

**2. Limitation (Childhood Abuse) Bill 2019 –  
Second Reading approved**

Mrs Sharpe to move:

*That the Limitation (Childhood Abuse) Bill 2019 be read a second time.*

10 **The President:** We turn to the Limitation (Childhood Abuse) Bill 2019, Second Reading.  
Mrs Sharpe.

**Mrs Sharpe:** Thank you, Mr President.

15 Hon. Members, at the First Reading of the Bill I outlined its purpose and scope. This was, in essence, to facilitate access to justice for victims of childhood abuse by removing the present limitation period for bringing a civil action for damages for personal injuries in such cases. There would, if the Bill was passed, be no limitation period for bringing an action for damages for personal injuries where the action relates to abuse, the person who sustained the injuries was a child at the time of the abuse and the person who sustained the injuries is the person who is bringing the action.

20 As explained at the First Reading, if a person wishes to bring a claim for damages in respect of personal injuries, the person must bring the claim within three years of the cause of action arising or, if later, three years from the date of knowledge of the person injured. After this time period has expired, the burden is on the person bringing the claim to persuade the court to permit the claim to be brought out of time. This can be very burdensome in the specific context of childhood abuse, where it can take many years before a person feels able to bring a claim for damages.

The Bill removes the barrier of the limitation period for this very specific group of childhood abuse survivors and places on the defendant, the person against whom the claim is made, the burden of showing why a claim should not proceed.

30 The removal of the three-year time limit for childhood abuse claims applies to claims which accrued before the Bill comes into operation and to certain claims which have already been subject to litigation. This gives the provisions in the Bill retrospective application.

The aims of the Bill are achieved by making amendments to the Limitation Act 1984 for this specific group of claimants in childhood abuse actions.

35 I stress again to Hon. Members of Council, as I did at the First Reading, the Bill seeks to amend the law on limitation only. It does not alter what is capable of being a cause of action for which a claim in damages may be brought. The Bill does not change the existing law on establishing liability in a claim. A successful cause of action depends on the person claiming the abuse being able to show that the behaviour falling under the definition of abuse has caused an actionable injury —the liability of the defendant still has to be established under the present law.

40 With your agreement, Mr President, I should like to move clauses 1 and 2 together. I am happy to have them voted on separately if Hon. Members wish.

45 **The President:** First of all, you need to move the Second Reading.

**Mrs Sharpe:** I apologise, Mr President. I beg to move that the Second Reading of the Bill do stand.

50 **The President:** Thank you. Do we have a seconder? Mr Henderson.

**Mr Henderson:** I beg to second, sir.

**The President:** I put the motion that the Limitation (Childhood Abuse) Bill be read for the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

**Limitation (Childhood Abuse) Bill 2019 –  
Clauses considered**

**The President:** Clauses, Mrs Sharpe.

**Mrs Sharpe:** Thank you, Mr President.  
I should like to move clauses 1 and 2 together. I am happy to have them voted on separately if Hon. Members wish.

**The President:** Is that agreed, Hon. Members?

**Members:** Agreed.

**Mrs Sharpe:** The clauses comprise Part 1 of the Bill and are introductory.  
Clause 1 gives the short title of the resulting Act of Tynwald. Clause 2 provides for the resulting Act, other than clauses 1 and 2, to be brought into operation by one or more Appointed Day Orders made by the Council of Ministers. The power includes provision to make consequential, incidental, supplementary and transitional provisions in connection with commencement.

Mr President, I beg to move that clauses 1 and 2 stand part of the Bill.

**The President:** Mr Henderson.

**Mr Henderson:** I beg to second, sir, and reserve my remarks.

**Mrs Sharpe:** Mr President, with your leave –

**The President:** One moment.  
Hon. Members, I put the motion that clauses 1 and 2 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 3, Mrs Sharpe.

**Mrs Sharpe:** Thank you, Mr President.  
With your leave, I will now move to Part 2, which comprises clauses 3 and 4, makes amendments to the Limitation Act 1984 – the 1984 Act – and forms the substantive Part of the Bill.

