



# Prescription (Scotland) Act 2018

## 2018 asp 15

### *5-year negative prescription*

PROSPECTIVE

#### **1 Obligations to pay damages and delictual obligations**

- (1) The Prescription and Limitation (Scotland) Act 1973 (“the 1973 Act”) is amended as follows.
- (2) In schedule 1 (obligations affected by prescriptive periods of five years under section 6), in paragraph 1, for sub-paragraph (d) substitute—
  - “(d) to any obligation to pay damages (whatever the source of the obligation);
  - (da) to any obligation arising from delict, not being an obligation falling within any other provision of this paragraph;”.
- (3) In section 11 (obligations to make reparation)—
  - (a) in subsection (1), for the words from “(whether” to “reparation” substitute “to pay damages (whatever the source of the obligation) ”,
  - (b) the section title becomes “Obligations to pay damages ”.

PROSPECTIVE

#### **2 Obligations related to contract**

- (1) Schedule 1 (obligations affected by prescriptive periods of five years under section 6) of the 1973 Act is amended as follows.
- (2) In paragraph 1, after sub-paragraph (f) insert—
  - “(fa) to any obligation relating to the validity of a contract, not being an obligation falling within any other provision of this paragraph;
  - (fb) to any obligation to reimburse expenditure incurred in reliance on a representation about the existence of a contract;”.

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*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: 5-year negative prescription. (See end of Document for details)

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## PROSPECTIVE

**3 Statutory obligations**

- (1) Schedule 1 (obligations affected by prescriptive periods of five years under section 6) of the 1973 Act is amended as follows.
- (2) In paragraph 1—
- (a) the following sub-paragraphs are repealed—
    - (i) sub-paragraphs (aa) (both),
    - (ii) sub-paragraphs (aca) to (ae), and
    - (iii) sub-paragraph (dd),
  - (b) after sub-paragraph (g) insert—
    - “(h) to any obligation to make a payment arising under an enactment (whenever passed or made), not being an obligation falling within any other provision of this paragraph.”
- (3) In paragraph 2—
- (a) for sub-paragraph (e) substitute—
    - “(e) except as provided in paragraph 1(a), (ab), (ac) and (h) of this Schedule, to any obligation relating to land (including an obligation to recognise a servitude);
    - (ea) to any obligation of the Keeper of the Registers of Scotland to pay compensation by virtue of section 77 or 94 of the Land Registration etc. (Scotland) Act 2012;”,
  - (b) after sub-paragraph (f) insert—
    - “(fa) to any obligation to pay taxes or duties that are recoverable by the Crown, or to pay any penalty, interest or other sum that is recoverable as if it were an amount of such taxes or duties;
    - (fb) to any obligation to pay a sum recoverable under—
      - (i) Part 3 (overpayments and adjustments of benefit) of the Social Security Administration Act 1992;
      - (ii) section 127(c) (recovery of income support in certain circumstances) of the Social Security Contributions and Benefits Act 1992; or
      - (iii) Part 1 (tax credits) of the Tax Credits Act 2002;
    - (fc) to any obligation to pay child support maintenance under the Child Support Act 1991;
    - (fd) to any obligation to pay—
      - (i) council tax under Part 2 of the Local Government Finance Act 1992;
      - (ii) non-domestic rates levied under section 7B(2) of the Local Government (Scotland) Act 1975; or
      - (iii) any surcharge, fees, expenses or other sum recoverable in connection with the enforcement of an obligation to pay such council tax or rates;”.

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PROSPECTIVE

**4 Effect of fraud or error on computation of prescriptive period**

- (1) Section 6 (extinction of obligations by prescriptive periods of five years) of the 1973 Act is amended as follows.
- (2) In subsection (4), for “was induced to refrain from making” substitute “ failed to make ”.
- (3) After subsection (4) insert—
  - “(4A) For the purposes of subsection (4)(a), it does not matter whether the debtor, or the person acting on the debtor’s behalf, intended the fraud or the words or conduct to cause the creditor to fail to make a relevant claim.”.

**5 Start point of prescriptive period for obligations to pay damages**

- (1) Section 11 (obligations to make reparation) of the 1973 Act is amended as follows.
- (2) In subsection (1), for “act, neglect or default” substitute “ act or omission ”.
- (3) In subsection (2), for “act, neglect or default”, in each place those words appear substitute “ act or omission ”.
- (4) In subsection (3), for the words “that loss, injury or damage caused as aforesaid had occurred” substitute “ of each of the facts mentioned in subsection (3A) ”.
- (5) After subsection (3) insert—
  - “(3A) The facts referred to in subsection (3) are—
    - (a) that loss, injury or damage has occurred,
    - (b) that the loss, injury or damage was caused by a person’s act or omission, and
    - (c) the identity of that person.
  - (3B) It does not matter for the purposes of subsections (3) and (3A) whether the creditor is aware that the act or omission that caused the loss, injury or damage is actionable in law.”.

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**Commencement Information**

**II** S. 5 in force at 1.6.2022 by S.S.I. 2022/78, reg. 2(2) (with reg. 3(2))

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