



Prescription (Scotland) Act 2018

2018 asp 15

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 8th November 2018 and received Royal Assent on 18th December 2018

An Act of the Scottish Parliament to amend the law relating to the extinction of rights and obligations by the passage of time.

PROSPECTIVE

5-year negative prescription

1 Obligations to pay damages and delictual obligations

- (1) The Prescription and Limitation (Scotland) Act 1973 (“the 1973 Act”) is amended as follows.
- (2) In schedule 1 (obligations affected by prescriptive periods of five years under section 6), in paragraph 1, for sub-paragraph (d) substitute—
 - “(d) to any obligation to pay damages (whatever the source of the obligation);
 - (da) to any obligation arising from delict, not being an obligation falling within any other provision of this paragraph;”.
- (3) In section 11 (obligations to make reparation)—
 - (a) in subsection (1), for the words from “(whether” to “reparation” substitute “to pay damages (whatever the source of the obligation) ”,
 - (b) the section title becomes “Obligations to pay damages ”.

2 Obligations related to contract

- (1) Schedule 1 (obligations affected by prescriptive periods of five years under section 6) of the 1973 Act is amended as follows.
- (2) In paragraph 1, after sub-paragraph (f) insert—
 - “(fa) to any obligation relating to the validity of a contract, not being an obligation falling within any other provision of this paragraph;

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Prescription (Scotland) Act 2018 is up to date with all changes known to be in force on or before 10 March 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (fb) to any obligation to reimburse expenditure incurred in reliance on a representation about the existence of a contract;”.

3 Statutory obligations

- (1) Schedule 1 (obligations affected by prescriptive periods of five years under section 6) of the 1973 Act is amended as follows.

- (2) In paragraph 1—

- (a) the following sub-paragraphs are repealed—

- (i) sub-paragraphs (aa) (both),
- (ii) sub-paragraphs (aca) to (ae), and
- (iii) sub-paragraph (dd),

- (b) after sub-paragraph (g) insert—

“(h) to any obligation to make a payment arising under an enactment (whenever passed or made), not being an obligation falling within any other provision of this paragraph.”.

- (3) In paragraph 2—

- (a) for sub-paragraph (e) substitute—

“(e) except as provided in paragraph 1(a), (ab), (ac) and (h) of this Schedule, to any obligation relating to land (including an obligation to recognise a servitude);

(ea) to any obligation of the Keeper of the Registers of Scotland to pay compensation by virtue of section 77 or 94 of the Land Registration etc. (Scotland) Act 2012;”,

- (b) after sub-paragraph (f) insert—

“(fa) to any obligation to pay taxes or duties that are recoverable by the Crown, or to pay any penalty, interest or other sum that is recoverable as if it were an amount of such taxes or duties;

(fb) to any obligation to pay a sum recoverable under—

(i) Part 3 (overpayments and adjustments of benefit) of the Social Security Administration Act 1992;

(ii) section 127(c) (recovery of income support in certain circumstances) of the Social Security Contributions and Benefits Act 1992; or

(iii) Part 1 (tax credits) of the Tax Credits Act 2002;

(fc) to any obligation to pay child support maintenance under the Child Support Act 1991;

(fd) to any obligation to pay—

(i) council tax under Part 2 of the Local Government Finance Act 1992;

(ii) non-domestic rates levied under section 7B(2) of the Local Government (Scotland) Act 1975; or

(iii) any surcharge, fees, expenses or other sum recoverable in connection with the enforcement of an obligation to pay such council tax or rates;”.

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4 Effect of fraud or error on computation of prescriptive period

- (1) Section 6 (extinction of obligations by prescriptive periods of five years) of the 1973 Act is amended as follows.
- (2) In subsection (4), for “was induced to refrain from making” substitute “ failed to make ”.
- (3) After subsection (4) insert—
“(4A) For the purposes of subsection (4)(a), it does not matter whether the debtor, or the person acting on the debtor's behalf, intended the fraud or the words or conduct to cause the creditor to fail to make a relevant claim.”.

