

Citizen Participation and Public Petitions Committee

9th Meeting, 2022 (Session 6), Wednesday 18
May 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 [2 February 2022](#). At that meeting, the Committee agreed to write to the Minister for Community Safety.
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 new responses from the Minister for Community Safety, and the Scottish Courts and Tribunal Service which are 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 2nd February 2022

The Convener: PE1860, which was lodged by Jennifer Morrison Holdham, 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.

The petition was last considered on 17 November. Members will recall that, in her previous submission, the Minister for Community Safety advised the committee that the Scottish Government does not hold data relating to the exercise of section 19 of the Prescription and Limitation (Scotland) Act 1973 and that the Scottish Courts and Tribunals Service cannot interrogate the information that it holds, as it is held in a court interlocutor. The committee therefore agreed to write to the minister to ask how the Scottish Government intended to address the data gap identified by the petition. I think that we were all quite surprised by that. The minister promised to write once again to the Scottish Courts and Tribunals Service to raise the issue with it.

The minister also notes that section 19A empowers the court to disapply the time limit and that this discretion is unfettered, stating:

“what matters is the circumstances in which the courts have exercised the discretion, not necessarily the number of times it has been exercised.”

I thought that the response that we received from the minister was the one that we might have hoped to receive the first time round. Are there any comments?

David Torrance: Could we write to the Minister for Community Safety to ask for an update on how she got on with the Scottish Courts and Tribunals Service?

The Convener: Indeed. I do not know when we can expect the minister will have written, but we will chase that up until we get an understanding of what has progressed.

Annexe C

Minister for Community Safety submission of 11 March 2022

PE1860/E - New legislation for Prescription and Limitation Act

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

Thank you for your letter of 16 February 2022 requesting an update regarding the above petition. The Scottish Government recently wrote to the Scottish Courts and Tribunals Service and awaits a response. As the discussion progresses, I will provide the Committee with updated information.

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.