect only where the removal is a result of the contributor failing to make the financial contribution mentioned in section 12(1)(b) which the contributor had agreed to make.

(2)   Where the Scottish Ministers intend to remove a scheme contributor with retrospective effect, they must carry out an assessment of any contribution made by the contributor under the agreement and allocate it against redress payments as they consider appropriate.

(3)   The allocation must—

    (a) be carried out in accordance with any statement published under section 13 about how a fair and meaningful financial contribution is to be calculated, and

    (b) allow the Scottish Ministers to determine the date on which they consider any contribution made by the scheme contributor to be exhausted.

(4)   In determining the date on which a retrospective removal is to take effect, the Scottish Ministers must have regard to the date on which they consider that any contribution made by the scheme contributor is exhausted.>

Section 14

Iain Gray

4   In section 14, page 6, line 5, at end insert—

<( ) The making of the financial contribution must—

    (a) be affordable to the charity whilst still remaining a fair and meaningful contribution, and

    (b) not jeopardise the services the charity provides.>

John Swinney

49   In section 14, page 6, line 6, leave out <or in section 15>

Section 15

John Swinney

50   Leave out section 15

Section 17

John Swinney

51   In section 17, page 7, line 7, leave out <means> and insert <includes>

Rona Mackay

22   In section 17, page 7, line 12, leave out from <does> to end of line 14 and insert <includes corporal punishment to the extent that, at the time it was administered, it was not permitted under or by virtue of any enactment or rule of law because it was—

        (a) excessive, arbitrary or cruel,

        (b) administered for an improper motive, or

        (c) not so permitted for another reason.>

Section 18

John Swinney

52   In section 18, page 8, line 7, at end insert—

    <( ) The Scottish Ministers may make regulations under subsection (4) only if satisfied, so far as reasonably practicable, that doing so will not have the effect that persons who would otherwise be eligible to apply for redress payments will cease to be so eligible.>

Section 20

John Swinney

53   In section 20, page 9, line 17, at end insert—

    <( ) For the purpose of subsection (1), it is immaterial whether the child was within or outside Scotland during the period of absence from the relevant care setting.>

Section 22

John Swinney

54   In section 22, page 9, line 37, leave out <17 November 2016> and insert <1 December 2004>

John Swinney

55   In section 22, page 10, line 10, leave out from <died> to end of line 11 and insert <had not previously been paid a fixed rate payment,>

Section 23

John Swinney

56   In section 23, page 10, line 29, leave out <died without a fixed rate payment having already been accepted> and insert <had not previously been paid a fixed rate payment>

Section 24

John Swinney

57 In section 24, page 11, line 18, leave out <4> and insert <8>

Section 26

John Swinney

58 In section 26, page 12, line 16, after <is> insert <or was>

Ross Greer

23 In section 26, page 12, line 18, leave out from <, provided> to end of line 21

Ross Greer

24 In section 26, page 12, line 35, at end insert <and had been so living for a period of at least 6 months.>

Section 28

John Swinney

59 In section 28, page 13, line 31, at end insert—

 <(2A) An application for an individually assessed payment may be made by a person where—

  (a) an application for an individually assessed payment has previously been made in respect of the person,

  (b) that application resulted in the applicant accepting a redress payment other than a level 5 payment, and

  (c) Redress Scotland is satisfied that new evidence is available which the person had a reasonable excuse for not providing in connection with the previous application and which justifies allowing a further application.>

Section 29

John Swinney

60 In section 29, page 14, line 26, leave out <section 27(1)(b)> and insert <this Act>

Section 31

John Swinney

61 In section 31, page 15, line 21, leave out from <unless> to end of line 22

Section 32

John Swinney

62   In section 32, page 15, line 30, leave out <in the application> and insert <to Redress Scotland (in the application or otherwise)>

After section 33

Daniel Johnson

25*   After section 33, insert—

<**Principles for determining applications**

(1)   The Scottish Ministers must by regulations set out principles to be followed by the panel appointed under section 33 in determining an application for a redress payment.

(2)   The first draft regulations under subsection (1) must be laid before the Scottish Parliament no later than 2 months after the day of Royal Assent.

(3)   The principles set out in regulations under subsection (1) must include—

   (a)   the principle that the experience of an applicant may be assumed to be coherent with evidence gathered from other accounts of experience in the relevant care setting to which the application relates,

   (b)   the principle that evidence of the experience of an applicant may be inferred from—

      (i)   the accounts of other applicants,

      (ii) existing accounts about the relevant care setting to which the application relates which may not explicitly establish abuse but are consistent with the applicant's account,

   (c)   the presumption that an applicant is to be believed,

   (d)   the principle that the obligation to establish the facts of the application rests with the panel and not the applicant,

   (e)   a presumption that where possible, and where evidence is already available or obtainable elsewhere, an applicant need not repeat their account of abuse,

   (f)   the principle that the standard of proof be no higher than the balance of probabilities.

