Limitation (Childhood Abuse)(Scotland) Bill

Bill Number: SP Bill 1
Introduced on: 16 November 2016
Introduced by: Michael Matheson MSP (Government Bill)
Passed: 22 June 2017
Royal Assent: 28 July 2017
2017 asp 3

Passage of the Bill

The Limitation (Childhood Abuse)(Scotland) Bill (‘the Bill’) was introduced in the Scottish Parliament on 16 November 2016 by the Scottish Government. The Justice Committee, as lead committee, took Stage 1 oral evidence on the general principles of the Bill at meetings on 21 February, 28 February and 14 March 2017.


The Justice Committee considered amendments to the Bill at Stage 2 on 23 May 2017. The Stage 3 debate took place on 22 June 2017, after which the Bill was passed by Parliament. The Bill, as amended, received Royal Assent on 28 July 2017 to become the Limitation (Childhood Abuse)(Scotland) Act 2017 (asp 3).

Purpose and objectives of the Bill

The overarching policy aim of the Bill is to improve access to justice for survivors of historical childhood abuse. The Bill represents one of a package of measures designed to improve the lives of survivors of historical childhood abuse in Scotland.

The Bill relates to a rule of civil court procedure known as ‘time bar’ or ‘limitation of actions’. The current law is contained in the Prescription and
Limitation (Scotland) Act 1973 (‘the 1973 Act’). It provides that those individuals suing in the civil courts for damages for personal injuries generally have three years from the date of the injury or – as is often relevant to childhood abuse – their sixteenth birthday, in which to bring a court action. Thereafter they are usually prevented from doing so.

The Bill contains provisions which would remove the three year statutory time limit where the claim relates to childhood abuse.

**Provisions of the Bill**

The Bill has three sections and only section 1 is substantive in policy terms. It makes provision for four additional sections (sections 17A–D) to be inserted into the 1973 Act. The remaining statutory references in this note are to the new provisions of the 1973 Act.

Section 17A removes the three year limitation period.

Section 17B says that the removal of the three year limitation period (under section 17A) applies to abuse which occurred before or after the legislation comes into force.

However, a related area of law known as ‘prescription’ is not reformed by the Bill. Accordingly, if the abuse occurred prior to 26 September 1964, any legal obligations arising from the abuse will usually (although not always) have been extinguished. This greatly limits the Bill’s impact on survivors of abuse occurring before the aforementioned date.

Section 17C supplements section 17B. It makes specific provision to deal with the situation where there has been previous litigation which was concluded prior to the commencement of section 17A. It allows these court actions to be re-raised where the court ruled the case was time barred, or the case was ‘settled’ based on the reasonable belief that it would have been time barred.

Significantly, any sum of money paid to the victim as a financial settlement must not have exceeded his or her legal expenses associated with raising and settling the claim. There also must have been no previous consideration of the actual merits of the case.

Section 17D says that, notwithstanding the general rule set out in section 17A, a court may not allow a court action to proceed where the defender satisfies the court that certain specified conditions are met. These relate to a fair hearing for the person defending the action and the possibility that that person would be “substantially prejudiced” by the action proceeding.

**Parliamentary consideration**

In its Stage 1 Report, the Justice Committee expressed support for the removal of the three year limitation period for childhood abuse cases, having heard ‘powerful evidence’ that the current limitation regime has created an insurmountable barrier to access to justice for survivors of childhood abuse.
However, it cautioned that the Bill is not a panacea, and pursuing a civil action will not be the right solution for all survivors. It noted the position for claims where the abuse took place prior to 1964 and stressed that the Scottish Government must explore what other options for redress could be made available for this group.

The Committee also heard concerns about the potential financial and resource implications of the Bill, and said these required further consideration.

The *Stage 1 Report* also made a number of recommendations relating to the more detailed aspects of the Bill, including the definition of abuse and the provisions relating to previously raised cases.

At Stage 2, a Scottish Government amendment was passed which amended the definition of abuse to make it clear that it included abuse which took the form of neglect.

A non-government amendment in the name of Douglas Ross MSP (as he then was) was not agreed to. This amendment would have prevented the new regime taking effect unless the Scottish Government had laid a report before the Parliament showing that sufficient and other resources had been made available to ensure that public bodies can meet their any obligations arising from this Act.

At Stage 3, after a robust debate, a similar amendment, in the name of Oliver Mundell MSP, was not agreed to.