



# Prescription and Limitation (Scotland) Act 1973

## 1973 CHAPTER 52

### PART I

#### PRESCRIPTION

##### *Positive prescription*

#### [<sup>F1</sup> 1 Validity of right

(1) If land 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 the possession was founded on, and followed—

(a) the recording of a deed which is sufficient in respect of its terms to constitute in favour of that person a real right in—

(i) that land; or

(ii) land of a description *habile* to include that land; or

[<sup>F2</sup>(b) the registration of a deed which is sufficient in respect of its terms to constitute in favour of that person a real right in—

(i) that land; or

(ii) land of a description *habile* to include that land,]

then, as from the expiry of that period, the real right so far as relating to that land shall be exempt from challenge.

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

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

(b) possession was founded on registration in the Land Register of Scotland proceeding on a forged deed and the person appearing from the Register to have the real right in question was aware of the forgery at the time of registration in his favour.

*Status: Point in time view as at 30/11/2016.*

*Changes to legislation: Prescription and Limitation (Scotland) Act 1973, Part I is up to date with all changes known to be in force on or before 30 July 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 subsection (1) above, the reference to a real right is to a real right which is registrable in the Land Register of Scotland or a deed relating to which can competently be recorded; but this section does not apply to <sup>F3</sup>real burdens,]servitudes or public rights of way.
- (4) 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.
- (5) Where, in any question involving any foreshore or 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 “twenty years”.
- (6) This section is without prejudice to section 2 of this Act.]

#### Textual Amendments

- F1** S. 1 substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), **Sch. 12 paras. 33(2)** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F2** S. 1(1)(b) substituted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, **Sch. 5 paras. 18(2)** (with ss. 120(1), 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F3** Words in s. 1(3) inserted (28.11.2004) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), ss. 122(1), 129(2), **Sch. 14 paras. 5(2)** (with ss. 119, 121) (see S.S.I. 2003/456, art. 2)

#### 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**

#### <sup>F42</sup> Special cases

- (1) If—
  - (a) land 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 <sup>F5</sup> or not registered or recorded ) which is sufficient in respect of its terms to constitute in favour of that person a real right in that land, or in land of a description *habile* to include that land, then, as from the expiry of that period, the real right so far as relating to that 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 real right of the lessee under a lease; and
  - (b) to any other real right in land, being a real right of a kind which, under the law in force immediately before the commencement of this Part of this Act, was sufficient to form a foundation for positive prescription without the deed constituting the title to the real right having been<sup>F6</sup>registered or] recorded, but does not apply to servitudes or public rights of way.
- (3) This section is without prejudice to section 1 of this Act or to <sup>F7</sup>section 20B or 20C of the Registration of Leases (Scotland) Act 1857 (c.26)].]

*Status: Point in time view as at 30/11/2016.*

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#### Textual Amendments

- F4** S. 2 substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), Sch. 12 paras. 33(2) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F5** Words in s. 2(1)(b) substituted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, [Sch. 5 paras. 18\(3\)\(a\)](#) (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F6** Words in s. 2(2)(b) inserted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, [Sch. 5 paras. 18\(3\)\(b\)](#) (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2
- F7** Words in s. 2(3) substituted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, [Sch. 5 paras. 18\(3\)\(c\)](#) (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

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

- (1) If in the case of a positive servitude over land—
- the servitude has been possessed for a continuous period of twenty years openly, peaceably and without any judicial interruption, and
  - 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 *invalidex 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—
- 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;
  - any arbitration in Scotland [<sup>F8</sup>in respect of which an arbitrator (or panel of arbitrators) has been appointed];

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- (c) any arbitration in a country other than Scotland, being an arbitration an award in which would be enforceable in Scotland.
- (3) The date of a judicial interruption shall be taken to be—
- (a) where the claim has been made in an arbitration [<sup>F9</sup>, the date when the arbitration begins];
- (b) in any other case, the date when the claim was made.
- [<sup>F10</sup>(4) An arbitration begins for the purposes of this section—
- (a) when the parties to the arbitration agree that it begins, or
- (b) in the absence of such agreement, in accordance with rule 1 of the Scottish Arbitration Rules (see section 7 of, and schedule 1 to, the Arbitration (Scotland) Act 2010 (asp 1)).]

