
STATUTORY INSTRUMENTS

1989 No. 1339

The Limitation (Northern Ireland) Order 1989

PART III

**ACTIONS TO RECOVER LAND, ACTIONS IN RESPECT OF
MORTGAGES OR CHARGES AND CERTAIN OTHER ACTIONS**

Actions to recover land

Part III subject to Part IV

20. This Part has effect subject to Part IV.

Time limit: actions to recover present interests in land

21.—(1) Subject to paragraph (2), no action may be brought by any person (other than the Crown) to recover any land after the expiration of twelve years from the date on which the right of action accrued—

- (a) to him, or
- (b) if it first accrued to some person through whom he claims, to that person.

(2) Where—

- (a) the right of action first accrued to the Crown; and
- (b) the person bringing the action claims through the Crown,

the action may be brought at any time before the expiration of—

- (i) the period during which the action could have been brought by the Crown, or
- (ii) twelve years from the date on which the right of action accrued to some person other than the Crown,

whichever period first expires.

(3) Subject to paragraphs (4) and (5), no action may be brought by the Crown to recover any land after the expiration of thirty years from the date on which the right of action accrued—

- (a) to the Crown; or
- (b) if it first accrued to some person through whom the Crown claims, to that person.

(4) Paragraph (3) applies to an action to recover any land which comprises or forms part of an intestate's estate to which the Crown is entitled as if the reference in that paragraph to thirty years were a reference to twelve years. In this paragraph "intestate" includes a person—

- (a) who leaves no will; and
- (b) who leaves a will but dies intestate as to some beneficial interest in his property.

(5) An action to recover foreshore may be brought by the Crown at any time before the expiration of sixty years from the date on which the right of action accrued to the Crown.

(6) Where any right of action to recover land, which has ceased to be foreshore but remains in the ownership of the Crown, accrued when the land was foreshore, the action may be brought at any time before the expiration of—

- (a) sixty years from the date of the accrual of the right of action, or
- (b) thirty years from the date on which the land ceased to be foreshore,

whichever period first expires.

(7) Schedule 1 sets out provisions for determining when certain actions to recover land accrue.

Time limit: actions to recover future interests in land

22.—(1) Subject to paragraphs (2) to (5), where—

- (a) an estate or interest claimed in any land was an estate or interest in reversion or remainder or any future estate or interest; and
- (b) the right of action to recover the land accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest; and
- (c) the person entitled to the preceding estate or interest, not being a leasehold estate or interest, was not in possession of the land on that date,

no action may be brought by the person entitled to the succeeding estate or interest after the expiration of—

- (i) twelve years from the date on which the right of action accrued to the person entitled to the preceding estate or interest, or
- (ii) six years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest,

whichever period last expires.

(2) Where the Crown is entitled to the succeeding estate or interest, paragraph (1) has effect with the substitution—

- (a) for the reference to twelve years, of a reference to thirty years, and
- (b) for the reference to six years, of a reference to twelve years.

(3) Paragraphs (1) and (2) do not apply to any estate or interest which falls into possession on the determination of an entailed interest and which might have been barred by the person entitled to the entailed interest.

(4) No person may bring an action to recover any estate or interest in land under an assurance taking effect after the right of action had accrued—

- (a) to the person by whom the assurance was made; or
- (b) some person through whom that person claimed; or
- (c) some person entitled to a preceding estate or interest,

unless the person by whom the assurance was made could have brought such an action.

(5) Where—

- (a) any person is entitled to any estate or interest in land in possession; and
- (b) that person is, while so entitled, also entitled to any future estate or interest in that land; and
- (c) his right to recover the estate or interest in possession is barred under this Order,

no action may be brought by that person or by any person claiming through him in respect of the future estate or interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.