Clause 3 inserts new sections 11ZA to 11ZD into the 1984 Act. These new provisions closely mirror sections 17A to 17D of the Prescription and Limitation (Scotland) Act 1973, which were inserted into that Act of Parliament by the Limitation (Childhood Abuse) (Scotland) Act 2017, which is an Act of the Scottish Parliament.

Clause 11ZA(2) removes the limitation periods in the 1984 Act for claims in damages if all the conditions in clause 11ZA(1) are met. Those conditions are: (a) the damages are in respect of personal injuries; (b) the person who suffered the injuries was a minor on the date the act or

omission which caused the injuries occurred – or began, where the act or omission was a continuing one; (c) the act or omission which caused the injuries constitutes abuse of the person harmed; and (d) the claim is brought by the person who suffered the injuries.

100 Clause 11ZA(3) gives a non-exhaustive definition of ‘abuse’, covering a wide range of abusive behaviour. The intention is to recognise that abused persons have suffered a wide range of abuse and to permit the courts to make the necessary judgment as to whether the behaviour alleged in each case constitutes abuse. The aim of the Bill is to enable sufferers of child abuse, where the abuse has caused personal injury giving rise to the right to make a claim for damages,  
105 to make a claim without the present restrictions on the period within which a claim can be brought.

The person who suffered the injuries must have been a ‘minor’ on the date the act or omission which caused the injuries occurred – or began, where the act or omission was a continuing one. A ‘minor’ is a term already used in the 1984 Act and, in accordance with the  
110 Family Law Reform (Isle of Man) Act 1971 means a person under 18. There are some transitional provisions in the 1984 Act, at Schedule 2, paragraph 5, which provide that a person under 21 is a ‘minor’ in relation to a cause of action arising before 1st April 1972, when the age of majority was lowered.

The second condition in clause 11ZA(1) provides that the person must have been a minor on  
115 the date the act or omission – that is, the abuse – which caused the injuries took place. It does not specify that the resulting injury must have occurred at that time. This allows for a situation where the abuse occurred when the victim was a child, but the injury manifests itself at a later date.

As I stated at the First Reading and have stressed again today, the Bill seeks only to remove  
120 the limitation period for the specific group of people who satisfy the conditions in the proposed clause 11ZA. It does not change the existing law on establishing liability for a claim in damages. A claimant taking advantage of the new provisions to bring a claim, which might be out of time under the current law, would still have to prove that the actions of the alleged abuser caused the personal injury giving rise to a claim in damages.

125 Clause 11ZB provides that clause 11ZA also applies to a right of action arising before clause 11ZA commences. The intention is to permit current survivors of abuse who have not made a claim to be able to rely on the new legislation. As I said at the First Reading of the Bill, it can take a long time before survivors of child abuse reach the point where they feel able to bring an action for damages. The legislation needs to be applied to existing rights of action otherwise  
130 survivors of past abuse who have reached the point of considering starting a civil action would not benefit, and the benefits of the legislation could take many years to have any practical effect. This would thwart the aim of the Bill to remove a barrier to access to justice for historic abuse.

It should be remembered that the removal of the limitation period is only to apply to those  
135 who suffered the abuse – only they may make a claim without a limitation period under the conditions in clause 11ZA.

Mr President, clause 11ZB provides an important element to the aim of the Bill to facilitate access to justice for existing survivors of child abuse who have yet to make a claim.

140 Clause 11ZC permits those who have made a claim, but who never had the claim decided by a court because the claim was either found by a court to be time-barred or was settled in the belief it would have been time-barred, to benefit from the new legislation by making a fresh claim. Where clause 11ZC applies, a person may bring a claim in damages under clause 11ZA, if, of course, the conditions in that clause are satisfied, for ‘relevant personal injuries’ – that is, injuries sustained as a result of childhood abuse – and so bring a claim without the hurdle of the  
145 limitation period, despite having previously brought a claim in damages for the childhood abuse.