#### Textual Amendments

- F8** Words in s. 4(2)(b) inserted (7.6.2010 for specified purposes) by [Arbitration \(Scotland\) Act 2010 \(asp 1\)](#), **ss. 23(2)(a), 35(2)** (with [ss. 30, 34, 36](#)); [S.S.I. 2010/195](#), [art. 2](#) (with [art. 3](#))
- F9** Words in s. 4(3)(a) substituted (7.6.2010 for specified purposes) by [Arbitration \(Scotland\) Act 2010 \(asp 1\)](#), **ss. 23(2)(b), 35(2)** (with [ss. 30, 34, 36](#)); [S.S.I. 2010/195](#), [art. 2](#) (with [art. 3](#))
- F10** S. 4(4) substituted (7.6.2010 for specified purposes) by [Arbitration \(Scotland\) Act 2010 \(asp 1\)](#), **ss. 23(2)(c), 35(2)** (with [ss. 30, 34, 36](#)); [S.S.I. 2010/195](#), [art. 2](#) (with [arts. 3, 5](#))

## 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 [<sup>F11</sup>right in land shall be treated as a deed sufficient to constitute that right] in favour of that person.
- [<sup>F12</sup>(1A) Any reference in those sections to a real right's being exempt from challenge as from the expiration of some continuous period is to be construed, if the real right of the possessor was void immediately before that expiration, as including reference to acquisition of the real right by the possessor.]

[<sup>F13</sup>(2) . . . . .]

#### Textual Amendments

- F11** Words in s. 5(1) substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), [ss. 71, 77\(2\)](#), **Sch. 12 paras. 33(3)** (with [ss. 58, 62, 75](#)); [S.S.I. 2003/456](#), [art. 2](#)
- F12** S. 5(1A) inserted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), [ss. 122, 123](#), **Sch. 5 paras. 18(4)** (with [ss. 120\(1\), 121](#), [Sch. 4 paras. 13, 16](#)); [S.S.I. 2014/127](#), [art. 2](#)
- F13** S. 5(2) repealed (1.8.1995) by [1995 c. 7](#), [ss. 14\(2\), 15\(2\)](#), **Sch.5** (with [ss. 9\(3\)\(5\)\(7\), 13, 14\(3\)](#))

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

- C2** S. 5 modified (*prosp.*) by [2000 asp 5](#), **ss. 57, 77(2)** (with [ss. 58, 62, 75](#))

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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.

(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)

- C3** S. 6 extended by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 123:2\)](#), **s. 113(11)**
- C4** 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**)
- C5** S. 6 applied (with modifications) by 1974 c. 38, s. 5 and 6 (as modified (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), **ss. 57, 71, 77(2)** (with **ss. 58, 62, 75**)); S.S.I. 2003/456, **art. 2**
- C6** S. 6(4) extended by [Merchant Shipping \(Liner Conferences\) Act 1982 \(c. 37, SIF 111\)](#), **s. 8(3)**

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**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—
- without any relevant claim having been made in relation to the obligation, and
  - 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 [F14to which section 22A of this Act applies or an obligation] specified in Schedule 3 to this Act as an imprescriptible obligation [F15or 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.]

### Textual Amendments

- F14** Words inserted by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), ss. 6, 41(2), 47(1)(2), [Sch. 1 para. 8](#)
- F15** 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.

