



# Prescription and Limitation (Scotland) Act 1973

## 1973 CHAPTER 52

### PART I

#### PRESCRIPTION

##### *Positive prescription*

#### **1 Interests in land: general**

(1) If in the case of an interest in particular land, being an interest to which this section applies.—

- (a) the interest has been possessed by any person, or by any person and his successors, for a continuous period of ten years openly, peaceably and without any judicial interruption, and
- (b) the possession was founded on, and followed the recording of, a deed which is sufficient in respect of its terms to constitute in favour of that person a title to that interest in the particular land, or in land of a description habile to include the particular land,

then, as from the expiration of the said period, the validity of the title so far as relating to the said interest in the particular land shall be exempt from challenge except on the ground that the deed is invalid *ex facie* or was forged.

(2) This section applies to any interest in land the title to which can competently be recorded.

(3) In the computation of a prescriptive period for the purposes of this section in a case where the deed in question is a decree of adjudication for debt, any period before the expiry of the legal shall be disregarded.

(4) Where in any question involving an interest in any foreshore or in any salmon fishings this section is pled against the Crown as owner of the regalia, subsection (1) above

shall have effect as if for the words " ten years " there were substituted the words " twenty years ".

(5) This section is without prejudice to the operation of section 2 of this Act.

## **2 Interests in land: special cases**

(1) If in the case of an interest in particular land, being an interest to which this section applies.—

- (a) the interest has been possessed by any person, or by any person and his successors, for a continuous period of twenty years openly, peaceably and without any judicial interruption, and
- (b) the possession was founded on, and followed the execution of, a deed (whether recorded or not) which is sufficient in respect of its terms to constitute in favour of that person a title to that interest in the particular land, or in land of a description habile to include the particular land,

then, as from the expiration of the said period, the validity of the title so far as relating to the said interest in the particular land shall be exempt from challenge except on the ground that the deed is invalid *ex facie* or was forged.

(2) This section applies—

- (a) to the interest in land of the lessee under a lease;
- (b) to any interest in allodial land;
- (c) to any other interest in land the title to which is of a kind which, under the law in force immediately before the commencement of this Part of this Act, was sufficient to form a foundation for positive prescription without the deed constituting the title having been recorded.

(3) This section is without prejudice to the operation of section 1 of this Act.

## **3 Positive servitudes and public rights of way**

(1) If in the case of a positive servitude over land—

- (a) the servitude has been possessed for a continuous period of twenty years openly, peaceably and without any judicial interruption, and
- (b) the possession was founded on, and followed the execution of, a deed which is sufficient in respect of its terms (whether expressly or by implication) to constitute the servitude,

then, as from the expiration of the said period, the validity of the servitude as so constituted shall be exempt from challenge except on the ground that the deed is invalid *ex facie* or was forged.

(2) If a positive servitude over land has been possessed for a continuous period of twenty years openly, peaceably and without judicial interruption, then, as from the expiration of that period, the existence of the servitude as so possessed shall be exempt from challenge.

(3) If a public right of way over land has been possessed by the public for a continuous period of twenty years openly, peaceably and without judicial interruption, then, as from the expiration of that period, the existence of the right of way as so possessed shall be exempt from challenge.

- (4) References in subsections (1) and (2) of this section to possession of a servitude are references to possession of the servitude by any person in possession of the relative dominant tenement.
- (5) This section is without prejudice to the operation of section 7 of this Act.

#### **4 Judicial interruption of periods of possession for purposes of sections 1, 2 and 3**

- (1) In sections 1, 2 and 3 of this Act references to a judicial interruption, in relation to possession, are references to the making in appropriate proceedings, by any person having a proper interest to do so, of a claim which challenges the possession in question.
- (2) In this section " appropriate proceedings " means—
  - (a) any proceedings in a court of competent jurisdiction in Scotland or elsewhere, except proceedings in the Court of Session initiated by a summons which is not subsequently called;
  - (b) any arbitration in Scotland ;
  - (c) any arbitration in a country other than Scotland, being an arbitration an award in which would be enforceable in Scotland.
- (3) The date of a judicial interruption shall be taken to be—
  - (a) where the claim has been 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 preliminary notice was served;
  - (b) in any other case, the date when the claim was made.
- (4) In the foregoing subsection " preliminary notice " in relation to an arbitration means a notice served by one party to the arbitration on the other party or parties requiring him or them to appoint an arbiter or to agree to the appointment of an arbiter, or, where the arbitration agreement or any relevant enactment provides that the reference shall be to a person therein named or designated, a notice requiring him or them to submit the dispute to the person so named or designated.

