
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force the provisions of the Prescription (Scotland) Act 2018 “the 2018 Act”, insofar as not already in force. The Bill for the 2018 Act received Royal Assent on 18 December 2018. Sections 15, 17 and 18 of the 2018 Act came into force on the following day. The 2018 Act makes amendments to the Prescription and Limitation (Scotland) Act 1973 (“the 1973 Act”).

Regulation 2(1) provides that the amendments made to the 1973 Act by the 2018 Act, except for those made by sections 5 and 13, come into force on 28 February 2025. Regulation 2(2) provides that sections 5 and 13 of the 2018 Act come into force on 1 June 2022.

Regulation 3(1) makes provision that, generally, amendments made to the 1973 Act by the 2018 Act have no effect for rights or obligations which have prescribed according to the 1973 Act (as it stood prior to amendment by the 2018 Act) before the day appointed in regulation 2(1). Regulation 3(2) makes provision that the commencement of section 5 of the 2018 Act will have no effect for rights or obligations which have prescribed according to the 1973 Act (as it stood prior to amendment by the 2018 Act) before the day appointed in regulation 2(2). Regulation 3(2) does not make provision in relation to section 13 of the 2018 Act. The commencement of section 13 enables an agreement to be made, on a day from or after the day appointed in regulation 2(2), and in terms of section 13(2) (a) of the 1973 Act (as substituted by section 13 of the 2018 Act) the agreement can only be made during the prescriptive period for the obligation, to extend it. Section 13(2)(a) of the 1973 Act does not allow an agreement to revive rights or obligations which are already extinguished before the day appointed in regulation 2(2).

Where amendments made to the 1973 Act by the 2018 Act would have the effect that a prescriptive period expired before the day appointed in regulation 2(1), regulation 4 makes provision extending the prescriptive period to the day before the day appointed in regulation 2(1). By virtue of regulation 3(1), the provision in regulation 4 has no effect in relation to rights or obligations which have prescribed before the day appointed in regulation 2(1) in accordance with the 1973 Act (as it stood prior to amendment by the 2018 Act). Sections 5 and 13 of the 2018 Act are excepted from the effects of regulation 4. Those sections come into force earlier on the day appointed by regulation 2(2).