Questions

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

Yes ☒ No ☐

There is currently a significant gap in Scots Law of a clear rule of positive prescription for corporeal moveables that creates uncertainty. National Museums Scotland strongly welcomes a legally defined period of positive prescription. This clarity in law would allow Museums and Galleries to acquire, lend and dispose of objects with confidence and to maintain our established practice of due diligence.

In our discussions with peer organisations, we understand that this will be welcomed by the broader cultural heritage sector.

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

Yes ☒ No ☐

A 20 year period may be considered to be a more than reasonable timeframe for owners to assert their rights and to offer appropriate protection and reassurance to owners who have acquired in good faith. A longer term could stagnate business activities and processes and create uncertainty.

Criminals are known to move goods to countries with shorter prescriptive periods, therefore a period of this length acts in the favour of the owner protecting their moveable property.

We note that English Law requires a term of 6 years, which is considered to meet the standard of the European Convention of Human Rights. We consider that there may be business advantages for consistency in this area, across England and
Scotland, although we recognise that within the Scottish jurisdiction it may be felt that a longer term is more appropriate.

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 ☒

We consider that no further provisions are required.


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

Yes ☒ No ☐

We agree that time outwith Scotland should be counted towards the total time required for positive prescription as currently outlined in the draft Bill. This would allow that loans of museum objects to touring exhibitions or international venues would be made in good faith without interruption of the prescribed period.

The English Act of Limitations (1980) does not specify if the 6 year limitation period must involve the corporeal goods remaining in England and Wales, so inclusion of this provision in Scottish law would achieve greater clarity.

Q5 Should the proposed 3 year transition period be used? Please give reasons for your answer.
We agree with the proposed 3 year transition period. This will enable effective communication with stakeholders and a reasonable period of time for ourselves and other institutions to respond to any enquiries that may arise.

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

We strongly agree that there should be a defined period of time after which, and with reasonable diligence being undertaken, the possessor may elect to acquire the property.

The current formal position is that the National Museums may not lend, conserve, or enable access to property which it does not own, or have permission from the owner for.

Through consultation with colleagues in the cultural heritage sector we are conscious that in cases where the original lender is untraceable, after reasonable diligence, or where there is minimal documentation, a term of 50 years is considered too lengthy (as it is described in the Scottish Law Commission Report, 2012), and imposes too onerous a burden on publicly funded and charitable organisations.

For example, National Museums are required to continue to maintain the property during this timeframe, which incurs costs in storage and maintenance without being able to use the property as described above.

We would welcome serious consideration of a shorter term in recognition of the requirement to undertake reasonable diligence, which may be considered to afford an appropriate level of protection for owners.

In terms of ensuring that the Bill is not overly complicated and
relatively easy for the public to understand, there is a strong case to consider adopting the same term as that proposed for ‘standard’ cases, i.e. 20 years.

Furthermore this situation is considered to arise largely in relation to longer term or historic loans. National Museums Scotland strives to contact lenders every three years, in order to maintain contact and ensure that appropriate arrangements for the management of the loan are in place.

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

Yes ☐ No ☒

We do not consider that there should be a special rule for cultural items and agree with the reasons cited for this, as published in the Scottish Law Commission Report, 2012.

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 ☐

The proposed protections are sufficient. The proposed length of time for lent cultural goods may be considered to be too lengthy, for the reasons given above.

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 ☐

We support the proposal that abandoned moveables should become ownerless so that acquisition by the finder is possible.
This will be applicable to museums who receive unsolicited donations.

However, National Museums Scotland would welcome clarity on as to why this requires inclusion as there appears to be provision for this already by the Civic Government (Scotland) Act 1982.

Further explanation would be welcome, especially with regard to the requirement to report such abandoned items to the police or equivalent authority.

Q9 Do you have any comments on the Impact Assessments?

Yes ☒  No ☐

We agree with the impact assessment that maintaining the status quo is not desirable and that the recommendations will provide benefits to both the public and the cultural heritage sector.

Q10 Do you have any other comments?

No.

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

Propertylaw@scotland.gsi.gov.uk  or

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Please note that no late responses will be accepted.

Scottish Government
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