

# ANNEX H: CONSULTATION ON PRESCRIPTION AND TITLE TO MOVEABLE PROPERTY (SCOTLAND) BILL



## RESPONDENT INFORMATION FORM

Please Note this form must be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

Organisation Name

University of Glasgow

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

McCarthy

Forename

Frankie

### 2. Postal Address

School of Law

5-8 The Square

University of Glasgow

Glasgow

Postcode G12 8QQ

T: 0141 330 6927

Email frankie.mccarthy@glasgow.ac.uk

### 3. Permissions - I am responding as:

Individual

/

Group/Organisation



Please tick as



(a) Do you agree to your response being made available to the public?

Yes  No

(c) The name and address of your organisation will be made available to the public.

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis. Please tick ONE of the following boxes

Are you content for your response to be made available?

Please tick as appropriate  
 Yes  No

	Yes, make my response, name and address all available	<input checked="" type="checkbox"/>
		or
	Yes, make my response available, but not my name and address	<input type="checkbox"/>
		or
	Yes, make my response and name available, but not my address	<input type="checkbox"/>


(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?  
 Please tick as appropriate  Yes  No

**Questions**

**General comments**

It should be noted at the outset that the bill represents a significant improvement on the present state of the law. While I believe that the legislation would be improved by giving effect to the suggestions below, this

should not be taken to imply that the measures are in any way controversial. Rather my suggestion is that the approach taken could reasonably be taken further.

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

Yes  No

I agree with the comments made here in the Consultation response by my colleague Dr John MacLeod. Positive prescription for corporeal moveables would make the law clearer and is supported by similar policy concerns to positive prescription for land.

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

Yes  No

I agree that 20 years is an appropriate period for the item to have been possessed by someone other than the owner before prescription will operate. I share the concerns of Dr MacLeod as to the practicality of a 20 year good faith requirement, however, and would support his suggestion of a 5 year good faith rule.

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

20 years of possession in good faith and without negligence is a good length of time and the other protections mentioned are substantial. Some are not affected by who owns the asset.

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

Yes  No

I do not think it would be practical to exclude time spent outwith Scotland given the long prescriptive period.

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

Yes  No

This is an appropriate period of time for awareness to be raised of the forthcoming changes in the law and for owners to take appropriate steps to protect ownership if necessary. A transitional period of this length will also help to ensure the change in the law does not fall foul of Article 1 of the First Protocol to the European Convention on Human Rights.

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

Yes  No

I agree with the comments of Dr MacLeod in response to this question.

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

I do not wish to respond to this question.

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?

I do not wish to respond to this question.

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

The provisions strike an appropriate balance between protecting an owner who has lost rather than abandoned property, and recognising that many items are, in fact, abandoned rather than lost. Given the treasure trove rule, I do not think that the effect of these proposals on the rights of the Crown will be harmful to the public interest.

Q9 Do you have any comments on the Impact Assessments?

Yes  No

Q10 Do you have any other comments?

I understand the exemption of Crown assets from the prescriptive regime is designed to ensure that the Crown's right to treasure trove not undermined. I agree with Dr MacLeod's view that this seems a clumsy way to make that

provision. Express provision for treasure trove would be preferable. There seems no policy basis justifying a different rule for the Crown than for other people in relation to assets other than treasure trove.

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

[PropertyLaw@scotland.gsi.gov.uk](mailto:PropertyLaw@scotland.gsi.gov.uk) or

Catherine Devlin  
Civil Law and Legal System Division  
Scottish Government  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

Please note that no late responses will be accepted.

**Scottish Government**  
**July 2015**