150 There are restrictions on the ability to start a fresh claim, as set out in clause 11ZC(2). Firstly, the claim made previously – the ‘initial action’ – has to have been brought before clause 11ZA commences. A person cannot bring repeated claims on the same issue. A claim can only be brought again if there was a claim made and disposed of before clause 11ZA came into operation. If a claim is made after clause 11ZA comes into operation, clause 11ZC does not allow the claimant to bring yet another claim.

155 Secondly, the initial action must have been disposed of by the court either under section 11 of the 1984 Act, as being time-barred under the present law on limitation, or under a relevant settlement. A ‘relevant settlement’ is defined in 11ZC(4)(b) to be: (a) an agreement between the parties to that initial action; (b) entered by the claimant in the reasonable belief that the initial action was likely to have been time-barred under section 11; and (c) a settlement under which the claimant did not receive any financial compensation other than the costs of bringing and settling the initial action.

160 Clause 11ZC(5) clarifies that if the settlement terms included payment of sums which were anything other than reimbursement of the claimant’s costs in bringing and settling the initial action, that initial action would not meet the third criterion required for its settlement to be a ‘relevant settlement’.

165 A person can only rely on clause 11ZC to re-litigate a claim if the court did not make a decision on the merits of the claim and the reason the initial action was unsuccessful was the limitation period. A person cannot rely on clause 11ZC if under a relevant settlement they received any financial compensation other than the recovery of costs.

170 Clause 11ZD provides for circumstances in which a claim made under clause 11ZA must not go ahead. Clause 11ZD(2) ensures that, where a childhood abuse claim is brought using clause 11ZA – that is, without any limitation period – the court must not allow the claim to go ahead if the defendant proves to the court a fair trial is not possible. The burden is on the defendant to show a fair trial is not possible. The clause protects a defendant’s right to a fair trial and shows clearly that the ability to bring a childhood abuse claim without any limitation period does not override this right. The courts must ensure that the new provisions are construed as being compatible with the rights under the European Convention on Human Rights – the ‘Convention’.

175 Clause 11ZD(3) provides a further circumstance in which the court must not permit a childhood abuse claim brought under 11ZA to go ahead. This is where the defendant proves to the court that the defendant would be substantially prejudiced if the claim were to go ahead, as a result of the operation of 11ZB or 11ZC. That is, the prejudice to the defendant comes from the retrospective application of 11ZA — either in bringing a claim for harm that arose before 11ZA comes into operation, or in re-litigating a claim defeated in the past on limitation. If the defendant proves substantial prejudice because of the retrospective application of the law under 11ZB or 11ZC, the court has to be satisfied that the prejudice is such that the claim should not go ahead. In making this determination, the court must have regard to the claimant’s interest in the claim proceeding.

185 With the inclusion of clause 11ZD, the Bill aims to strike a fair balance between facilitating access to justice for the very specific and vulnerable group of victims of child abuse and protecting a defendant’s Convention rights.

Mr President, I beg to move that clause 3 stand part of the Bill.

190 **The President:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane. I beg to second and reserve my remarks.

195 **The President:** I put the question that clause 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

**Mrs Sharpe:** Clause 4 makes some consequential amendments to the 1984 Act.

200 Clause 4(1) disapples the time limits in section 14 of the 1984 Act for actions under the new provisions.

205 Clause 14(2) makes amendments to paragraph 6 of Schedule 2 to the 1984 Act. It excepts actions to which the new provisions apply from the effect of paragraph 6(1), which provides that the 1984 Act does not enable actions to be brought which were barred by the Statute of Limitations 1891 before the 1984 Act commenced. It has been disappplied so that it does not inadvertently act to time-bar claims which could otherwise be brought as a result of the new provisions.

Mr President, I beg to move that clause 4 stand part of the Bill.

**The President:** Mr Henderson.

210

**Mr Henderson:** Gura mie eu, Eaghtyrane. I beg to second, sir, and reserve my remarks.

**The President:** I put the question that clause 4 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

215

Thank you, Hon. Members.