
STATUTORY INSTRUMENTS

1989 No. 1339

The Limitation (Northern Ireland) Order 1989

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Limitation (Northern Ireland) Order 1989.

(2) This Order comes into operation on the expiration of two months from the date on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(1) applies to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“action” includes any proceeding (other than a criminal proceeding) in a court established by law;

“action to recover land” includes—

- (a) an action claiming a declaration of title to land;
- (b) proceedings by a mortgagee for the delivery of possession of land by a mortgagor;
- (c) proceedings, under paragraph 5 of Schedule 7 to the Land Registration Act (Northern Ireland) 1970(2), by a person who is the registered owner of a charge on registered land for possession of the land;

“arbitration agreement” has the same meaning as in the Arbitration Act (Northern Ireland) 1937(3);

“conventional rent” means a rent payable under a lease or other contract of tenancy (whether in writing or not and whether express or implied) and includes the rent payable by a tenant within the meaning of the Rent (Northern Ireland) Order 1978(4), but does not include a fee farm rent payable under a grant which creates the relationship of landlord and tenant;

“foreshore” means the bed and shore, below the line of high water of ordinary or medium tides, of the sea and of every tidal river and tidal estuary and of every channel, creek and bay of the sea or any such river or estuary;

“land” includes corporeal hereditaments and rentcharges, and an interest in the proceeds of the sale of land held upon trust for sale, but save as aforesaid does not include any incorporeal hereditament;

(1) 1954 c. 33 (N.I.)

(2) 1970 c. 8 (N.I.)

(3) 1937 c. 8 (N.I.)

(4) 1978 NI 20

“mortgage” includes an equitable mortgage;

“other limitation provision” means any statutory provision (other than this Order) in force after the commencement of this Order with respect to the limitation of actions (including paragraphs (3) to (5) of Article 2 and Articles 3 and 4 of the Foreign Limitation Periods (Northern Ireland) Order 1985⁽⁵⁾);

“personal estate” does not include chattels real;

“personal injuries” includes any disease and any impairment of a person’s physical or mental condition, and “injury” and cognate expressions are to be construed accordingly;

“personal property” does not include chattels real;

“personal representative” means the executor, original or by representation, or the administrator of a deceased person;

“rentcharge” means any annuity or periodic sum of money charged upon or payable out of land, and includes—

- (a) any annual or periodic sum payable to the Department of Agriculture—
 - (i) under the Land Purchase Acts;
 - (ii) in respect of any annuity in repayment of an instalment mortgage payable into a fund which was apportioned to the Government of Northern Ireland by section 31 of the Government of Ireland Act 1920⁽⁶⁾ (which relates to the Church Temporalities Fund); and
- (b) any periodic sum payable to the Crown Estate Commissioners under the Crown Estate Act 1961⁽⁷⁾, being—
 - (i) a Crown rent; or
 - (ii) a quit rent; or
 - (iii) a composition rent; or
 - (iv) any other rentcharge; and
- (c) a fee farm rent, whether the grant under which it arises does or does not create the relationship of landlord and tenant;

but does not include—

- (d) a conventional rent; or
- (e) interest on a mortgage or charge on land;

“Statute of Limitations” means the Statute of Limitations (Northern Ireland) 1958⁽⁸⁾;

“statutory provision” has the same meaning as in section 1(f) of the Interpretation Act (Northern Ireland) 1954⁽⁹⁾;

(3) In this Order “trustee” does not include—

- (a) a person whose fiduciary relationship arises merely by construction or implication of law and whose fiduciary relationship is not treated by any rule of law as that of an express trustee; or
- (b) a personal representative in the capacity of personal representative.

(4) Where—

(5) 1985 NI 5
(6) 1920 c. 67
(7) 1961 c. 55
(8) 1958 c. 10 (N.I.)
(9) 1954 c. 33 (N.I.)

- (a) an interest (in this paragraph referred to as a “new interest”) in land, which is conveyed to or vested in a purchaser under the Land Purchase Acts is, under any provision of those Acts or otherwise, a graft or treated as a graft on any previous interest in that land or any other land; and
 - (b) the new interest is subject to any rights or equities arising from its being such a graft,
- neither the purchaser nor any person claiming through him is, by reason only of the matters mentioned in sub-paragraphs (a) and (b), a trustee for the purposes of this Order in respect of the new interest.

(5) Where the title of any person to any registered land is deemed, by virtue of paragraph 2 of Part I of Schedule 13 to the Land Registration Act (Northern Ireland) 1970⁽¹⁰⁾, to be a possessory title, then, neither that person nor any person claiming through him is, by reason only of the registration, a trustee for the purposes of this Order in respect of that land.

(6) In the application of this Order to registered land in respect of which a charge for the payment of a principal sum has been created under section 41 of the Land Registration Act (Northern Ireland) 1970—

- (a) references to a mortgagor are to be construed as references to the registered owner who charged the land;
- (b) references to a mortgagee are to be construed as references to the registered owner of the charge;
- (c) references to a mortgage are to be construed as references to the instrument of charge.

(7) For the purposes of this Order—

- (a) a person is to be treated as claiming through another person, if he became entitled by, through, under or by the act of that other person to the right claimed;
- (b) a person whose estate or interest might have been barred by a person entitled to an entailed interest in possession is to be treated as claiming through the person so entitled;
- (c) a person becoming entitled to any estate or interest by virtue of a special power of appointment is not, for the purposes of this Order, to be treated as claiming through the appointor.

(8) In this Order—

- (a) references to a right of action to recover land include references to a right to enter into possession of the land or, as respects a rentcharge, to a right of the Crown to distrain for arrears of the rentcharge;
- (b) references to the bringing of an action to recover land include references to the making of an entry into possession of the land or, as respects a rentcharge, to the making by the Crown of a distress for arrears of the rentcharge.

(9) In this Order—

- (a) references to the possession of land are, in relation to a rentcharge, to be construed as references to the receipt of the rentcharge; and
- (b) references to the date of dispossession or discontinuance of possession of land are, in relation to a rentcharge, to be construed as references to the date of the last receipt of the rentcharge.

