



# Latent Damage Act 1986

## 1986 CHAPTER 37

An Act to amend the law about limitation of actions in relation to actions for damages for negligence not involving personal injuries; and to provide for a person taking an interest in property to have, in certain circumstances, a cause of action in respect of negligent damage to the property occurring before he takes that interest. [18th July 1986]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Time limits for negligence actions in respect of latent damage not involving personal injuries*

#### **1 Time limits for negligence actions in respect of latent damage not involving personal injuries.**

The following sections shall be inserted in the <sup>M1</sup>Limitation Act 1980 (referred to below in this Act as the 1980 Act) immediately after section 14 (date of knowledge for purposes of special time limits for actions in respect of personal injuries or death)—

*“ Actions in respect of latent damage not involving personal injuries*

#### **14A Special time limit for negligence actions where facts relevant to cause of action are not known at date of accrual.**

- (1) This section applies to any action for damages for negligence, other than one to which section 11 of this Act applies, where the starting date for reckoning the period of limitation under subsection (4)(b) below falls after the date on which the cause of action accrued.
- (2) Section 2 of this Act shall not apply to an action to which this section applies.

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*Changes to legislation:* There are currently no known outstanding effects for the Latent Damage Act 1986. (See end of Document for details)

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- (3) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (4) below.
- (4) 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 subsection (5) below, if that period expires later than the period mentioned in paragraph (a) above.
- (5) For the purposes of this section, the starting date for reckoning the period of limitation under subsection (4)(b) above 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.
- (6) In subsection (5) above “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 subsection (8) below.
- (7) For the purposes of subsection (6)(a) above, 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.
- (8) The other facts referred to in subsection (6)(b) above 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 identify 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.
- (9) Knowledge that any acts or omissions did or did not, as a matter of law, involve negligence is irrelevant for the purposes of subsection (5) above.
- (10) For the purposes of this section 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 shall not be taken by virtue of this subsection to have 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.

#### **14B Overriding time limit for negligence actions not involving personal injuries.**

- (1) An action for damages for negligence, other than one to which section 11 of this Act applies, shall not be brought after the expiration of fifteen years from the

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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 section bars the right of action in a case to which subsection (1) above applies notwithstanding that—

- (a) the cause of action has not yet accrued; or
- (b) where section 14A of this Act applies to the action, the date which is for the purposes of that section the starting date for reckoning the period mentioned in subsection (4)(b) of that section has not yet occurred;

before the end of the period of limitation prescribed by this section.”

#### Marginal Citations

M1 1980 c. 58.

## 2 Provisions consequential on section 1.

(1) The following section shall be inserted in the 1980 Act immediately after section 28 (extension of limitation period in case of disability on date of accrual of cause of action)—

**“28A Extension for cases where the limitation period is the period under section 14A(4)(b).**

(1) Subject to subsection (2) below, if in the case of any action for which a period of limitation is prescribed by section 14A of this Act—

- (a) the period applicable in accordance with subsection (4) of that section is the period mentioned in paragraph (b) of that subsection;
- (b) on the date which is for the purposes of that section the starting date for reckoning that period the person by reference to whose knowledge that date fell to be determined under subsection (5) of that section was under a disability; and
- (c) section 28 of this Act 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 period mentioned above has expired.

(2) An action may not be brought by virtue of subsection (1) above after the end of the period of limitation prescribed by section 14B of this Act.”

(2) In section 32 of the 1980 Act (postponement of limitation period in case of fraud, concealment or mistake), at the end there shall be added the following subsection—

“(5) Sections 14A and 14B of this Act shall not apply to any action to which subsection (1)(b) above applies (and accordingly the period of limitation referred to in that subsection, in any case to which either of those sections would otherwise apply, is the period applicable under section 2 of this Act).”

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*Accrual of cause of action to successive owners in respect of latent damage to property*

**3 Accrual of cause of action to successive owners in respect of latent damage to property.**

- (1) Subject to the following provisions of this section, where—
  - (a) a cause of action (“the original cause of action”) has accrued to any person in respect of any negligence to which damage to any property in which he has an interest is attributable (in whole or in part), and
  - (b) another person acquires an interest in that property after the date on which the original cause of action accrued but before the material facts about the damage have become known to any person who, at the time when he first has knowledge of those facts, has any interest in the property;
 a fresh cause of action in respect of that negligence shall accrue to that other person on the date on which he acquires his interest in the property.
- (2) A cause of action accruing to any person by virtue of subsection (1) above—
  - (a) shall be treated as if based on breach of a duty of care at common law owed to the person to whom it accrues; and
  - (b) shall be treated for the purposes of section 14A of the 1980 Act (special time limit for negligence actions where facts relevant to cause of action are not known at date of accrual) as having accrued on the date on which the original cause of action accrued.
- (3) Section 28 of the 1980 Act (extension of limitation period in case of disability) shall not apply in relation to any such cause of action.
- (4) Subsection (1) above shall not apply in any case where the person acquiring an interest in the damaged property is either—
  - (a) a person in whom the original cause of action vests by operation of law; or
  - (b) a person in whom the interest in that property vests by virtue of any order made by a court under section 538 of the <sup>M2</sup>Companies Act 1985 (vesting of company property in liquidator).
- (5) For the purposes of subsection (1)(b) above, the material facts about the damage are such facts about the damage as would lead a reasonable person who has an interest in the damaged property at the time when those facts become known to him 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.
- (6) For the purposes of this section 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 shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable by him 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.
- (7) This section shall bind the Crown, but as regards the Crown’s liability in tort shall not bind the Crown further than the Crown is made liable in tort by the <sup>M3</sup>Crown Proceedings Act 1947.

*Changes to legislation: There are currently no known outstanding effects for the Latent Damage Act 1986. (See end of Document for details)*

#### Marginal Citations

**M2** 1985 c. 6.

**M3** 1947 c. 44.

### *Supplementary*

## **4 Transitional provisions.**

- (1) Nothing in section 1 or 2 of this Act shall—
  - (a) enable any action to be brought which was barred by the 1980 Act or (as the case may be) by the <sup>M4</sup>Limitation Act 1939 before this Act comes into force; or
  - (b) affect any action commenced before this Act comes into force.
- (2) Subject to subsection (1) above, sections 1 and 2 of this Act shall have effect in relation to causes of action accruing before, as well as in relation to causes of action accruing after, this Act comes into force.
- (3) Section 3 of this Act shall only apply in cases where an interest in damaged property is acquired after this Act comes into force but shall so apply, subject to subsection (4) below, irrespective of whether the original cause of action accrued before or after this Act comes into force.
- (4) Where—
  - (a) a person acquires an interest in damaged property in circumstances to which section 3 would apart from this subsection apply; but
  - (b) the original cause of action accrued more than six years before this Act comes into force;a cause of action shall not accrue to that person by virtue of subsection (1) of that section unless section 32(1)(b) of the 1980 Act (postponement of limitation period in case of deliberate concealment of relevant facts) would apply to any action founded on the original cause of action.

#### Marginal Citations

**M4** 1939 c. 21.

## **5 Citation interpretation, commencement and extent.**

- (1) This Act may be cited as the Latent Damage Act 1986.
- (2) In this Act—
  - “the 1980 Act” has the meaning given by section 1; and
  - “action” includes any proceeding in a court of law, an arbitration and any new claim within the meaning of section 35 of the 1980 Act (new claims in pending actions).
- (3) This Act shall come into force at the end of the period of two months beginning with the date on which it is passed.
- (4) This Act extends to England and Wales only.

**Changes to legislation:**

There are currently no known outstanding effects for the Latent Damage Act 1986.