

Scottish Government submission of 19 April 2022

PE1860/F– New legislation for Prescription and Limitation Act

The following letter from Eric McQueen, Chief Executive of Scottish Courts and Tribunals Service, to the Minister for Community Safety has been shared with the Committee.

Thank you for your letter of 25 February 2022 in relation to the provision of information on the use of judicial discretion under section 19A of the Prescription and Limitation (Scotland) Act 1973 (the Act) to dis-apply time limits for bringing legal proceedings in certain actions.

It may be of assistance to firstly expand on the previous indication that such information would only be able to be identified from the interlocutors relating to individual cases. The Scottish Courts and Tribunals Service civil case management system is structured for operational rather than statistical purposes. The registration of actions on the system is not aligned with whether section 19A applies to that action. We are therefore unable to differentiate those cases electronically from other types of action.

As you are no doubt aware, Section 19A provides the power of the court to over-ride time limits “where a person would be entitled, but for any of the provisions of [section 17, 18, 18A or 18B] of this Act, to bring an action, the court may, if it seems to it equitable to do so, allow him to bring the action notwithstanding that provision”. In the context of overriding limitation periods of actions, the types of cases that are subject to section 19A are:

- s. 17 Actions in respect of personal injuries not resulting in death.
- s. 18 Actions where death has resulted from personal injuries.
- s. 18A Limitation of defamation and other actions.
- s. 18B Actions of harassment.

However the above must be read along with further sections which make separate provisions for limitation or otherwise, of specific types of action:

- s. 17A Actions in respect of personal injuries resulting from childhood abuse
- s. 17B Childhood abuse actions: previously accrued rights of action
- s. 17C Childhood abuse actions: previously litigated rights of action
- s. 17D Childhood abuse actions: circumstances in which an action may not proceed
- s. 18ZA Actions under section 2 of the Automated and Electric Vehicles Act 2018
- s. 18ZB Section 18ZA: extension of limitation periods
- s. 18ZC Actions under section 5 of the Automated and Electric Vehicles Act 2018

In relation to personal injury actions it would therefore mean that in order to determine whether the court had overridden the limitation period, each interlocutor in each registered personal injury action would need to be considered individually. Actions relating to defamation and harassment are not registered in such a way that the case management system can be interrogated to identify that specific crave. As a result, in order to identify whether section 19A has been applied by the court to those types of actions, this would mean potentially looking at all actions in which such a crave could have been made.

We have also considered if there are alternative sources that might provide the information - such as any locally held statistics – however, this is not something on which we collect data. Accordingly, the only source of this information would be the case interlocutors themselves. Given the volume of cases proceeding through the courts per year - over 8,000 personal injury cases alone - it would be a very substantial undertaking to firstly identify which cases might fall within scope and to then read the interlocutors in each of those cases.

I hope this explanation is helpful and I am sorry that we cannot be of more assistance in this regard.