

Prescription (Scotland) Bill

[CONSULTATION DRAFT]

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

5-year negative prescription

1 Obligations to pay damages and delictual obligations

- (1) The Prescription and Limitation (Scotland) Act 1973 (referred to in this Act as “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;
 - (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 - (a) the following sub-paragraphs are repealed—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 (ac) 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) in sub-paragraph (e), for the words from “provided in” to “this Schedule” substitute “provided in paragraphs 1(a), (ab) and (h) of this Schedule”,
 - (b) after sub-paragraph (f) insert—
 - “(fa) to any obligation to pay taxes or duties that are recoverable by the Crown, including any penalty or interest that is recoverable as if it were an amount of such taxes or duties;
 - (fb) so as to prevent the bringing of—
 - (i) proceedings for forfeiture under the customs and excise Acts (within the meaning of the Customs and Excise Management Act 1979); or
 - (ii) proceedings in respect of the forfeiture of a ship (that is, any description of vessel used in navigation and not propelled by oars);”.

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) the occurrence of the loss, injury or damage,

- (b) the act or omission that caused the loss, injury or damage, and
 - (c) the identity of the debtor in the obligation to pay damages for the loss, injury or damage.
- (3B) In relation to a case where there is more than one debtor in the obligation, the reference in subsection (3A)(c) to the debtor is to the one against whom the creditor seeks to enforce the obligation (so that a separate prescriptive period is capable of applying in relation to each debtor).
- (3C) 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.”.

20-year negative prescription

6 Extinction of obligations by prescriptive period of 20 years

- (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—

“(3) Subsection (4) applies if—

 - (a) before the expiry of the prescriptive period mentioned in subsection (1) a relevant claim is made in relation to an obligation to which this section applies, and
 - (b) at the expiry of that period—
 - (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 the obligation to which the claim relates is extinguished—
 - (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 Extinction of rights relating to property by prescriptive period of 20 years

- (1) Section 8 (extinction of other rights relating to property by prescriptive period 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) before the expiry of the prescriptive period mentioned in subsection (1) a relevant claim is made in relation to a right to which this section applies, and
 - (b) at the expiry of that period—
 - (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 the right to which the claim relates is extinguished—
 - (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).”.

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.”.

*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 one contained in 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) a claim or proceedings in respect of the obligation—
 - (i) is not subject to any period of limitation, or
 - (ii) may be made or brought 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”.

10 Definition of “relevant claim”

- (1) The 1973 Act is amended as follows.
- (2) In section 9(1) (definition of “relevant claim”)—
- (a) the word “or” after each of paragraphs (a), (b) and (c) is repealed,
 - (b) after paragraph (d) insert—
 - “(e) by the appointment, or the submission of an application for the appointment, of a receiver under section 51 of the Insolvency Act 1986;
 - (f) by the submission of an application for an administration order under paragraph 12 of Schedule B1 of the Insolvency Act 1986;
 - (g) by the appointment of an administrator under paragraph 12 of Schedule B1 of the Insolvency Act 1986; or
 - (h) by the submission of a claim in an administration under Part 2, or a receivership under Part 3, of the Insolvency Act 1986 in accordance with rules made under section 411 of that Act;”.
- (3) In section 22A(3), in the definition of “relevant claim”—
- (a) the word “or” after each of paragraphs (a) and (b) is repealed,
 - (b) after paragraph (c) insert—
 - “(d) by the appointment, or the submission of an application for the appointment, of a receiver under section 51 of the Insolvency Act 1986;
 - (e) by the submission of an application for an administration order under paragraph 12 of Schedule B1 of the Insolvency Act 1986;
 - (f) by the appointment of an administrator under paragraph 12 of Schedule B1 of the Insolvency Act 1986; or
 - (g) by the submission of a claim in an administration under Part 2, or a receivership under Part 3, of the Insolvency Act 1986 in accordance with rules made under section 411 of that Act;”.