(10) For the purposes of section 42 of the Northern Ireland Constitution Act 1973⁽¹¹⁾ (validity of Acts of Northern Ireland Parliament), provisions of this Order which re-enact provisions of an Act of the Parliament of Northern Ireland are to be treated as provisions of such an Act.

⁽¹⁰⁾ 1970 c. 18 (N.I.)

⁽¹¹⁾ 1973 c. 36

PART II

ACTIONS OF CONTRACT AND TORT AND CERTAIN OTHER ACTIONS

Part II subject to Part IV

3. This Part has effect subject to Part IV.

Time limit: actions founded on contract, etc.

4. Subject to Articles 5, 7 and 9, the following actions may not be brought after the expiration of six years from the date on which the cause of action accrued—

- (a) an action founded on simple contract;
- (b) an action founded on quasi-contract;
- (c) an action to enforce an award where the arbitration agreement is not under seal;
- (d) an action to recover any sum recoverable by virtue of any statutory provision, other than—
 - (ii) a debt created by Article 25(2) or 474 of the Companies (Northern Ireland) Order 1986⁽¹²⁾; or
 - (iii) an amount recoverable under section 1 of the Civil Liability (Contribution) Act 1978⁽¹³⁾.

Time limit: actions on certain loans

5.—(1) Subject to paragraph (3), Article 4(a) does not bar the right of action on a contract of loan to which this Article applies.

- (2) This Article applies to any contract of loan which—
 - (a) does not provide for repayment of the debt on or before a fixed or determinable date; and
 - (b) does not effectively (whether or not it purports to do so) make the obligation to repay the debt conditional on a demand for repayment made by or on behalf of the creditor or on any other matter,

except where in connection with taking the loan the debtor enters into any collateral obligation to pay the amount of the debt or any part of it (as, for example, by delivering a promissory note as security for the debt) on terms which would exclude the application of this Article to the contract of loan if they applied directly to repayment of the debt.

(3) Where a demand in writing for repayment of the debt under a contract of loan to which this Article applies is made by or on behalf of the creditor (or, where there are joint creditors, by or on behalf of any one of them) Article 4(a) thereupon applies as if the cause of action to recover the debt had accrued on the date on which the demand was made.

(4) In this Article “promissory note” has the same meaning as in the Bills of Exchange Act 1882⁽¹⁴⁾.

Time limit: certain actions founded on tort

6.—(1) Subject to paragraph (2) and to Articles 7 and 9 and 11 to 13, an action founded on tort may not be brought after the expiration of six years from the date on which the cause of action accrued.

⁽¹²⁾ 1986 NI 6

⁽¹³⁾ 1978 c. 47

⁽¹⁴⁾ 1882 c. 61

(2) Subject to Article 51, an action for damages for libel or slander may not be brought after the expiration of three years from the date on which the cause of action accrued.

Time limit: actions for personal injuries

7.—(1) This Article applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(2) Articles 4 and 6 do not apply to an action to which this Article applies.

(3) Subject to Article 50, an action to which this Article applies may not be brought after the expiration of the period specified in paragraphs (4) and (5).

(4) Except where paragraph (5) applies, that period is three years from—

- (a) the date on which the cause of action accrued, or
- (b) the date of knowledge (if later) of the person injured.

(5) If the person injured dies before the expiration of the period in paragraph (4), the period as respects the cause of action surviving for the benefit of the estate of the deceased by virtue of section 14 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937(15) is three years from—

- (a) the date of death; or
- (b) the date of the personal representative's knowledge,

whichever is the later.

(6) Subject to paragraph (7), in this Article and in Article 9, references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts—

- (a) that the injury in question was significant; and
- (b) that that injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; and
- (c) the identity of the defendant; and
- (d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant,

and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

(7) In Article 8 and in Article 9 so far as that Article applies to an action by virtue of Article 9(1) of the Consumer Protection (Northern Ireland) Order 1987(16) (death caused by defective product) references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts—

- (a) such facts about the damage caused by the defect as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment; and
- (b) that the damage was wholly or partly attributable to the facts and circumstances alleged to constitute the defect; and

(15) 1937 c. 9 (N.I.)

(16) 1987 NI 20

(c) the identity of the defendant;

but, in determining the date on which a person first had such knowledge there is to be disregarded both the extent (if any) of that person's knowledge on any date of whether particular facts or circumstances would or would not, as a matter of law, constitute a defect and, in a case relating to loss of or damage to property, any knowledge which that person had on a date on which he had no right of action by virtue of Part II of that Order in respect of the loss or damage.

(8) For the purposes of paragraph (6) an injury is significant if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(9) For the purposes of paragraph (6) a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

- (a) from facts observable or ascertainable by him; or
- (b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek,

but a person is not to be fixed under this paragraph with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

(10) For the purposes of this Article and Article 8—

- (a) "personal representative" includes any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate); and
- (b) regard is to be had to any knowledge acquired by any such person while a personal representative or previously.

(11) If there is more than one personal representative and their dates of knowledge are different, paragraph (5)(b) is to be read as referring to the earliest of those dates.

Time limit: actions in respect of defective products

8.—(1) This Article applies to an action for damages by virtue of any provision of Part II of the Consumer Protection (Northern Ireland) Order 1987(17).

(2) The time limits fixed by Articles 4 to 7 do not apply to an action to which this Article applies.

(3) An action to which this Article applies may not be brought after the expiration of ten years from the relevant time, within the meaning of Article 7 of that Order of 1987; and this paragraph operates to extinguish a right of action and does so whether or not that right of action had accrued, or time under the following provisions of this Order had begun to run, at the end of that period of ten years.

(4) Subject to paragraph (5), an action to which this Article applies in which the damages claimed by the plaintiff consist of or include damages in respect of personal injuries to the plaintiff or any other person or loss of or damage to any property, may not be brought after the expiration of three years from whichever is the later of—

- (a) the date on which the cause of action accrued; and
- (b) the date of knowledge of the injured person or, in the case of loss of or damage to property, the date of knowledge of the plaintiff or (if earlier) of any person in whom his cause of action was previously vested.

