



Isle of Man

Ellan Vannin

**LIMITATION (CHILDHOOD ABUSE) BILL
2019**



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LIMITATION (CHILDHOOD ABUSE) BILL 2019

Explanatory Memorandum

THE BILL

1. This Bill is promoted by Mr Thomas M.H.K.
2. Part 1 (*clauses 1-2*) deals with introductory matters, *clause 1* giving the resulting Act its short title, *clause 2* providing for its commencement.
3. Part 2 (*clauses 3-4*) deals with amendments to the Limitation Act 1984 (the “1984 Act”).
4. *Clause 3* inserts sections 11ZA to 11ZD into the 1984 Act.
5. Section 11ZA removes the limitation periods in the 1984 Act for an action for damages if 4 conditions are met –
 - a. the damages claimed must be in respect of personal injuries;
 - b. the person who sustained the injuries must have been a minor when the act or omission which caused the injuries took place, or, in the case of a continuing act or omission, the person must have been a minor when the act or omission began;
 - c. the act or omission which caused the injuries must constitute abuse; and
 - d. the person bringing the action must be the person who sustained the injuries.
6. Section 11ZA(3) defines what is meant by “abuse”. The definition is non-exhaustive and covers a wide range of abusive behaviour.
7. Section 11ZB provides that the removal of the limitation period by section 11ZA applies to rights of action that accrued before the coming into operation of section 11ZA, as well as to those that accrue afterwards.
8. Section 11ZC makes specific provision to deal with actions that have already been the subject of litigation and have been disposed of prior to the coming into operation of section 11ZA. It permits those actions to be re-litigated in certain circumstances.
9. Section 11ZC applies to actions in respect of personal injuries sustained as described in section 11ZA(1)(b) and (c). In addition, for the section to apply, an action for damages must have been brought in respect of the right of action (the “initial action”) prior to the coming into operation of section 11ZA and have been disposed of by the court either by reason of section 11 of the 1984 Act or in accordance with a relevant settlement.

10. Where those conditions are met, section 11ZC(3) permits a person who sustained abuse to bring an action for damages in respect of the cause of action despite the initial action previously having been disposed of by the court.
11. Section 11ZC(4)(b) defines “relevant settlement” for the purposes of the section. A relevant settlement must meet 3 criteria —
 - a. the settlement must have been agreed by the parties to the initial action;
 - b. the plaintiff¹ must have entered into the settlement under the reasonable belief that the initial action was likely to be disposed of by the court by reason of section 11; and
 - c. any sum which the settlement required the defendant to pay to the plaintiff did not exceed the plaintiff’s costs in connection with bringing and settling the initial action.
12. Section 11ZC(5) clarifies that if the settlement included sums payable which are anything other than reimbursement of the plaintiff’s costs in bringing and settling the initial action, the action would not meet this criterion and section 11ZC would not apply.
13. Section 11ZD sets out 2 circumstances in which the court must not allow an action brought under section 11ZA to proceed. The court must not allow an action if the defendant can show that a fair hearing is not possible or if the defendant would be substantially prejudiced in accordance with section 11ZD(3) if the action were to proceed.
14. The substantial prejudice test in section 11ZD(3) is in 2 parts. Firstly, it applies only where the prejudice arises as a result of the operation of the new law in section 11ZB or 11ZC. Secondly, where substantial prejudice is established, the court, having regard to the plaintiff’s interest in the case, must be satisfied that the prejudice is such that the action should not proceed.
15. *Clause 4* deals with amendments to the 1984 Act consequential on the new sections 11ZA to 11ZD being inserted. Section 14 is excluded in relation to childhood abuse actions to which the new provisions apply. The amendments to Schedule 2 are to disapply the saving provision regarding the (repealed) *Statute of Limitations 1891* in paragraph 6(1) of that Schedule with respect to the new provisions.

FINANCIAL IMPLICATIONS

16. The Bill will have financial implications for the Government and indeed for other bodies who have provided care for children, but the extent of such implications is not readily quantifiable. The increased opportunity to bring claims against Government (and indeed third parties) as a result of the Bill will probably lead to increased claims by Departments against the Government’s

¹ The term “plaintiff” is used in the Bill to be consistent with the language of the 1984 Act, although the Rules of the High Court of Justice 2009 use the more modern term “claimant”.

insurers, and corresponding claims in respect of the liabilities of charities and others who provided care in the past for children, but whether that leads to increased premia will depend upon the overall claims experience. In any event the extent of the risk in this area is not readily quantifiable. The changes may also have resource implications for the courts because of an increased litigation workload. In addition there could be resource implications for the Department of Health and Social Care in terms of providing medical and psychological support to people bringing claims.

17. The extent of the financial implications for the Government in terms of defending or meeting any claims brought as a result of the Bill will be influenced by the existence of insurance cover at the time of the occurrence of events giving rise to any claim. It is difficult to anticipate the number and the particular nature of any historic claims which may now be capable of being advanced against Government and other entities which could not have been brought under the current law.

