

*These notes relate to the Limitation (Childhood Abuse) (Scotland)
Act 2017 (asp 3) which received Royal Assent on 28 July 2017*

LIMITATION (CHILDHOOD ABUSE) (SCOTLAND) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

Inserted section 17D - Childhood abuse actions: circumstances in which an action may not proceed

18. A court considering an action will, as a public authority under the Human Rights Act 1998, require to consider whether it would infringe a defender's Convention rights to allow the case to proceed. Section 17D reflects this by requiring the court to dismiss an action which is brought in reliance on section 17A if the defender demonstrates either that it would not be possible for a fair hearing to take place (see section 17D(2)) or that the defender would be subject to substantial prejudice if the action were to proceed (see section 17D(3)). In the latter case the court is required to balance the interests of the pursuer in the case proceeding and the prejudice to the defender which would result from the case proceeding. The substantial prejudice test in subsection (3) applies only where the prejudice arises from the application of the new law to cases about abuse which occurred prior to commencement of the Act (i.e. where the fact that the law on limitation has changed subsequent to the abuse taking place is the cause of the prejudice).