

PRESCRIPTION (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

The structure of the Act

Section 11 - Prescriptive periods under sections 6 and 8A: interruption by relevant claim

40. For periods of prescription which are amenable to interruption, in terms of section 6 or section 8A of the 1973 Act, section 11 clarifies the effect of the making of a relevant claim on the running of prescription. The current law on this matter is uncertain. On one view, the interruption of prescription takes place at an instant (the date when the relevant claim is made) from which prescription immediately begins to run again; on another view, the interruption of prescription endures until the claim has been finally dealt with.
41. To clarify the effect of the making of a relevant claim on the running of prescription, subsection (2) provides for the insertion of new subsection (2A) into section 9 of the 1973 Act. The effect of the new provision is that the making of a relevant claim for implement or part-implement of an obligation will interrupt the running of the five-year prescription, and the two-year prescription (which applies, in terms of section 8A of the 1973 Act, to extinguish obligations to make contribution between wrongdoers) until the claim is disposed of finally. Only at that point will a fresh prescriptive period begin to run. In other words, the claim is to be treated as being made continuously until it is finally disposed of. “Relevant claim” for these purposes is not restricted to claims advanced in litigation but includes those made, for example, in a liquidation.
42. This section applies only to prescription under sections 6 and 8A of the 1973 Act. (Provision is made in sections 6 and 7 of the Act that the long-stop prescription under sections 7 and 8 of the 1973 Act should not be amenable to interruption by a relevant claim. The limited extensions of time provided for cases in which a relevant claim has been raised before expiry of the long-stop prescriptive period are applicable only to the long-stop prescription under section 7 or section 8 of the 1973 Act.)
43. The various circumstances in which a relevant claim will be taken to be finally disposed of are set out in section 12 of the Act.
44. Subsection (3) updates the title of section 9 of the 1973 Act.