(4)   Regulations under this section are subject to the affirmative procedure.>

Section 34

John Swinney

63   In section 34, page 16, line 4, after <whether> insert <, on the balance of probabilities,>

John Swinney

64   In section 34, page 16, line 10, leave out <consider or make a determination on any issue of fault or negligence> and insert <rule on, and has no power to determine, any person's civil or criminal liability>

John Swinney

65   In section 34, page 16, line 14, leave out <fully>

John Swinney

66   In section 34, page 16, line 23, at beginning insert <For the purposes of other proceedings,>

Section 35

John Swinney

67   In section 35, page 17, line 4, after <28(2)> insert <or (2A)>

Section 36

Iain Gray

5   In section 36, page 17, leave out lines 26 to 30

John Swinney

68   Leave out section 36

Section 38

John Swinney

69   In section 38, page 18, line 5, at end insert—

          <( )   £50,000,>

John Swinney

70   In section 38, page 18, line 6, at end insert <, or

          ( )   £90,000,>

Daniel Johnson

26   In section 38, page 18, line 6, at end insert—

          <( )   a sum above £70,000 as determined by the panel,>

Daniel Johnson

27   In section 38, page 18, line 8, leave out subsection (2)

John Swinney

71   In section 38, page 18, line 12, at end insert—

          <( )   £60,000 (a level 3 payment),>

John Swinney

72   In section 38, page 18, line 13, leave out <3> and insert <4>

John Swinney

73   In section 38, page 18, line 13, at end insert <, or

        ( ) £100,000 (a level 5 payment).>

John Swinney

74   In section 38, page 18, line 14, after <where> insert <—

        ( )>

John Swinney

75   In section 38, page 18, line 16, at end insert—

        <( ) the application is an application for an individually assessed payment made by virtue of section 28(2A), any redress payment (other than a next of kin payment) which has previously been paid to the applicant is to be deducted from the individually assessed payment for which the applicant is eligible.>

Section 42

John Swinney

76   In section 42, page 21, line 1, leave out <fixed rate> and insert <redress>

John Swinney

77   In section 42, page 21, line 1, leave out from <(either> to end of line 3

John Swinney

78   In section 42, page 21, line 5, leave out <fixed rate> and insert <previous redress>

Section 45

John Swinney

79   In section 45, page 22, line 5, leave out <, 36>

John Swinney

80   In section 45, page 22, line 15, after <paid> insert <—

        (a)>

John Swinney

81   In section 45, page 22, line 15, leave out from <(either> to end of line 16 and insert <under a previous application for one,>

John Swinney

82   In section 45, page 22, line 16, at end insert <or

          (b)   where the application is made by virtue of section 28(2A), an individually assessed payment.>

John Swinney

83   In section 45, page 22, line 21, after <payment> insert <or, where subsection (3)(b) applies, the previous individually assessed payment>

John Swinney

84   In section 45, page 23, line 8, at end insert—

     <( )   For the purpose of subsection (6), where a scheme contributor is removed from the contributor list with retrospective effect in accordance with section (*Retrospective removal of scheme contributor from contributor list*), the question of whether the scheme contributor is a relevant scheme contributor on a particular date is to be determined by reference to the contributor list as retrospectively amended.>

Iain Gray

6   Leave out section 45

Section 46

Iain Gray

7   Leave out section 46

Section 47

John Swinney

85   In section 47, page 23, line 24, leave out <12 weeks> and insert <6 months>

Section 48

Iain Gray

8   In section 48, page 23, line 37, leave out subsection (1)

Iain Gray

9   In section 48, page 24, line 6, leave out from <in> to end of line 9

Iain Gray

10   In section 48, page 24, line 14, leave out subsection (4)

Section 49

Kenneth Gibson

28   In section 49, page 24, line 18, leave out from first <is> to <made> in line 19 and insert <makes an offer of a redress payment to an applicant who>

Kenneth Gibson

29   In section 49, page 24, line 20, leave out <16> and insert <18>

Kenneth Gibson

30   In section 49, page 24, leave out lines 21 to 25

Kenneth Gibson

31   In section 49, page 24, line 27, at end insert—

  <(3)   A direction under subsection (2) may, in particular, provide that the redress payment—

      (a) is to be paid in instalments,

      (b) is not to be paid until the applicant reaches the age of 18.