(5) If, in a case where the damages claimed by the plaintiff consist of or include damages in respect of personal injuries to the plaintiff or any other person, the injured person died before the expiration of the period mentioned in paragraph (4), that paragraph has effect as respects the cause of action surviving for the benefit of his estate by virtue of section 14 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937⁽¹⁸⁾ as if for the reference to that period there were substituted a reference to three years from—

- (a) the date of death; or
- (b) the date of the personal representative's knowledge,

whichever is the later.

(6) If there is more than one personal representative and their dates of knowledge are different, paragraph (5)(b) is to be read as referring to the earliest of those dates.

(7) Expressions used in this Article or Article 7(6) to (10) and in Part II of the Consumer Protection (Northern Ireland) Order 1987⁽¹⁹⁾ have the same meanings in this Article or that Article as in that Part; and Article 4(1) of that Order (Part II to be construed as enacted for the purpose of complying with the product liability Directive) applies for the purpose of construing this Article and the following provisions of this Order so far as they relate to an action by virtue of any provision of that Part as it applies for the purpose of construing that Part.

Time limit: actions under Fatal Accidents (NI) Order 1977

9.—(1) This Article has effect subject to Article 50.

(2) An action under the Fatal Accidents (Northern Ireland) Order 1977⁽²⁰⁾ may not be brought if the death occurred when the person injured could no longer maintain an action and recover damages in respect of the injury (whether because of a time limit in this Order or in any other statutory provision, or any other reason).

Where any such action by the injured person would have been barred by the time limit in Article 7 or 8, no account is to be taken of the possibility of that time limit being overridden under Article 50.

(3) An action under the Fatal Accidents (Northern Ireland) Order 1977 may not be brought after the expiration of three years from—

- (a) the date of death; or
- (b) the date of knowledge of the person for whose benefit the action is brought,

whichever is the later.

(4) Paragraph (3) does not apply to an action for which a time limit is fixed by any other limitation provision, and Articles 4 to 7 do not apply to an action under the Fatal Accidents (Northern Ireland) Order 1977.

(5) An action under the Fatal Accidents (Northern Ireland) Order 1977 is one to which Articles 48 (extension of time limit: disability) and 73 (new claims in pending actions) apply, but otherwise Parts IV and V do not apply to the action.

Dependants subject to different time limits

10.—(1) This Article applies where there is more than one person for whose benefit an action under the Fatal Accidents (Northern Ireland) Order 1977 is brought.

⁽¹⁸⁾ 1937 c. 9 (N.I.)

⁽¹⁹⁾ 1987 NI 20

⁽²⁰⁾ 1977 NI 18

(2) Article 9(3)(b) is to be applied separately to each of them, and if that would debar one or more of them, but not all, the court must direct that any person who would be so debarred is to be excluded from those for whom the action is brought unless it is shown that if the action were brought exclusively for the benefit of that person it would not be defeated by a defence of limitation (whether in consequence of Article 48 (extension of time limit: disability), or an agreement between the parties not to raise the defence, or otherwise).

Special time limit for negligence actions where facts relevant to cause of action are not known at date of accrual

11.—(1) This Article applies to any action for damages for negligence, other than one to which Article 7 applies, where the starting date for reckoning the time limit under paragraph (3)(b) falls after the date on which the cause of action accrued.

(2) An action to which this Article applies may not be brought after the expiration of the period applicable in accordance with paragraph (3).

(3) That period is either—

- (a) six years from the date on which the cause of action accrued; or
- (b) three years from the starting date as defined by paragraph (4), if that period expires later than the period mentioned in sub-paragraph (a).

(4) For the purposes of this Article, the starting date for reckoning the time limit under paragraph (3)(b) is the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action.

(5) In paragraph (4) “the knowledge required for bringing an action for damages in respect of the relevant damage” means knowledge both—

- (a) of the material facts about the damage in respect of which damages are claimed; and
- (b) of the other facts relevant to the current action mentioned in paragraph (7).

(6) For the purposes of paragraph (5)(a), the material facts about the damage are such facts about the damage as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(7) The other facts referred to in paragraph (5)(b) are—

- (a) that the damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence; and
- (b) the identity of the defendant; and
- (c) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant.

(8) Knowledge that any acts or omissions did or did not, as a matter of law, involve negligence is irrelevant for the purposes of paragraph (5).

(9) For the purposes of this Article a person’s knowledge includes knowledge which he might reasonably have been expected to acquire—

- (a) from facts observable or ascertainable by him; or
- (b) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek;

but a person is not to be fixed under this paragraph with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

Overriding time limit for negligence actions not involving personal injuries

12.—(1) An action for damages for negligence, other than one to which Article 7 applies, may not be brought after the expiration of fifteen years from the date (or, if more than one, from the last of the dates) on which there occurred any act or omission—

- (a) which is alleged to constitute negligence; and
- (b) to which the damage in respect of which damages are claimed is alleged to be attributable (in whole or in part).

(2) This Article bars the right of action in a case to which paragraph (1) applies notwithstanding that—

- (a) the cause of action has not yet accrued; or
- (b) where Article 11 applies to the action, the date which is for the purposes of that Article the starting date for reckoning the period mentioned in paragraph (3)(b) of that Article has not yet occurred,

before the end of the time limit fixed by this Article.

Time limit for recovering contribution

13.—(1) Where under section 1 of the Civil Liability (Contribution) Act 1978(21) any person becomes entitled to a right to recover contribution in respect of any damage from any other person, no action to recover contribution by virtue of that right may be brought after the end of the period of two years from the date on which that right accrued.

(2) For the purposes of this Order the date on which a right to recover contribution in respect of any damage accrues to any person (in this paragraph referred to as “the relevant date”) is to be ascertained as follows, that is to say—

- (a) if the person in question is held liable in respect of that damage by a judgment given in any civil proceedings, or an award made on any arbitration, the relevant date is the date on which the judgment is given, or the date of the award, as the case may be;
- (b) if, in any case not falling within sub-paragraph (a), the person in question makes or agrees to make any payment to one or more persons in compensation for that damage (whether he admits any liability in respect of the damage or not), the relevant date is the earliest date on which the amount to be paid by him is agreed between him (or his representative) and the person (or each of the persons, as the case may be) to whom the payment is to be made;

and for the purposes of this paragraph no account is to be taken of any judgment or award given or made on appeal in so far as it varies the amount of damages awarded against the person in question.

