

# **Prescription (Scotland) Act 2018**

**Consultation on commencement regulations**

**July 2020**

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# 1. Introduction

1.1 The doctrine of prescription serves a vital function in the civil justice system. Negative prescription sets time-limits for when obligations (and rights), such as obligations under a contract, are extinguished. The rules of negative prescription<sup>1</sup> as they currently stand are, for the most part, to be found in the Prescription and Limitation (Scotland) Act 1973 (“the 1973 Act”).

1.2 The Prescription (Scotland) Act 2018 (“the 2018 Act”), when commenced, will make a number of changes to the rules of negative prescription, addressing certain issues which have caused or may cause difficulty in practice.

1.3 The 2018 Act takes forward the legislative recommendations contained in the Scottish Law Commission (“the Commission”) Report on Prescription of July 2017 (“the Report”).<sup>2</sup> Greater detail as to the legal and practical issues which informed the Act are set out in the Report and also in the Discussion Paper on Prescription of February 2016.<sup>3</sup>

1.4 Scots law, like many legal systems, recognises that it is fair, in certain circumstances, for legal rights to expire with the passage of time. Prescription is justified by a number of policy considerations. There are clear benefits to bringing actions early, in particular, delay may adversely affect the quality of justice. Evidence may deteriorate or be lost, including witnesses dying or becoming incapacitated. It may be unfair for a debtor to have an action raised against them long after the circumstances that gave rise to it have passed. It is reasonable that debtors should be able to organise their affairs and resources on the basis that, after a definite period of time, their obligation is extinguished.<sup>4</sup> The public interest also lies in disputes being resolved as quickly as possible. Considerations of legal certainty justify, as a general rule, a cut-off beyond which obligations are extinguished and therefore claims may not be litigated. Prescription is an essential part of balancing individual interests on one hand and serving the wider public interest on the other. This means that there will be individual cases where prescription appears to operate harshly to extinguish a creditor’s right but, in the wider interests of fairness, justice and certainty, prescription needs to strike a fair balance overall.

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<sup>1</sup> For ease, when using the term “prescription” in the remainder of the consultation we will be referring to “negative prescription”.

<sup>2</sup> Available at [https://www.scotlawcom.gov.uk/files/3414/9978/5138/Report\\_on\\_Prescription\\_Report\\_No\\_247.pdf](https://www.scotlawcom.gov.uk/files/3414/9978/5138/Report_on_Prescription_Report_No_247.pdf).

<sup>3</sup> Available at [https://www.scotlawcom.gov.uk/files/3514/5614/9429/Discussion\\_Paper\\_on\\_Prescription\\_DP\\_No\\_16\\_0.pdf](https://www.scotlawcom.gov.uk/files/3514/5614/9429/Discussion_Paper_on_Prescription_DP_No_16_0.pdf)

<sup>4</sup> In relation to a debt, it is usual to refer to a creditor and debtor. For other rights and obligations to which prescription applies, such as in relation to personal injury, it is more often appropriate to refer to a pursuer and defender. To assist the reader, this consultation refers to debtors and creditors (unless the context otherwise requires), which are considered to be most easily understood.

1.5 The changes made by the 2018 Act are designed to increase clarity, legal certainty and fairness as well as promote a more efficient use of resources, such as pursuers being less likely to have to raise court proceedings to preserve a right, and reduce costs for those involved in litigation and insurance. The Act makes these changes by amending the 1973 Act. Most notably, the 2018 Act makes changes in the following areas:

- the scope of the 5 year negative prescription;
- section 11(3) of the 1973 Act and the discoverability test;
- the long-stop prescriptive periods under sections 7 and 8 of the 1973 Act; and,
- contracting out and standstill agreements.<sup>5</sup>

1.6 Very little was said about commencement of the 2018 Act during parliamentary passage, except that sufficient time be given to creditors/debtors to arrange their affairs and that any such provisions should avoid the potential for claims which have already prescribed under the current law from being revived as a result of any provisions in the 2018 Act.<sup>6</sup>

1.7 The purpose of this consultation is to seek the views of interested parties on the Scottish Government's proposed commencement regulations.

