

SCHEDULES

SCHEDULE 3

Section 9

LIMITATION PERIODS: SCOTLAND

PART 1

COURT'S POWER TO OVERRIDE TIME-LIMITS

- 1 (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.
- (2) In section 19A (power of court to override time-limits etc), in subsection (1), after “that provision” insert “(but see section 19AA)”.
- (3) After section 19A, insert—

“19AA Restriction of court’s power to override time-limits: overseas armed forces actions

- (1) This section applies where the court is considering whether to exercise its power under section 19A to override time-limits in respect of an overseas armed forces action (see subsection (11)).
- (2) The court must exercise its power—
 - (a) in accordance with subsection (3), and
 - (b) subject to the rules in subsections (5) to (7).
- (3) The court must have particular regard to—
 - (a) the effect of the delay in bringing the action on the cogency of evidence adduced or likely to be adduced by the parties, with particular reference to—
 - (i) the likely impact of the operational context on the ability of members of Her Majesty’s forces to remember relevant events or actions fully or accurately, and
 - (ii) the extent of dependence on the memories of members of Her Majesty’s forces, taking into account the effect of the operational context on their ability to record, or to retain records of, relevant events or actions; and
 - (b) the likely impact of the action on the mental health of any witness or potential witness who is a member of Her Majesty’s forces.
- (4) In subsection (3)(a) references to “the operational context” are to the fact that the events to which the action relates took place in the context of overseas operations, and include references to the exceptional demands and stresses to which members of Her Majesty’s forces are subject.

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- (5) The first rule referred to in subsection (2)(b) is that an overseas armed forces action for which a limitation period is specified in section 17 must be brought within the period of 6 years beginning with the section 17 relevant date.
- (6) The second rule referred to in subsection (2)(b) is that an overseas armed forces action for which a limitation period is specified in section 18(2) must be brought within the period of 6 years beginning with the section 18 relevant date.
- (7) The third rule referred to in subsection (2)(b) is that, in respect of an overseas armed forces action to which section 18 applies, the court may exercise its power to override section 18(4) only if the injured person in question died within the period of 6 years beginning with the section 17 relevant date.
- (8) In the application of the rule in subsection (5) or (7) to an action in respect of which (in accordance with section 17(3)) any time has been disregarded when computing the limitation period specified in section 17(2) for the purposes of section 17 or 18(4) (as the case may be), the reference to the period of 6 years is to be treated as a reference to the period of 6 years plus the period that was so disregarded.
- (9) In the application of the rule in subsection (6) to an action in respect of which (in accordance with section 18(3)) any time has been disregarded when computing the limitation period specified in section 18(2), the reference to the period of 6 years is to be treated as a reference to the period of 6 years plus the period that was so disregarded.
- (10) In the application of the rule in subsection (5) or (7) to an overseas armed forces action in respect of which a limitation period has been suspended in accordance with section 1(1) of the Limitation (Enemies and War Prisoners) Act 1945 (as modified by section 4 of that Act), any reference to the period of 6 years is to be treated as a reference to the period of 6 years plus—
 - (a) the period during which the limitation period was suspended, and
 - (b) any extra period after the suspension ended during which the action could have been brought only because of an extension provided for by section 1(1) of that Act.
- (11) In this section, an “overseas armed forces action” means an action which, or an action which includes a claim which—
 - (a) is against the Ministry of Defence, the Secretary of State for Defence, or any member of Her Majesty’s forces,
 - (b) is brought in connection with overseas operations (see subsection (13)), and
 - (c) relates to damage that occurred outside the British Islands.
- (12) In subsection (11), “damage” means—
 - (a) in the case of an overseas armed forces action for which a limitation period is specified in section 17, the personal injuries to which the action relates;
 - (b) in the case of an overseas armed forces action for which a limitation period is specified in section 18(2), the death to which the action relates (and where a person sustains personal injuries outside the British Islands which are a substantial cause of their later death in

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any of the British Islands, or vice versa, the death is for the purposes of subsection (11)(c) to be treated as occurring where the injuries were sustained).

(13) In this section—

“Her Majesty’s forces” has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act);

“overseas operations” means any operations outside the British Islands, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of Her Majesty’s forces come under attack or face the threat of attack or violent resistance;

“the section 17 relevant date” means the date from which the period of 3 years starts to run in accordance with subsection (2) of section 17;

“the section 18 relevant date” means the date from which the period of 3 years starts to run in accordance with subsection (2) of section 18.

(14) In this section, references—

- (a) to the British Islands include the territorial sea adjacent to the United Kingdom and the territorial sea adjacent to any of the Channel Islands or the Isle of Man (and the reference to any of the British Islands is to be read accordingly);
- (b) to a member of Her Majesty’s forces, in relation to an overseas armed forces action, include an individual who was a member of Her Majesty’s forces at the time of the events to which the action relates.”

PART 2

RESTRICTION OF FOREIGN LIMITATION LAW

- 2 (1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.
- (2) In section 23A (private international law application)—
- (a) in subsection (1), after “to enforce the obligation” insert “, subject to section 23B,”, and
 - (b) in subsection (4), after “This section” insert “and section 23B”.
- (3) After section 23A, insert—

“23B Overseas armed forces actions: restriction of foreign prescription and limitation law

- (1) Subsection (3) applies where—
- (a) the law of a country other than Scotland relating to the extinction of an obligation or the limitation of time within which an action may be brought to enforce an obligation is to be applied by virtue of section 23A(1) in an overseas armed forces personal injuries action, and
 - (b) the commencement condition applies in relation to that action,

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and in this section the law mentioned in paragraph (a) that is to be applied in that action is referred to as “the relevant foreign limitation law”.

- (2) The commencement condition applies in relation to an overseas armed forces personal injuries action if the action commenced on a date which is after the end of the period of 6 years beginning with—
- (a) the date on which any limitation period specified in the relevant foreign limitation law began to run, or
 - (b) where the relevant foreign limitation law has the effect that the action may be commenced within an indefinite period, the first date on which the action could have been commenced,
- and in this section “limitation period” includes a prescriptive period (however expressed in the relevant foreign limitation law).
- (3) The relevant foreign limitation law is to be treated as providing the defender with a complete defence to the action so far as relating to the obligation (where that would not otherwise be the case).
- (4) An “overseas armed forces personal injuries action” means an action—
- (a) which is an overseas armed forces action as defined in section 19AA(11), and
 - (b) which (under the substantive law of the other country that falls to be applied) corresponds to an action to which section 17 or 18 applies (actions in respect of personal injuries or death).
- (5) In the application of subsection (2) to an action in respect of which—
- (a) in accordance with the relevant foreign limitation law, a limitation period specified in that law has been suspended or interrupted for a period by reason of a person’s lacking legal capacity or being under a disability, or
 - (b) in accordance with the relevant foreign limitation law, a period during which a person lacks legal capacity or is under a disability has been disregarded in computing a limitation period specified in that law,

the reference to the period of 6 years is to be treated as a reference to the period of 6 years plus the period of suspension or interruption or (as the case may be) the period that was so disregarded.”