

PRESCRIPTION (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

The structure of the Act

Section 7 - Property rights: 20-year prescriptive period and extension

28. In the same way as section 6 of the Act amends section 7 of the 1973 Act with a view to ensuring that the 20-year prescriptive period functions as a long stop, section 7 so amends section 8 of the 1973 Act.
29. Section 8 of the 1973 Act deals with the extinction of certain rights relating to property by a 20-year prescriptive period. Subsection (2) of section 7 of the Act provides that such a period of prescription will no longer be amenable to interruption by a relevant claim. (As section 8 contains no reference to relevant acknowledgement, it is necessary only to amend the section by repealing the reference to interruption by a relevant claim.)
30. Subsection (3) replicates the provision made by section 6 of the Act for the extension of the prescriptive period in certain circumstances. Where a relevant claim, as defined for the purposes of section 8 of the 1973 Act by section 9 of that Act, has been made during the prescriptive period of 20 years but, before the end of that period, has not been finally disposed of and the proceedings in which the claim is made have not otherwise ended, the extension will run until the claim has been finally disposed of or until the proceedings otherwise come to an end. The circumstances in which a relevant claim will be taken to be disposed of finally are set out in section 12 of the Act. Where the 20-year prescriptive period is extended to the end of proceedings raised before the expiry of that period, then at the end of those proceedings where the relevant claim has been successful, the right is deemed to have been exercised or enforced at the time when the claim was made. The result is that a new 20-year prescriptive period starts to run at that time. This deeming provision applies only where the 20-year prescriptive period is extended by the amendments made by subsection (3) and only where the claim, as finally disposed of, is successful.