

Minister for Community Safety submission of 16 June 2022

PE1860/G: New legislation for Prescription and Limitation Act

Section 19A of the Prescription and Limitation (Scotland) Act 1973 allows the courts to override the principal limitation time limits where it is persuaded that it is equitable to do so. Section 19A empowers the court to dis-apply the time limit and this discretion is unfettered: what matters is the circumstances in which the courts have exercised the discretion, not necessarily the number of times it has been exercised. The very nature of the unfettered discretion means that the outcome of each case will depend on the detail and judges have tended to develop a similar approach to considering such applications. This provides an understanding to legal (and other) professionals about what circumstances and factors are likely to move a court to exercise its discretion.

The overwhelming majority of the relevant types of civil cases are likely to be initiated within the 3-year time limit. Under these circumstances, it will only be in a few cases that a court will ever have to consider whether to use its equitable discretion to dis-apply a time limit. There will, in addition, be a number of cases that settle either after an action is initiated in court or before: in these instances, a court will not have to consider exercising its discretion.

The response of the SCTS to the Committee's question sets out the significant difficulties that would need to be overcome in order to collect this information.

At this time, the Scottish Government have no plans to take any further action to collect and evaluate information on the use of judicial discretion under section 19A of the Prescription and Limitation (Scotland) Act 1973. Nevertheless, we will continue to keep this area of law under review.