### **Responding to this Consultation**

1.8 We are inviting responses to this consultation by **14 October 2020**.

1.9 Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/private-law-unit/prescription-commencement-regulations/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of **14 October 2020**.

1.10 If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Private Law Unit, Civil Law and Legal System  
Scottish Government  
GW.15  
St Andrew's House  
Edinburgh, EH1 3DG

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<sup>5</sup> This list is non-exhaustive.

<sup>6</sup> In its Report the Commission briefly discuss potential arrangements for bringing into effect its recommendations to the law of prescription. See paragraphs 1.30 to 1.35.

## **Handling your response**

1.11 If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

1.12 All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

1.13 If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

1.14 To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

## **Next steps in the process**

1.15 Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

1.16 Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

## **Comments and complaints**

1.17 If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at [michael.paparakis@gov.scot](mailto:michael.paparakis@gov.scot).

## **Scottish Government consultation process**

1.18 Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

1.19 You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

1.20 Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented.

1.21 While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

## 2. Commencement of the 1973 Act

2.1 The law of prescription is set out in the Prescription and Limitation (Scotland) Act 1973. Section 6 of the 1973 Act provides for the extinction of certain types of obligations on the expiry of a period of 5 years, without interruption, from the date on which they became enforceable. It does not apply to all obligations but only to those listed in paragraph 1 of schedule 1 and those not listed in paragraph 2 of that schedule. The period can be interrupted by a relevant claim or acknowledgement being made in relation to the obligation. Section 7 provides for the extinction of obligations after they have subsisted for a continuous period of 20 years from the date on which they became enforceable. Unlike the 5 year prescription, the date on which the 20 year prescription begins to run takes no account of whether the creditor knew the obligation in question existed. It is a “long stop” period which provides a “cut off” point if an obligation has not already been extinguished. Under the current system the long-stop period is capable of interruption. The long-stop period applies to all obligations other than those specifically excluded from it, namely obligations to make reparation in respect of personal injuries, or for damage caused by a defective product, and obligations identified in schedule 3 as being imprescriptible. Section 8 provides for a similar 20 year long-stop period of prescription in relation to the extinction of certain rights relating to property.

2.2 The 1973 Act also provides when a prescriptive period starts to run and when the running of the period is suspended. For example, section 11(3) deals with what is required, in terms of the state of knowledge of the creditor, to start the running of the 5 year prescriptive period where there is latent damage. This is sometimes referred to as the “discoverability test”. Section 6(4) provides that the 5 year prescriptive period will not run during any period for which the creditor is induced by fraud or error on the part of the debtor (caused by the debtor innocently or otherwise) to refrain from making a claim.

2.3 The commencement provision in section 25 provides that the substantive Parts of the 1973 Act should come into operation three years after the Act is passed, giving an effective date of 25 July 1976. Also included is a second provision (in section 14) relating to the computation of prescriptive periods: the effect is that time which occurred before 25 July 1976 can be counted towards the prescriptive period, but the whole prescriptive period cannot pre-date 25 July 1976. That provision was needed because, as the Commission write, “...the 1973 Act reduced the length of some prescriptive periods and introduced a new five-year prescriptive period in place of a variety of earlier prescriptive regimes...”<sup>7</sup>

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<sup>7</sup> See paragraph 1.30 of the Report.

### 3. Commencement of the 2018 Act

3.1 A number of provisions in the 2018 Act can, for the purposes of commencement, usefully be divided into two broad categories: those which might in practice *reduce* the amount of time before an obligation prescribes and those which might in practice *increase* the amount of time.

