

PE1672/A

Scottish Government submission of 25 January 2018

Thank you for your letter of 12 December 2017 to Neil Robertson, Committee Liaison Officer, in the Scottish Government, regarding the petition by Hugh Paterson calling on the Scottish Parliament to urge the Scottish Government to consider remedial action in terms of the law relating to prescription and limitation.

The Committee agreed to seek the views of the Scottish Government on the action called for in the petition and why a decision was made not to change the law of negative prescription to address the concerns raised in the petition, despite them being highlighted to the Scottish Law Commission by the petitioner.

The Committee also agreed to seek the Scottish Government's views on whether the following approach, which was raised during the meeting, might address the concerns raised without the need for a change to the law—

At the time of the registration of a property, the purchaser could receive a letter of notification specifying what information has been submitted to Registers of Scotland which will therefore inform purchasers immediately at the time of purchasing a property whether a title has been adequately registered.

I am replying as Civil Law and Legal System Division has policy responsibility for prescription and limitation.

The Committee is seeking views on the Scottish Government's decision not to change the law of negative prescription to address the concerns raised in the petition. The Scottish Government accepts the Scottish Law Commission's (SLC) recommendation that there should be no reform on this issue in their Report on Prescription. The Scottish Government agrees with the SLC that negative prescription is an essential part of balancing individual interests on one hand and serving the wider public interest on the other. The Scottish Government shares their view that the 20 year long-stop serves the important purpose of creating legal certainty, finality and fairness.

Aiming to strike a fair balance overall means there will sometimes be cases where prescription operates harshly. Nevertheless the prospect of such cases needs to be balanced against the wider public interest of certainty and finality. The Scottish Government's view is that there has to be a clear and certain cut-off point. Removing that certainty would prevent individuals and organisations arranging their affairs effectively and could raise concerns about stale and missing evidence and difficulties of administering justice in very old cases.

The Committee is also seeking views on the approach suggested at the meeting on 7 December of notifying purchasers at the time of registration as set out above. There is relevant legislation in place under the Land Registration etc. Act 2012. Under section 40 of the 2012 Act <http://www.legislation.gov.uk/asp/2012/5/section/40> when an application for registration is accepted (or rejected) the Keeper of the Registers has to notify the applicant (which in most cases will be solicitors acting for

a party involved in a property transaction) so long as it is reasonably practicable to carry out the notification.

The person submitting the application for registration (usually the solicitor) can specify on the application form 2 email addresses to which the notification should be sent. A further 2 email addresses may be provided for notification to the granter of any deed and/or their solicitor. I attach a link to the relevant [application form](#) for your information (the notification box is at the top of page 2).