



# Prescription and Limitation (Scotland) Act 1973

## 1973 CHAPTER 52

### PART I

#### PRESCRIPTION

##### *Positive prescription*

#### **1 Interests in land: general.**

(1) If in the case of an interest in particular land, being an interest to which this section applies,—

(a) the interest has been possessed by any person, or by any person and his successors, for a continuous period of ten years openly, peaceably and without any judicial interruption, and

(b) the possession was founded on, and followed

[<sup>F1</sup>(i)] the recording of, a deed which is sufficient in respect of its terms to constitute in favour of that person a title to that interest in the particular land, or in land of a description habile to include the particular land, [<sup>F2</sup>, or

(ii) registration of that interest in favour of that person in the Land Register of Scotland, subject to an exclusion of indemnity under section 12(2)

of the <sup>M1</sup>Land Registration (Scotland) Act 1979,

then, as from the expiration of the said period, the validity of the title so far as relating to the said interest in the particular land shall be exempt from challenge.

(1A) Subsection (1) above shall not apply where—

(a) possession was founded on the recording of a deed which is *invalidex facie* or was forged; or

*Status: Point in time view as at 22/07/2004.*

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- (b) possession was founded on registration in respect of an interest in land in the Land Register of Scotland proceeding on a forged deed and the person appearing from the Register to be entitled to the interest was aware of the forgery at the time of registration in his favour.]
- (2) This section applies to any interest in land the title to which can competently be recorded [<sup>F3</sup>or which is registrable in the Land Register of Scotland.]
- (3) In the computation of a prescriptive period for the purposes of this section in a case where the deed in question is a decree of adjudication for debt, any period before the expiry of the legal shall be disregarded.
- (4) Where in any question involving an interest in any foreshore or in any salmon fishings this section is pled against the Crown as owner of the regalia, subsection (1) above shall have effect as if for the words “ten years” there were substituted the words “twenty years”.
- (5) This section is without prejudice to the operation of section 2 of this Act.

#### Textual Amendments

- F1** Word inserted by [Land Registration \(Scotland\) Act 1979 \(c. 33, SIF 31:3\), s. 10\(a\)](#)
- F2** [S. 1\(1\)\(ii\)](#) and [\(1A\)](#) inserted by [Land Registration \(Scotland\) Act 1979 \(c. 33, SIF 31:3\), s. 10\(a\)](#)
- F3** Words added by [Land Registration \(Scotland\) Act 1979 \(c. 33, SIF 31:3\), s. 10\(b\)](#)

#### Modifications etc. (not altering text)

- C1** [S. 1](#) restricted (31.10.1994) by [1994 c. 21, ss. 10\(2\)\(b\)\(4\), 68\(2\)\(a\)](#) (with [s. 40\(7\)](#)); [S.I. 1994/2553, art.2](#)

#### Marginal Citations

- M1** [1979 c. 33\(31:3\)](#).

## 2 Interests in land: special cases.

- (1) If in the case of an interest in particular land, being an interest to which this section applies,—
- (a) the interest has been possessed by any person, or by any person and his successors, for a continuous period of twenty years openly, peaceably and without any judicial interruption, and
- (b) the possession was founded on, and followed the execution of, a deed (whether recorded or not) which is sufficient in respect of its terms to constitute in favour of that person a title to that interest in the particular land, or in land of a description habile to include the particular land,
- then, as from the expiration of the said period, the validity of the title so far as relating to the said interest in the particular land shall be exempt from challenge except on the ground that the deed is invalid *ex facie* or was forged.
- (2) This section applies—
- (a) to the interest in land of the lessee under a lease;
- (b) to any interest in allodial land;
- (c) to any other interest in land the title to which is of a kind which, under the law in force immediately before the commencement of this Part of this Act,

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was sufficient to form a foundation for positive prescription without the deed constituting the title having been recorded.

(3) This section is without prejudice to the operation of section 1 of this Act.

**Modifications etc. (not altering text)**

**C2** S. 2 restricted (31.10.1994) by 1994 c. 21, ss. 10(2)(b)(4), 68(2)(a) (with s. 40(7)); S.I. 1994/2553, art. 2

**3 Positive servitudes and public rights of way.**

- (1) If in the case of a positive servitude over land—
- (a) the servitude has been possessed for a continuous period of twenty years openly, peaceably and without any judicial interruption, and
  - (b) the possession was founded on, and followed the execution of, a deed which is sufficient in respect of its terms (whether expressly or by implication) to constitute the servitude,
- then, as from the expiration of the said period, the validity of the servitude as so constituted shall be exempt from challenge except on the ground that the deed is invalid *ex facie* or was forged.
- (2) If a positive servitude over land has been possessed for a continuous period of twenty years openly, peaceably and without judicial interruption, then, as from the expiration of that period, the existence of the servitude as so possessed shall be exempt from challenge.
- (3) If a public right of way over land has been possessed by the public for a continuous period of twenty years openly, peaceably and without judicial interruption, then, as from the expiration of that period, the existence of the right of way as so possessed shall be exempt from challenge.
- (4) References in subsections (1) and (2) of this section to possession of a servitude are references to possession of the servitude by any person in possession of the relative dominant tenement.
- (5) This section is without prejudice to the operation of section 7 of this Act.

**4 Judicial interruption of periods of possession for purposes of sections 1, 2 and 3.**

- (1) In sections 1, 2 and 3 of this Act references to a judicial interruption, in relation to possession, are references to the making in appropriate proceedings, by any person having a proper interest to do so, of a claim which challenges the possession in question.
- (2) In this section “appropriate proceedings” means—
- (a) any proceedings in a court of competent jurisdiction in Scotland or elsewhere, except proceedings in the Court of Session initiated by a summons which is not subsequently called;
  - (b) any arbitration in Scotland;
  - (c) any arbitration in a country other than Scotland, being an arbitration an award in which would be enforceable in Scotland.

