

# **LIMITATION (CHILDHOOD ABUSE) (SCOTLAND) ACT 2017**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 1 – Removal of three year limitation period in certain actions***

#### **Inserted section 17A - in respect of personal injuries resulting from childhood abuse**

6. Section 17A of the 1973 Act, as inserted by section 1 of the Act, removes the three year limitation period for actions where four conditions are met. The conditions are set out in subsection (1). The conditions relate to—
  - the nature of the damages claimed (they must be damages in respect of personal injuries),
  - the age of the person at the time the abuse occurred (the person must have been a child – under 18 – when the act/omission constituting abuse took place (or began, where the act/omission was a continuing one)),
  - the nature of the act or omission which is the subject of the action (the delict which gives rise to the action must be abuse, which includes sexual abuse, physical abuse and emotional abuse),
  - the identity of the pursuer (the person bringing the action must be the person who sustained the injuries mentioned above, not a third party).
7. For the limitation period to be removed, it is the “act or omission” (i.e. the abuse) that must have taken place when the pursuer was a child, regardless of the timing of the injury that arose from that act or omission. Although both may occur simultaneously, this section allows for a situation where the abuse occurred when the pursuer was a child but the injury manifests itself at a later date when the pursuer is an adult.
8. Subsection (2) defines what is meant by “abuse”. The definition is non-exhaustive and covers a wide range of abusive behaviour – sexual abuse, physical abuse, emotional abuse, and abuse which takes the form of neglect. The Act does not alter what is an actionable delict and any successful action will depend on the person bringing the action being able to show that the behaviour falling under the definition of abuse has caused an actionable (non-negligible) injury.
9. The application of the limitation period is relevant at the point the action is raised and also to those cases where a final judgment has not yet been pronounced. This means that this section will apply to any case where there is still a right of appeal or where an appeal has been lodged against a judicial decision under section 17 or 19A of the 1973 Act (Section 19A provides courts with a power to override the section 17 time limit where the court considers it equitable to do so).