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STATUTORY INSTRUMENTS

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**1985 No. 754 (N.I. 5)**

**NORTHERN IRELAND**

**The Foreign Limitation Periods  
(Northern Ireland) Order 1985**

*Laid before Parliament in draft*

*Made* 15th May 1985

*Coming into Operation* 16th August 1985

ARRANGEMENT OF ORDER

Article

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At the Court at Buckingham Palace, the 15th day of May 1985

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1974 c. 28

*Title and commencement*

**1.—**(1) This Order may be cited as the Foreign Limitation Periods (Northern Ireland) Order 1985.

(2) This Order shall come into operation on the expiration of three months from the date on which it is made.

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*Interpretation*

1954 c. 33 (N.I.)      **2.—**(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

1958 c. 10 (N.I.)      (2) In this Order “the Statute of Limitations” means the Statute of Limitations (Northern Ireland) 1958.

(3) Subject to paragraph (5), references in this Order to the law of any country (including Northern Ireland) relating to limitation shall, in relation to any matter, be construed as references to so much of the relevant law of that country as (in any manner) makes provision with respect to a limitation period applicable to the bringing of proceedings in respect of that matter in the courts of that country and shall include—

(a) references to so much of that law as relates to, and to the effect of, the application, extension, reduction or interruption of that period; and

(b) a reference, where under that law there is no limitation period which is so applicable, to the rule that such proceedings may be brought within an indefinite period.

(4) In paragraph (3) “relevant law”, in relation to any country, means the procedural and substantive law applicable, apart from any rules of private international law, by the courts of that country.

(5) References in this Order to the law of Northern Ireland relating to limitation shall not include the rules by virtue of which a court may, in the exercise of any discretion, refuse equitable relief on the grounds of acquiescence or otherwise; but, in applying those rules to a case in relation to which the law of any country outside Northern Ireland is applicable by virtue of Article 3(1)(a) (not being a law that provides for a limitation period that has expired), a court in Northern Ireland shall have regard, in particular, to the provisions of the law that is so applicable.

(6) References in this Order to the Crown shall be construed in accordance with section 4(2) of the Statute of Limitations (which provides, amongst other things, for references to the Crown to include references to government departments and their officers).

*Application of foreign limitation law*

**3.—**(1) Subject to the following provisions of this Order, where in any action or proceedings in a court in Northern Ireland the law of any other country falls (in accordance with rules of private international law applicable by any such court) to be taken into account in the determination of any matter—

(a) the law of that other country relating to limitation shall apply in respect of that matter for the purposes of the action or proceedings; and

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(b) except where that matter falls within paragraph (2), the law of Northern Ireland relating to limitation shall not so apply.

(2) A matter falls within this paragraph if it is a matter in the determination of which both the law of Northern Ireland and the law of some other country fall to be taken into account.

(3) The law of Northern Ireland shall determine for the purposes of any law applicable by virtue of paragraph (1)(a) whether, and the time at which, proceedings have been commenced in respect of any matter; and accordingly section 2 of the Statute of Limitations (new claims in pending proceedings) shall apply in relation to time limits applicable by virtue of paragraph (1)(a) as it applies in relation to time limits under the Statute of Limitations.

(4) A court in Northern Ireland, in exercising in pursuance of paragraph (1)(a) any discretion conferred by the law of any other country, shall so far as practicable exercise that discretion in the manner in which it is exercised in comparable cases by the courts of that other country.

(5) In this Article “law”, in relation to any country, shall not include rules of private international law applicable by the courts of that country or, in the case of Northern Ireland, this Order.

*Exceptions to Article 3*

4.—(1) In any case in which the application of Article 3 would to any extent conflict (whether under paragraph (2) or otherwise) with public policy, that Article shall not apply to the extent that its application would so conflict.

(2) The application of Article 3 in relation to any action or proceedings shall conflict with public policy to the extent that its application would cause undue hardship to a person who is, or might be made, a party to the action or proceedings.

(3) Where, under a law applicable by virtue of Article 3(1)(a) for the purposes of any action or proceedings, a limitation period is or may be extended or interrupted in respect of the absence of a party to the action or proceedings from any specified jurisdiction or country, so much of that law as provides for the extension or interruption shall be disregarded for those purposes.

(4) In the Limitation (Enemies and War Prisoners) Act 1945 (which in relation to cases involving enemy aliens and war prisoners extends certain limitation periods), in section 5 (meaning of expression “statute of limitation” in the application of the Act to Northern Ireland), after the word “means” there shall be inserted “(a)” and after the words “required to be brought” there shall be added the words “and—

1945 c. 16  
(8 & 9 Geo. 6)

(b) in a case to which Article 3(1) of the Foreign Limitation Periods (Northern Ireland) Order 1985 applies, so much of the law of any country outside Northern Ireland as applies by virtue of that Order;”.

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*Foreign judgments on limitation points*

5. Where a court in any country outside Northern Ireland has determined any matter wholly or partly by reference to the law of that or any other country (including Northern Ireland) relating to limitation, then, for the purposes of the law relating to the effect to be given in Northern Ireland to that determination, that court shall, to the extent that it has so determined the matter, be deemed to have determined it on its merits.

*Arbitrations*

6.—(1) In section 72 of the Statute of Limitations (application of limitation provisions to arbitrations), after subsection (4) there shall be inserted the following subsection—

“(4A) For the purposes of any case to which Article 3 of the Foreign Limitation Periods (Northern Ireland) Order 1985 applies the reference in subsection (4) to the time fixed by a limitation provision applies as a reference to the limitation period (if any) applicable by virtue of that Article.”

(2) In section 74(1) of the Statute of Limitations (interpretation), at the end of the definition of “other limitation provision” there shall be added the words “(including paragraphs (3) to (5) of Article 2 and Articles 3 and 4 of the Foreign Limitation Periods (Northern Ireland) Order 1985)”.

*Application to the Crown*

7. This Order applies in relation to any action or proceedings by or against the Crown as it applies in relation to actions and proceedings to which the Crown is not a party.

*Transitional provisions*

8.—(1) Nothing in this Order shall affect any action, proceedings or arbitration commenced in Northern Ireland before the commencement of this Order.

(2) Nothing in this Order shall apply in relation to any matter if the limitation period which, apart from this Order, would have been applied in respect of that matter in Northern Ireland expired before the commencement of this Order.

*G. I. de Deney,*  
Clerk of the Privy Council.

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**EXPLANATORY NOTE**

*(This Note is not part of the Order.)*

This Order provides for any law relating to the limitation of actions to be treated, for the purposes of cases in which effect is given to foreign law or to determinations by foreign courts, as a matter of substance rather than as a matter of procedure.

Under the present law regarding the applicability of limitation periods to the litigation of foreign claims in Northern Ireland, the foreign limitation period may apply if its effect is to extinguish the claim; but if its effect is merely to bar the remedy it will not apply and the Northern Ireland law of limitation will apply instead. Following the recommendations of the Law Commission in its Report on Classification of Limitation in Private International Law (Law Com. No. 114) the Order provides for the foreign limitation period to apply as a general rule, even where its effect is to bar the remedy without extinguishing the claim.

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