Cure of defective disentailing assurance

23. Where—

- (a) a person entitled in remainder under a settlement to an estate tail in any land has made an assurance thereof which fails to bar the issue in tail or the estates taking effect on the determination of the estate tail or fails to bar only those estates; and
- (b) any person (other than some person entitled to possession by virtue of the settlement) is in possession of the land for a period of twelve years from the commencement of the time at which the assurance, if it had then been executed by the person entitled to the estate tail, would have operated, without the consent of any other person, to bar the issue in tail and those estates,

then, at the expiration of that period, the assurance operates, and is to be treated always as having operated, to bar the issue in tail and those estates.

Possession of one co-parcener, etc., not to be possession of others

24. Where any one or more of several persons entitled to any land as co-parceners, joint tenants or tenants in common have been in possession of the entirety or more than his or their undivided share or shares of the land—

- (a) for his or their own benefit; or
- (b) for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the land,

then, for the purposes of this Order, that possession is not to be treated as having been the possession of the last-mentioned person or persons or any of them.

Administration relates back to death

25. For the purposes of the provisions of this Order relating to actions for the recovery of land, an administrator of the estate of a deceased person is to be treated as claiming as if there had been no interval of time between the date of the death of the deceased person and the grant of letters of administration.

Extinction of title to land at expiration of time limit

26. Subject to Article 27 and to section 53 of the Land Registration Act (Northern Ireland) 1970⁽¹⁾, at the expiration of the time limit fixed by this Order for any person to bring an action to recover land, the title of that person to the land is extinguished.

Equitable estates in land and land held on trust

27.—(1) Subject to Article 43—

- (a) this Order applies to equitable estates in land, including interests in the proceeds of the sale of land held upon trust for sale, in like manner as it applies to legal estates in land; and
- (b) accordingly, for the purposes of this Order but not otherwise, a right of action to recover the land is to be treated as accruing to a person entitled in possession to an equitable estate in land in the like manner and like circumstances and on the same date as it would accrue if his estate were a legal estate in the land.

(2) Where—

(1) 1970 c. 18 (N.I.)

- (a) any land is held upon trust, including a trust for sale; and
- (b) the time limit fixed by this Order has expired for the bringing of an action to recover the land by the trustees,

then—

- (i) the estate of the trustees is not extinguished, if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Order, but
- (ii) if and when every such right of action has been so barred, the estate of the trustees is extinguished.

(3) Where any land is held upon trust, including a trust for sale, an action to recover the land may be brought by the trustees on behalf of any person entitled to a beneficial interest in possession in the land or in the proceeds of sale whose right of action has not been barred by this Order, notwithstanding that the right of action of the trustees would apart from this provision have been barred by this Order.

Actions to recover settled chattels

Actions to recover settled chattels

28.—(1) Where—

- (a) any chattels are held upon trust, including a trust for sale, and
- (b) the time limit fixed by this Order has expired for the bringing of an action to recover the chattels by the trustees,

then—

- (i) the title of the trustees is not extinguished if and so long as the right of action of any person beneficially entitled to the chattels either has not accrued or has not been barred by this Order, but
- (ii) if and when every such right of action has been so barred, the title of the trustees is extinguished.

(2) Where any chattels are held upon trust, including a trust for sale, an action to recover the chattels may be brought by the trustees on behalf of any person beneficially entitled in possession to the chattels or in the proceeds of sale whose right of action has not been barred by this Order, notwithstanding that the right of action of the trustees would apart from this provision have been barred by this Order.

(3) Where any chattels held upon trust, including a trust for sale, are in the possession of a person entitled to a beneficial interest in the chattels or in the proceeds of sale, not being a person solely and absolutely entitled thereto, for the purposes of this Order no right of action to recover the chattels is to be treated as accruing during that possession—

- (a) to any person in whom the chattels are vested as trustee; or
- (b) to any other person entitled to a beneficial interest in the chattels or the proceeds of sale.

Actions to recover arrears of rentcharges, conventional rents and annuities charged on personal property

Time limit: rentcharges

29. No action may be brought or distress made to recover arrears of a rentcharge or damages in respect thereof after the expiration of six years from the date on which the arrears became due.