### Modifications etc. (not altering text)

- C8** S. 8(1) explained (22.4.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 161, 227(3) (with s. 223); S.S.I. 2009/67, art. 3(1)(a) (with arts. 4-6) (as amended (31.1.2011) by S.S.I. 2011/31, art. 5(b))

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## **[<sup>F16</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>M1</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**

**F16** S. 8A inserted by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), s. 1

### **Marginal Citations**

**M1** 1940 c. 42(122:3).

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

- (1) In sections 6 [<sup>F17</sup> 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>F18</sup>(b) by the presentation of, or the concurring in, a petition for sequestration or by the submission of a claim under section [<sup>F19</sup>46 or 122 of the Bankruptcy (Scotland) Act 2016] . . . <sup>F20</sup>; or
  - (c) by a creditor to the trustee acting under a trust deed as defined in section [<sup>F21</sup>228(1) of the Bankruptcy (Scotland) Act 2016]; [<sup>F22</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>M2</sup> 1986;]
- and for the purposes of the said sections 6 [<sup>F17</sup> 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>F23</sup>8 or 8A] of this Act is made in an arbitration, [<sup>F24</sup>the date when the arbitration begins] 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 “[<sup>F25</sup>the date when the arbitration begins]” have the same meanings as in section 4 of this Act.

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### Textual Amendments

- F17** Words substituted by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), s. 6(1), **Sch. 1 para. 3 (a)**
- F18** 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**
- F19** Words in s. 9(1)(b) substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), **sch. 8 para. 6(2)(a)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2
- F20** Words repealed by [Prescription \(Scotland\) Act 1987 \(c. 36, SIF 97\)](#), s. 1(2)(3)
- F21** Words in s. 9(1)(c) substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016 \(asp 21\)](#), s. 237(2), **sch. 8 para. 6(2)(b)** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2
- F22** 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
- F23** Words substituted by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), s. 6(1), **Sch. 1 para. 3(b)**
- F24** Words in s. 9(3) substituted (7.6.2010 for specified purposes) by [Arbitration \(Scotland\) Act 2010 \(asp 1\)](#), ss. **23(3)(a)**, 35(2) (with ss. 30, 34, 36); S.S.I. 2010/195, art. 2 (with art. 3)
- F25** Words in s. 9(4) substituted (7.6.2010 for specified purposes) by [Arbitration \(Scotland\) Act 2010 \(asp 1\)](#), ss. **23(3)(b)**, 35(2) (with ss. 30, 34, 36); S.S.I. 2010/195, art. 2 (with art. 3)

### Modifications etc. (not altering text)

- C9** Unreliable margin note
- C10** 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

- M2** [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>[F267]</sup> and 8A] of this Act as having been relevantly acknowledged if, and only if, either of the following conditions is satisfied, namely—
- 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;
  - 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—
- 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 <sup>[F267]</sup> and 8A] as respects the liability of each of those persons, and
  - 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.



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- (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 [F267 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

**F26** 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)

**C11** Unreliable margin note

**C12** S. 10 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)

## 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 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>F27</sup>

#### Textual Amendments

**F27** Words repealed by Prescription and Limitation (Scotland) Act 1984 (c. 45, SIF 97), s. 6(2), **Sch. 2**

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## 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 [F288 or 8A] of this Act shall not have effect shall be null.

### Textual Amendments

**F28** 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 [F29]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;

*Status: Point in time view as at 30/11/2016.*

*Changes to legislation: Prescription and Limitation (Scotland) Act 1973, Part 1 is up to date with all changes known to be in force on or before 30 July 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)*