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- (3) The date of a judicial interruption shall be taken to be—
  - (a) where the claim has been made in an arbitration and the nature of the claim has been stated in a preliminary notice relating to that arbitration, the date when the preliminary notice was served;
  - (b) in any other case, the date when the claim was made.
- (4) In the foregoing subsection “preliminary notice” in relation to an arbitration means a notice served by one party to the arbitration on the other party or parties requiring him or them to appoint an arbiter or to agree to the appointment of an arbiter, or, where the arbitration agreement or any relevant enactment provides that the reference shall be to a person therein named or designated, a notice requiring him or them to submit the dispute to the person so named or designated.

**5 Further provisions supplementary to sections 1, 2 and 3.**

- (1) In sections 1, 2 and 3 of this Act “deed” includes a judicial decree; and for the purposes of the said sections any of the following, namely an instrument of sasine, a notarial instrument and a notice of title, which narrates or declares that a person has a title to an interest in land shall be treated as a deed sufficient to constitute that title in favour of that person.

<sup>F4</sup>(2) .....

<p><b>Textual Amendments</b></p> <p><b>F4</b> S. 5(2) repealed (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), <b>Sch.5</b> (with ss. 9(3)(5)(7), 13, 14(3))</p> <hr/> <p><b>Modifications etc. (not altering text)</b></p> <p><b>C3</b> S. 5 modified (<i>prosp.</i>) by 2000 asp 5, <b>ss. 57, 77(2)</b> (with ss. 58, 62, 75)</p>
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*Negative Prescription*

**6 Extinction of obligations by prescriptive periods of five years.**

- (1) If, after the appropriate date, an obligation to which this section applies has subsisted for a continuous period of five years—
  - (a) without any relevant claim having been made in relation to the obligation, and
  - (b) without the subsistence of the obligation having been relevantly acknowledged,
 then as from the expiration of that period the obligation shall be extinguished: Provided that in its application to an obligation under a bill of exchange or a promissory note this subsection shall have effect as if paragraph (b) thereof were omitted.
- (2) Schedule 1 to this Act shall have effect for defining the obligations to which this section applies.
- (3) In subsection (1) above the reference to the appropriate date, in relation to an obligation of any kind specified in Schedule 2 to this Act is a reference to the date specified in that Schedule in relation to obligations of that kind, and in relation to an obligation of any other kind is a reference to the date when the obligation became enforceable.

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- (4) In the computation of a prescriptive period in relation to any obligation for the purposes of this section—
- (a) any period during which by reason of—
- (i) fraud on the part of the debtor or any person acting on his behalf, or
- (ii) error induced by words or conduct of the debtor or any person acting on his behalf,
- the creditor was induced to refrain from making a relevant claim in relation to the obligation, and
- (b) any period during which the original creditor (while he is the creditor) was under legal disability,
- shall not be reckoned as, or as part of, the prescriptive period:
- Provided that any period such as is mentioned in paragraph (a) of this subsection shall not include any time occurring after the creditor could with reasonable diligence have discovered the fraud or error, as the case may be, referred to in that paragraph.
- (5) Any period such as is mentioned in paragraph (a) or (b) of subsection (4) of this section shall not be regarded as separating the time immediately before it from the time immediately after it.

**Modifications etc. (not altering text)**

- C4** S. 6 extended by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 123:2\)](#), **s. 113(11)**
- C5** S. 6 modified (25.9.1991) by [Age of Legal Capacity Act 1991 \(c. 50, SIF 49:8\)](#), **ss.8, 11(2)**.  
S. 6 applied (with modifications) (*prosp.*) by [2000 asp 5, ss. 57, 77\(2\)](#) (with [ss. 58, 62, 75](#))
- C6** S. 6(4) extended by [Merchant Shipping \(Liner Conferences\) Act 1982 \(c. 37, SIF 111\)](#), **s. 8(3)**
- C7** S. 6(4)(a)(ii) excluded (with effect in accordance with s. 321(2) of the commencing Act) by [Finance Act 2004 \(c. 12\)](#), **s. 321**

**7 Extinction of obligations by prescriptive periods of twenty years.**

- (1) If, after the date when any obligation to which this section applies has become enforceable, the obligation has subsisted for a continuous period of twenty years—
- (a) without any relevant claim having been made in relation to the obligation, and
- (b) without the subsistence of the obligation having been relevantly acknowledged,
- then as from the expiration of that period the obligation shall be extinguished:
- Provided that in its application to an obligation under a bill of exchange or a promissory note this subsection shall have effect as if paragraph (b) thereof were omitted.
- (2) This section applies to an obligation of any kind (including an obligation to which section 6 of this Act applies), not being an obligation [<sup>F5</sup>to which section 22A of this Act applies or an obligation] specified in Schedule 3 to this Act as an imprescriptible obligation [<sup>F6</sup>or an obligation to make reparation in respect of personal injuries within the meaning of Part II of this Act or in respect of the death of any person as a result of such injuries.]

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#### Textual Amendments

- F5** Words inserted by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), ss. 6, 41(2), 47(1)(2), [Sch. 1 para. 8](#)
- F6** Words added by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), ss. 5(3), 6(1), [Sch. 1 para. 2](#)

### 8 Extinction of other rights relating to property by prescriptive periods of twenty years.

- (1) If, after the date when any right to which this section applies has become exercisable or enforceable, the right has subsisted for a continuous period of twenty years unexercised or unenforced, and without any relevant claim in relation to it having been made, then as from the expiration of that period the right shall be extinguished.
- (2) This section applies to any right relating to property, whether heritable or moveable, not being a right specified in Schedule 3 to this Act as an imprescriptible right or falling within section 6 or 7 of this Act as being a right correlative to an obligation to which either of those sections applies.