Time limit: actions for an account

14. An action for an account may not be brought after the expiration of any time limit under this Order which is applicable to the claim which is the basis of the duty to account.

Time limit: actions founded on instruments under seal etc.

15. The following actions may not be brought after the expiration of twelve years from the date on which the cause of action accrued—

- (a) an action upon an instrument under seal other than an action upon an instrument under seal to recover—
 - (i) arrears of a rentcharge or of a conventional rent; or
 - (ii) any principal sum of money secured by a mortgage or other charge; or
 - (iii) arrears of interest in respect of any sum of money secured by a mortgage or other charge; or
 - (iv) arrears of an annuity charged on personal property;
- (b) an action to enforce an award where the arbitration agreement is under seal;
- (c) an action to recover a debt created by Article 25(2) or 474 of the Companies (Northern Ireland) Order 1986(22).

Time limit: actions upon judgments and for arrears of interest on judgment debts

16.—(1) An action may not be brought upon a judgment after the expiration of six years from the date on which the judgment became enforceable.

(2) No arrears of interest in respect of any judgment debt may be recovered after the expiration of six years from the date on which the interest became due.

Time limit: successive conversions and extinction of title of owner of converted goods

17.—(1) Where—

- (a) any cause of action in respect of the conversion of a chattel has accrued to any person, and
- (b) before he recovers possession of the chattel, a further conversion takes place,

subject to Article 28, no action may be brought in respect of the further conversion after the expiration of six years from the accrual of the cause of action in respect of the original conversion.

(2) Where—

- (a) any such cause of action has accrued to any person and the period fixed for bringing that action has expired; and
- (b) that person has not during that period recovered possession of the chattel,

the title of that person to the chattel is, subject to Article 28, extinguished.

Time limit: theft

18.—(1) The right of any person from whom a chattel is stolen to bring an action in respect of the theft—

- (a) is not subject to the time limits under Articles 6(1) and 17(1), but
- (b) if his title to the chattel is extinguished under Article 17(2), he may not bring an action in respect of a theft preceding the loss of his title, unless the theft in question preceded the conversion from which time began to run for the purposes of Article 17(2).

(2) Paragraph (1) applies to any conversion related to the theft of a chattel as it applies to the theft of a chattel; and, except as provided below, every conversion following the theft of a chattel before the person from whom it is stolen recovers possession of it is to be treated for the purposes

of this Article as related to the theft. If anyone purchases the stolen chattel in good faith neither the purchase nor any conversion following it is to be treated as related to the theft.

(3) Any cause of action accruing in respect of the theft or any conversion related to the theft of a chattel to any person from whom the chattel is stolen is to be disregarded for the purpose of applying Article 17(1) or (2) to his case.

(4) Where, in any action brought in respect of the conversion of a chattel, it is proved that the chattel was stolen from the plaintiff or anyone through whom he claims, it is to be presumed that any conversion following the theft is related to the theft unless the contrary is shown.

(5) In this Article “theft” includes—

- (a) any conduct outside Northern Ireland which would be theft if committed in Northern Ireland; and
- (b) obtaining any chattel (in Northern Ireland or elsewhere) in the circumstances described in section 15(1) of the Theft Act (Northern Ireland) 1969⁽²³⁾ (obtaining by deception) or by blackmail within the meaning of section 20 of that Act;

and references in this Article to a chattel being “stolen” are to be construed accordingly.

Savings (Part II)

19.—(1) This Part does not apply to any claim—

- (a) for specific performance of a contract; or
- (b) for an injunction or for other equitable relief,

except in so far as any provision of this Part may be applied by the court by analogy in like manner as the corresponding enactment repealed by the Statute of Limitations was applied before the commencement of that Act.

(2) Paragraph (1) does not affect the operation of Article 14.

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—

(23) 1969 c. 16 (N.I.)

(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⁽²⁴⁾, 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—

- (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—

(24) 1970 c. 18 (N.I.)

- (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⁽²⁵⁾, 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⁽²⁶⁾ (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.

⁽²⁵⁾ 1970 c. 18 (N.I.)

⁽²⁶⁾ 1920 c. 67

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
- (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(27).

(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.

PART IV

EXTENSION AND EXCLUSION OF TIME LIMITS

Interpretation

Interpretation (Part IV)

46. In this Part—

(a) “debt” includes any liquidated pecuniary claim;

“statute-barred debt” means a debt in respect of which the time limit fixed by this Order for the bringing of an action to recover it has expired; “successor” means—

(i) as respects a mortgagee, his personal representatives and any other person on whom the rights under the mortgage devolve, whether—

- (A) on death or bankruptcy;
- (B) on the disposition of the property; or
- (C) on the determination of a limited estate or interest in settled property;

or otherwise;

(ii) as respects a person liable in respect of a debt, his personal representatives and any other person on whom the liability in respect of the debt devolves, whether—

- (A) on death or bankruptcy;
- (B) on the disposition of the property; or
- (C) on the determination of a limited estate or interest in settled property;

or otherwise;

(b) references to a right of action include—

- (i) a cause of action;
- (ii) a right to receive money secured by a mortgage or charge on any property or to receive proceeds of the sale of land;
- (iii) a right to receive a share or interest in the personal estate of a deceased person;

(c) references to the date of the accrual of a right of action refer—

- (i) as respects an action upon a judgment, to the date on which the judgment became enforceable;
- (ii) as respects an action to recover arrears of a rentcharge, a conventional rent, or interest or damages in respect thereof, to the date on which the arrears became due;

- (d) references to a person in possession of land include—
 - (i) as respects a rentcharge, a person who is in possession of the land charged, but does not pay the rentcharge; and
 - (ii) as respects land (including a rentcharge) held under a lease in writing reserving a yearly conventional rent of not less than £1, a person who, wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, is in receipt of the conventional rent;
- (e) references to a debt refer—
 - (i) as respects a rentcharge or a conventional rent, to a gale of the rentcharge or of the conventional rent;
 - (ii) as respects interest, to an instalment of the interest;
- (f) references to a mortgagee who is by virtue of the mortgage in possession of any mortgaged land include references to a mortgagee who has obtained possession of the mortgaged land by virtue of an order of a court.

