

PRESCRIPTION (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

The structure of the Act

Section 13 - Restrictions on contracting out

47. **Section 13** substitutes a new section 13 into the 1973 Act. It makes clear that agreements to extend the five-year prescriptive period (section 6), and the two-year prescriptive period which applies to extinguish obligations to make contribution between wrongdoers (section 8A), are competent provided that certain conditions are met. Conversely, it provides that agreements to disapply those periods, or the 20-year prescriptive periods provided for by sections 7 and 8 of the 1973 Act, or to otherwise alter the operation of any of such periods, are not competent.
48. Subsection (1) provides that agreements to lengthen the five-year prescriptive period, and the two-year prescriptive period which applies to extinguish obligations to make contribution between wrongdoers, are competent providing certain conditions are satisfied. These conditions are laid down in subsection (2): the appropriate prescriptive period must have started to run (but not expired); the extension should be for no more than one year; and there may only be one extension of an agreement in relation to the same obligation. The provision refers to “the same obligation” rather than the particular creditor or debtor in the obligation. This means that it is not possible to get round the restriction which prevents more than one extension of the prescriptive period by assigning the obligation to a new creditor or debtor. That is because, even if there is an assignation, it remains “the same obligation”.
49. Subsection (3)(a) makes clear that where an agreement is reached for an extension of a prescriptive period, the prescriptive period will expire on the date set out in or determined in accordance with the agreement. It also makes clear that the extension binds only the parties to the agreement: if there are multiple creditors or multiple debtors, the agreement affects them only if they are party to it.
50. Subsection (3)(b) clarifies that the extension of the prescriptive period affects only the length of the prescriptive period. It does not affect the operation of the remainder of the 1973 Act in relation to either the obligation or the prescriptive period. Accordingly, the ordinary rules of the 1973 Act about the commencement, interruption and suspension of prescription continue to apply.
51. Subsection (4) deals with the disapplication of, or alteration in some other way of the operation of, the five-year prescriptive period, the two-year prescriptive period which applies to extinguish obligations to make contribution between wrongdoers and the 20-year prescriptive periods provided for by sections 7 and 8 of the 1973 Act (other than by means of agreement to lengthen certain prescriptive periods as discussed above). Agreements to do so, for example by shortening such periods, are not competent. The subsection refers to the effect which the provision in the agreement would (apart from this section) have on the operation of section 6, 7, 8 or 8A of the 1973 Act. The intention

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

is that it should extend not just to cases where parties have in terms purported to disapply one of those sections, but also where that is in fact the effect of their agreement.

52. This will not impact on the current practice in fields such as conveyancing where the parties enter into contractual limitation provisions. Such provisions do not extinguish obligations and, accordingly, are not provisions relating to prescription.