   (4)   Where a direction under subsection (2) postpones the payment of the whole or part of the redress payment—

      (a) Redress Scotland may at any time, at the request of or otherwise with the consent of the applicant, instruct the Scottish Ministers to make earlier payment to the applicant of the whole or part of the redress payment or, as the case may be, any remaining balance of it,

      (b) on the applicant reaching the age of 18, the Scottish Ministers must pay the redress payment or, as the case may be, the balance of it (if any) to the applicant in accordance with paragraphs (a) and (b) of section 48(3).>

Section 50

John Swinney

86   In section 50, page 24, line 33, leave out <4> and insert <8>

Section 52

John Swinney

87   In section 52, page 26, line 8, leave out <4> and insert <8>

Section 56

John Swinney

88   In section 56, page 28, line 5, leave out <12 weeks> and insert <6 months>

Section 57

John Swinney

89   In section 57, page 28, line 34, leave out <12 week> and insert <6 month>

Section 60

John Swinney

90   In section 60, page 31, line 16, leave out <4> and insert <8>

Section 65

John Swinney

91   In section 65, page 34, line 13, leave out <4> and insert <8>

Section 67

John Swinney

92   In section 67, page 35, line 18, leave out subsection (2)

Section 68

John Swinney

93   In section 68, page 35, line 31, leave out <4> and insert <8>

Section 69

John Swinney

94   In section 69, page 36, line 20, after <payment> insert <or, in the case of an application made by virtue of section 28(2A), an individually assessed payment>

Iain Gray

11   In section 69, page 36, leave out lines 37 to 39

Section 70

John Swinney

95   In section 70, page 37, line 23, leave out subsection (4)

<div align="center">**Section 72**</div>

John Swinney

96   In section 72, page 38, line 30, leave out <4> and insert <8>

John Swinney

97   In section 72, page 39, line 1, at beginning insert <For the purposes of other proceedings,>

<div align="center">**Section 73**</div>

John Swinney

98   In section 73, page 39, line 32, leave out <4> and insert <8>

<div align="center">**Section 75**</div>

Iain Gray

12   In section 75, page 41, line 16, leave out from <(including> to end of line 17

<div align="center">**After section 78**</div>

Daniel Johnson

32   After section 78, insert—

        <**Applicant access to evidence**

  (1)   An applicant has the right to any evidence obtained by the panel under section 34(2) or 78 in relation to the determination of their application.

  (2)   Nothing in this section authorises a disclosure of any information—

     (a) that would be likely to identify any person other than the applicant,

     (b) that would be in contravention of the data protection legislation.

  (3)   In this section, "the data protection legislation" has the meaning given by section 3(9) of the Data Protection Act 2018.>

<div align="center">**Section 83**</div>

Daniel Johnson

33   In section 83, page 44, line 23, at beginning insert <Subject to section (*Applicant access to evidence*),>

<div align="center">**Section 84**</div>

Iain Gray

13   In section 84, page 45, leave out lines 36 to 38

Iain Gray

14   In section 84, page 46, line 3, leave out from <(including> to <45)> in line 4

Iain Gray

15   In section 84, page 46, leave out lines 17 and 18

Section 86

John Swinney

99   In section 86, page 47, line 8, leave out <(including by virtue of an initial determination under section 36)>

Iain Gray

16   In section 86, page 47, line 10, leave out from <either> to end of line 12

Section 89

Iain Gray

17   In section 89, page 49, line 14, leave out from <and> to end of line 16

John Swinney

100   In section 89, page 49, leave out lines 15 and 16

Before section 91

Iain Gray

18   Before section 91, insert—

        <**Advance payment scheme report**

    (1)   Before the end of the period of 2 months beginning with the day this section comes into force, the Scottish Ministers must lay before the Scottish Parliament a report outlining—

        (a)   how soon they anticipate Redress Scotland will be operational,

        (b)   any adjustments they intend to make to the advance payment scheme before Redress Scotland is operational, in particular in response to how anyone eligible for an advance payment may be or has been impacted by coronavirus.

    (2)   In this section, "coronavirus" has the meaning given in section 1 of the Coronavirus (Scotland) Act 2020.>

Section 96

John Swinney

101   In section 96, page 53, line 15, at end insert—

<"application period" is to be construed in accordance with section 29,>

John Swinney

102   In section 96, page 54, line 4, after first <payment> insert <—

( )>

John Swinney

103   In section 96, page 54, line 5, at end insert—

<( )   a person who has accepted a redress payment which is still to be paid (in instalments or otherwise) is to be treated as having received it or been paid it, as the case may be.>

Section 97

John Swinney

104   In section 97, page 54, line 16, at end insert—

<( )   the determination of applications under section 34, including the standard of proof to be applied,>

Section 98

John Swinney

105   In section 98, page 55, leave out line 4

John Swinney

106   In section 98, page 55, line 8, at end insert—

<( )   section 46,>

John Swinney

107   In section 98, page 55, leave out line 15

Section 100

Iain Gray

19   In section 100, page 55, line 34, after <sections> insert <(*Advance payment scheme report*),>