#### [<sup>F7</sup>8A Extinction of obligations to make contributions between wrongdoers.

- (1) If any obligation to make a contribution by virtue of section 3(2) of the <sup>M2</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 in respect of any damages or expenses has subsisted for a continuous period of 2 years after the date on which the right to recover the contribution became enforceable by the creditor in the obligation—
- (a) without any relevant claim having been made in relation to the obligation; and
  - (b) without the subsistence of the obligation having been relevantly acknowledged;
- then as from the expiration of that period the obligation shall be extinguished.
- (2) Subsections (4) and (5) of section 6 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.]

#### Textual Amendments

- F7** S. 8A inserted by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), [s. 1](#)

#### Marginal Citations

- M2** 1940 c. 42(122:3).

### 9 †Definition of “relevant claim” for purposes of sections 6, 7 and 8.

- (1) In sections 6 [<sup>F8</sup>7 and 8A] of this Act the expression “relevant claim”, in relation to an obligation, means a claim made by or on behalf of the creditor for implement or part-implement of the obligation, being a claim made—
- (a) in appropriate proceedings, or
  - [<sup>F9</sup>(b) by the presentation of, or the concurring in, a petition for sequestration or by the submission of a claim under section 22 or 48 of the <sup>M3</sup>Bankruptcy (Scotland) Act 1985 . . . <sup>F10</sup>; or

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- (c) by a creditor to the trustee acting under a trust deed as defined in section 5(2) (c) of the <sup>M4</sup>Bankruptcy (Scotland) Act 1985; <sup>F11</sup>or
- (d) by the presentation of, or the concurring in, a petition for the winding up of a company or by the submission of a claim in a liquidation in accordance with rules made under section 411 of the Insolvency Act <sup>M5</sup>1986;]

and for the purposes of the said sections 6 <sup>F8</sup>7 and 8A] the execution by or on behalf of the creditor in an obligation of any form of diligence directed to the enforcement of the obligation shall be deemed to be a relevant claim in relation to the obligation.

- (2) In section 8 of this Act the expression “relevant claim”, in relation to a right, means a claim made in appropriate proceedings by or on behalf of the creditor to establish the right or to contest any claim to a right inconsistent therewith.
- (3) Where a claim which, in accordance with the foregoing provisions of this section, is a relevant claim for the purposes of section 6, 7 <sup>F12</sup>8 or 8A] of this Act is made in an arbitration, and the nature of the claim has been stated in a preliminary notice relating to that arbitration, the date when the notice was served shall be taken for those purposes to be the date of the making of the claim.
- (4) In this section the expression “appropriate proceedings” and, in relation to an arbitration, the expression “preliminary notice” have the same meanings as in section 4 of this Act.

#### Textual Amendments

- F8** Words substituted by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), s. 6(1), **Sch. 1 para. 3 (a)**
- F9** S. 9 paras. (b)(c) substituted for para. (b) by [Bankruptcy \(Scotland\) Act 1985 \(c. 66, SIF 66:2\)](#), s. 75(1), **Sch. 7 para. 11**
- F10** Words repealed by [Prescription \(Scotland\) Act 1987 \(c. 36, SIF 97\)](#), s. 1(2)(3)
- F11** S. 9(1)(d) and word “or” immediately preceding it inserted by [Prescription \(Scotland\) Act 1987 \(c. 36, SIF 97\)](#), s. 1(1)(3), with effect as regards any claim (whenever submitted) in a liquidation in respect of which the winding up commenced on or after 29 December 1986
- F12** Words substituted by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), s. 6(1), **Sch. 1 para. 3(b)**

#### Modifications etc. (not altering text)

- C8** Unreliable margin note
- C9** S. 9 applied (with modifications) (4.4.2003 for specified purposes, 28.11.2004 in so far as not already in force) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), ss. 18(3), 122(1), 129(2), 129(5)(d) (with ss. 119, 121) (see [S.S.I. 2003/456](#), art. 2)

#### Marginal Citations

- M3** [1985 c. 66\(11:2\)](#).
- M4** [1985 c. 66\(11:2\)](#).
- M5** [1986 c. 45 \(66\)](#).

## 10 † Relevant acknowledgment for purposes of sections 6 and 7.

- (1) The subsistence of an obligation shall be regarded for the purposes of sections 6 <sup>F13</sup>7 and 8A] of this Act as having been relevantly acknowledged if, and only if, either of the following conditions is satisfied, namely—

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- (a) that there has been such performance by or on behalf of the debtor towards implement of the obligation as clearly indicates that the obligation still subsists;
  - (b) that there has been made by or on behalf of the debtor to the creditor or his agent an unequivocal written admission clearly acknowledging that the obligation still subsists.
- (2) Subject to subsection (3) below, where two or more persons are bound jointly by an obligation so that each is liable for the whole, and the subsistence of the obligation has been relevantly acknowledged by or on behalf of one of those persons then—
- (a) if the acknowledgment is made in the manner specified in paragraph (a) of the foregoing subsection it shall have effect for the purposes of the said sections 6 [F137 and 8A] as respects the liability of each of those persons, and
  - (b) if it is made in the manner specified in paragraph (b) of that subsection it shall have effect for those purposes only as respects the liability of the person who makes it.
- (3) Where the subsistence of an obligation affecting a trust estate has been relevantly acknowledged by or on behalf of one of two or more co-trustees in the manner specified in paragraph (a) or (b) of subsection (1) of this section, the acknowledgment shall have effect for the purposes of the said sections 6 [F137 and 8A] as respects the liability of the trust estate and any liability of each of the trustees.
- (4) In this section references to performance in relation to an obligation include, where the nature of the obligation so requires, references to refraining from doing something and to permitting or suffering something to be done or maintained.