5 Start point of prescriptive period for obligations to pay damages

- (1) Section 11 (obligations to make reparation) of the 1973 Act is amended as follows.
- (2) In subsection (1), for “act, neglect or default” substitute “ act or omission ”.
- (3) In subsection (2), for “act, neglect or default”, in each place those words appear substitute “ act or omission ”.
- (4) In subsection (3), for the words “that loss, injury or damage caused as aforesaid had occurred” substitute “ of each of the facts mentioned in subsection (3A) ”.
- (5) After subsection (3) insert—
“(3A) The facts referred to in subsection (3) are—
 - (a) that loss, injury or damage has occurred,
 - (b) that the loss, injury or damage was caused by a person's act or omission, and
 - (c) the identity of that person.
(3B) It does not matter for the purposes of subsections (3) and (3A) whether the creditor is aware that the act or omission that caused the loss, injury or damage is actionable in law.”.

PROSPECTIVE

20-year negative prescription

6 Obligations: 20-year prescriptive period and extension

- (1) The 1973 Act is amended as follows.
- (2) In section 7 (extinction of obligations by prescriptive periods of twenty years)—
 - (a) for subsection (1) substitute—
“(1) An obligation to which this section applies is extinguished on the expiry of the continuous period of 20 years after the date on which the obligation became enforceable.”,
 - (b) after subsection (2) insert—

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“(3) Subsection (4) applies if—

- (a) a relevant claim is made in relation to an obligation to which this section applies,
- (b) the claim is made before the time at which the prescriptive period mentioned in subsection (1) would, but for subsection (4), expire, and
- (c) at that time—
 - (i) the claim has not been finally disposed of, and
 - (ii) the proceedings in which the claim is made have not otherwise come to an end.

(4) The prescriptive period is extended so that it expires—

- (a) when the claim is finally disposed of, or
- (b) when the proceedings in which the claim is made come to an end (where the proceedings come to an end without the claim having been finally disposed of).

(5) In subsections (3) and (4), the references to proceedings in which a relevant claim is made include references to any other process in or by which a relevant claim is made.”.

(3) In section 10 (relevant acknowledgement for purposes of sections 6 and 7)—

- (a) in each of subsections (1), (2)(a) and (3), for “sections 6 7 and 8A” substitute “ sections 6 and 8A ”,
- (b) in the section title, for “7” substitute “ 8A ”.

7 Property rights: 20-year prescriptive period and extension

(1) Section 8 (extinction of other rights relating to property by prescriptive periods of twenty years) of the 1973 Act is amended as follows.

(2) In subsection (1), the words “, and without any relevant claim in relation to it having been made,” are repealed.

(3) After subsection (1) insert—

“(1A) Subsection (1B) applies if—

- (a) a relevant claim is made in relation to a right to which this section applies,
- (b) the claim is made before the time at which the prescriptive period mentioned in subsection (1) would, but for subsection (1B), expire, and
- (c) at that time—
 - (i) the claim has not been finally disposed of, and
 - (ii) the proceedings in which the claim is made have not otherwise come to an end.

(1B) The prescriptive period is extended so that it expires—

- (a) when the claim is finally disposed of, or
- (b) when the proceedings in which the claim is made come to an end (where the proceedings come to an end without the claim having been finally disposed of).

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(1C) If the relevant claim (as finally disposed of) is successful, the right is to be treated for the purposes of subsection (1) as having been exercised or enforced by the creditor at the time when the claim was made.”.

8 Start point of prescriptive period for obligations to pay damages

In section 11 (obligations to make reparation) of the 1973 Act, for subsection (4) substitute—

- “(4) For the purposes of section 7 of this Act, any obligation referred to in subsection (1) of this section is to be regarded as having become enforceable on—
- (a) the date on which the act or omission occurred (or the last such date, where there was more than one act or omission), or
 - (b) where the act or omission was a continuing one, the date on which it ceased.”.

PROSPECTIVE

Miscellaneous

9 Saving for other statutory provisions about prescription or limitation

- (1) The 1973 Act is amended as follows.
- (2) After section 7 insert—

“7A Saving for other statutory provisions about prescription or limitation

- (1) Sections 6 and 7 of this Act do not apply to an obligation if, and so far as, an enactment other than this Act makes provision to the effect that—
 - (a) the obligation is imprescriptible,
 - (b) the obligation is extinguished after a specified period of time, or
 - (c) the making of a claim or the bringing of proceedings in respect of the obligation—
 - (i) is not subject to any period of limitation, or
 - (ii) may be done only within a specified period of time.
- (2) In this section—
 - “enactment” means any enactment whenever passed or made,
 - “specified” means specified in, or determined in accordance with, any enactment other than one contained in this Act.”.
- (3) In section 15(1) (interpretation of Part 1), in the definition of “enactment”, after “Act” insert “ and includes an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament ”.