Disability

Persons under a disability

47.—(1) For the purposes of this Order, a person is under a disability while—

- (a) he is an infant; or
- (b) he is of unsound mind.

(2) For the purposes of paragraph (1) a person is of unsound mind if he is a person who, by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986⁽²⁸⁾, is incapable of managing and administering his property and affairs.

(3) Without prejudice to the generality of paragraph (2), a person is to be conclusively presumed for the purposes of that paragraph to be of unsound mind—

- (a) while he is liable to be detained in hospital for treatment or subject to guardianship under the Mental Health (Northern Ireland) Order 1986; and
- (b) while he is receiving treatment as an in-patient in any hospital or private hospital within the meaning of that Order without being liable to be detained thereunder, being treatment which follows without any interval a period during which he was liable to be detained in hospital for treatment or subject to guardianship under that Order.

Extension of time limit: disability

48.—(1) If, on the date when any right of action accrued for which a time limit is fixed by this Order, the person to whom it accrued was under a disability, the action may, subject to paragraphs (2) to (8), be brought at any time before the expiration of six years from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the time limit has expired.

(2) Paragraph (1) does not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims.

(3) Where a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time may be allowed by reason of the disability of the second person.

(28) 1986 NI 4

(4) None of the following—

- (a) an action to recover land or money charged on land;
- (b) an action by an incumbrancer claiming sale of land;
- (c) 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 be brought by virtue of paragraph (1) by any person after the expiration of thirty years from the date on which the right of action accrued to that person or to some person through whom he claims.

(5) Where Article 7 or 9(3) applies to an action, in paragraph (1) for “six years” substitute “three years”.

(6) Where Article 8 applies to an action or the action is one by virtue of Article 9(1) of the Consumer Protection (Northern Ireland) Order 1987(29) (death caused by defective product), paragraph (1)—

- (a) does not apply to the time limit fixed by Article 8(3) or to that time limit as applied by virtue of Article 9(2); and
- (b) in relation to any other time limit fixed by this Order, has effect as if for “six years” there were substituted “three years”.

(7) Where an action is for damages for libel or slander, in paragraph (1) for the words from “six years” to “occurred” substitute “three years from the date when the person ceased to be under a disability”.

(8) Where an action is to recover an amount recoverable under section 1 of the Civil Liability (Contribution) Act 1978(30), in paragraph (1) for “six years” substitute “two years”.

Extension of time limit (disability): cases under Article 11(3)(b)

49.—(1) Subject to paragraph (2), if in relation to any action for which a time limit is fixed by Article 11—

- (a) the time limit applicable in accordance with paragraph (3) of that Article is that mentioned in sub-paragraph (b) of that paragraph;
- (b) on the date which is for the purposes of that Article the starting date for reckoning that time limit, the person by reference to whose knowledge that date fell to be determined under paragraph (4) of that Article was under a disability; and
- (c) Article 48 does not apply to the action,

the action may be brought at any time before the expiration of three years from the date when he ceased to be under a disability or died (whichever first occurred) notwithstanding that the time limit mentioned above has expired.

(2) An action may not be brought by virtue of paragraph (1) after the end of the time limit fixed by Article 12.

Discretionary Power of Court to Override certain Time Limits

Court's power to override certain time limits

50.—(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—

(29) 1987 NI 20

(30) 1978 c. 47

- (a) the provisions of Article 7, 8 or 9 prejudice the plaintiff or any person whom he represents; and
- (b) any decision of the court under this paragraph would prejudice the defendant or any person whom he represents,

the court may direct that those provisions are not to apply to the action, or are not to apply to any specified cause of action to which the action relates.

(2) The court must not under this Article disapply—

- (a) Article 8(3); or
- (b) where the damages claimed by the plaintiff are confined to damages for loss of or damage to any property, any other provision in its application to an action by virtue of Part II of the Consumer Protection (Northern Ireland) Order 1987⁽³¹⁾.

(3) The court must not under this Article disapply Article 9(2) except where the reason why the person injured could no longer maintain an action was because of the time limit in Article 7 or 8(4).

(4) In acting under this Article, the court is to have regard to all the circumstances of the case and in particular to—

- (a) the length of, and the reasons for, the delay on the part of the plaintiff;
- (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by Article 7, 8 or, as the case may be, 9;
- (c) the conduct of the defendant after the cause of action arose, including the extent if any to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;
- (d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;
- (e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;
- (f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

(5) In a case where the person injured died when, because of Article 7 or 8(4), he could no longer maintain an action and recover damages in respect of the injury, the court is to have regard in particular to the length of, and the reasons for, the delay on the part of the deceased.

(6) In a case under paragraph (5), or any other case where the time limit, or one of the time limits, depends on the date of knowledge of a person other than the plaintiff, paragraph (4) has effect with appropriate modifications, and in particular as if references to the plaintiff included references to any person whose date of knowledge is or was relevant in determining a time limit.

(7) A direction by the court disapplying Article 9(2) operates to disapply the provisions to the same effect in Article 3(1) of the Fatal Accidents (Northern Ireland) Order 1977⁽³²⁾.

(8) In this Article “the court” means the court in which the action has been brought.

(9) References in this Article to Article 7, 8 or 9 include references to those Articles as extended by any other provision of this Order.

⁽³¹⁾ 1987 NI 20

⁽³²⁾ 1977 NI 18

Discretionary extension of time limit: actions for libel or slander

51. Where a person to whom a cause of action for libel or slander has accrued has not brought such an action for damages within the period of three years mentioned in Article 6(2) (or, where applicable, the period allowed by Article 48(1) as modified by Article 48(7)) because all or any of the facts relevant to that cause of action did not become known to him until after the expiration of that period, such an action for damages—

- (a) may be brought by him at any time before the expiration of one year from the earliest date on which he knew all the facts relevant to that cause of action; but
- (b) is not to be so brought without the leave of the High Court.