#### Textual Amendments

**F13** Words substituted by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), s. 6(1), [Sch. 1 para. 4](#)

#### Modifications etc. (not altering text)

**C10** Unreliable margin note

**C11** [S. 10](#) applied (with modifications) (4.4.2003 for specified purposes) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), [ss. 18\(3\)](#), [122\(1\)](#), [129\(2\)](#), [129\(5\)\(d\)](#) (with [ss. 119](#), [121](#)) (see S.S.I. 2003/456, art. 2)

## 11 Obligations to make reparation.

- (1) Subject to subsections (2) and (3) below; any obligation (whether arising from any enactment, or from any rule of law or from, or by reason of any breach of, a contract or promise) to make reparation for loss, injury or damage caused by an act, neglect or default shall be regarded for the purposes of section 6 of this Act as having become enforceable on the date when the loss, injury or damage occurred.
- (2) Where as a result of a continuing act, neglect or default loss, injury or damage has occurred before the cessation of the act, neglect or default the loss, injury or damage shall be deemed for the purposes of subsection (1) above to have occurred on the date when the act, neglect or default ceased.
- (3) In relation to a case where on the date referred to in subsection (1) above (or, as the case may be, that subsection as modified by subsection (2) above) the creditor was not aware, and could not with reasonable diligence have been aware, that loss, injury or



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damage caused as aforesaid had occurred, the said subsection (1) shall have effect as if for the reference therein to that date there were substituted a reference to the date when the creditor first became, or could with reasonable diligence have become, so aware.

- (4) Subsections (1) and (2) above (with the omission of any reference therein to subsection (3) above) shall have effect for the purposes of section 7 of this Act as they have effect for the purposes of section 6 of this Act; . . . <sup>F14</sup>

#### Textual Amendments

**F14** Words repealed by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), s. 6(2), [Sch. 2](#)

## 12 Savings.

- (1) Where by virtue of any enactment passed or made before the passing of this Act a claim to establish a right or enforce implement of an obligation may be made only within a period of limitation specified in or determined under the enactment, and, by the expiration of a prescriptive period determined under section 6, 7 or 8 of this Act the right or obligation would, apart from this subsection, be extinguished before the expiration of the period of limitation, the said section shall have effect as if the relevant prescriptive period were extended so that it expires—
- (a) on the date when the period of limitation expires, or
  - (b) if on that date any such claim made within that period has not been finally disposed of, on the date when the claim is so disposed of.
- (2) Nothing in section 6, 7 or 8 of this Act shall be construed so as to exempt any deed from challenge at any time on the ground that it is invalid *ex facie* or was forged.

## 13 Prohibition of contracting out.

Any provision in any agreement purporting to provide in relation to any right or obligation that section 6, 7 <sup>F158</sup> or 8A of this Act shall not have effect shall be null.

#### Textual Amendments

**F15** Words substituted by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), s. 6(1), [Sch. 1 para. 5](#)

### General

## 14 Computation of prescriptive periods.

- (1) In the computation of a prescriptive period for the purposes of any provision of this Part of this Act—
- (a) time occurring before the commencement of this Part of this Act shall be reckonable towards the prescriptive period in like manner as time occurring thereafter, but subject to the restriction that any time reckoned under this paragraph shall be less than the prescriptive period;
  - (b) any time during which any person against whom the provision is pled was under legal disability shall (except so far as otherwise provided by

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[<sup>F16</sup>subsection (4) of section 6 of this Act including that subsection as applied by section 8A of this Act] of this Act) be reckoned as if the person were free from that disability;

- (c) if the commencement of the prescriptive period would, apart from this paragraph, fall at a time in any day other than the beginning of the day, the period shall be deemed to have commenced at the beginning of the next following day;
- (d) if the last day of the prescriptive period would, apart from this paragraph, be a holiday, the period shall, notwithstanding anything in the said provision, be extended to include any immediately succeeding day which is a holiday, any further immediately succeeding days which are holidays, and the next succeeding day which is not a holiday;
- (e) save as otherwise provided in this Part of this Act regard shall be had to the like principles as immediately before the commencement of this Part of this Act were applicable to the computation of periods of prescription for the purposes of the <sup>M6</sup>Prescription Act 1617.

- (2) In this section “holiday” means a day of any of the following descriptions, namely, a Saturday, a Sunday and a day which, in Scotland, is a bank holiday under the <sup>M7</sup>Banking and Financial Dealings Act 1971.