3.2 Under the first category we have identified two types of provision which might reduce the amount of time before an obligation prescribes. These are:

- i.* provision which makes obligations that were previously subject to the 20 year prescription subject to the 5 year prescription;
- ii.* provision which may in practice reduce the amount of time before an obligation is extinguished under the 20 year prescription, by –
  - a. providing for an earlier starting point for the 20 year prescription for obligations to pay damages,
  - b. making the 20 year prescription no longer amenable to interruption.

3.3 In the second category, we have identified 5 types of provision which might increase the amount of time before an obligation prescribes. These are:

- iii.* provision which introduces a new (later) start date for the 5 year prescription for obligations to pay damages;
- iv.* provision allowing greater periods of time to be discounted from the 5 year prescriptive period by reason of fraud or error;
- v.* provision which expands the definition of relevant claim, potentially creating new interruptions to the 5 year prescription;
- vi.* provision that the 5 year prescriptive period, where interrupted, will restart upon final disposal of the relevant claim, rather than from the point when the claim was made; and
- vii.* provision allowing the 5 and 2 year prescriptive periods to be extended by agreement for up to 1 year.

3.4 Taken together, these seven types of provision give rise to a number of recurring issues that may require a transitional provision when the 2018 Act is commenced.

3.5 The first of these issues we refer to here as “overnight prescription”. At the point when the reforms made by the 2018 Act come into force a creditor might find that their claim is extinguished “overnight” by the commencement of the 2018 Act. This issue can best be illustrated if we consider the provision in the 2018 Act that will make obligations currently subject to the 20 year prescription subject to the shorter 5 year prescription.<sup>8</sup> Consider a shop premises located beneath residential property consisting of flats. In the course of refurbishment to the flats damage is caused to the shop. If the shop owner were to raise an action to require the defenders to reinstate, repair and if necessary rebuild part of the shop then, under the current law,

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<sup>8</sup> See sections 1(2), 2(1), 2(2) and 3(2)(b) of the 2018 Act for instance.

this obligation is subject to the long 20 year prescription. Under changes made by the 2018 Act, however, an obligation of this type would likely be made subject to the shorter 5 year prescriptive period. This shorter period might have already expired by the time the 2018 Act is commenced. Therefore the obligation, which had many years left before it would prescribe under the current law might, could prescribe immediately when the 2018 Act comes into force.

3.6 A second, closely related, issue which may require a transitional provision is referred to here as “retrospective prescription”. This might occur where, at the point when the 2018 Act comes into force, an obligation has not yet prescribed according to the 1973 Act (as it stood prior to amendment), but when the prescriptive period is calculated in accordance with the changes made by the 2018 Act, it is found to have expired on a date which precedes the coming into force of the 2018 Act.

3.7 For example, a planning authority’s obligation to pay statutory compensation is an obligation arising from delict other than the obligation to pay damages. The obligation is currently subject to the 20 year prescription and might not yet have prescribed when the 2018 Act comes into force. On commencement of the 2018 Act the obligation becomes subject to the 5 year prescription.<sup>9</sup> The changes made by the 2018 Act might feasibly provide that the prescriptive period expired before the date when the 2018 Act came into force. This has potential to create uncertainty over when the obligation in fact prescribes.

3.8 The final issue we refer to as “revived obligations”. This might occur where, according to the 1973 Act (as it stood prior to amendment), an obligation has prescribed before the coming into force of the 2018 Act, but amendments made by the 2018 Act provide that the obligation has not yet prescribed. The commencement of the 2018 Act might create uncertainty as to whether obligations which had previously prescribed are revived.

**Question 1: We have identified three potential issues that may benefit from transitional or saving provision when the 2018 Act is commenced. These are ‘overnight prescription’, ‘retrospective prescription’ and ‘revived obligations’. Are there any other issues that you consider may benefit from transitional or saving provisions?**

#### *Existing transitional provision*

3.9 As already mentioned, the rules of prescription as they currently stand are, for the most part, to be found in the 1973 Act. The Interpretation Act 1978 (“the 1978 Act”) governs the way that the 1973 Act is interpreted.<sup>10</sup> Amendments made to the 1973 Act by the 2018 Act will be interpreted in light of the 1978 Act.

