

## **RESPONSE TO THE ONLINE CONSULTATION ON THE WORKING DRAFT OF THE PRESCRIPTION (SCOTLAND) BILL**

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### **FIFE COUNCIL**

I refer to the above and broadly welcome the proposals to amend the current regime regarding the prescription and limitation of actions. I do however wish to make the following representations on behalf of Fife Council:-

#### **Section 1: Obligations to pay damages and delictual obligations**

As the second largest local authority in Scotland we require to defend a significant number of delictual personal injury claims and consider this proposed amendment would be prejudicial to defence solicitors. Whilst we fully understand the desire to consolidate the law on the different types of obligations and short negative prescription we consider that there are specific reasons why delictual cases were identified as requiring a three year in the first place. The proposal would impact on defence solicitors because of the heavier burden to obtain the necessary evidence to build up a defence in terms of identifying witnesses and all the practicalities associated with this, do they still work for the employer etc. Naturally there will be memory issues and potentially you could have a scenario case does not call for Proof until 8 years after the harmful event takes place.

#### **Section 2: Statutory obligations**

Once again we understand the desire to consolidate the law in relation statutory obligations and in general terms we are supportive of this particularly now that this proposed amendment is restricted just to actions for payment. It is recognised however that in a small amount of cases this proposal will affect the local authority's ability to pursue actions of payment where there are good, genuine reasons why an action has not been raised in cases for example because they are highly complex or there has been some other justified delay. It is of course accepted however that this is reciprocal and litigants would only have five years to raise actions against local authorities although such actions are infrequent. It is also accepted that in the vast majority cases, actions should be raised within five years, local government should be more efficient in gathering all necessary evidence and focus their attention on resolving a dispute one way or another.

We are unclear however as to the reasons why only the Crown's ability to recover taxation is exempt. It would seem fair and reasonable that if an exemption in relation to taxation be made that this should be engaged whatever the source of the taxation i.e. regardless of whether it is a local authority or a crown debt. We do not

understand why some tax liabilities attract a different prescriptive period but perhaps there are compelling reasons for this for which we are unaware.

#### Section 5: Start point of prescriptive periods for obligations to pay damages

We welcome the useful clarification on the starting point for prescription periods in the expectation that there will always be disputes on this point.

#### Section 6: Extinction of obligations by prescriptive periods of 20 years

We understand the rationale for abandoning the concept of interruption of the 20 year prescription however we wish to point out that this is inconsistent with the provisions with short term negative prescription and might lead to considerable confusion.

We support the remaining draft provisions.