

PRESCRIPTION (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

The structure of the Act

Section 9 - Saving for other statutory provisions about prescription or limitation

34. This section clarifies the interaction between the five-year and 20-year prescriptive periods provided for in sections 6 and 7 of the 1973 Act and other prescriptive or limitation provisions set out in other enactments.
35. Subsection (2) provides for the insertion of a new section 7A in the 1973 Act. This makes clear that neither the five-year nor 20-year prescriptive periods (under sections 6 and 7 respectively of the 1973 Act) will apply where an enactment other than the 1973 Act expressly provides either for a specific limitation or prescriptive period or that an obligation is imprescriptible or not subject to any period of limitation. (It is appropriate for the section to apply to provisions in other statutes which stipulate that an obligation should be imprescriptible or that proceedings in respect of it should not be subject to any period of limitation, even though it may be unlikely that this will be an issue of significance in practice.)
36. The reference to making provision in relation to prescription or limitation serves to focus on express provision in the enactment and directs attention to its effect rather than the way in which it is worded. Subsection (3) modifies the definition of “enactment” in section 15(1) of the 1973 Act. “Enactment” includes an enactment contained in, or in an instrument under, an Act of the Scottish Parliament. This is necessary to oust the restriction in the definition of “enactment” in the Interpretation Act 1978, which otherwise applies to the 1973 Act.