- (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>M3</sup>Prescription Act 1617.
- [<sup>F30</sup>(1A) The prescriptive period calculated in relation to a relevant cross-border dispute for the purposes of any provision of this Part of this Act is extended where the last day of the period would, apart from this subsection, fall—
- (a) in the 8 weeks after the date that a mediation in relation to the dispute ends;
  - (b) on the date that a mediation in relation to the dispute ends; or
  - (c) after the date when all of the parties to the dispute agree to participate in a mediation in relation to the dispute but before the date that such mediation ends.
- (1B) Where subsection (1A) applies, the prescriptive period is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.
- (1C) For the purposes of subsections (1A) and (1B), a mediation ends on the date that any of the following occurs—
- (a) all of the parties reach an agreement in resolution of the dispute;
  - (b) all of the parties agree to end the mediation;
  - (c) a party withdraws from the mediation, which is the date on which—
    - (i) a party informs all of the other parties of that party's withdrawal,
    - (ii) in the case of a mediation involving 2 parties, 14 days expire after a request made by one party to the other party for confirmation of whether the other party has withdrawn, if the other party does not respond in that period, or
    - (iii) in the case of a mediation involving more than 2 parties, a party informs all of the remaining parties that the party received no response in the 14 days after a request to another party for confirmation of whether the other party had withdrawn; or
  - (d) a period of 14 days expires after the date on which the mediator's tenure ends (by reason of death, resignation or otherwise), if a replacement mediator has not been appointed.]

[<sup>F31</sup>(1D) The prescriptive period calculated in relation to a relevant consumer dispute for the purposes of any provision of this Part of this Act is extended where the last day of the period would, apart from this subsection fall—

    - (a) after the date when the non-binding ADR procedure starts but before the date that such a procedure ends;
    - (b) on the date that a non-binding ADR procedure in relation to the dispute ends; or
    - (c) in the 8 weeks after the date that a non-binding ADR procedure in relation to the dispute ends.

(1E) Where subsection (1D) applies, the prescriptive period is extended so that it expires on the date falling 8 weeks after the date on which the non-binding ADR procedure ends.

(1F) For the purposes of subsections (1D)(a) and (1E), a non-binding ADR procedure starts in relation to a relevant dispute on the date when the dispute is first sent or otherwise communicated to the ADR entity in accordance with the entity's rules regarding the submission of complaints.

*Status: Point in time view as at 30/11/2016.*

*Changes to legislation: Prescription and Limitation (Scotland) Act 1973, Part I is up to date with all changes known to be in force on or before 30 July 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)*

(1G) For the purposes of subsections (1D) and (1E), a non-binding ADR procedure ends on the date that any of the following occurs—

- (a) all of the parties reach an agreement in resolution of the relevant consumer dispute;
- (b) a party completes the notification of the other parties that it has withdrawn from the non-binding ADR procedure;
- (c) a party to whom a qualifying request is made fails to give a response reaching the other parties within 14 days of the request;
- (d) the ADR entity notifies the party that submitted the relevant dispute to the ADR entity that, in accordance with its policy, the ADR entity refuses to deal with the relevant consumer dispute;
- (e) after the parties are notified that the ADR entity can no longer act in relation to the relevant dispute (for whatever reason), the parties fail to agree within 14 days to submit the dispute to an alternative ADR entity;
- (f) the non-binding ADR procedure otherwise comes to an end pursuant to the rules of the ADR entity. ]

(2) In this section<sup>F32</sup>—

<sup>F33</sup> “ADR Directive” means Directive 2013/11/ EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC ;

“ADR entity” has the meaning given by article 4(1)(h) of the ADR Directive;

<sup>F34</sup> <sup>F34</sup> ... <sup>F34</sup> <sup>F34</sup> <sup>F34</sup> <sup>F34</sup> <sup>F34</sup> ...

“ADR procedure” has the meaning given by article 4(1)(g) of the ADR Directive; ]

“the Directive” means Directive 2008/52/ EC of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters; ]

“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>M4</sup>Banking and Financial Dealings Act 1971;

<sup>F35</sup> “mediation” and “mediator” have the meanings given by Article 3 of the Directive; and

<sup>F33</sup> “non-binding ADR procedure” means an ADR procedure the outcome of which is not binding on the parties;

“qualifying request” is a request by a party that another (A) confirm to all parties that A is continuing with the non-binding ADR procedure;

“relevant consumer dispute” means a dispute to which Article 12(1) of the ADR Directive applies (certain cross-border or domestic contractual disputes brought by a consumer against a trader); ]

“relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive—

- (a) which is about a right or obligation to which a prescriptive period applies by virtue of this Part of this Act; and
- (b) to which the Directive applies.]

