



# Scottish Law Commission

*promoting law reform*

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION  
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## Time-limits and raising claims in court

Claims in court have to be raised within strict time-limits. In many cases in Scots law if the time-limit is missed, it is no longer possible to pursue a claim. That is because the right or obligation on which it is based has been extinguished by the law of negative prescription. The Scottish Law Commission, an independent body which promotes the reform of the law of Scotland, has today published a Report on this topic.

The Report explains that prescription plays an essential part in balancing the interests of the parties to a court action on the one hand and serving the public interest on the other. Justice between the parties to a court action means that after a certain period it is fairer to deprive a pursuer of a claim than to allow it to be pursued against a defender. This is related to concerns about stale or missing evidence and the difficulties facing a court in trying to administer justice in those circumstances. But in addition to justice between the parties, there is a wider public interest in court proceedings being raised promptly if they are to be raised at all. Even if in an individual case prescription seems to involve hardship, as long as the law of prescription strikes a fair balance overall, it serves the wider interests of fairness, justice and certainty.

The Report's recommendations seek to bring more certainty and fairness to the law in this area and to reduce the need to resort to court action (with its consequential costs).

David Johnston QC, the Scottish Law Commissioner with lead responsibility for this project, said:

“The Report addresses issues in the law of negative prescription which cause difficulty in practice. The immediate impetus for taking on this project was concern about the date when prescription starts to run in cases of latent damage, such as when a defect emerges in a building long after it was built. It would be unfair for prescription to start to run against a claim before the person affected even knew that there was a claim to be made. The difficult question is how much knowledge that person should have before time starts to run. In fixing the date on which prescription starts to run, the law needs to strike a fair balance. The new

test we recommend in cases of this kind is intended to do that. We have also taken the opportunity to recommend certain other changes to the law of prescription. One is to authorise the use of standstill agreements, which are not currently permissible in Scots law. They allow parties to a dispute to agree to a short extension of the prescriptive period in order to avoid the need for litigation.”

The Report makes clear that it is not concerned with the question of time-limits for claims relating to historical sexual abuse. Such time-limits are established by the law of limitation and have recently been the topic of a Bill passed by the Scottish Parliament.

## **NOTES TO EDITORS**

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Pentland, a Court of Session judge. The other Commissioners are Caroline Drummond, David Johnston QC, Professor Hector L MacQueen, and Dr Andrew J M Steven. The Chief Executive is Malcolm McMillan.
2. Further information can be obtained by contacting Gillian Swanson, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131; email [info@scotlawcom.gsi.gov.uk](mailto:info@scotlawcom.gsi.gov.uk)).
3. The paper will be available on our website at <http://www.scotlawcom.gov.uk> as early as possible on 14 July.