

**3. Limitation (Childhood Abuse) Bill 2019 –  
First Reading approved**

Mrs Sharpe to move:

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

**The President:** We turn to Item 3. First Reading of the Limitation (Childhood Abuse) Bill.

Before I call on the mover, I would remind Members, of course, of the *sub judice* rule and the importance of not making reference to any individual cases or live cases, as may have been referred to in the Social Affairs Policy Review latest report, I remind Members of that situation.

Mrs Sharpe.

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

Mr President and Hon. Members, I am pleased to introduce the Limitation (Childhood Abuse) Bill 2019 and today will briefly explain the purpose and scope of the Bill.

The purpose of this Bill, which amends the Limitation Act 1984 for one specific reason, is to remove the present limitation period for bringing an action in damages for personal injuries where the action relates to abuse and the person who sustained the injuries, and who is bringing the action, was a child at the time of the abuse. It responds to the recognition of the impact of historic childhood abuse on the victims of such abuse, by removing the limitation which constitutes a barrier to access to justice for this specific group.

I would like to address the current law on limitation in personal injury actions: under the current law, as provided for in section 11 of the Limitation Act 1984, personal injury claims, including claims involving child abuse, have to be brought within three years of the cause of action arising or, if later, three years from the date of the knowledge of the person injured. If the person was a child at the time when the right to bring an action arose, the three-year period starts to run from when the person is 18, or 21 for causes of action arising before 1st April 1972, because until that time that was the age of majority.

If a person wants to bring an action for damages for personal injuries after the limitation period, at present they must persuade the court to exercise its discretion, under section 31 of the 1984 Act, to permit the action to be brought out of time. Accordingly, it is possible, but by no means certain, that the court will exercise its discretion and permit a childhood abuse action to proceed if it is brought outside the limitation period.

In the very specific context of child abuse, the current law is burdensome on a person who has suffered such abuse. It can take years before the abused person reaches the point where they feel able to bring an action for damages; and once a victim feels able to bring a claim, if it is outside the three-year period, the victim faces the additional hurdle of persuading the court it would be fair to allow the claim to proceed.

In terms of the aim of the new legislation, the Bill seeks to facilitate access to justice in such cases by removing the limitation period so that a claimant would no longer have the burden of establishing before a court why a claim should be allowed outside that period. Under the proposed legislation, the burden would be on a defendant to show why a case should not proceed. It closely follows similar provision made by the Scottish Parliament in the Limitation (Childhood Abuse) (Scotland) Act 2017.

Specifically, the Bill inserts additional provisions into the Limitation Act 1984 to remove the limitation period in childhood abuse cases if: (a) the damages are in respect of personal injuries; (b) the person who sustained the injuries was a child when the act or omission which caused the injuries took place, or if the act or omission was a continuing one, on the date the act or omission began; (c) the act or omission to which the injuries are attributable constitutes abuse; and (d) the person bringing the action is the person who sustained the injuries.

Actions meeting the criteria are not subject to limitation, including those that arose before the provision removing the limitation period comes into operation. This will allow claims to be brought which currently fall outside the limitation period. Retrospective application of the legislation is considered appropriate in the case of childhood abuse for the reasons outlined earlier, that it can take a long time before a victim of child abuse can in practical terms bring a damages claim.

It should be noted that only surviving victims of child abuse may make a claim without any limitation period applying under the proposed new legislation. However, child abuse claims which have already been subject to litigation may be re-litigated in certain specific circumstances. As the limitation on actions is being removed for survivors of child abuse who have never made a claim, it would be unfair not to permit those survivors of child abuse who have made a claim, but who have never had the claim heard by a court because the claim was time-barred under the present legislation, to have the benefit of the new legislation.

There are, nevertheless, restrictions on the ability to re-litigate under the Bill. The Bill will only permit a previously brought child abuse action to be re-litigated if the court did not make a decision on the merits of the claim and the reason the previous claim was unsuccessful was the limitation period. The initial claim must either have been disposed of by the court as being time-barred, or disposed of under a settlement between the parties in the belief the claim would be likely to be time-barred.

In addition, if a previously litigated case was disposed of by a settlement, the claim can only be re-litigated if the claimant recovered no more than the costs of bringing the action under the settlement — a claimant will not be able to bring the claim again if the claimant recovered any financial compensation beyond his or her costs in bringing the claim.

The Bill does not permit repeat claims on the same issue. New proceedings which are in substance the same as cases previously litigated are only permitted to be brought where there has been an initial claim disposed of by the court before the Bill comes into operation.

Mr President and Hon. Members, I should also stress that the provisions permitting retrospective application of the new law, and indeed the provisions of the new law itself, relate only to the removal of the limitation period for a very specific category of claims. The Bill does not change the existing law on rules of evidence, liability and procedure for the hearing of a claim in damages. A survivor of child abuse would still have to make out the substantive claim and establish the liability of the defendant, judged by the standards of the time when the abuse took place.

I would now like to address the issue of safeguards for defendants: clearly, Mr President, the Bill aims to make the law fairer for victims of childhood abuse by removing the limitation period in these specific cases. To strike a balance between the need to remove the limitation barrier for claimants and the right of a defendant to a fair trial, the Bill includes two important safeguards for defendants.

First, the court must not permit an action to proceed if a fair trial of the action is impossible. This reflects the current position under Article 6 of the European Convention on Human Rights.

Secondly, the court must dismiss the action if the defendant satisfies the court that, because of the law's retrospective effect, the defendant will suffer substantial prejudice which outweighs the claimant's interest in the action proceeding.

In this way, the Bill aims to strike a fair balance between facilitating access to justice, for the very specific and vulnerable group of surviving victims of child abuse, and protecting a defendant's Convention rights.

In terms of financial implications, as set out in the explanatory memorandum to the Bill, the proposed new legislation will have financial implications for Government and for other bodies which have provided care for children, but the implications are difficult to quantify. Nevertheless, the Government takes the view that it is proper to accept the risk which is involved in order to secure justice for victims of child abuse.

Mr President and Hon. Members, what is paramount is the principle that those harmed as children should be entitled to seek compensation through the court process, provided the person defending the claim can have a fair trial. That principle, I suggest, is far more important than the monetary cost involved.

If I may make one last point in closing, Mr President, with your permission, I should like to make it clear that there are live civil proceedings afoot at present, as you mentioned earlier, the claimants in which will be assisted by the passage of the Bill. But equally, there are criminal proceedings involving child abuse allegations ongoing and I am sure Hon. Members of Council will not wish to prejudice their outcome by referring to them. So, I respectfully suggest that the debate today, and forthcoming debates on the Bill, should be confined to discussing only its merits and provisions. I would respectfully suggest, Mr President, that there should be no pre-emptive debate on the work of the Social Affairs Policy Review Committee, as you mentioned, on this topic. Nor, for obvious reasons, should specific reference be made to individual cases which are before the courts or which may come before them in the future.

Mr President, I beg to move that the Limitation (Childhood Abuse) Bill 2019 be read for a first time.

**The President:** Hon. Member, Mr Crookall.

**Mr Crookall:** I beg to second, Mr President.

**The President:** I put the question that the Limitation (Childhood Abuse) Bill 2019 be read for the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.