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Explanatory Notes (SP Bill 1-EN), a Financial Memorandum (SP Bill 1-FM), a Policy
Memorandum (SP Bill 1-PM) and statements on legislative competence (SP Bill 1-LC).**

Limitation (Childhood Abuse) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to remove the limitation period for actions of damages in respect of personal injuries resulting from childhood abuse.

1 Removal of 3 year limitation period in certain actions

After section 17 of the Prescription and Limitation (Scotland) Act 1973 insert—

“17A Actions in respect of personal injuries resulting from childhood abuse

- (1) The time limit in section 17 does not apply to an action of damages if—
- (a) the damages claimed consist of damages in respect of personal injuries,
 - (b) the person who sustained the injuries was a child on the date the act or omission to which the injuries were attributable occurred or, where the act or omission was a continuing one, the date the act or omission began,
 - (c) the act or omission to which the injuries were attributable constitutes abuse of the person who sustained the injuries, and
 - (d) the action is brought by the person who sustained the injuries.

- (2) In this section—

“abuse” includes sexual abuse, physical abuse and emotional abuse,

“child” means an individual under the age of 18.

17B Childhood abuse actions: previously accrued rights of action

Section 17A has effect as regards a right of action accruing before the commencement of section 17A.

17C Childhood abuse actions: previously litigated rights of action

- (1) This section applies where a right of action in respect of relevant personal injuries has been disposed of in the circumstances described in subsection (2).
- (2) The circumstances are that—
- (a) prior to the commencement of section 17A, an action of damages was brought in respect of the right of action (“the initial action”), and

(b) the initial action was disposed of by the court—

- (i) by reason of section 17, or
- (ii) in accordance with a relevant settlement.

(3) A person may bring an action of damages in respect of the right of action despite the initial action previously having been disposed of (including by way of decree of absolvitor).

(4) In this section—

(a) personal injuries are “relevant personal injuries” if they were sustained in the circumstances described in paragraphs (b) and (c) of section 17A(1),

(b) a settlement is a “relevant settlement” if—

- (i) it was agreed by the parties to the initial action,
- (ii) the pursuer entered into it under the reasonable belief that the initial action was likely to be disposed of by the court by reason of section 17, and
- (iii) any sum of money which it required the defender to pay to the pursuer, or to a person nominated by the pursuer, did not exceed the pursuer’s expenses in connection with bringing and settling the initial action.

(5) The condition in subsection (4)(b)(iii) is not met if the terms of the settlement indicate that the sum payable under it is or includes something other than reimbursement of the pursuer’s expenses in connection with bringing and settling the initial action.

17D Childhood abuse actions: circumstances in which an action may not proceed

(1) The court may not allow an action which is brought by virtue of section 17A(1) to proceed if either of subsections (2) or (3) apply.

(2) This subsection applies where the defender satisfies the court that it is not possible for a fair hearing to take place.

(3) This subsection applies where—

- (a) the defender satisfies the court that, as a result of the operation of section 17B or (as the case may be) 17C, the defender would be substantially prejudiced were the action to proceed, and
- (b) having had regard to the pursuer’s interest in the action proceeding, the court is satisfied that the prejudice is such that the action should not proceed.”.

2 Commencement

(1) This section and section 3 come into force on the day after Royal Assent.

(2) Section 1 comes into force on such day as the Scottish Ministers may by regulations appoint.

(3) Regulations under subsection (2) may—

- (a) appoint different days for different purposes,

(b) contain transitional, transitory or saving provision.

3 Short title

The short title of this Act is the *Limitation (Childhood Abuse) (Scotland) Act 2017*.

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Introduced by: Michael Matheson
Supported by: Annabelle Ewing
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