

PRESCRIPTION (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

The structure of the Act

Section 4 - Effect of fraud or error on computation of prescriptive period

16. Case law has drawn attention to the fact that the language of section 6(4)(a) of the 1973 Act is not as clear as it might be.
17. Subsection (2) addresses one of the problems identified in the case law, namely that the wording seems to imply that the creditor should have formed the intention to make a claim and then been induced by the debtor not to do so. “Failure to make a claim” carries no such implications. Subsection (2) therefore clarifies that, for the purposes of section 6(4), what matters is that the words or conduct of the debtor caused the failure by the creditor to make a claim for implement or part-implement of the obligation.
18. Subsection (3), which inserts new subsection (4A) into section 6 of the 1973 Act, clarifies that it is irrelevant for the purposes of section 6(4)(a) whether or not the debtor *intended* to cause the failure on the part of the creditor. In other words, the debtor’s own state of knowledge as to the situation is irrelevant. This relief is available when as a matter of fact (rather than intention) the cause of the creditor’s failure to make the claim was the fraud, words or conduct of the debtor or his or her agent.