



Prescription (Scotland) Act 2018

2018 asp 15

PROSPECTIVE

Miscellaneous

9 Saving for other statutory provisions about prescription or limitation

- (1) The 1973 Act is amended as follows.
- (2) After section 7 insert—

“7A Saving for other statutory provisions about prescription or limitation

- (1) Sections 6 and 7 of this Act do not apply to an obligation if, and so far as, an enactment other than this Act makes provision to the effect that—
 - (a) the obligation is imprescriptible,
 - (b) the obligation is extinguished after a specified period of time, or
 - (c) the making of a claim or the bringing of proceedings in respect of the obligation—
 - (i) is not subject to any period of limitation, or
 - (ii) may be done only within a specified period of time.
- (2) In this section—

“enactment” means any enactment whenever passed or made,
“specified” means specified in, or determined in accordance with, any enactment other than one contained in this Act.”.
- (3) In section 15(1) (interpretation of Part 1), in the definition of “enactment”, after “Act” insert “ and includes an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament ”.

10 Definition of “relevant claim”

- (1) The 1973 Act is amended as follows.
- (2) In section 9(1) (definition of “relevant claim”)—

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Prescription (Scotland) Act 2018, Cross Heading: Miscellaneous. (See end of Document for details)

- (a) the word “or” after each of paragraphs (a), (b) and (c) is repealed,
- (b) after paragraph (d) insert—
 - “(e) by the appointment, or the submission of an application for the appointment, of a receiver under section 51 of the Insolvency Act 1986;
 - (f) by the submission of an application for an administration order under paragraph 12 of Schedule B1 of the Insolvency Act 1986;
 - (g) by the appointment of an administrator under paragraph 14 of Schedule B1 of the Insolvency Act 1986; or
 - (h) by the submission of a claim in an administration under Part 2, or a receivership under Part 3, of the Insolvency Act 1986 in accordance with rules made under section 411 of that Act;”.

(3) In section 22A(3), in the definition of “relevant claim”—

- (a) the word “or” after each of paragraphs (a) and (b) is repealed,
- (b) after paragraph (c) insert—
 - “(d) by the appointment, or the submission of an application for the appointment, of a receiver under section 51 of the Insolvency Act 1986;
 - (e) by the submission of an application for an administration order under paragraph 12 of Schedule B1 of the Insolvency Act 1986;
 - (f) by the appointment of an administrator under paragraph 14 of Schedule B1 of the Insolvency Act 1986; or
 - (g) by the submission of a claim in an administration under Part 2, or a receivership under Part 3, of the Insolvency Act 1986 in accordance with rules made under section 411 of that Act;”.

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

(1) Section 9 (definition of “relevant claim” for the purposes of sections 6, 7 and 8) of the 1973 Act is amended as follows.

(2) After subsection (2) insert—

“(2A) Where a relevant claim is made in relation to an obligation to which section 6 or 8A applies, the claim is to be treated for the purposes of that section as being made continuously until the claim is finally disposed of.”.

(3) In the section title, for “and 8” substitute “, 8 and 8A ”.

12 Definition of “final disposal” of relevant claim

After section 9 of the 1973 Act insert—

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“9A Definition of “final disposal” of relevant claim for purposes of sections 7, 8 and 9

- (1) For the purposes of sections 7, 8 and 9, a relevant claim is finally disposed of—
 - (a) when a decision disposing of the claim is made, if there is no right of appeal against the decision,
 - (b) if there is a right of appeal with leave or permission against such a decision—
 - (i) when the time period for seeking leave or permission to appeal has expired without an application for leave or permission having been made, or
 - (ii) when leave or permission to appeal is refused,
 - (c) if leave or permission to appeal against such a decision has been granted or is not required, when the time period for making an appeal has expired without an appeal having been made, or
 - (d) when the claim is withdrawn or abandoned.
- (2) In subsection (1)(a), the reference to a decision disposing of the claim includes a reference to a decision made in an appeal against an earlier decision.”.

13 Restrictions on contracting out

For section 13 (prohibition of contracting out) of the 1973 Act substitute—

“13 Restrictions on contracting out

- (1) The creditor and debtor in an obligation to which a prescriptive period under section 6 or 8A applies may agree to extend the prescriptive period under section 6 or, as the case may be, 8A in relation to the obligation.
- (2) A prescriptive period may be extended by agreement under subsection (1) only—
 - (a) after the period has commenced (and before it would, but for this section, expire),
 - (b) by a period of no more than one year, and
 - (c) once in relation to the same obligation.
- (3) Where there is an agreement under subsection (1) in relation to an obligation—
 - (a) the prescriptive period which is the subject of the agreement expires, in relation to the parties to the agreement, on the date specified in or determined in accordance with the agreement, but
 - (b) that does not otherwise affect the operation of this Act in relation to the obligation or the prescriptive period.
- (4) Except as provided for in subsections (1) to (3), a provision in an agreement is of no effect so far as the provision would (apart from this subsection) have the effect, in relation to a right or obligation to which section 6, 7, 8 or 8A (the “section in question”) applies, of—

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- (a) disapplying the section in question in relation to the right or obligation, or
- (b) otherwise altering the operation of the section in question in relation to the right or obligation.”.

14 Burden of proof

- (1) The 1973 Act is amended as follows.
- (2) After section 13 insert—

“13A Burden of proof

- (1) This section applies in relation to—
 - (a) an obligation to which a prescriptive period under section 6, 7 or 8A applies, and
 - (b) a right to which the prescriptive period under section 8 applies.
- (2) If a question arises as to whether the obligation or right has been extinguished by the expiry of the applicable prescriptive period, it is to be presumed that the obligation or right has been so extinguished unless the contrary is proved by the creditor.”.
- (3) In section 22A (prescription of obligations under Part 1 of the Consumer Protection Act 1987), after subsection (7) insert—
 - “(7A) Section 13A of this Act applies in relation to an obligation to which the prescriptive period under this section applies as it applies in relation to the obligations and rights referred to in subsection (1) of that section.”.

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