Acknowledgment

Fresh accrual of acknowledged right: actions to recover land

52.—(1) Where—

- (a) there has accrued to any person (other than a mortgagee) any right of action to recover land; and
- (b) the person in possession of the land acknowledges the title of the person to whom the right of action has accrued,

the right of action is to be treated as having accrued on and not before the date of the acknowledgment.

(2) Paragraph (1) applies to a right of action accrued to a person entitled to an estate or interest taking effect on the determination of an estate tail against whom time is running under Article 23, and on the making of the acknowledgment that Article ceases to apply to the land.

Fresh accrual of acknowledged right: action by mortgagee to recover land

53. Where—

- (a) the right of a mortgagee of land to bring an action to recover the land has accrued; and
- (b) either—
 - (i) the person in possession of the land acknowledges the mortgagee's title to the land; or
 - (ii) the person in possession of the land or the person liable for the mortgage debt acknowledges the debt,

the right of action is to be treated as having accrued on and not before the date of the acknowledgment.

Fresh accrual of acknowledged right: action by incumbrancer claiming sale of land

54. Where—

- (a) the right of an incumbrancer of land to bring an action claiming sale of the land has accrued; and
- (b) the person in possession of the land or the person liable for the debt secured by the incumbrance acknowledges the debt,

the right of action is to be treated as having accrued on and not before the date of the acknowledgment.

Effect of acknowledgment: action to redeem mortgaged land in mortgagee's possession

55. Where—

- (a) a mortgagee is by virtue of the mortgage in possession of any mortgaged land; and
- (b) the mortgagee acknowledges the title of the mortgagor or his equity of redemption,

an action to redeem the land in the mortgagee's possession may be brought at any time before the expiration of twelve years from the date of the acknowledgment.

Fresh accrual of acknowledged right: action in respect of personal right of support etc. in or over land

56. Where—

- (a) there has accrued a right of 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; and
- (b) the person in possession of the land acknowledges the right secondly mentioned in subparagraph (a),

the right of action is to be treated as having accrued on and not before the date of the acknowledgment.

Fresh accrual of acknowledged right: action to recover debt

57.—(1) Where—

- (a) any right of action has accrued to recover any debt; and
- (b) the person liable therefor acknowledges the debt,

the right of action is to be treated as having accrued on and not before the date of the acknowledgment.

(2) Where—

- (a) the right of action of a mortgagee of land to recover the mortgage debt has accrued; and
- (b) the person in possession of the land acknowledges the mortgagee's title to the land,

the right of action is to be treated as having accrued on and not before the date of the acknowledgment.

Fresh accrual of acknowledged right: action claiming personal estate of deceased person

58. Where—

- (a) any right of action has accrued to recover any claim to the personal estate of a deceased person or to any share or interest therein; and
- (b) the person accountable therefor acknowledges the claim,

the right of action is to be treated as having accrued on and not before the date of the acknowledgment.

Acknowledgments: formalities

59.—(1) Every acknowledgment must be in writing and signed by the person making the acknowledgment.

(2) An acknowledgment under Articles 52 to 58—

- (a) may be made by the agent of the person by whom it is required to be made under whichever of those Articles is applicable; and
 - (b) must be made to the person or the agent of the person whose title, right, equity of redemption or claim (as the case may be) is being acknowledged.
- (3) A current limitation period may be repeatedly extended under Articles 52 to 58 by further acknowledgments.
- (4) A right of action, once barred by this Order, is not revived by any subsequent acknowledgment.

Acknowledgment: effect on persons other than maker or recipient

60.—(1) An acknowledgment of title to any land by any person in possession thereof binds all other persons in possession during the ensuing limitation period.

(2) Where—

- (a) two or more mortgagees of land are by virtue of the mortgage in possession of the land; and
- (b) one only of the mortgagees (in this Article referred to as “the acknowledgor”) gives an acknowledgment of the mortgagor’s title or of his equity of redemption,

the following provisions have effect—

- (i) the acknowledgment binds only the acknowledgor and his successors and does not bind any other mortgagee or his successors;
- (ii) if the acknowledgor is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the mortgagor is entitled to redeem that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of that part of the land bears to the value of the whole of the mortgaged land.

(3) Where—

- (a) there are two or more mortgagors of land, and
- (b) the title or equity of redemption of one of the mortgagors is acknowledged,

the acknowledgment is to be treated as having been made to all the mortgagors.

(4) An acknowledgment of a debt binds the acknowledgor and his successors, but not any other person.

(5) An acknowledgment by one of several personal representatives of any claim to the personal estate of a deceased person or to any share or interest therein binds the estate of the deceased person.

Exemption of acknowledgment from stamp duty

61. No acknowledgment is to be treated as an agreement within the meaning of the Stamp Act 1891(33).

Part payment

Fresh accrual of right on payment: action by mortgagee to recover land

62. Where—

- (a) the right of a mortgagee of land to bring an action to recover the land has accrued; and

(b) the person in possession of the land or the person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest,
the right of action is to be treated as having accrued on and not before the date of the payment.

Fresh accrual of right on payment: action by incumbrancer claiming sale of land

63. Where—

- (a) the right of an incumbrancer of land to bring an action claiming sale of the land has accrued; and
- (b) the person in possession of the land or the person liable for the debt secured by the incumbrance makes any payment in respect thereof, whether of principal or interest,

the right of action is to be treated as having accrued on and not before the date of the payment.

Effect of payment: action to redeem mortgaged land in mortgagee's possession

64. Where—

- (a) a mortgagee is by virtue of the mortgage in possession of any mortgaged land; and
- (b) the mortgagee receives any payment from the mortgagor in respect of the principal or interest of the mortgage debt,

an action to redeem the land in the mortgagee's possession may be brought at any time before the expiration of twelve years from the date of the payment.

Fresh accrual of right on payment: action to recover debt

65.—(1) Where—

- (a) any right of action has accrued to recover any debt; and
- (b) the person liable therefor makes any payment in respect thereof,

the right of action is to be treated as having accrued on and not before the date of the payment.

(2) Payment of interest in whole or in part is for the purposes of this Part to be treated as a payment in respect of the principal debt.