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<sup>9</sup> In accordance with paragraph 1(d) of schedule 1 of the 1973 Act, as amended by section 1(2) of the 2018 Act.

<sup>10</sup> Available at <http://www.legislation.gov.uk/ukpga/1978/30/contents>.

3.10 Section 16 of the 1978 Act makes general savings provision that -

(1) Without prejudice to section 15, where an Act repeals an enactment, the repeal does not, unless the contrary intention appears,—

(a) revive anything not in force or existing at the time at which the repeal takes effect;

(b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;”

3.11 Sections 16(1)(a) and (b) have the potential to mitigate many of the potential problems identified in connection with the commencement of the 2018 Act. However, making bespoke savings and transitional provision in the commencement regulations would provide greater certainty as to the effect of the commencement of the 2018 Act than relying on the provision in section 16 of the 1978 Act alone. For instance, the application of section 16 of the 1978 Act would depend on the provision of the 2018 Act in question constituting a repeal of an enactment. This may not be clear in every case.

#### *Proposed transitional and saving provision*

3.12 Commencement of the 2018 Act must give sufficient notice to creditors and debtors before they are affected by the changes made to the law. This is necessary to allow people to adequately arrange their affairs and protect their position in anticipation of the potential for an earlier (or later) date of prescription under the rules as amended by the 2018 Act. For this reason it is proposed to allow a period of 3 years between the commencement regulations being made and the substantive provisions of the 2018 Act coming into force. Regulation 2 of the illustrative Commencement Regulations (Annex A), would have this effect.

3.13 There is a presumption that legislation does not affect proceedings which are ongoing at the time when the legislation comes into force.<sup>11</sup> The Regulations proceed on the basis of that presumption and do not propose provision on this matter. Accordingly, where proceedings are initiated prior to, and remain ongoing at the time of, the coming into force of the 2018 Act, the changes made by the 2018 Act will not affect the underlying right or obligation until the proceedings are concluded or otherwise ended (in relation to that obligation). As a result the 2018 Act will not interfere with proceedings which are ongoing when it comes into force by causing the underlying obligations on which the proceedings are based to prescribe while the proceedings remain ongoing.<sup>12</sup>

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<sup>11</sup> *Wilson and others v. Secretary of State for Trade and Industry*, [2003] UKHL 40, per Lord Roger at para 198.

<sup>12</sup> Whether or not the changes to the law made by the 2018 Act apply to pending proceedings is thought to be of little practical significance. This is because the changes the 2018 Act makes, taken together with the saving and transitional provision proposed, are not thought to cause an obligation to prescribe while proceedings relating to that obligation remain ongoing. Both the 1973 Act as un-amended and as amended by the 2018 Act appear to produce the same effect in this respect.

**Question 2: The 1973 Act allowed those affected by the incoming regime a period of 3 years to arrange their affairs. Do you agree that 3 years is a sufficient length of time to ensure that creditors/debtors have the necessary time to arrange their affairs accordingly? If not, what period of notice would you suggest and what are your reasons for this suggestion?**

3.14 Commencement of the 2018 Act must not create legal uncertainty. It should be beyond doubt that obligations which have been extinguished by the 1973 Act (as it stands before amendment by the 2018 Act) are not revived by the coming into force of the 2018 Act. This applies to obligations which would not yet have prescribed if the prescriptive period were to be (re)calculated according to the 1973 Act as amended the 2018 Act. To achieve this, we propose that the Commencement Regulations should contain a savings provision (Regulation 3 of the illustrative draft). This would provide that the amendments made to the 1973 Act by the 2018 Act have no effect in relation to any right or obligation which has prescribed prior to the coming into force of the 2018 Act.

