

LIMITATION (CHILDHOOD ABUSE) (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Limitation (Childhood Abuse) (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.
2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

OUTLINE OF BILL PROVISIONS

3. One of the priorities in the Scottish Government's Justice Strategy is to widen access to justice and advance law reform. This supports the justice outcome that our public services are fair and accessible. The policy aim of the Bill is to improve access to justice for survivors of childhood abuse. This Bill is one of a number of measures which have been taken, and are being taken, to address historical childhood abuse in Scotland. It is clearly in the public interest of a modern and just society that we help those where we can to access the justice that they seek for the terrible wrongs they have suffered.
4. The Bill amends the Prescription and Limitation (Scotland) Act 1973 ("the 1973 Act"). It removes the current three year limitation period in actions seeking damages in respect of personal injury where the action relates to abuse when the person who sustained the injuries and is bringing the action was a child at the time of the abuse. It applies to abuse occurring before or after commencement of the provisions.
5. Further information about the Bill's provisions is contained in the Explanatory Notes and Financial Memorandum published separately as SP Bill 1-EN, and in the Policy Memorandum published separately as SP Bill 1-PM.

RATIONALE FOR SUBORDINATE LEGISLATION

6. The Bill contains one delegated power which is explained in more detail below. In deciding whether legislative provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has had regard to:

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- the need to make proper use of valuable Parliamentary time;
- the need to provide the flexibility to respond to changing circumstances without the need for further primary legislation; and
- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by Parliament.

DELEGATED POWERS

Section 2 – Commencement

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Laid, no procedure

Provision

7. This provision enables the Scottish Ministers to commence section 1 of the Bill by making regulations. Regulations may include transitional, transitory or savings provision and may also appoint different days for different purposes.

Reason for taking power

8. Some formal provisions in the Bill (sections 2 and 3) come into force on the day after Royal Assent. However, this power is necessary to enable the Scottish Ministers to commence the substantive provision, section 1, when they consider appropriate. It is standard for Ministers to have control over the date of commencement.

9. While the Scottish Government intends to commence section 1 for all purposes on the same day, it considers that it is preferable to ensure there is flexibility in the commencement powers in case it transpires there is any need for staggered commencement. The Scottish Government therefore considers that in accordance with usual practice, the regulations should be capable of making different provision for different purposes.

10. The power also includes the usual ability to make transitional, transitory or saving provision in the commencement regulations. While the Bill applies retrospectively to claims which arise before section 17A comes into force, it is possible that the need for saving or transitional provision may be required on commencement. It is not considered that any such provision, if required, is likely to be complex.

Choice of procedure

11. As is now usual for commencement regulations, the default laying requirement applies (as provided for by section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010). This is considered appropriate because the policy behind the provisions will have already been considered by the Parliament during the passage of the Bill.

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