#### Textual Amendments

**F16** Words substituted by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\), s. 6\(1\), Sch. 1 para. 6](#)

#### Modifications etc. (not altering text)

**C12** S. 14 applied (with modifications) (4.4.2003 for specified purposes, 28.11.2004 in so far as not already in force) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\), ss. 18\(4\), 122\(1\), 129\(2\), 129\(5\)\(d\)](#) (with ss. 119, 121) (see [S.S.I. 2003/456](#), art. 2)

#### Marginal Citations

**M6** 1617 c. 12.

**M7** 1971 c. 80(10).

## 15 Interpretation of Part I.

- (1) In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, namely—

“bill of exchange” has the same meaning as it has for the purposes of the <sup>M8</sup>Bills of Exchange Act 1882;

“date of execution”, in relation to a deed executed on several dates, means the last of those dates;

“enactment” includes an order, regulation, rule or other instrument having effect by virtue of an Act;

“holiday” has the meaning assigned to it by section 14 of this Act;

“interest in land” does not include a servitude;

“land” includes heritable property of any description;

“lease” includes a sub-lease;

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“legal disability” means legal disability by reason of nonage or unsoundness of mind;

“possession” includes civil possession, and “possessed” shall be construed accordingly;

“prescriptive period” means a period required for the operation of section 1, 2, 3, 6, 7 [<sup>F17</sup>8 or 8A] of this Act;

“promissory note” has the same meaning as it has for the purposes of the Bills of Exchange Act 1882;

“trustee” includes any person holding property in a fiduciary capacity for another and, without prejudice to that generality, includes a trustee within the meaning of the <sup>M9</sup>Trusts (Scotland) Act 1921; and “trust” shall be construed accordingly;

and references to the recording of a deed are references to the recording thereof in the General Register of Sasines.

- (2) In this Part of this Act, unless the context otherwise requires, any reference to an obligation or to a right includes a reference to the right or, as the case may be, to the obligation (if any), correlative thereto.
- (3) In this Part of this Act any reference to an enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended, and as including a reference thereto as applied, by or under any other enactment.

#### Textual Amendments

**F17** Words substituted by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\), s. 6\(1\), Sch. 1 para. 7](#)

#### Marginal Citations

**M8** 1882 c. 61(13).

**M9** 1921 c. 58(128).

## 16 Amendments and repeals related to Part I.

- (1) The enactment specified in Part I of Schedule 4 to this Act shall have effect subject to the amendment there specified, being an amendment related to this Part of this Act.
- (2) Subject to the next following subsection, the enactments specified in Part I of Schedule 5 to this Act (which includes certain enactments relating to the limitation of proof) are hereby repealed to the extent specified in column 3 of that Schedule.
- (3) Where by virtue of any Act repealed by this section the subsistence of an obligation in force at the date of the commencement of this Part of this Act was immediately before that date, by reason of the passage of time, provable only by the writ or oath of the debtor the subsistence of the obligation shall (notwithstanding anything in [<sup>F18</sup>sections 16(1) and 17(2)(a) of the <sup>M10</sup>Interpretation Act 1978], which relates to the effect of repeals) as from that date be provable as if the said repealed Act had not passed.

#### Textual Amendments

**F18** Words substituted by virtue of [Interpretation Act 1978 \(c. 30, SIF 115:1\), s. 25\(2\)](#)

*Status: Point in time view as at 22/07/2004.*

*Changes to legislation: Prescription and Limitation (Scotland) Act 1973 is up to date with all changes known to be in force on or before 20 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### **Modifications etc. (not altering text)**

**C13** The text of s. 16(1) and Sch. 5 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### **Marginal Citations**

**M10** 1978 c. 30(115:1).

## **PART II**

### LIMITATION OF ACTIONS

#### **[<sup>F19</sup>16A Part II not to extend to product liability.**

—This Part of this Act does not apply to any action to which section 22B or 22C of this Act applies.]

#### **Textual Amendments**

**F19** S. 16A inserted by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), ss. 6, 41(2), 47(1)(2), [Sch. 1 para. 9](#)

#### **[<sup>F20</sup>17 Actions in respect of personal injuries not resulting in death.**

- (1) This section applies to an action of damages where the damages claimed consist of or include damages in respect of personal injuries, being an action (other than an action to which section 18 of this Act applies) brought by the person who sustained the injuries or any other person.
- (2) Subject to subsection (3) below and section 19A of this Act, no action to which this section applies shall be brought unless it is commenced within a period of 3 years after—
  - (a) the date on which the injuries were sustained or, where the act or omission to which the injuries were attributable was a continuing one, that date or the date on which the act or omission ceased, whichever is the later; or
  - (b) the date (if later than any date mentioned in paragraph (a) above) on which the pursuer in the action became, or on which, in the opinion of the court, it would have been reasonably practicable for him in all the circumstances to become, aware of all the following facts—
    - (i) that the injuries in question were sufficiently serious to justify his bringing an action of damages on the assumption that the person against whom the action was brought did not dispute liability and was able to satisfy a decree;
    - (ii) that the injuries were attributable in whole or in part to an act or omission; and
    - (iii) that the defender was a person to whose act or omission the injuries were attributable in whole or in part or the employer or principal of such a person.

*Status: Point in time view as at 22/07/2004.*

*Changes to legislation: Prescription and Limitation (Scotland) Act 1973 is up to date with all changes known to be in force on or before 20 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) In the computation of the period specified in subsection (2) above there shall be disregarded any time during which the person who sustained the injuries was under legal disability by reason of nonage or unsoundness of mind.]

#### Textual Amendments

**F20** Ss. 17, 18 substituted for ss. 17–19 by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), [ss. 2, 5\(1\)](#)

#### Modifications etc. (not altering text)

**C14** S. 17 modified (25.9.1991) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), [ss. 8, 11\(2\)](#).

## 18 Actions where death has resulted from personal injuries.

- (1) This section applies to any action in which, following the death of any person from personal injuries, damages are claimed in respect of the injuries or the death.
- (2) Subject to subsections (3) and (4) below and section 19A of this Act, no action to which this section applies shall be brought unless it is commenced within a period of 3 years after—
- (a) the date of death of the deceased; or
  - (b) the date (if later than the date of death) on which the pursuer in the action became, or on which, in the opinion of the court, it would have been reasonably practicable for him in all the circumstances to become, aware of both of the following facts—
    - (i) that the injuries of the deceased were attributable in whole or in part to an act or omission; and
    - (ii) that the defender was a person to whose act or omission the injuries were attributable in whole or in part or the employer or principal of such a person.
- (3) Where the pursuer is a relative of the deceased, there shall be disregarded in the computation of the period specified in subsection (2) above any time during which the relative was under legal disability by reason of nonage or unsoundness of mind.
- (4) Subject to section 19A of this Act, where an action of damages has not been brought by or on behalf of a person who has sustained personal injuries within the period specified in section 17(2) of this Act and that person subsequently dies in consequence of those injuries, no action to which this section applies shall be brought in respect of those injuries or the death from those injuries.
- (5) In this section “relative” has the same meaning as in Schedule 1 to the <sup>M11</sup>Damages (Scotland) Act 1976.