**Question 3: Do you consider the savings provision proposed is sufficient to ensure that obligations which have prescribed under the 1973 Act as it stands prior to amendment by the 2018 Act will not be revived? Do you consider any further provision is required?**

3.15 Changes to the law of prescription made by the 2018 Act should not result in rights and obligations being extinguished with effect from a point in time before the coming into force of the 2018 Act. To put this beyond doubt we propose to make provision to ensure that a prescriptive period calculated in accordance with the amendments made by the 2018 Act cannot expire before the moment the 2018 Act comes into force. (Regulation 4 of the illustrative draft.)

3.16 It is proposed to achieve this by making provision which extends any prescriptive period calculated in accordance with the amendments made by the 2018 Act to ensure that it expires no earlier than the moment the 2018 Act comes into force.<sup>13</sup> While provision is made to extend a prescriptive period so that it expires on that date, the intention is not to prevent an (extended) prescriptive period from itself being further interrupted or extended in accordance with the 1973 Act as amended by the 2018 Act, for instance where a relevant claim which is capable of interrupting the prescriptive period has been made within the extended prescriptive period.

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<sup>13</sup> Section 14(1)(c) of the 1973 Act provides that prescriptive periods run from the beginning of the day and, being calculated in full days, thus expire at the end of the day. Accordingly the transitional provision proposes to extend the prescriptive period to the end of the day before the day the when 2018 Act comes into force”, which is to say, the moment the 2018 Act comes into force.

3.17 This provision will avoid any potential uncertainty that might otherwise arise where the changes made by the 2018 Act provide for the expiry of a prescriptive period on a date before the 2018 Act comes into force. The effect would be similar to the transitional provision contained in section 14(1)(a) of the 1973 Act, which was made to facilitate the coming into force of that Act.

**Question 4: Do you consider the transitional provision proposed to prevent the amendments made by the 2018 Act from providing for a date of prescription which pre-dates the coming into force of the 2018 Act are sufficient? Do you consider any further provision is required?**

3.18 In line with the analysis outlined above, an illustrative draft of the Commencement Regulations has been prepared for the purposes of this consultation and is included at Annex A. The purpose is to afford anyone with an interest the opportunity to consider and comment on the proposed provision made.

**Question 5: Do you agree that the manner in which the Scottish Government proposes to commence the 2018 Act address the potential issues highlighted in this consultation?**

**Question 6: Are there any effects of the commencement provision proposed that are not anticipated and addressed in this consultation?**

## Annex A Illustrative draft of commencement regulations

\*\*\*These draft Regulations are prepared for the purposes of public consultation.\*\*\*

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### SCOTTISH STATUTORY INSTRUMENTS

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2020 No. (C. )

## PRESCRIPTION

### The Prescription (Scotland) Act 2018 (Commencement, Saving and Transitional Provision) Regulations 2020

*Made* - - - - 2020

*Laid before the Scottish Parliament* 2020

*Coming into force* - - 2020

The Scottish Ministers make the following Regulations, in exercise of the powers conferred by section 17(2) of the Prescription (Scotland) Act 2018<sup>(14)</sup> and all other powers enabling them to do so.

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Prescription (Scotland) Act 2018 (Commencement, Saving and Transitional Provision) Regulations 2020 and come into force on [ ].

(2) In these Regulations—

“prescriptive period” has the meaning given in section 15(1) (Interpretation of Part I) of the 1973 Act, “the 1973 Act” means the Prescription and Limitation (Scotland) Act 1973<sup>(15)</sup>,

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<sup>(14)</sup> 2018 asp 15. Section 17(3) contains further provision about Regulations made under section 17(2).