Fresh accrual of right on payment: action claiming personal estate of deceased person

66. Where—

- (a) any right of action has accrued to recover any claim to the personal estate of a deceased person or to any share or interest therein; and
- (b) the person accountable therefor makes any payment in respect thereof,

the right of action is to be treated as having accrued on and not before the date of the payment.

Payment: formalities

67.—(1) A payment under Articles 62 to 66—

- (a) may be made by the agent of the person by whom it is required to be made under whichever of those Articles is applicable;
- (b) must be made to the person or the agent of the person in respect of whose claim the payment is being made.

(2) A current limitation period may be repeatedly extended under Articles 62 to 66 by further payments.

(3) A right of action, once barred by this Order, may not be revived by any subsequent payment.

Payment: effect on persons other than maker or recipient

68.—(1) A payment in respect of a mortgage debt by the mortgagor or any other person liable for the debt or by any person in possession of the mortgaged property, so far as any right of the mortgagee to recover the property is concerned, binds all persons in possession of the mortgaged property during the ensuing limitation period.

(2) Where—

(a) two or more mortgagees of land are by virtue of the mortgage in possession of the land; and

(b) one only of the mortgagees (in this paragraph referred to as “the recipient”) receives any payment in respect of the principal or interest of the mortgage debt,

the following provisions have effect—

(i) the payment binds only the recipient and his successors and does not bind any other mortgagee or his successors;

(ii) if the recipient is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the mortgagor is entitled to redeem that part of the land on payment, with interest, of the part of the mortgage debt which, immediately before the recipient received the payment, referred to in sub-paragraph (b), bore the same proportion to the whole of the debt as the value of that part of the land bears to the value of the whole of the land, less the amount of the payment.

(3) Where there are two or more mortgagors of land, and the mortgagee, being in possession of the land, is paid any sum in respect of the principal or interest of the mortgage debt by one of the mortgagors, the payment is to be treated as having been made by all the mortgagors.

(4) A payment made in respect of any debt binds all persons liable in respect thereof.

(5) A payment by one of several personal representatives in respect of any claim to the personal estate of a deceased person binds the estate of the deceased person.

Appropriation of payment in respect of debts

69.—(1) Where—

(a) there exist a number of debts, some or all of which are not statute-barred; and

(b) the person liable therefor (in this Article referred to as “the debtor”) makes any payment, whether on account or generally, to the person to whom he is liable (in this Article referred to as “the creditor”); and

(c) neither the debtor nor the creditor appropriates the sum paid to any particular debt or debts, the payment is, for the purposes of this Part, unless the circumstances in which it was made indicate otherwise, to be treated as being appropriated *pari passu* in respect of each of the debts which are not statute-barred debts.

(2) Where the debtor does not appropriate, paragraph (1) does not operate to prevent the creditor from appropriating a payment made on account or generally to a particular debt or to particular debts or to all the debts (whether statute-barred debts or not), but the appropriation does not, by reason only of its being made by the creditor, operate to make the payment a payment for the purposes of this Part in respect of such debt or debts, unless the circumstances in which the payment was made by the debtor so indicate.

(3) Where, under section 16 of the Land Law (Ireland) Act 1896⁽³⁴⁾, a tenant against whom an ejectment has been brought pays two years' rent, the payment is for the purposes of this Part, unless the circumstances in which it was made indicate otherwise, to be treated as a payment in respect of all arrears which, at the date of the commencement of the proceedings in the ejectment, are not statute-barred debts.

Effect of endorsement of bill of exchange

70. No endorsement or memorandum of any payment written upon any bill of exchange or promissory note by or on behalf of the party to whom such payment is made is to be treated as evidence of such payment for the purposes of this Part.

Fraud, concealment and mistake

Postponement of time limit: fraud, concealment or mistake

71.—(1) Subject to paragraphs (3) and (5), where in any action for which a time limit is fixed by this Order, either—

- (a) the action is based upon the fraud of the defendant; or
- (b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or
- (c) the action is for relief from the consequences of a mistake,

the time limit does not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.

(2) For the purposes of paragraph (1), deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.

(3) Nothing in this Article enables any action—

- (a) to recover, or recover the value of, any property; or
- (b) to enforce any charge against, or set aside any transaction affecting, any property,

to be brought against the purchaser of the property or any person claiming through him in any case where the property has been purchased for valuable consideration by an innocent third party since the fraud or concealment or (as the case may be) the transaction in which the mistake was made took place.

(4) A purchaser is an innocent third party for the purposes of this Article—

- (a) in the case of fraud or concealment of any fact relevant to the plaintiff's right of action if—
 - (i) he was not a party to the fraud or (as the case may be) to the concealment of that fact; and
 - (ii) did not at the time of the purchase know or have reason to believe that the fraud or concealment had taken place; and
- (b) in the case of mistake, if he did not at the time of the purchase know or have reason to believe that the mistake had been made.

(5) Paragraph (1) does not apply in relation to the time limit fixed by Article 8(3) or in relation to that time limit as applied by virtue of Article 9(2).

(6) In this Article “defendant” includes—

⁽³⁴⁾ 1896 c. 47

- (a) the defendant's agent; and
- (b) any person through whom the defendant claims and his agent.

(7) Articles 11 and 12 do not apply to any action to which paragraph (1)(b) applies (and accordingly the time limit referred to in that paragraph, in any case to which either of those Articles would otherwise apply, is the time limit applicable under Article 6(1)).

PART V

MISCELLANEOUS AND GENERAL

Application of Order and other limitation provisions to arbitrations

72.—(1) This Order and any other limitation provision apply to arbitrations as they apply to actions.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action is to accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action is, for the purposes of this Order and of any other limitation provision (whether in their application to arbitrations or to other proceedings), to be treated as having accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purposes of this Order and of any other limitation provision, an arbitration is to be treated as being commenced when—

- (a) one party to the arbitration serves on the other party or parties a written notice requiring him or them to appoint or concur in appointing an arbitrator, or
- (b) where the arbitration provides that the reference is to be to a person named or designated in the agreement, when one party to the arbitration serves on the other party or parties a notice requiring him or them to submit the dispute to the person so named or designated.

