

SCHEDULE 12 MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

MINOR AND CONSEQUENTIAL AMENDMENTS: GENERAL

Notes to Schedule K, shall cease to have effect.

Prescription and Limitation (Scotland) Act 1973 (c. 52)

- 33 (1) The Prescription and Limitation (Scotland) Act 1973 shall be amended in accordance with this paragraph.
- (2) For sections 1 and 2 there shall be substituted—

“1 Validity of right

- (1) If land 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 the possession was founded on, and followed—
- (a) the recording of a deed which is sufficient in respect of its terms to constitute in favour of that person a real right in—
 - (i) that land; or
 - (ii) land of a description *habile* to include that land; or
 - (b) registration of a real right in that land, in favour of that person, in the Land Register of Scotland, subject to an exclusion of indemnity under section 12(2) of the Land Registration (Scotland) Act 1979 (c. 33),
- then, as from the expiry of that period, the real right so far as relating to that land shall be exempt from challenge.
- (2) Subsection (1) above shall not apply where—
- (a) possession was founded on the recording of a deed which is invalid *ex facie* or was forged; or
 - (b) possession was founded on registration in the Land Register of Scotland proceeding on a forged deed and the person appearing from the Register to have the real right in question was aware of the forgery at the time of registration in his favour.
- (3) In subsection (1) above, the reference to a real right is to a real right which is registrable in the Land Register of Scotland or a deed relating to which can competently be recorded; but this section does not apply to servitudes or public rights of way.
- (4) 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.
- (5) Where, in any question involving any foreshore or any salmon fishings, this section is pled against the Crown as owner of the regalia, subsection (1)

Status: This is the original version (as it was originally enacted).

above shall have effect as if for the words “ten years” there were substituted “twenty years”.

(6) This section is without prejudice to section 2 of this Act.

2 Special cases

(1) If—

- (a) land 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 real right in that land, or in land of a description *habile* to include that land, then, as from the expiry of that period, the real right so far as relating to that 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 real right of the lessee under a lease; and
- (b) to any other real right in land, being a real right 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 to the real right having been recorded,

but does not apply to servitudes or public rights of way.

(3) This section is without prejudice to section 1 of this Act or to section 3(3) of the Land Registration (Scotland) Act 1979 (c. 33).”.

(3) In section 5(1) (provision as to what is to be treated as a deed for the purposes of sections 1, 2 and 3 of the Act), for the words “title to an interest in land shall be treated as a deed sufficient to constitute that title” substitute “right in land shall be treated as a deed sufficient to constitute that right”.

(4) In section 15(1) (interpretation), the definition of “interest in land” shall cease to have effect.

(5) In Schedule 1 (obligations affected by certain prescriptive periods)—

- (a) in paragraph 1, heads (iii) and (iv) of sub-paragraph (a); and
- (b) in paragraph 2(f), the words “terce, courtesy,”

shall cease to have effect.