

ANNEX H: CONSULTATION ON PRESCRIPTION AND TITLE TO MOVEABLE PROPERTY (SCOTLAND) BILL



The Scottish Government
Riaghaltas na h-Alba

RESPONDENT INFORMATION FORM

Please Note this form must be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Faculty of Advocates

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

Advocates Library

Parliament House

Parliament Square

Edinburgh

EH1 1RF

Phone 0131 260 5689

Email

Gaynor.adam@advocates.org.uk

3. Permissions - I am responding as:

Individual / Group/Organisation

Please tick as

(a) Do you agree to your response being made available to the public?

Yes No

(c) The name and address of your organisation will be made available to the public.

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis
Please tick ONE of the following boxes

Are you content for your response to be made available?

Please tick as appropriate
 Yes No

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) 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?
Please tick as appropriate Yes No

Questions

Q1 Should a period of positive prescription for corporeal moveables be introduced? Please give reasons.

Yes No

As identified by the Scottish Law Commission, positive prescription for corporeal moveables would increase certainty of ownership and the marketability of long-lived moveable assets.

Q2 Is a 20 year period suitable for positive prescription for corporeal moveables? Please give reasons.

Yes No

This was the Faculty's recommendation to the SLC Discussion Paper. Such a period would provide a degree of protection to original proprietors; and has a consistency with other provisions within the 1973 Act.

Q3 Are any further provisions on prescription needed in this proposed Bill to reflect that objects might have been looted during the Nazi period or during other periods in history when injustice occurred as a consequence of the rule of law not being applied properly? If so what provisions are needed?

Yes No

The proposed requirements for good faith and the absence of negligence, as do the terms of the existing Holocaust (Return of Cultural Property) Act 2009, go some way to afford protection against concerns identified.

Q4 Should time outwith Scotland be counted toward the total time period needed for positive prescription for corporeal moveable property? Please explain your answer.

Yes No

Inclusion of time outwith Scotland would be consistent with the core concept of possession.

Q5 Should the proposed 3 year transition period be used? Please give reasons for your answer.

Yes No

A five year commencement period would be more appropriate as being in line with the period of short negative prescription.

Q6a Should holders of lent or deposited property acquire ownership after 50

years?

Yes No

The longer period offers protection for original proprietors in such circumstances, whilst at the same time meeting the certainty of ownership and marketability of assets considerations that underscore the Bill.

Q6b Should there be a special rule here for cultural items and, if so, how should “cultural items” be defined?

Yes No

In its response to the SLC Discussion Paper the Faculty suggested a longer prescriptive period for cultural items. It is now considered that the requirements for good faith and the absence of negligence go some way to afford protection from institutional claims; and problems of definition are recognised. The case for no specific measures has been reasonably put.

Q7 Do you believe that the protections – time period, expectation of diligence in tracing owners etc. are sufficient? If not, what would you like to see introduced?

Yes No

Q8 Should the proposals in the draft Bill on how a finder may acquire abandoned property be enacted? Please give reasons for your answer.

Yes No

(i) Such provision provides valuable protection against theft.

(ii) The use of Latin in section 7(3) ought be avoided, or at least an English translation provided, to ease comprehension. See also s. 3(2).

Q9 Do you have any comments on the Impact Assessments?

Yes No

Q10 Do you have any other comments?

(i) Section 4(2)(b): If the prescriptive period is to commence the day after the first partial day of possession, the reference to “next following” day is apt to confuse: one of the two words is unnecessary. In any event, it would be

consistent with other prescription provisions in the 1973 Act to have prescriptive possession commence on the date (though partial) of first possession.

Responses should be sent to arrive by **17:00 on 23 September 2015** to:

PropertyLaw@scotland.gsi.gov.uk or

Catherine Devlin
Civil Law and Legal System Division
Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Please note that no late responses will be accepted.

Scottish Government
July 2015