

Consultation on Prescription and Title to Moveable Property (Scotland) Bill

Scottish Land & Estates represents landowners, land managers and rural businesses across Scotland. Many of our members will exhibit or loan objects or items and we welcome the opportunity to respond to this consultation.

Questions

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

Yes

The existing law is unclear and reform has been long considered and is overdue. Scottish Land & Estates considers that the introduction of such a period would give clarity and certainty as to title and the legal position. It would also provide sellers and purchasers with greater comfort and minimise potential for claims and save costs of litigation. As is recognised in the Scottish Law Commission Discussion Paper many other jurisdictions operate successfully on a similar basis. From a business perspective the added certainty would be welcome and this proposal makes practical sense.

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

Yes

Scottish Land & Estates considers that this achieves reasonable balance between offering the possessor a degree of certainty while at the same time recognising the rights of owners. We assume that it is also compatible with the European Convention on Human Rights, in that, *'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law.'*

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?

No.

Scottish Land & Estates suggests that this Bill would not be the appropriate place to fully consider legal mechanisms to address issues around Nazi-looted art or other injustices. We fully appreciate that the return of Nazi-looted artwork to its rightful owners represents a significant step in recognising fundamental property and political rights and note provisions at UK level around restitution. Broadly speaking, we consider that an international solution would be the most sensible way forward given that the stolen items are in most cases likely to have crossed numerous boundaries, thereby further complicating claim disputes.

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

No

We consider that the Bill ought to be redrafted to exclude time spent outside of Scotland. As the consultation paper recognises it would make it more difficult for the 'owner' to trace the object or item. This would seem to go against the whole ethos of the proposed legislation of striking an equal and fair balance between the different parties involved.

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

Yes.

Scottish Land & Estates concurs that this is a suitable compromise approach. We would strongly oppose the recognition of any twenty year period ending after the legislation commences given the lack of protection thereby afforded to owners who would be in a disadvantageous position.

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

Yes

Scottish Land & Estates considers this to be an appropriate time period. However, while we note that the necessary due diligence requires to take place, we would suggest that 'best efforts' to find the owner, rather than reasonable due diligence should be the key test. The uncertainty which currently exists arguably acts as a disincentive (in terms of museum collections etc.) to cataloguing, preserving and displaying objects or items and generally investing resources in collections. There is also potentially a knock on effect on marketability and value where there is currently long-term persistent uncertainty over ownership and this would be removed by this proposal.

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

No

We agree that it is important to ensure that title to cultural objects cannot be acquired too easily, but at the same time we appreciate that it is difficult to succinctly define 'cultural items'. In one sense it is more difficult to envisage works of art of significant monetary and cultural value not being linked with a lender or successor at some stage? We are also wary of legislation which is intended to clarify the law, itself becoming more complex with numerous rules and distinctions.

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

However we would caveat our response by stating that there should be a requirement for a 'duty of diligence' as opposed to simply an expectation.

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

In order to clarify and streamline the law.

Q9 Do you have any comments on the Impact Assessments?

No

Q10 Do you have any other comments?

The title to the Bill is rather cumbersome, but the aim of simplifying the law in this area is welcome.

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