



T: 0131-244 2196
E: Jill.clark@gov.scot

Mr E Donald
Clerk
Delegated Powers and Law Reform Committee
Room T1:01
Scottish Parliament
EH99 1SP

5 January 2017

Dear Euan

LIMITATION (CHILDHOOD ABUSE)(SCOTLAND) BILL AT STAGE ONE

Thank you for your letter of 15 December to James Hynd in which you seek a further explanation on the powers contained at sections 2(2) and 2(3) of the Limitation (Childhood Abuse)(Scotland) Bill ("the Bill"). It has been passed to me to reply as my team has policy responsibility for the Bill.

For ease of reference I have replicated the questions asked by the Committee and set out our corresponding explanation below.

The Committee asks Scottish Government to explain the following, in connection with the commencement powers in section 2(3) of the Bill.

(1) In what circumstances could it be either necessary or appropriate for the Scottish Government to exercise the power in section 2(3)(a) to appoint different days for different purposes, when commencing section 1 by regulations?

It may be necessary or appropriate to bring section 1 of the Bill into force on different days for the purposes of inserting different sections into the Prescription and Limitation (Scotland) Act 1973. For example, the application of section 17C (previously raised cases) could give rise to issues which are not raised by the other sections inserted by section 1 of the Bill. Resolution of such issues (for example by having court rules in place to deal with cases to which section 17C would apply) could mean that the commencement of section 17C should be postponed for a short period.

However, awaiting the resolution of issues raised by section 17C should not delay the removal of the limitation period for cases otherwise covered by section 17A. Taking a power to appoint different powers for different purposes will therefore allow ministers the flexibility of bringing the advantages of the Bill to survivors of childhood abuse as quickly

as possible, whilst allowing time for resolution of issues which may be raised by some of the more complicated aspects of the Bill.

Such a power is commonly taken in Acts of the Scottish Parliament and, by virtue of the Interpretation and Legislative Reform (Scotland) Act 2010, was included where Asps contained a power to commence provisions by Order. Including the power provided by section 2(3)(a) brings the current Bill into line with that default position.

- (2) In what circumstances could it be either necessary or appropriate for the Scottish Government to exercise the power in section 2(3)(b) to make transitional, transitory or saving provision, given that the proposed section 17B of the Prescription and Limitation (Scotland) Act 1973 provides that section 17A also has effect as regards a right of action which accrues before the date of commencement of section 17A?**

It is true that the proposed section 17B of the Prescription and Limitation (Scotland) Act 1973 provides that section 17A also has effect as regards a right of action which accrues before the date of commencement of section 17A. However, there will still be a transition from a position where sections 17A to 17D do not form part of the law, to a position where they do. The change in the law will apply to actions pending before a court at the point of commencement as well as to actions raised after it. (As the Committee will be aware, there is normally a presumption against changes affecting pending actions and so this application is itself unusual.)

It may therefore be necessary to make transitional, transitory or saving provision to ensure that the application of section 17A to existing rights of action works appropriately in the range of scenarios that it will cover. Additionally, if section 1 is commenced so as to insert different sections into the 1973 Act on different days, it may be necessary to make express provision so as to ensure that the application of the law in the intervening period is clear.

The Scottish Government intends to keep this matter under review and continue to work with stakeholders to determine what provision (if any) may be necessary or appropriate.

Yours sincerely



Jill Clark
Head of Civil Law Reform Unit