

PRESCRIPTION (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

The structure of the Act

Section 3 - Statutory obligations

11. This section brings within the scope of the five-year prescription all statutory obligations to make a payment in so far as they neither fall within any other sub-paragraph of paragraph 1 of schedule 1 of the 1973 Act, nor are excluded. A statutory obligation to make a payment should be interpreted broadly so as to include any statutory obligation to pay something or to repay something.
12. Subsection (2)(a) provides for the repeal of provisions of paragraph 1 of schedule 1 of the 1973 Act which relate solely to statutory obligations to make a payment. This is a rationalisation of paragraph 1, given that these obligations will be covered by the general provision inserted by subsection (2)(b), discussed below. Those sub-paragraphs dealing with statutory obligations which do not involve payment, or may involve something in addition to payment, are unaffected and so remain in place.
13. Subsection (2)(b) inserts a new sub-paragraph (h) into paragraph 1 of schedule 1 of the 1973 Act. Subject to exceptions set out in subsection (3) (on which see below), new sub-paragraph (h) creates a default rule that all statutory obligations to make a payment prescribe under the five-year prescription. Statutory obligations to make a payment that fall within any other sub-paragraph of paragraph 1 will not fall within the scope of sub-paragraph (h). Moreover, as provided by section 9 of the Act, obligations to make a payment deriving from statutes with their own provisions on prescription or limitation will continue to be subject to those provisions, to the exclusion of the five-year prescription. For example, the one-year limitation period, in terms of the Carriage of Goods by Sea Act 1971, for claims for loss of or damage to goods carried at sea.
14. Subsection (3) amends paragraph 2 of schedule 1 of the 1973 Act which sets out obligations to which the five-year prescription does **not** apply. Subsection (3)(a) makes consequential changes to sub-paragraph (e) of paragraph 2 to reflect the addition to paragraph 1 of statutory obligations to make a payment (sub-paragraph (h)); it also reflects the rationalisation of paragraph 1 as discussed above. For the avoidance of doubt, that part of the current sub-paragraph (e) which relates to any obligation of the Keeper of the Registers of Scotland to pay compensation by virtue of section 77 or 94 of the Land Registration etc. (Scotland) Act 2012 (“the 2012 Act”) has been moved into a separate new sub-paragraph (ea), in order to make it clear that such obligations of the Keeper in terms of the 2012 Act will continue to be governed by the 20-year prescription.
15. Subsection (3)(b) sets out further exceptions to the application of the five-year prescription to statutory obligations to make a payment. First, notwithstanding sub-paragraph (h) of paragraph 1 of schedule 1 of the 1973 Act (statutory obligations to make a payment), obligations to pay taxes and duties recoverable by the Crown (i.e. HM Revenue and Customs and Revenue Scotland which, as part of the Scottish

*These notes relate to the Prescription (Scotland) Act 2018
(asp 15) which received Royal Assent on 18 December 2018*

Administration, is a Crown body), and any interest, penalty or other sum recoverable as if it were an amount of such taxes or duties, are not subject to the five-year prescription (new sub-paragraph (fa)). Secondly, an exception is made for obligations to pay sums recoverable under certain social security and tax credit legislation (new sub-paragraph (fb)). Thirdly, an exception is made for any obligation to pay child support maintenance under the Child Support Act 1991 (new sub-paragraph (fc)). Fourthly, an exception is made in relation to obligations to pay council tax or non-domestic rates and sums recoverable in connection with the enforcement of such obligations (new sub-paragraph (fd)).