

22 February 2016



Our ref: L/1/2/2A

Dear Consultee,

### **DISCUSSION PAPER ON PRESCRIPTION (DISCUSSION PAPER No 160)**

We invite comment on the above mentioned Discussion Paper on Prescription which has been published today. This paper is available on our website, together with a news release and a summary.

Negative prescription establishes a time-limit within which a person who is aggrieved must raise his or her claim in court. If the time-limit is missed, the ability to pursue the claim is lost. That may at first sight seem unfair. But it should not be, provided that the choice of time-limit strikes a fair balance between competing interests. It is for the legislature to decide what the appropriate time-limits should be, and what exceptions or qualifications to them there should be. A well moderated law of prescription will serve the public interest by promoting legal certainty and the efficient use of resources. In this way it can make a valuable contribution to a strong sustainable economy. Following the case of *David T Morrison & Co Ltd v ICL Plastics Ltd* [2014] UKSC 48, 2014 SC (UKSC) 222, the issue of prescription in relation to claims for latent damage has become topical. The pursuers in that case were owners of a shop which was damaged by the explosion at the Stockline factory in Glasgow. The Discussion Paper examines the law relating to latent damage along with other topics including the scope of the five-year prescription; the structure of the 20-year prescription; whether it should be possible to contract out from the statutory prescriptive periods; unjustified enrichment and discoverability; and the burden of proof.

Consultation is critical in all our law reform projects to ensure that the final recommendations contained in our report would, if implemented, result in law which is just, principled, responsive and easy to understand. We would therefore be grateful to receive your views on any or all of the questions in this Discussion Paper; they will be fully considered and analysed in the course of reaching our final conclusions. Even if you agree with our views but do not wish to make any further comments, a brief note to that effect would be most helpful as an indication that our policy is developing along the right lines.

Where possible, we would prefer the electronic submission of comments. For example, you can use the downloadable electronic response form for this Discussion Paper on our website at <http://www.scotlawcom.gov.uk/publications/discussion-papers-and-consultative-memoranda/2010-present/>. The MS Word form has a questionnaire format which allows you to comment - briefly or at length - on any of the paper's questions which interest you. The form can be downloaded and emailed to us at [info@scotlawcom.gsi.gov.uk](mailto:info@scotlawcom.gsi.gov.uk), as can comments composed in other electronic formats. Alternatively, you may prefer to send your comments on the Discussion Paper by using the general

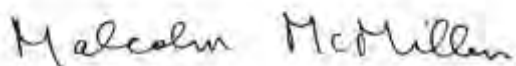


comments form to be found on the website Contact us page (<http://www.scotlawcom.gov.uk/contact-us/>). Please note that the consultation process for this project will conclude on **23 May 2016**; accordingly, we would be grateful if comments were submitted by then.

PLEASE NOTE THAT information about this Discussion Paper, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act. We may also (i) publish responses on our website (either in full or in some other way such as reformatted or summarised); and (ii) attribute comments and publish a list of respondents' names.

Finally, should you wish to offer any comments on the way in which we conduct our consultation exercises, we would be pleased to hear from you.

Yours faithfully



Chief Executive