



Prescription and Limitation (Scotland) Act 1973

1973 CHAPTER 52

PART I

PRESCRIPTION

Negative Prescription

6 Extinction of obligations by prescriptive periods of five years

- (1) If, after the appropriate date, an obligation to which this section applies has subsisted for a continuous period of five years—
- (a) without any relevant claim having been made in relation to the obligation, and
 - (b) without the subsistence of the obligation having been relevantly acknowledged, then as from the expiration of that period the obligation shall be extinguished:

Provided that in its application to an obligation under a bill of exchange or a promissory note this subsection shall have effect as if paragraph (b) thereof were omitted.

- (2) Schedule 1 to this Act shall have effect for defining the obligations to which this section applies.
- (3) In subsection (1) above the reference to the appropriate date, in relation to an obligation of any kind specified in Schedule 2 to this Act is a reference to the date specified in that Schedule in relation to obligations of that kind, and in relation to an obligation of any other kind is a reference to the date when the obligation became enforceable.
- (4) In the computation of a prescriptive period in relation to any obligation for the purposes of this section—
- (a) any period during which by reason of—
 - (i) fraud on the part of the debtor or any person acting on his behalf, or

Status: This is the original version (as it was originally enacted).

(ii) error induced by words or conduct of the debtor or any person acting on his behalf, the creditor was induced to refrain from making a relevant claim in relation to the obligation, and

(b) any period during which the original creditor (while he is the creditor) was under legal disability,

shall not be reckoned as, or as part of, the prescriptive period;

Provided that any period such as is mentioned in paragraph (a) of this subsection shall not include any time occurring after the creditor could with reasonable diligence have discovered the fraud or error, as the case may be, referred to in that paragraph.

(5) Any period such as is mentioned in paragraph (a) or (b) of subsection (4) of this section shall not be regarded as separating the time immediately before it from the time immediately after it.

7 Extinction of obligations by prescriptive periods of twenty years

(1) If, after the date when any obligation to which this section applies has become enforceable, the obligation has subsisted for a continuous period of twenty years—

(a) without any relevant claim having been made in relation to the obligation, and

(b) without the subsistence of the obligation having been relevantly acknowledged,

then as from the expiration of that period the obligation shall be extinguished :

Provided that in its application to an obligation under a bill of exchange or a promissory note this subsection shall have effect as if paragraph (b) thereof were omitted.

(2) This section applies to an obligation of any kind (including an obligation to which section 6 of this Act applies), not being an obligation specified in Schedule 3 to this Act as an imprescriptible obligation.

8 Extinction of other rights relating to property by prescriptive periods of twenty years

(1) If, after the date when any right to which this section applies has become exercisable or enforceable, the right has subsisted for a continuous period of twenty years unexercised or unenforced, and without any relevant claim in relation to it having been made, then as from the expiration of that period the right shall be extinguished.

(2) This section applies to any right relating to property, whether heritable or moveable, not being a right specified in Schedule 3 to this Act as an imprescriptible right or falling within section 6 or 7 of this Act as being a right correlative to an obligation to which either of those sections applies.

9 Definition of " relevant claim " for purposes of sections 6, 7 and 8

(1) In sections 6 and 7 of this Act the expression " relevant claim ", in relation to an obligation, means a claim made by or on behalf of the creditor for implement or part-implement of the obligation, being a claim made—

(a) in appropriate proceedings, or

(b) by such procedure as is mentioned in section 105 of the Bankruptcy (Scotland) Act 1913 (which relates to the interruption of prescription by certain proceedings) including that section as applied by section 318 of the Companies Act 1948;

and for the purposes of the said sections 6 and 7 the execution by or on behalf of the creditor in an obligation of any form of diligence directed to the enforcement of the obligation shall be deemed to be a relevant claim in relation to the obligation.

- (2) In section 8 of this Act the expression "relevant claim", in relation to a right, means a claim made in appropriate proceedings by or on behalf of the creditor to establish the right or to contest any claim to a right inconsistent therewith.
- (3) Where a claim which, in accordance with the foregoing provisions of this section, is a relevant claim for the purposes of section 6, 7 or 8 of this Act is made in an arbitration, and the nature of the claim has been stated in a preliminary notice relating to that arbitration, the date when the notice was served shall be taken for those purposes to be the date of the making of the claim.
- (4) In this section the expression "appropriate proceedings" and, in relation to an arbitration, the expression "preliminary notice" have the same meanings as in section 4 of this Act.