#### Modifications etc. (not altering text)

**C15** S. 18 modified (25.9.1991) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), [ss.8, 11\(2\)](#).

*Status: Point in time view as at 22/07/2004.*

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#### Marginal Citations

M11 1976 c. 13(122:3).

### [<sup>F21</sup>18A Limitation of defamation and other actions.

- (1) Subject to subsections (2) and (3) below and section 19A of this Act, no action for defamation shall be brought unless it is commenced within a period of 3 years after the date when the right of action accrued.
- (2) In the computation of the period specified in subsection (1) above there shall be disregarded any time during which the person alleged to have been defamed was under legal disability by reason of nonage or unsoundness of mind.
- (3) Nothing in this section shall affect any right of action which accrued before the commencement of this section.
- (4) In this section—
  - (a) “defamation” includes *convicium* and malicious falsehood, and “defamed” shall be construed accordingly; and
  - (b) references to the date when a right of action accrued shall be construed as references to the date when the publication or communication in respect of which the action for defamation is to be brought first came to the notice of the pursuer.]

#### Textual Amendments

F21 S. 18A inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36: 1\)](#), s. 12(2)

#### Modifications etc. (not altering text)

C16 S. 18A modified (25.9.1991) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), ss. 8, 11(2).

### [<sup>F22</sup>18B Actions of harassment.

- (1) This section applies to actions of harassment (within the meaning of section 8 of the Protection from Harassment Act 1997) which include a claim for damages.
- (2) Subject to subsection (3) below and to section 19A of this Act, no action to which this section applies shall be brought unless it is commenced within a period of 3 years after—
  - (a) the date on which the alleged harassment ceased; or
  - (b) the date, (if later than the date mentioned in paragraph (a) above) on which the pursuer in the action became, or on which, in the opinion of the court, it would have been reasonably practicable for him in all the circumstances to have become, aware, that the defender was a person responsible for the alleged harassment or the employer or principal of such a person.
- (3) In the computation of the period specified in subsection (2) above there shall be disregarded any time during which the person who is alleged to have suffered the harassment was under legal disability by reason of nonage or unsoundness of mind.]

*Status: Point in time view as at 22/07/2004.*

*Changes to legislation: Prescription and Limitation (Scotland) Act 1973 is up to date with all changes known to be in force on or before 20 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F22** S. 18B inserted (16.6.1997) by 1997 c. 40, ss. 10(1); S.I. 1997/1418, art. 2

### [<sup>F23</sup>19A Power of court to override time-limits etc.

- (1) Where a person would be entitled, but for any of the provisions of [<sup>F24</sup>section 17, 18, 18A or 18B] of this Act, to bring an action, the court may, if it seems to it equitable to do so, allow him to bring the action notwithstanding that provision.
- (2) The provisions of subsection (1) above shall have effect not only as regards rights of action accruing after the commencement of this section but also as regards those, in respect of which a final judgment has not been pronounced, accruing before such commencement.
- (3) In subsection (2) above, the expression “ final judgment ” means an interlocutor of a court of first instance which, by itself, or taken along with previous interlocutors, disposes of the subject matter of a cause notwithstanding that judgment may not have been pronounced on every question raised or that the expenses found due may not have been modified, taxed or decerned for; but the expression does not include an interlocutor dismissing a cause by reason only of a provision mentioned in subsection (1) above. ]

[<sup>F25</sup>(4) An action which would not be entertained but for this section shall not be tried by jury.]

#### Textual Amendments

**F23** S. 19A inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55, SIF 36:3), s. 23(a)

**F24** Words in s. 19A(1) substituted (16.7.1997) by virtue of 1997 c. 40, ss. 10(2); S.I. 1997/1418, art. 2

**F25** S. 19A(4) added by Prescription and Limitation (Scotland) Act 1984 (c. 45, SIF 97), s. 6(1), Sch. 1 para. 8(b)

### [<sup>F26</sup>19B Actions for recovery of property obtained through unlawful conduct etc.

- (1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (civil recovery of proceeds of unlawful conduct).
- (2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be commenced after the expiration of the period of twelve years from the date on which the Scottish Ministers’ right of action accrued.
- (3) Proceedings under that Chapter are commenced when—
  - (a) the proceedings are served, or
  - (b) an application is made for an interim administration order,whichever is the earlier.
- (4) The Scottish Ministers’ right of action accrues in respect of any recoverable property—
  - (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained,

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- (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

- (5) Expressions used in this section and Part 5 of that Act have the same meaning in this section as in that Part.]