*Status: Point in time view as at 30/11/2016.*

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### Textual Amendments

- F29** Words substituted by [Prescription and Limitation \(Scotland\) Act 1984 \(c. 45, SIF 97\)](#), s. 6(1), **Sch. 1 para. 6**
- F30** S. 14(1A)-(1C) inserted (6.4.2011) by [Cross-Border Mediation \(Scotland\) Regulations 2011 \(S.S.I. 2011/234\)](#), regs. 1(1), **5(2)** (with reg. 1(2)(3))
- F31** S. 14(1D)-(1G) inserted (9.7.2015) by [The Alternative Dispute Resolution for Consumer Disputes \(Amendment\) Regulations 2015 \(S.I. 2015/1392\)](#), regs. 1(2), **3(2)(a)** (with reg. 1(3))
- F32** Words in s. 14(2) inserted (6.4.2011) by [Cross-Border Mediation \(Scotland\) Regulations 2011 \(S.S.I. 2011/234\)](#), regs. 1(1), **5(3)(a)** (with reg. 1(2)(3))
- F33** Words in s. 14(2) inserted (9.7.2015) by [The Alternative Dispute Resolution for Consumer Disputes \(Amendment\) Regulations 2015 \(S.I. 2015/1392\)](#), regs. 1(2), **3(2)(b)** (with reg. 1(3))
- F34** Definition of 'ADR official' in s. 14(2) omitted (9.1.2016) by virtue of [The Alternative Dispute Resolution for Consumer Disputes \(Amendment\) \(No. 2\) Regulations 2015 \(S.I. 2015/1972\)](#), regs. 1, **2(2)**
- F35** Words in s. 14(2) inserted (6.4.2011) by [Cross-Border Mediation \(Scotland\) Regulations 2011 \(S.S.I. 2011/234\)](#), regs. 1(1), **5(3)(b)** (with reg. 1(2)(3))

### Modifications etc. (not altering text)

- C13** 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

- M3** 1617 c. 12.  
**M4** 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>M5</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;

<sup>F36</sup> ...

“land” includes heritable property of any description;

“lease” includes a sub-lease;

“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>F37</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;

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“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>M6</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<sup>F38</sup> and to the registering of a deed are to the registering thereof in the Land Register of Scotland].

- (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

- F36** Words in s. 15(1) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000](#) (asp 5), ss. 71, 77(2), Sch. 12 paras. 33(4), **Sch. 13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F37** Words substituted by [Prescription and Limitation \(Scotland\) Act 1984](#) (c. 45, SIF 97), s. 6(1), **Sch. 1 para. 7**
- F38** Words in s. 15(1) inserted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012](#) (asp 5), ss. 122, 123, **Sch. 5 paras. 18(5)** (with s. 121, Sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

#### Marginal Citations

- M5** 1882 c. 61(13).
- M6** 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>F39</sup>sections 16(1) and 17(2)(a) of the <sup>M7</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

- F39** Words substituted by virtue of [Interpretation Act 1978](#) (c. 30, SIF 115:1), s. 25(2)

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**Status:** Point in time view as at 30/11/2016.

**Changes to legislation:** Prescription and Limitation (Scotland) Act 1973, Part I is up to date with all changes known to be in force on or before 30 July 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)

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

**C14** 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**

**M7** 1978 c. 30(115:1).

**Status:**

Point in time view as at 30/11/2016.

**Changes to legislation:**

Prescription and Limitation (Scotland) Act 1973, Part I is up to date with all changes known to be in force on or before 30 July 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.