Time limit: conventional rent

30. No action may be brought or distress made to recover arrears of a conventional rent or damages in respect thereof after the expiration of six years from the date on which the arrears became due.

Time limit: annuity charged on personal property

31. No action may be brought to recover arrears of an annuity charged on personal property or damages in respect thereof after the expiration of six years from the date on which the arrears became due.

Actions in respect of mortgages and charges

Time limit: incumbrancers claiming sale of land

32.—(1) Subject to paragraph (2), no action may be brought by any person (other than the Crown) claiming the sale of land which is subject to a mortgage or charge after the expiration of twelve years from the date on which the right of action accrued—

- (a) to the person bringing it; or
- (b) if it first accrued to some person through whom he claims, to that person.

(2) Where—

- (a) the right of action first accrued to the Crown; and
- (b) the person bringing the action claims through the Crown,

the action may be brought at any time before the expiration of—

- (i) the period during which the action could have been brought by the Crown; or
- (ii) twelve years from the date on which the right of action accrued to some person other than the Crown,

whichever period first expires.

(3) No action may be brought by the Crown claiming the sale of land which is subject to a mortgage or charge after the expiration of thirty years from the date on which the right of action accrued—

- (a) to the Crown, or
- (b) if it first accrued to some person through whom the Crown claims, to that person.

Extinction of title of mortgagee to mortgaged land at expiration of time limit

33. At the expiration of the time limit fixed by this Order for a mortgagee to bring an action claiming sale of the mortgaged land, the title of the mortgagee to the land is extinguished.

Time limit: redemption of land

34.—(1) Where a mortgagee of land has been in possession of any of the mortgaged land for twelve years, no action to redeem the land of which the mortgagee has been so in possession may thereafter be brought by the mortgagor or any person claiming through him.

(2) Paragraph (1) does not apply to a Welsh mortgage.

(3) Where a mortgagee of land under a Welsh mortgage which provides that the rents and profits are to be applied in reduction of the principal moneys and interest has been in possession of the land for twelve years commencing on the date on which all the principal moneys and interest have to the knowledge of the mortgagor been satisfied, no action to redeem the land may thereafter be brought by the mortgagor or any person claiming through him.

Extinction of mortgagor's title at expiration of time limit

35. Subject to section 53 of the Land Registration Act (Northern Ireland) 1970⁽²⁾, at the expiration of the time limit fixed by this Order for a mortgagor to bring an action to redeem land subject to a mortgage, the title of the mortgagor to the land is extinguished.

Time limit: principal money secured by a charge on land or personal property

36.—(1) No action may be brought to recover any principal sum of money secured by a mortgage or charge on land or personal property after the expiration of twelve years from the date when the right to receive the money accrued.

(2) In its application to a mortgage which was apportioned to the Government of Northern Ireland by section 31 of the Government of Ireland Act 1920⁽³⁾ (Church Temporalities Fund), in paragraph (1) for “twelve years” substitute “thirty years”.

(3) For the purposes of this Article, the right to receive any principal sum of money secured by a mortgage or other charge does not accrue so long as the property subject to the mortgage or charge comprises any future interest or any life insurance policy which has not matured or been determined.

Time limit: interest on mortgage etc.

37.—(1) No action may be brought to recover arrears of interest payable in respect of any principal sum of money secured by a mortgage or charge on land or personal property to recover damages in respect of such arrears after the expiration of six years from the date on which the interest became due.

(2) Where—

- (a) a prior mortgagee or other incumbrancer has been in possession of the property charged; and
- (b) an action is brought within one year of a discontinuance of such possession by a subsequent incumbrancer,

he may recover by that action all the arrears of interest which fell due during the period of possession by the prior incumbrancer or damages in respect thereof, notwithstanding that the period exceeded six years.

(3) Where—

- (a) the property subject to a mortgage or charge comprises any future interest or life insurance policy; and

(2) 1970 c. 18 (N.I.)