#### Textual Amendments

**F26** S. 19B inserted (24.2.2003) by [2002 c. 29, ss.288\(2\), 458\(1\)](#); S.I. 2003/120, art. 2, Sch. (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

**20, 21.** ..... <sup>F27</sup>

#### Textual Amendments

**F27** Ss. 20 and 21 repealed by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\), s. 6\(2\), Sch. 2](#)

#### [<sup>F28</sup>**22 Interpretation of Part II and supplementary provisions.**

- (1) In this Part of this Act—  
     “ the court ” means the Court of Session or the sheriff court; and  
     “ personal injuries ” includes any disease and any impairment of a person’s physical or mental condition.
- (2) Where the pursuer in an action to which section 17 [<sup>F29</sup>, 18 or 18A] of this Act applies is pursuing the action by virtue of the assignation of a right of action, the reference in subsection (2)(b) of the said section 17 or [<sup>F29</sup> of the said section 18 or, as the case may be, subsection (4)(b) of the said section 18A] to the pursuer in the action shall be construed as a reference to the assignor of the right of action.
- (3) For the purposes of the said subsection (2)(b) knowledge that any act or omission was or was not, as a matter of law, actionable, is irrelevant.
- (4) An action which would not be entertained but for the said subsection (2)(b) shall not be tried by jury.]

#### Textual Amendments

**F28** S. 22 substituted by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\), s. 3](#)

**F29** Words substituted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 36:1\), s. 12\(4\)](#)



*Status: Point in time view as at 22/07/2004.*

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## [<sup>F30</sup>PART IIA

### PREScription OF OBLIGATIONS AND LIMITATION OF ACTIONS UNDER PART I OF THE CONSUMER PROTECTION ACT 1987

#### Textual Amendments

**F30** Part 2A (ss. 22A–22D) inserted by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), ss. 6, 41(2), 47(1)(2), [Sch. 1 para. 10](#)

#### [<sup>F31</sup> Prescription of Obligations

#### Textual Amendments

**F31** Part IIA (ss. 22A–22D) inserted by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), ss. 6, 41(2), 47(1)(2), [Sch. 1 para. 10](#)

## 22A Ten years' prescription of obligations.

- (1) An obligation arising from liability under section 2 of the 1987 Act (to make reparation for damage caused wholly or partly by a defect in a product) shall be extinguished if a period of 10 years has expired from the relevant time, unless a relevant claim was made within that period and has not been finally disposed of, and no such obligation shall come into existence after the expiration of the said period.
- (2) If, at the expiration of the period of 10 years mentioned in subsection (1) above, a relevant claim has been made but has not been finally disposed of, the obligation to which the claim relates shall be extinguished when the claim is finally disposed of.
- (3) In this section—  
a claim is finally disposed of when—
  - (a) a decision disposing of the claim has been made against which no appeal is competent;
  - (b) an appeal against such a decision is competent with leave, and the time limit for leave has expired and no application has been made or leave has been refused;
  - (c) leave to appeal against such a decision is granted or is not required, and no appeal is made within the time limit for appeal; or
  - (d) the claim is abandoned;  
“relevant claim” in relation to an obligation means a claim made by or on behalf of the creditor for implement or part implement of the obligation, being a claim made—
    - (a) in appropriate proceedings within the meaning of section 4(2) of this Act; or
    - (b) by the presentation of, or the concurring in, a petition for sequestration or by the submission of a claim under section 22 or 48 of the Bankruptcy (Scotland) Act <sup>M12</sup>1985; or
    - (c) by the presentation of, or the concurring in, a petition for the winding up of a company or by the submission of a claim in a liquidation in accordance with the rules made under section 411 of the Insolvency Act <sup>M13</sup>1986;  
“relevant time” has the meaning given in section 4(2) of the 1987 Act.

*Status: Point in time view as at 22/07/2004.*

*Changes to legislation: Prescription and Limitation (Scotland) Act 1973 is up to date with all changes known to be in force on or before 20 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) Where a relevant claim is made in an arbitration, and the nature of the claim has been stated in a preliminary notice (within the meaning of section 4(4) of this Act) relating to that arbitration, the date when the notice is served shall be taken for those purposes to be the date of the making of the claim.]

#### Marginal Citations

- M12** 1985 c. 66 (66).  
**M13** 1986 c. 45 (66).

### *f<sup>32</sup> Limitation of actions*

#### Textual Amendments

- F32** Part IIA (ss. 22A–22D) inserted by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), ss. 6, 41(2), 47(1)(2), [Sch. 1 para. 10](#)

## **22B 3 year limitation of actions.**

- (1) This section shall apply to an action to enforce an obligation arising from liability under section 2 of the 1987 Act (to make reparation for damage caused wholly or partly by a defect in a product), except where section 22C of this Act applies.
- (2) Subject to subsection (4) below, an action to which this section applies shall not be competent unless it is commenced within the period of 3 years after the earliest date on which the person seeking to bring (or a person who could at an earlier date have brought) the action was aware, or on which, in the opinion of the court, it was reasonably practicable for him in all the circumstances to become aware, of all the facts mentioned in subsection (3) below.
- (3) The facts referred to in subsection (2) above are—
  - (a) that there was a defect in a product;
  - (b) that the damage was caused or partly caused by the defect;
  - (c) that the damage was sufficiently serious to justify the pursuer (or other person referred to in subsection (2) above) in bringing an action to which this section applies on the assumption that the defender did not dispute liability and was able to satisfy a decree;
  - (d) that the defender was a person liable for the damage under the said section 2.
- (4) In the computation of the period of 3 years mentioned in subsection (2) above, there shall be disregarded any period during which the person seeking to bring the action was under legal disability by reason of nonage or unsoundness of mind.
- (5) The facts mentioned in subsection (3) above do not include knowledge of whether particular facts and circumstances would or would not, as a matter of law, result in liability for damage under the said section 2.
- (6) Where a person would be entitled, but for this section, to bring an action for reparation other than one in which the damages claimed are confined to damages for loss of or damage to property, the court may, if it seems to it equitable to do so, allow him to bring the action notwithstanding this section.]