11 Prescriptive periods under sections 6 and 8A: interruption by relevant claim

- (1) Section 9 (definition of “relevant claim” for the purposes of sections 6, 7 and 8) of the 1973 Act is amended as follows.
- (2) After subsection (2) insert—

“(2A) Where a relevant claim is made in relation to an obligation to which section 6 or 8A applies, the claim is to be treated for the purposes of that section as being made continuously until the claim is finally disposed of.”.
- (3) In the section title, for “and 8” substitute “, 8 and 8A”.

12 Definition of “final disposal” of relevant claim

After section 9 of the 1973 Act insert—

“9A Definition of “final disposal” of relevant claim for purposes of sections 7, 8 and 9

- (1) For the purposes of sections 7, 8 and 9, a relevant claim is finally disposed of—
 - (a) when a decision disposing of the claim is made, if there is no right of appeal against the decision,
 - (b) if there is a right of appeal with leave or permission against such a decision—
 - (i) when the time period for seeking leave or permission to appeal has expired without an application for leave or permission having been made, or
 - (ii) when leave or permission to appeal is refused,
 - (c) if leave or permission to appeal against such a decision has been granted or is not required, when the time period for making an appeal has expired without an appeal having been made, or
 - (d) when the claim is withdrawn or abandoned.
- (2) In subsection (1)(a), the reference to a decision disposing of the claim includes a reference to a decision made in an appeal against an earlier decision.”.

13 Restrictions on contracting out

For section 13 (prohibition of contracting out) of the 1973 Act substitute—

“13 Restrictions on contracting out

- (1) The creditor and debtor in an obligation to which a prescriptive period under section 6 or 8A applies may agree to extend the prescriptive period under section 6 or, as the case may be, 8A in relation to the obligation.
- (2) A prescriptive period may be extended by agreement under subsection (1) only—
 - (a) after the period has commenced,
 - (b) by a period of no more than one year, and
 - (c) once in relation to the same creditor and debtor.

- (3) Where there is an agreement under subsection (1) in relation to an obligation—
 - (a) the prescriptive period which is the subject of the agreement expires, in relation to the parties to the agreement, on the date specified in or determined in accordance with the agreement, but
 - (b) that does not otherwise affect the operation of this Act in relation to the obligation or the prescriptive period.
- (4) Except as provided for in subsections (1) to (3), a provision in an agreement is of no effect so far as the provision purports, in relation to a right or obligation to which section 6, 7, 8 or 8A (the “section in question”) applies—
 - (a) to disapply the section in question in relation to the right or obligation, or
 - (b) otherwise to alter the operation of the section in question, or any other provision of this Act, in relation to the right or obligation.”.

14 Burden of proof

- (1) The 1973 Act is amended as follows.
- (2) After section 13 insert—

“13A Burden of proof

- (1) This section applies in relation to—
 - (a) an obligation to which a prescriptive period under section 6, 7 or 8A applies, and
 - (b) a right to which the prescriptive period under section 8 applies.
 - (2) If a question arises as to whether the obligation or right has been extinguished by the expiry of the applicable prescriptive period, it is to be presumed that the obligation or right has been so extinguished unless the contrary is proved by the creditor.”.
- (3) In section 22A (prescription of obligations under Part 1 of the Consumer Protection Act 1987), after subsection (7) insert—

“(7A) Section 13A of this Act applies in relation to an obligation to which the prescriptive period under this section applies as it applies in relation to the obligations and rights referred to in subsection (1) of that section.”.

General

15 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under this section may—
 - (a) make different provision for different purposes,
 - (b) modify any enactment (including this Act).
- (3) Regulations under this section containing provision that adds to, replaces or omits any part of the text of an Act are subject to the affirmative procedure.
- (4) Otherwise, regulations under this section are subject to the negative procedure.

16 Commencement

- (1) This section and sections 15 and 17 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
 - (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

17 Short title

The short title of this Act is the Prescription (Scotland) Act 2017.