<sup>(15)</sup> 1973 c.52. That Act is relevantly amended by the Interpretation Act 1978 (c.30), section 25(2); the Local Government, Planning and Land Act 1980 (c.65), section 113(11); the Merchant Shipping (Liner Conferences) Act 1982 (c.37), section 8(3); the Prescription and Limitation (Scotland) Act 1984 (c.45), sections 5(3) and 6(1) and (2), schedule 1, paragraphs 2 to 7 and schedule 2; the Bankruptcy (Scotland) Act 1985 (c.66), section 75(1) and schedule 7, paragraph 11; the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), section 12(5); the Prescription (Scotland) Act 1987 (c.36), section 1(1), (2) and (3); the Consumer Protection Act 1987 (c.43), sections 6, 41(2), 47(1) and (2), 48(3), schedule 1, paragraphs 8 to 11 and schedule 5; the Requirements of Writing (Scotland) Act 1995 (c.7), schedule 5, paragraph 1; the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), section 12(a), schedule 12, paragraph 33 and schedule 13, paragraph 1; the Leasehold Casualties (Scotland) Act 2001 (asp 5), section 4(a); the Title Conditions (Scotland) Act 2003 (asp 9), section 88(a) and (b), schedule 14, paragraph 5 and schedule 5, paragraph 18; the Tenements (Scotland) Act 2004 (asp 11), section 15(a); the Management of Offenders etc. (Scotland) Act 2005 (asp 14), section 20(4); the Arbitration (Scotland) Act 2010 (asp 1), section 23(2)(a), (2)(b) and (c), (3)(b), (5) and (6); the Damages (Scotland) Act 2011 (asp 7), schedule 1 paragraph 2; the Land Registration etc. (Scotland) Act 2012 (asp 5), schedule 5, paragraph 18; the Long Leases (Scotland) Act 2012 (asp 9), section 60; the Bankruptcy (Scotland) Act 2016 (asp 21), schedule 8, paragraph 6;

“the 2018 Act” means the Prescription (Scotland) Act 2018.

**Appointed day**

2. The day appointed for the coming into force of the provisions of the 2018 Act insofar as not already in force is [*3 years from date these Regulations are made*].

**Saving provision**

3. Amendments to the 1973 Act made by the 2018 Act have no effect in relation to any right or obligation which was extinguished before the day appointed in regulation 2.

**Transitional provision**

4. Where amendments to the 1973 Act made by the 2018 Act would, apart from this regulation, have the effect that a prescriptive period expired before the day appointed in regulation 2, the amendments instead have the effect that the prescriptive period is extended so that it expires on the day before the day appointed in regulation 2.

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
2020



**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

Individual  Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

**Information for organisations:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes  No

## **Annex C** List of consultation questions

### **Question 1**

We have identified three potential issues that may benefit from transitional or saving provision when the 2018 Act is commenced. These are 'overnight prescription', 'retrospective prescription' and 'revived obligations'. Are there any other issues that you consider may benefit from transitional or saving provisions?

- Yes
- No

Please explain your answer.

### **Question 2**

The 1973 Act allowed those affected by the incoming regime a period of 3 years to arrange their affairs. Do you agree that 3 years is a sufficient length of time to ensure that creditors/debtors have the necessary time to arrange their affairs accordingly? If not, what period of notice would you suggest and what are your reasons for this suggestion?

- Yes
- No

Please explain your answer.

### **Question 3**

Do you consider the savings provision proposed is sufficient to ensure that obligations which have prescribed under the 1973 Act as it stands prior to amendment by the 2018 Act will not be revived? Do you consider any further provision is required?

- Yes
- No

Please explain your answer.

**Question 4**

Do you consider the transitional provision proposed to prevent the amendments made by the 2018 Act from providing for a date of prescription which pre-dates the coming into force of the 2018 Act are sufficient? Do you consider any further provision is required?

- Yes
- No

Please explain your answer.

**Question 5**

Do you agree that the manner in which the Scottish Government proposes to commence the 2018 Act address the potential issues highlighted in this consultation?

- Yes
- No

Please explain your answer.

**Question 6**

Are there any effects of the commencement provision proposed that are not anticipated and addressed in this consultation?

- Yes
- No

Please explain your answer.



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W W W . G O V . S C O T