*Status: Point in time view as at 22/07/2004.*

*Changes to legislation: Prescription and Limitation (Scotland) Act 1973 is up to date with all changes known to be in force on or before 20 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**22C** **Actions under the 1987 Act where death has resulted from personal injuries.**

- (1) This section shall apply to an action to enforce an obligation arising from liability under section 2 of the 1987 Act (to make reparation for damage caused wholly or partly by a defect in a product) where a person has died from personal injuries and the damages claimed include damages for those personal injuries or that death.
- (2) Subject to subsection (4) below, an action to which this section applies shall not be competent unless it is commenced within the period of 3 years after the later of—
- (a) the date of death of the injured person;
  - (b) the earliest date on which the person seeking to make (or a person who could at an earlier date have made) the claim was aware, or on which, in the opinion of the court, it was reasonably practicable for him in all the circumstances to become aware—
    - (i) that there was a defect in the product;
    - (ii) that the injuries of the deceased were caused (or partly caused) by the defect; and
    - (iii) that the defender was a person liable for the damage under the said section 2.
- (3) Where the person seeking to make the claim is a relative of the deceased, there shall be disregarded in the computation of the period mentioned in subsection (2) above any period during which that relative was under legal disability by reason of nonage or unsoundness of mind.
- (4) Where an action to which section 22B of this Act applies has not been brought within the period mentioned in subsection (2) of that section and the person subsequently dies in consequence of his injuries, an action to which this section applies shall not be competent in respect of those injuries or that death.
- (5) Where a person would be entitled, but for this section, to bring an action for reparation other than one in which the damages claimed are confined to damages for loss of or damage to property, the court may, if it seems to it equitable to do so, allow him to bring the action notwithstanding this section.
- (6) In this section “relative” has the same meaning as in the Damages (Scotland) Act <sup>M14</sup>1976.
- (7) For the purposes of subsection (2)(b) above there shall be disregarded knowledge of whether particular facts and circumstances would or would not, as a matter of law, result in liability for damage under the said section 2.]

**Textual Amendments**

**F33** Part IIA (ss. 22A–22D) inserted by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), ss. 6, 41(2), 47(1)(2), [Sch. 1 para. 10](#)

**Marginal Citations**

**M14** [1976 c. 13 \(122:3\)](#).

*Status: Point in time view as at 22/07/2004.*

*Changes to legislation: Prescription and Limitation (Scotland) Act 1973 is up to date with all changes known to be in force on or before 20 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *[<sup>F34</sup> Supplementary*

#### **Textual Amendments**

**F34** Part IIA (ss. 22A–22D) inserted by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), ss. 6, 41(2), 47(1)(2), [Sch. 1 para. 10](#)

#### **22D Interpretation of this Part.**

- (1) Expressions used in this Part and in Part I of the 1987 Act shall have the same meanings in this Part as in the said Part I.
- (2) For the purposes of section 1(1) of the 1987 Act, this Part shall have effect and be construed as if it were contained in Part I of that Act.
- (3) In this Part, “the 1987 Act” means the <sup>M15</sup>Consumer Protection Act 1987.]]

#### **Marginal Citations**

**M15** [1987 c. 43 \(109:1\)](#).

#### **23** ..... <sup>F35</sup>

#### **Textual Amendments**

**F35** S. 23 repealed (with saving) by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), ss. 6, 41(2), 47(1)(2), 48(3), [Sch. 1 para. 11](#), [Sch. 5](#)

### **PART III**

#### **SUPPLEMENTAL**

#### **[<sup>F36</sup>23A Private international law application.**

- (1) Where the substantive law of a country other than Scotland falls to be applied by a Scottish court as the law governing an obligation, the court shall apply any relevant rules of law of that country relating to the extinction of the obligation or the limitation of time within which proceedings may be brought to enforce the obligation to the exclusion of any corresponding rule of Scots law.
- (2) This section shall not apply where it appears to the court that the application of the relevant foreign rule of law would be incompatible with the principles of public policy applied by the court.
- (3) This section shall not apply in any case where the application of the corresponding rule of Scots law has extinguished the obligation, or barred the bringing of proceedings prior to the coming into force of the <sup>M16</sup>Prescription and Limitation (Scotland) Act 1984.]

*Status: Point in time view as at 22/07/2004.*

**Changes to legislation:** *Prescription and Limitation (Scotland) Act 1973 is up to date with all changes known to be in force on or before 20 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

**F36** S. 23A inserted by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), **ss. 4, 5(2)**

**Marginal Citations**

**M16** [1984 c. 45\(97\)](#).

**24 The Crown.**

This Act binds the Crown.

**25 Short title, commencement and extent.**

(1) This Act may be cited as the Prescription and Limitation (Scotland) Act 1973.

(2) .....<sup>F37</sup> this Act shall come into operation, as follows:—

- (a) Parts II and III of this Act, Part II of Schedule 4 to this Act and Part II of Schedule 5 to this Act shall come into operation on the date on which this Act is passed;
- (b) except as aforesaid this Act shall come into operation on the expiration of three years from the said date.

(3) .....<sup>F38</sup>

(4) This Act extends to Scotland only.

**Textual Amendments**

**F37** Words repealed by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), s. 6(2), **Sch. 2**

**F38** [S. 25\(3\)](#) repealed by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), s. 6(2), **Sch. 2**

**Status:**

Point in time view as at 22/07/2004.

**Changes to legislation:**

Prescription and Limitation (Scotland) Act 1973 is up to date with all changes known to be in force on or before 20 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.