

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
BEFORE 0001 HOURS MONDAY 22 FEBRUARY 2016

Time-limits for raising claims in court

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. In a Discussion Paper published today, the Scottish Law Commission, whose remit is to recommend ways of simplifying, updating and improving the law of Scotland, looks at aspects of the law of prescription.

Following the decision of the Supreme Court in the case of *David T Morrison & Co Ltd v ICL Plastics Ltd* in 2014, 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 an explosion at the Stockline factory in Glasgow. The explosion was in May 2004. After a public inquiry into the blast which reported in July 2009, the shop owners raised an action in August 2009. Had the time-limit been missed? The case went all the way to the Supreme Court which (by a majority of 3:2) changed the understanding of the relevant law by ruling that the party suffering the loss merely had to be aware of the occurrence of that loss for the clock to start ticking. The shop owners' right to claim damages had therefore been lost. The Discussion Paper examines the law relating to latent damage, asks whether the law as it is after the *Morrison* case is fair, and explores options for reform.

Other topics examined in the paper include 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; and the burden of proof. The consultation exercise runs until 23 May.

David Johnston QC, leading the project, said:

'The law of prescription plays an important role in balancing the interests of the parties to a litigation. There is also a wider public interest in requiring litigation to be initiated promptly if it is to be initiated at all. The law has remained largely unchanged for 40 years. As part of our current programme of law reform we were encouraged to review the main areas in which change might be considered. This paper is the result.'

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 Mrs Gillian Swanson, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, email: info@scotlawcom.gsi.gov.uk).
3. The paper may also be viewed on our website at <http://www.scotlawcom.gov.uk>.