



Prescription and Limitation (Scotland) Act 1973

1973 CHAPTER 52

PART I

PRESCRIPTION

Positive prescription

[^{F1} 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
 - (b) registration of a real right in that land, in favour of that person, in the Land Register of Scotland, subject to an exclusion of indemnity under section 12(2) of the Land Registration (Scotland) Act 1979 (c.33),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Status: Point in time view as at 01/01/2006.

Changes to legislation: Prescription and Limitation (Scotland) Act 1973, Cross Heading: Positive prescription is up to date with all changes known to be in force on or before 31 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 [^{F2}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** 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](#)

[^{F3}2 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 recorded or not) 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 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 section 3(3) of the Land Registration (Scotland) Act 1979 (c.33).]

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Textual Amendments

F3 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

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 *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—
 - (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.
- (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;

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(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 [^{F4}right in land shall be treated as a deed sufficient to constitute that right] in favour of that person.

^{F5}(2)

Textual Amendments

F4 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

F5 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)

Status:

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