

Citizen Participation and Public Petitions Committee

12th Meeting, 2022 (Session 6), Wednesday
29 June 2022

PE1860: New legislation for Prescription and Limitation Act

Note by the Clerk

Lodged on 24 March 2021

Petitioner Jennifer Morrison-Holdham

**Petition
summary** Calling on the Scottish Parliament to urge the Scottish Government to
amend the Prescription and Limitation Act to allow retrospective
claims to be made.

Webpage <https://petitions.parliament.scot/petitions/PE1860>

Introduction

1. The Committee last considered this petition at its meeting on [18 May 2022](#). At that meeting, the Committee agreed to write to the Scottish Government.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received a new response from the Minister for Community Safety, which is set out in **Annexe C**.
4. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.

6. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).

Action

The Committee is invited to consider what action it wishes to take.

Clerk to the Committee

Annexe A

PE1860: New legislation for Prescription and Limitation Act

Petitioner

Jennifer Morrison-Holdham

Date lodged

24 March 2021

Petition summary

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

Previous action

I have raised this issue with Shirley-Anne Somerville MSP and the Law Society of Scotland.

Background information

Prescription sets time limits after which legal obligations (and associated rights) will be extinguished. Prescription and limitation are very similar, both containing time limits which courts must consider.

Where rights are thwarted for no fault of any petitioner a safety net in terms of legislation would be humane and serve justice.

In my own experience, lawyers failed to serve a writ in time and such a delay stopped my rights. Many Scots may benefit from the action being proposed in my petition, as I hope to, if new law allows.

Others may also benefit by extension of rules, especially if circumstances out of their control unjustly thwarts their rights.

A good outcome for others in Scotland enduring similar deprivation to mine, is also my hope.

Annexe B

Extract from Official Report of last consideration of PE1860 on 18 May 2022

The Convener: Our next continued petition is PE1860, which was lodged by Jennifer Morrison-Holdham. The petition calls on the Scottish Parliament to urge the Scottish Government to amend the Prescription and Limitation (Scotland) Act 1973 to allow retrospective claims to be made.

Our last consideration of this petition took place on 2 February, when we agreed to write to the Minister for Community Safety. We have received new responses from the Scottish Government, which include a copy of the response that the minister received from the Scottish Courts and Tribunals Service.

From the information provided, it appears that information on the use of judicial discretion under section 19A of the Prescription and Limitation (Scotland) Act 1973 to disapply time limits for bringing legal proceedings in certain actions, is not currently collected in a way that allows for it to be easily analysed or interrogated.

Do members have any comments or suggestions for action?

David Torrance: We should write to the Scottish Government to ask whether it intends 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 to disapply time limits for bringing legal proceedings in certain actions and what action that might be.

The Convener: I am inclined to agree although it is very clear from the evidence base that, although the problem is acknowledged, the resource does not currently exist to do anything about it. It might be sensible to identify in that correspondence whether, if it is not something that can happen immediately, it is something that could happen in due course.

Are members content with that recommendation?

Members indicated agreement.

Annexe C

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.