#### **5 Further provisions supplementary to sections 1, 2 and 3**

- (1) In sections 1, 2 and 3 of this Act " deed " includes a judicial decree; and for the purposes of the said sections any of the following, namely an instrument of sasine, a notarial instrument and a notice of title, which narrates or declares that a person has a title to an interest in land shall be treated as a deed sufficient to constitute that title in favour of that person.
- (2) Where a deed has been at any time *ex facie* invalid by reason of an informality of execution within the meaning of section 39 of the Conveyancing (Scotland) Act 1874, but the appropriate court has subsequently declared, in pursuance of that section, that it was subscribed by the granter or maker and the witnesses, the deed shall be deemed for the purposes of the said sections 1, 2 and 3 not to be, and not at any time to have been, *ex facie* invalid by reason of any such informality of execution.

### *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
    - (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.

### *General*

## 14 Computation of prescriptive periods

- (1) In the computation of a prescriptive period for the purposes of any provision of this Part of this Act—
  - (a) time occurring before the commencement of this Part of this Act shall be reckonable towards the prescriptive period in like manner as time occurring thereafter, but subject to the restriction that any time reckoned under this paragraph shall be less than the prescriptive period;
  - (b) any time during which any person against whom the provision is pled was under legal disability shall (except so far as otherwise provided by section 6(4) of this Act) be reckoned as if the person were free from that disability;
  - (c) if the commencement of the prescriptive period would, apart from this paragraph, fall at a time in any day other than the beginning of the day, the period shall be deemed to have commenced at the beginning of the next following day;
  - (d) if the last day of the prescriptive period would, apart from this paragraph, be a holiday, the period shall, notwithstanding anything in the said provision, be extended to include any immediately succeeding day which is a holiday, any further immediately succeeding days which are holidays, and the next succeeding day which is not a holiday ;
  - (e) save as otherwise provided in this Part of this Act regard shall be had to the like principles as immediately before the commencement of this Part of this Act were applicable to the computation of periods of prescription for the purposes of the Prescription Act 1617.

- (2) In this section " holiday " means a day of any of the following descriptions, namely, a Saturday, a Sunday and a day which, in Scotland, is a bank holiday under the Banking and Financial Dealings Act 1971.

## 15 Interpretation of Part I

- (1) In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, namely—

" bill of exchange " has the same meaning as it has for the purposes of the Bills of Exchange Act 1882;

" date of execution ", in relation to a deed executed on several dates, means the last of those dates;

" enactment " includes an order, regulation, rule or other instrument having effect by virtue of an Act;

" holiday " has the meaning assigned to it by section 14 of this Act;

" interest in land " does not include a servitude ;

" land " includes heritable property of any description;

" lease " includes a sub-lease;

" legal disability " means legal disability by reason of nonage or unsoundness of mind ;

" possession " includes civil possession, and " possessed " shall be construed accordingly ;

" prescriptive period " means a period required for the operation of section 1, 2, 3, 6, 1 or 8 of this Act;

" promissory note " has the same meaning as it has for the purposes of the Bills of Exchange Act 1882;

" trustee " includes any person holding property in a fiduciary capacity for another and, without prejudice to that generality, includes a trustee within the meaning of the Trusts (Scotland) Act 1921 ; and " trust " shall be construed accordingly ;

and references to the recording of a deed are references to the recording thereof in the General Register of Sasines.

- (2) In this Part of this Act, unless the context otherwise requires, any reference to an obligation or to a right includes a reference to the right or, as the case may be, to the obligation (if any), correlative thereto.
- (3) In this Part of this Act any reference to an enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended, and as including a reference thereto as applied, by or under any other enactment.

## 16 Amendments and repeals related to Part I

- (1) The enactment specified in Part I of Schedule 4 to this Act shall have effect subject to the amendment there specified, being an amendment related to this Part of this Act.
- (2) Subject to the next following subsection, the enactments specified in Part I of Schedule 5 to this Act (which includes certain enactments relating to the limitation of proof) are hereby repealed to the extent specified in column 3 of that Schedule.



- (3) Where by virtue of any Act repealed by this section the subsistence of an obligation in force at the date of the commencement of this Part of this Act was immediately before that date, by reason of the passage of time, provable only by the writ or oath of the debtor the subsistence of the obligation shall (notwithstanding anything in section 38 of the Interpretation Act 1889, which relates to the effect of repeals) as from that date be provable as if the said repealed Act had not passed.