10 Relevant acknowledgment for purposes of sections 6 and 7

- (1) The subsistence of an obligation shall be regarded for the purposes of sections 6 and 7 of (this Act as having been relevantly acknowledged if, and only if, either of the following conditions is satisfied, namely—
- (a) that there has been such performance by or on behalf of the debtor towards implement of the obligation as clearly indicates that the obligation still subsists;
 - (b) that there has been made by or on behalf of the debtor to the creditor or his agent an unequivocal written admission clearly acknowledging that the obligation still subsists.
- (2) Subject to subsection (3) below, where two or more persons are bound jointly by an obligation so that each is liable for the whole, and the subsistence of the obligation has been relevantly acknowledged by or on behalf of one of those persons then—
- (a) if the acknowledgment is made in the manner specified in paragraph (a) of the foregoing subsection it shall have effect for the purposes of the said sections 6 and 7 as respects the liability of each of those persons, and
 - (b) if it is made in the manner specified in paragraph
 - (b) of that subsection it shall have effect for those purposes only as respects the liability of the person who makes it.
- (3) Where the subsistence of an obligation affecting a trust estate has been relevantly acknowledged by or on behalf of one of two or more co-trustees in the manner specified in paragraph (a) or (b) of subsection (1) of this section, the acknowledgment shall have effect for the purposes of the said sections 6 and 7 as respects the liability of the trust estate and any liability of each of the trustees.
- (4) In this section references to performance in relation to an obligation include, where the nature of the obligation so requires, references to refraining from doing something and to permitting or suffering something to be done or maintained.

11 Obligations to make reparation

- (1) Subject to subsections (2) and (3) below, any obligation (whether arising from any enactment, or from any rule of law or from, or by reason of any breach of, a contract or promise) to make reparation for loss, injury or damage caused by an act, neglect or default shall be regarded for the purposes of section 6 of this Act as having become enforceable on the date when the loss, injury or damage occurred.
- (2) Where as a result of a continuing act, neglect or default loss, injury or damage has occurred before the cessation of the act, neglect or default the loss, injury or damage shall be deemed for the purposes of subsection (1) above to have occurred on the date when the act, neglect or default ceased.
- (3) In relation to a case where on the date referred to in subsection (1) above (or, as the case may be, that subsection as modified by subsection (2) above) the creditor was not aware, and could not with reasonable diligence have been aware, that loss, injury or damage caused as aforesaid had occurred, the said subsection (1) shall have effect as if for the reference therein to that date there were substituted a reference to the date when the creditor first became, or could with reasonable diligence have become, so aware.
- (4) Subsections (1) and (2) above (with the omission of any reference therein to subsection (3) above) shall have effect for the purposes of section 7 of this Act as they have effect for the purposes of section 6 of this Act; and in the said subsections (1) and (2), as they have effect for the purposes of the said section 7, "injury" includes personal injuries within the meaning of Part II of -this Act.

12 Savings

- (1) Where by virtue of any enactment passed or made before the passing of this Act a claim to establish a right or enforce implement of an obligation may be made only within a period of limitation specified in or determined under the enactment, and, by the expiration of a prescriptive period determined under section 6, 7 or 8 of this Act the right or obligation would, apart from this subsection, be extinguished before the expiration of the period of limitation, the said section shall have effect as if the relevant prescriptive period were extended so that it expires—
 - (a) on the date when the period of limitation expires, or
 - (b) if on that date any such claim made within that period has not been finally disposed of, on the date when the claim is so disposed of.
- (2) Nothing in section 6, 7 or 8 of this Act shall be construed so as to exempt any deed from challenge at any time on the ground that it is invalid *ex facie* or was forged.

13 Prohibition of contracting out

Any provision in any agreement purporting to provide in relation to any right or obligation that section 6, 7 or 8 of this Act shall not have effect shall be null.