HUMAN RIGHTS IMPLICATIONS

18. The Bill contains important safeguards in section 11ZD to address the issue of a defendant's rights under the Convention (within the meaning of the Human Rights Act 2001), including those rights affected by the retrospective application of the resulting legislation.
19. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



Ellan Vannin

LIMITATION (CHILDHOOD ABUSE) BILL 2019

1 **A BILL** to remove the limitation period for actions for damages in respect of
 2 personal injuries resulting from childhood abuse; and for connected purposes

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

3 **PART 1 – INTRODUCTORY**

4 **1 Short title**

5 The short title of this Act is the Limitation (Childhood Abuse) Act 2019.

6 **2 Commencement**

7 (1) This Act (apart from section 1 and this section) comes into operation on
 8 such day or days as the Council of Ministers may by order appoint and
 9 different days may be appointed for different provisions and for
 10 different purposes.

11 (2) An order under subsection (1) may include such consequential,
 12 incidental, supplemental, transitional, transitory or saving provisions as
 13 the Council of Ministers considers necessary or expedient in connection
 14 with the coming into operation of any provision of this Act.

15 **PART 2 – AMENDMENT OF THE LIMITATION ACT 1984**

16 **3 Removal of time limits for certain actions**

17 After section 11 of the *Limitation Act 1984* insert —

18 **“11ZA Actions in respect of personal injuries resulting from childhood**
 19 **abuse**

20 P1973/52/17A and drafting

21 (1) This section applies to an action for damages if —

- 1 (a) the damages claimed consist of damages in respect of
2 personal injuries;
- 3 (b) the person who sustained the injuries was a minor on the
4 date the act or omission to which the injuries were
5 attributable occurred, or, where the act or omission was a
6 continuing one, the date the act or omission began;
- 7 (c) the act or omission to which the injuries were attributable
8 constitutes abuse of the person who sustained the injuries;
9 and
- 10 (d) the action is brought by the person who sustained the
11 injuries.

12 (2) None of the time limits given in the preceding provisions of this
13 Act apply to an action to which this section applies.

14 (3) In this section, “abuse” includes sexual abuse, physical abuse,
15 emotional abuse and abuse which takes the form of neglect.

16 **11ZB Childhood abuse actions: previously accrued rights of action**

17 P1973/52/17B

18 Section 11ZA has effect as regards a right of action accruing before the
19 commencement of section 11ZA.

20 **11ZC Childhood abuse actions: previously litigated rights of action**

21 P1973/52/17C and drafting

22 (1) This section applies where a right of action in respect of relevant
23 personal injuries has been disposed of in the circumstances
24 described in subsection (2).

25 (2) The circumstances are that —

26 (a) prior to the commencement of section 11ZA, an action for
27 damages was brought in respect of the right of action (“the
28 initial action”); and

29 (b) the initial action was disposed of by the court —

30 (i) by reason of section 11; or

31 (ii) in accordance with a relevant settlement.

32 (3) A person may bring an action for damages under section 11ZA in
33 respect of the right of action despite the initial action previously
34 having been disposed of.

35 (4) In this section —

36 (a) personal injuries are “relevant personal injuries” if they
37 were sustained in the circumstances described in
38 paragraphs (b) and (c) of section 11ZA(1); and

39 (b) a settlement is a “relevant settlement” if —

- 1 (i) it was agreed by the parties to the initial action;
 2 (ii) the plaintiff entered into it under the reasonable
 3 belief that the initial action was likely to be disposed
 4 by the court by reason of section 11; and
 5 (iii) any sum of money which it required the defendant
 6 to pay to the plaintiff, or to a person nominated by
 7 the plaintiff, did not exceed the plaintiff's costs in
 8 connection with bringing and settling the initial
 9 action.

- 10 (5) The condition in subsection (4)(b)(iii) is not met if the terms of
 11 settlement indicate that the sum payable under it is or includes
 12 something other than reimbursement of the plaintiff's costs in
 13 connection with bringing and settling the initial action.

14 **11ZD Childhood abuse actions: circumstances in which an action may**
 15 **not proceed**

16 P1973/52/17D

- 17 (1) The court must not allow an action which is brought by virtue of
 18 section 11ZA to proceed if either of subsections (2) or (3) apply.
 19 (2) This subsection applies where the defendant satisfies the court
 20 that it is not possible for a fair hearing to take place.
 21 (3) This subsection applies where —
 22 (a) the defendant satisfies the court that, as a result of the
 23 operation of section 11ZB or (as the case may be) 11ZC, the
 24 defendant would be substantially prejudiced were the
 25 action to proceed; and
 26 (b) having had regard to the plaintiff's interest in the action
 27 proceeding, the court is satisfied that the prejudice is such
 28 that the action should not proceed.”

29 **4 Consequential amendments**

- 30 (1) For section 14(1)(a) of the *Limitation Act 1984* (special time limit for
 31 certain other actions) substitute —
 32 “(a) an action to which section 11, 11ZA, 11ZC or 11A applies;
 33 or”.
 34 (2) Paragraph 6 of Schedule 2 to the *Limitation Act 1984* is amended as
 35 follows —
 36 (a) in sub-paragraph (1), for “sub-paragraph (2)” substitute “sub-
 37 paragraphs (2) and (3)”; and
 38 (b) after sub-paragraph (2) insert —

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“(3) Sub-paragraph (1) does not apply to an action to which sections 11ZA to 11ZD applies.”

IN THE KEYS

LIMITATION (CHILDHOOD ABUSE) BILL 2019

A **BILL** to remove the limitation period for actions for damages in respect of personal injuries resulting from childhood abuse; and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys

MR THOMAS

OCTOBER 2019