

PRESCRIPTION (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

The structure of the Act

Section 6 - Obligations: 20-year prescriptive period and extension

23. This section amends section 7 of the 1973 Act with a view to ensuring that the 20-year prescriptive period does function as a long stop. Subsection (2)(a) substitutes a new subsection (1) into section 7. The 20-year prescriptive period will no longer be amenable to interruption by a relevant claim or by relevant acknowledgement which has the effect of a full 20-year period starting again. The amendment is achieved through omitting any reference to such a claim or acknowledgement.
24. To complement this amendment, subsection (2)(b) provides for the insertion of new subsections (3) to (5) into section 7 of the 1973 Act. Although the 20-year prescription will no longer be amenable to interruption by a relevant claim or by acknowledgement, it may be extended in certain circumstances. Where a relevant claim, as defined for the purposes of section 7 of the 1973 Act by section 9 of that Act, has been made during the prescriptive period of 20 years but, before the end of that period, has not been finally disposed of and the proceedings in which the claim is made have not otherwise ended, the extension will run until the claim has been finally disposed of or until the proceedings otherwise come to an end.
25. Reference to final disposal and the end of proceedings means that the claimant has the benefit of the extension only if the claim has not been finally disposed of and the proceedings in which it is made have not otherwise come to an end. In other words, if the proceedings have ended by the time the prescriptive period expires, it does not matter that there has not been a final disposal of the relevant claim; it is enough that the proceedings have ended. This provision ensures that what is intended to be a narrow exception from the long-stop prescription is kept within tight bounds. The words in brackets in new subsection (4)(b) of section 7 of the 1973 Act make clear that, where a claim has been finally disposed of, the claimant cannot rely on the fact that proceedings are continuing for other purposes (for example in relation to the enforcement of a separate obligation under the same contract) in order to seek an extension of time.
26. New subsection (5) of section 7 of the 1973 Act is necessary as not all means by which a relevant claim, as defined for the purposes of section 7 of the 1973 Act by section 9 of that Act, may be made (for example a claim in a sequestration or liquidation) can be defined as “proceedings”. The circumstances in which a relevant claim will be taken to be disposed of finally are set out in section 12 of the Act.
27. Subsection (3) of section 6 of the Act provides for consequential amendments to section 10 of the 1973 Act. These reflect the fact that the 20-year prescriptive period will also no longer be amenable to interruption by relevant acknowledgement.