



Briefing for the Public Petitions Committee

Petition Number: [PE01860](#)

Main Petitioner: Jennifer Morrison Holdham

Subject: New legislation for Prescription and Limitation Act

Calls on the Scottish Parliament to urge the Scottish Government to amend the Prescription and Limitation Act to allow retrospective claims to be made.

Background

The [Prescription and Limitation \(Scotland\) Act 1973](#) ('the 1973 Act') covers two similar, but distinct, concepts in Scots law – **prescription** and **limitation**. (Limitation is also known as **time bar**.)

In many cases, prescription and limitation produce the same practical result, i.e. that the person or organisation defending a court action can argue the case should not be heard due to the passage of a period of time set out in the 1973 Act.

Prescription

Prescription can either create legal rights ('positive prescription') or extinguish legal rights ('negative prescription') after the passage of a set period. The relevant periods of time are set out in the 1973 Act.

Where negative prescription is concerned, broadly speaking, legal rights are either extinguished under the 1973 Act after **five years** or **twenty years** or are exempt from the scope of prescription ('imprescriptible').

Limitation

Whereas prescription applies to a wide range of legal rights and obligations, limitation applies in the context of court claims for financial damages (i.e. compensation).

So, for example, an individual suffers personal injuries resulting in death due to the negligence of another person or organisation. After **three years** the relative of that person is usually prevented under the 1973 Act from raising court proceedings related to those injuries under the law of limitation.

In that example, the clock usually starts ticking on the three year period either from the date of death or the point the relative became aware, or should reasonably have become aware, that the fatal injuries were attributable to a negligent act or failure to act.¹

One technical point is that, with limitation the legal right is not actually *extinguished* by the passage of time. However, after the relevant statutory period has passed, a person is usually prevented from raising court proceedings based on the existence of the legal right.

Another key feature of the law of limitation, which does not apply to the law of prescription, is that the court has the power to override the statutory time limit where this is “equitable” (i.e. fair considering the interests of both parties).²

The policy underpinning prescription and limitation

When people first learn about prescription and limitation there is often confusion about why they are needed. Surely, the argument goes, if someone has a legal right it should last or be enforceable in court forever, unless everyone concerned has agreed this should not be the case. However, legal systems all over the world have prescription and limitation or equivalents to them, for various policy reasons.

The law tries to incentivise people to enforce their legal rights through the courts promptly, without delay. Delay causes the quality of evidence available in a court case to deteriorate. Witnesses may have died, be untraceable or, even if they are found and able to give evidence, important memories may have faded. Vital documents may also have been destroyed by individuals or organisations. Without prescription or limitation, these circumstances could cause insurmountable difficulties for the person or organisation defending the court action.

Scots law also favours legal certainty - recognising that there should be a point after which a person or organisation should be able to plan their affairs and resources knowing they will likely not be sued over a particular issue.

Prescription and limitation do have the potential to cause harsh results in individual cases. However, the court’s discretion to extend the limitation period in an individual case does give the court greater flexibility with limitation than with prescription.

Prescription and limitation are part of a wider body of law

The current petition focuses on the 1973 Act and time limits. However, it is worth noting that, when advising a client on the potential for any type of successful court action, the 1973 Act is one of a number of aspects of the law a solicitor will be considering.

¹ 1973 Act, section 18.

² 1973 Act, section 19A.

For example, with a potential court action relating to personal injuries, a solicitor will also consider whether a person has a valid case under the law of negligence. This sets out the (complex) rules determining whether an individual or organisation has been negligent or not in respect of those injuries. Sometimes there have been personal injuries but the law of negligence does not recognise that an individual or organisation is legally at fault in respect of those injuries.

The solicitor in such a case will also assess the amount of damages a person might be legally entitled to for any loss which it is established has been suffered under the law of negligence. There are also complex legal rules governing how damages are calculated.

Scottish Government and Scottish Parliament Action

In Sessions 4 and Session 5 of the Scottish Parliament, the Scottish Government consulted on several changes to the law of prescription and limitation, as set out in the 1973 Act. Some of these proposed changes were later implemented in legislation.

The 2012 consultation paper

In 2012, [the Scottish Government consulted on proposals](#) set out in three reports of the [Scottish Law Commission](#) (the independent statutory body that makes recommendations for law reform to Scottish Ministers). The three reports covered the law of personal injuries, i.e. the branch of law which compensates people for (physical or psychological) injuries suffered because of the negligence of another person or organisation.

[One of these Commission reports, from 2007, focused on the 1973 Act](#). This report recommended that the three year limitation period be extended to five years. It also proposed changes to the point from which the limitation period would start to run, as well as the introduction of statutory factors to guide the courts in their exercise of the discretion to extend the time limit in individual cases.

The Scottish Government decided not to introduce legislation to implement the 2012 consultation paper. There was opposition to some of the proposals, including, for example, the proposal to extend the limitation period from three to five years.³

³ See the analysis of responses associated with that consultation paper: <https://www.webarchive.org.uk/wayback/archive/20141129005835/http://www.scotland.gov.uk/Publications/2013/08/6983>

Limitation (Childhood Abuse) (Scotland) Act 2017

In 2015, [the Scottish Government consulted on proposals which would abolish the three year time limit](#) where the claim for financial damages for personal injuries related to abuse of a child or young person under the age of 18.

These proposals became law in the [Limitation \(Childhood Abuse\) \(Scotland\) Act 2017](#), which came into force in October 2017.

Prescription (Scotland) Act 2018

The [Scottish Law Commission](#) published its [Report on Prescription](#) in 2017. The Scottish Government later introduced a Bill based on the report, which, on completing its parliamentary passage, became the [Prescription \(Scotland\) Act 2018](#) ('the 2018 Act').

The 2018 Act, which is not yet in force, will make changes to the detailed rules associated with both the five and the twenty year periods for negative prescription.

Petition – proposed reform to the law of prescription

In October 2017, the parliamentary petition [PE01672](#) was lodged, in the name of Mr Hugh Paterson. This discussed an issue which had arisen with the purchase of Mr Paterson's house. A potential right to claim for damages against his solicitors for defective work was extinguished by the twenty year negative prescription rule before the petitioner was aware the work was defective. Mr Paterson argued the law in this area needed reform.

The petition was closed in 2019, on the basis that the Scottish Government had no plans to change the law but had agreed to update the relevant guidance.

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