

PRESCRIPTION (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

The structure of the Act

Section 8 - Start point of prescriptive period for obligations to pay damages

31. By virtue of section 11(4) of the 1973 Act, the 20-year prescriptive period for obligations to pay damages currently runs from the date when loss, injury or damage occurred. Where time runs from the date of loss or damage, it is quite possible for a very long period to pass without the prescriptive period even beginning to run. That is capable of undermining one of the principal rationales of prescription, namely that after a certain defined period a debtor should be able to arrange his or her affairs on the assumption that any risk of litigation has passed.
32. Accordingly, this section substitutes a new subsection (4) into section 11 of the 1973 Act. Its effect is to introduce a separate start date for the running of the 20-year prescriptive period, but only in relation to claims involving recovery of damages. For such claims, time will run from the date of the act or omission giving rise to the claim or, where there was more than one act or omission or the act or omission is continuing, from the date of the last act or omission or the date when it ceased.
33. Not all obligations subject to prescription under section 7 are obligations to pay damages, and for them an analysis in terms of act or omission and loss, injury or damage is inappropriate. For these obligations, the starting date for the 20-year prescription remains the date on which the obligation giving rise to the claim became enforceable.