(3) 1920 c. 67

(b) it is a term of the mortgage or charge that arrears of interest is to be treated as part of the principal sum secured by the mortgage or charge, interest is not to be treated as becoming due before the right to receive the principal sum of money has accrued or is treated as having accrued.

Extinction of right of mortgagee etc. to debt at expiration of time limit for action to recover land etc.

38. At the expiration of the time limit fixed by this Order for—

- (a) a mortgagee of land to bring an action to recover the land; or
- (b) a person claiming as mortgagee or chargeant to bring an action claiming sale of the land,

the right of the mortgagee or such person to the principal sum and interest secured by the mortgage or charge is extinguished.

Extinction of right of mortgagee etc. to debt secured by mortgage or charge on personal property at expiration of time limit

39. At the expiration of the time limit fixed by this Order for a mortgagee or chargeant to bring an action to recover a principal sum of money secured by a mortgage or charge on personal property, the right of the mortgagee or chargeant to the principal sum and interest is extinguished.

Time limit: certain personal rights in or over land

40. An action in respect of a right in the nature of a lien for money's worth in or over land for a limited period not exceeding life, such as a right of support or a right of residence, not being an exclusive right of residence in or on a specified part of the land, may not be brought after the expiration of twelve years from the date on which the right of action accrued.

Extinction of personal right in or over land at expiration of time limit

41. At the expiration of the time limit fixed by this Order for any person to bring an action in respect of a right in the nature of a lien for money's worth in or over land for a limited period not exceeding life, such as a right of support or a right of residence, not being an exclusive right of residence in or on a specified part of the land, the right is extinguished.

Actions in respect of trust property

Time limit: trustees etc.

42.—(1) Subject to Article 43, an action to recover money or other property or in respect of any breach of trust, not being an action for which a time limit is fixed by any other provision of this Order, may not be brought against a trustee or any person claiming through him after the expiration of six years from the date on which the right of action accrued.

(2) For the purposes of paragraph (1), a right of action is not to be treated as accruing to a beneficiary entitled to a future interest in trust property until the interest falls into possession.

(3) No beneficiary, as against whom there would be a good defence by virtue of this Article, may derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought the action and this Order had been pleaded in defence.

Exclusion of actions against trustees in cases of fraud or retention of trust property

43.—(1) No time limit fixed by this Order applies to an action against a trustee, or any person claiming through him, where—

- (a) the claim is founded on any fraud or fraudulent breach of trust to which the trustee was party or privy; or
- (b) the claim is to recover trust property or the proceeds thereof still retained by the trustee or previously received by the trustee and converted to his own use.

(2) Where a trustee who is also a beneficiary under the trust receives or retains trust property or its proceeds as his share on a distribution of trust property under the trust, his liability in any action brought by virtue of paragraph (1)(b) to recover that property or its proceeds after the expiration of the time limit fixed by this Order for bringing an action to recover trust property is limited to the excess over his proper share.

(3) Paragraph (2) only applies if the trustee acted honestly and reasonably in making the distribution.

Actions in respect of the estates of deceased persons

Time limit: personal estate of deceased persons

44.—(1) Subject to Article 45, no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, may be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued.

(2) Subject to Article 45, no action to recover arrears of interest in respect of any legacy or damages in respect of such arrears may be brought after the expiration of six years from the date on which the interest became due.

Actions against personal representatives

45.—(1) In an action against a personal representative or any person claiming through him, other than an action to which paragraph (2) applies, the rights and privileges conferred by this Order may be enjoyed in the like manner and to the like extent as they would have been enjoyed in the action if the personal representative had not been made a trustee by virtue of any provision of the Administration of Estates Act (Northern Ireland) 1955(4).

(2) No time limit fixed by this Order applies to an action against—

- (a) a personal representative; or
- (b) any person claiming through him,

where the claim is founded on any fraud to which the personal representative was party or privy.