(4) A notice under paragraph (2) may be served in any manner specified in section 24 of the Interpretation Act (Northern Ireland) 1954⁽³⁵⁾ as well as in any other manner provided for in the arbitration agreement.

(5) Where the High Court—

- (a) orders that an award be set aside; or
- (b) after the commencement of an arbitration, orders that the arbitration agreement is to cease to have effect with respect to the dispute referred,

the Court may further order that the period between the commencement of the arbitration and the date of the order of the Court is to be excluded in computing the time limit fixed by this Order or any other limitation provision for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(6) For the purposes of any case to which Article 3 of the Foreign Limitation Periods (Northern Ireland) Order 1985⁽³⁶⁾ applies, the reference in paragraph (4) to the time fixed by a limitation provision applies is a reference to the time limit (if any) applicable by virtue of that Article.

(7) This Part applies to an arbitration under a statutory provision as well as to an arbitration pursuant to an arbitration agreement, and paragraphs (2) and (3) have effect, in relation to an arbitration under a statutory provision, as if for the references to the arbitration agreement there were

⁽³⁵⁾ 1954 c. 33 (N.I.)

⁽³⁶⁾ 1985 NI 5

substituted references to such of the provisions of the statutory provision or of any order, scheme, rules, regulations or by-laws made thereunder as relate to the arbitration.

New claims in pending actions

73.—(1) For the purposes of this Order, any new claim made in the course of any action is to be treated as a separate action and as having been commenced—

- (a) if it is a new claim made in or by way of third party proceedings, on the date on which those proceedings were commenced; and
- (b) in relation to any other new claim, on the same date as the original action.

(2) Except as provided by Article 50, by rules of court, or by county court rules, neither the High Court nor any county court may allow a new claim within paragraph (1)(b), other than an original set-off or counterclaim, to be made in the course of any action after the expiry of any time limit under this Order which would affect a new action to enforce that claim. For the purposes of this paragraph, a claim is an original set-off or an original counterclaim if it is a claim made by way of set-off or (as the case may be) by way of counterclaim by a party who has not previously made any claim in the action.

(3) Rules of court and county court rules may provide for allowing a new claim to which paragraph (2) applies to be made as there mentioned, but only if the conditions specified in paragraph (4) are satisfied, and subject to any further restrictions the rules may impose.

(4) The conditions referred to in paragraph (3) are the following—

- (a) as respects a claim involving a new cause of action, if the new cause of action arises out of the same facts or substantially the same facts as are already in issue on any claim previously made in the original action; and
- (b) as respects a claim involving a new party, if the addition or substitution of the new party is necessary for the determination of the original action.

(5) The addition or substitution of a new party is not to be treated for the purposes of paragraph (4) (b) as necessary for the determination of the original action unless either—

- (a) the new party is substituted for a party whose name was given in any claim made in the original action in mistake for the new party's name; or
- (b) any claim already made in the original action cannot be maintained by or against an existing party unless the new party is joined or substituted as plaintiff or defendant in that action.

(6) Subject to paragraph (3), rules of court and county court rules may provide for allowing a party to any action to claim relief in a new capacity in respect of a new cause of action notwithstanding that he had no title to make that claim at the date of the commencement of the action. This paragraph does not prejudice the power of rules of court to provide for allowing a party to claim relief in a new capacity without adding or substituting a new cause of action.

(7) Paragraphs (2) to (6) apply in relation to a new claim made in the course of third party proceedings as if those proceedings were the original action, and subject to such other modifications as may be prescribed by rules of court or county court rules.

(8) In this Article—

“new claim” means any claim by way of set-off or counterclaim, and any claim involving either—

- (a) the addition or substitution of a new cause of action; or
- (b) the addition or substitution of a new party;

“third party proceedings” means any proceedings brought in the course of any action by any party to the action against a person not previously a party to the action, other than proceedings brought by joining any such person as defendant to any claim already made in the original action by the party bringing the proceedings.

Application to the Crown, etc.

74.—(1) Except as otherwise expressly provided in this Order and subject to paragraph (2), this Order applies to actions by or against the Crown in like manner as it applies to actions between subjects, and accordingly binds the Crown to the full extent authorised by the constitutional laws of Northern Ireland.

(2) Notwithstanding paragraph (1), this Order does not apply to any proceedings by the Crown—

- (a) for the recovery of any tax or duty or interest thereon of any fine or penalty due in connection with any tax or duty; or
- (b) for a forfeiture under any statutory provision; or
- (c) in respect of the forfeiture of a ship or any interest in a ship.

(3) References in this Order to actions by or against the Crown include references to actions by or (as the case may be) against—

- (a) Her Majesty in right of the Crown or of the Duchy of Lancaster or of the Duchy of Cornwall or the Duke of Cornwall for the time being;
- (b) the Crown in right of Her Majesty’s Government in the United Kingdom or in right of her Majesty’s Government in Northern Ireland;
- (c) any Minister, Head of a department, officer or other person acting on behalf of the Crown whether in right of Her Majesty’s Government in the United Kingdom or in right of Her Majesty’s Government in Northern Ireland; or
- (d) any department of either such Government and any officer or other person acting on behalf of any such department.

(4) Nothing in this Order affects the prerogative right of Her Majesty to any gold or silver mine.

(5) In this Article “ship” includes every description of vessel used in navigation not propelled by oars.

Savings (general)

75.—(1) Nothing in this Order affects any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

(2) This Order does not apply—

- (a) to any action or arbitration for which a time limit is fixed by any other statutory provision; or
- (b) to any action or arbitration to which the Crown is a party and for which, if it were between subjects, a time limit would be fixed by any other statutory provision.

(3) Nothing in this Order operates to prescribe the period within which a criminal proceeding must be instituted.

Transitional provisions, amendments and repeals

76.—(1) Schedule 2 (transitional provisions) has effect.

(2) The enactments set out in Schedule 3 have effect subject to the amendments specified in that Schedule.

(3) The enactments set out in Schedule 4 are hereby repealed to the extent specified in the third column of that Schedule.

G. I. de Deney
Clerk of the Privy Council