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Delegated Powers and Law Reform Committee

Limitation (Childhood Abuse) (Scotland) Bill at Stage 1



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

- a. any—
 - i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
 - ii. [deleted]
 - iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
- b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
- c. general questions relating to powers to make subordinate legislation;
- d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
- e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;
- f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;
- g. any Scottish Law Commission Bill as defined in Rule 9.17A.1;
- h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and
- i. any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. The Committee reports to the Parliament as follows—
2. At its meetings on 13 December 2016 and 17 January 2017, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Limitation (Childhood Abuse) (Scotland) Bill at Stage 1 (“the Bill”).ⁱ The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

Overview of the Bill

3. This Government Bill was introduced on 16 November 2016 by Michael Matheson MSP. The lead Committee is the Justice Committee.
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. The Bill contains 3 sections. Section 1 provides for the removal of the three year limitation period in particular actions (childhood abuse actions), including in relation to rights of action accruing before commencement of the provisions, and certain previously litigated rights of action. It does this by inserting new sections 17A to 17D into the 1973 Act, which will limit the circumstances in which the current limitation period applies.
6. Section 2 provides for the commencement of the Bill. Section 3 sets out the short title of the Act.

Delegated powers provisions

7. The Scottish Government has produced a Delegated Powers Memorandum (“DPM”)ⁱⁱ on the delegated powers provisions in the Bill. The Bill contains only commencement powers.

ⁱ Limitation (Childhood Abuse) (Scotland) Bill [as introduced] is available here:

[http://www.scottish.parliament.uk/S4_Bills/Lobbying%20\(Scotland\)%20Bill/SPBill82S042015.pdf](http://www.scottish.parliament.uk/S4_Bills/Lobbying%20(Scotland)%20Bill/SPBill82S042015.pdf)

ⁱⁱ Limitation (Childhood Abuse) (Scotland) Bill Delegated Powers Memorandum is available here:

[http://www.scottish.parliament.uk/S4_Bills/Lobbying%20\(Scotland\)%20Bill/SPBill82DPMS042015.pdf](http://www.scottish.parliament.uk/S4_Bills/Lobbying%20(Scotland)%20Bill/SPBill82DPMS042015.pdf)

8. At its meeting on 13 December 2016, the Committee agreed to write to the Scottish Government to raise questions on the commencement powers in the Bill. This correspondence is reproduced at the **Annexe**.

Recommendation

9. The Committee's comments and recommendation on the commencement powers in the Bill are detailed below.

Section 2 – Commencement

Power conferred on:

The Scottish Ministers

Power exercisable by:

Regulations

Parliamentary procedure:

Laid, no further procedure

Provision

10. Section 2(2) and (3) provide for powers to commence the Bill. Section 1 will come into force on such day as the Scottish Ministers may by regulations appoint.
11. Those regulations may appoint different days for different purposes, and contain transitional, transitory or saving provisions.
12. Sections 2 and 3 come into force on the day after Royal Assent.

Comment

13. The correspondence from the Scottish Government provided explanations why it may be necessary for the Scottish Ministers to exercise the powers to appoint different days for different purposes in commencing section 1 of the Bill, and to make transitional, transitory or saving provisions. The Committee accepted that it could be necessary for the Scottish Ministers to use those powers.

- 14. The Committee determined therefore that it did not need to draw the attention of the Parliament to the commencement powers in section 2 of the Bill.**

Annexe

Correspondence with the Scottish Government

On 15 December 2016, the Committee wrote to the Scottish Government as follows:

The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 12 December and seeks an explanation of the following matters:

Section 2 – Commencement

Power conferred on:	The Scottish Ministers
Power exercisable by:	Regulations
Parliamentary procedure:	Laid, no further procedure

Provisions

Section 2(2) and (3) provide for powers to commence the Bill. Section 1 will come into force on such day as the Scottish Ministers may by regulations appoint.

Those regulations may appoint different days for different purposes, and contain transitional, transitory or saving provisions.

Sections 2 and 3 come into force on the day after Royal Assent.

The Committee asks Scottish Government to explain the following, in connection with the commencement powers in section 2(3) of the Bill.

- (1) In what circumstances could it be either necessary or appropriate for the Scottish Government to exercise the power in section 2(3)(a) to appoint different days for different purposes, when commencing section 1 by regulations?**
- (2) In what circumstances could it be either necessary or appropriate for the Scottish Government to exercise the power in section 2(3)(b) to make transitional, transitory or saving provision, given that the proposed section 17B of the Prescription and Limitation (Scotland) Act 1973 provides that section 17A also has effect as regards a right of action which accrues before the date of commencement of section 17A?**

On 5 January 2017 the Scottish Government responded as follows:

Thank you for your letter of 15 December to James Hynd in which you seek a further explanation on the powers contained at sections 2(2) and 2(3) of the Limitation (Childhood Abuse)(Scotland) Bill ("the Bill"). It has been passed to me to reply as my team has policy responsibility for the Bill.

For ease of reference I have replicated the questions asked by the Committee and set out our corresponding explanation below.

The Committee asks Scottish Government to explain the following, in connection with the commencement powers in section 2(3) of the Bill.

(1) In what circumstances could it be either necessary or appropriate for the Scottish Government to exercise the power in section 2(3)(a) to appoint different days for different purposes, when commencing section 1 by regulations?

It may be necessary or appropriate to bring section 1 of the Bill into force on different days for the purposes of inserting different sections into the Prescription and Limitation (Scotland) Act 1973. For example, the application of section 17C (previously raised cases) could give rise to issues which are not raised by the other sections inserted by section 1 of the Bill. Resolution of such issues (for example by having court rules in place to deal with cases to which section 17C would apply) could mean that the commencement of section 17C should be postponed for a short period.

However, awaiting the resolution of issues raised by section 17C should not delay the removal of the limitation period for cases otherwise covered by section 17A. Taking a power to appoint different powers for different purposes will therefore allow ministers the flexibility of bringing the advantages of the Bill to survivors of childhood abuse as quickly as possible whilst allowing time for resolution of issues which may be raised by some of the more complicated aspects of the Bill.

Such a power is commonly taken in Acts of the Scottish Parliament and, by virtue of the Interpretation and Legislative Reform (Scotland) Act 2010, was included where Asps contained a power to commence provisions by Order. Including the power provided by section 2(3)(a) brings the current Bill into line with that default position.

(2) In what circumstances could it be either necessary or appropriate for the Scottish Government to exercise the power in section 2(3)(b) to make transitional, transitory or saving provision, given that the proposed section 17B of the Prescription and Limitation (Scotland) Act 1973 provides that section 17A also has effect as regards a right of action which accrues before the date of commencement of section 17A?

It is true that the proposed section 17B of the Prescription and Limitation (Scotland) Act 1973 provides that section 17A also has effect as regards a right of action which accrues before the date of commencement of section 17A. However, there will still be a transition from a position where sections 17A to 17D do not form part of the law, to a position where they do. The change in the law will apply to actions pending before a court at the point of commencement as well as to actions raised after it. (As the

Committee will be aware, there is normally a presumption against changes affecting pending actions and so this application is itself unusual.)

It may therefore be necessary to make transitional, transitory or saving provision to ensure that the application of section 17A to existing rights of action works appropriately in the range of scenarios that it will cover. Additionally, if section 1 is commenced so as to insert different sections into the 1973 Act on different days, it may be necessary to make express provision so as to ensure that the application of the law in the intervening period is clear.

The Scottish Government intends to keep this matter under review and continue to work with stakeholders to determine what provision (if any) may be necessary or appropriate.

