
STATUTORY INSTRUMENTS

1987 No. 1629 (N.I. 17)

NORTHERN IRELAND

The Limitation (Amendment) (Northern Ireland) Order 1987

Made - - - - 15th September 1987

Coming into Operation 16th December 1987

At the Court at Balmoral, the 15th day of September 1987

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:—

Title and commencement

1.—(1) This Order may be cited as the Limitation (Amendment) (Northern Ireland) Order 1987.

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

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 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—

“the 1958 Act” has the meaning given by Article 3;

“action” includes any proceeding in a court of law, an arbitration and any new claim within the meaning of section 2 of the 1958 Act.

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

3.—(1) The following sections shall be inserted in the Statute of Limitations (Northern Ireland) 1958 (referred to below as “the 1958 Act”) immediately after section 9D—

“Actions in respect of latent damage not involving personal injuries Special time limit for negligence actions where facts relevant to cause of action are not known at date of accrual.

9E.—(1) This section applies to any action for damages for negligence, other than one to which section 9A applies, where the starting date for reckoning the period of limitation under subsection (3)(b) falls after the date on which the cause of action accrued.

(2) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (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 subsection (4), if that period expires later than the period mentioned in paragraph (a).

(4) For the purposes of this section, the starting date for reckoning the period of limitation under subsection (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 subsection (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 subsection (7).

(6) For the purposes of subsection (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 subsection (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 subsection (5).

(9) 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. Overriding time limit for negligence actions not involving personal injuries.

9F.—(1) An action for damages for negligence, other than one to which section 9A applies, shall 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 section bars the right of action in a case to which subsection (1) applies notwithstanding that—
 - (a) the cause of action has not yet accrued; or
 - (b) where section 9E applies to the action, the date which is for the purposes of that section the starting date for reckoning the period mentioned in subsection (3)(b) of that section has not yet occurred; before the end of the period of limitation prescribed by this section.”.
- (2) In section 9(1) of the 1958 Act, after “9B” there shall be inserted “, 9E and 9F”.

Provisions consequential on Article 3

- 4.—(1) The following section shall be inserted in the 1958 Act immediately after section 50—

“Extension for cases where the limitation period is the period under section 9E(3)(b).

50A.—(1) Subject to subsection (2), if in the case of any action for which a period of limitation is prescribed by section 9E—

- (a) the period applicable in accordance with subsection (3) 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 (4) of that section was under a disability; and
- (c) section 50 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) after the end of the period of limitation prescribed by section 9F.”.

- (2) In section 70 of the 1958 Act (postponement of limitation period in case of fraud, concealment or mistake), at the end there shall be added the following subsection—

“(6) Sections 9E and 9F shall not apply to any action to which subsection (1)(b) 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 9(1)).”.

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

- 5.—(1) Subject to paragraphs (2) to (7), 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 paragraph (1)—

- (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 9E of the 1958 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 50 of the 1958 Act (extension of limitation period in case of disability) shall not apply in relation to any such cause of action.
- (4) Paragraph (1) 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 Article 498 of the Companies (Northern Ireland) Order 1986 (vesting of company property in liquidator).
- (5) For the purpose of paragraph (1)(b), 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 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 shall not be taken by virtue of this paragraph 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 Article shall bind the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland, 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 Crown Proceedings Act 1947.

Time limits for actions for libel or slander

- 6.—**(1) In section 9(2) of the 1958 Act (three year limitation period for an action claiming damages for slander)—
- (a) before “An action” there shall be inserted “Subject to section 9G,”;
 - (b) before “slander” there shall be inserted “libel or”.
- (2) For section 50(8) of the 1958 Act (extension of limitation period for slander actions in case of disability), there shall be substituted—
- “(8) In the case of an action for damages for libel or slander, subsection (1) shall have effect as if for the words from “six years” to “occurred” there were substituted “three years from the date when the person ceased to be under a disability”.”.
- (3) After section 9F of the 1958 Act there shall be inserted—

“Discretionary extension of time limit for actions for libel or slander Discretionary extension of time limit for actions for libel or slander.

9G. 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 section 9(2) (or, where applicable, the period allowed by section 50(1) as modified by section 50(8))

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) shall not be so brought without the leave of the High Court.”.

Transitional provisions

7.—(1) Nothing in Article 3 or 4 shall—

- (a) enable any action to be brought which was barred by the 1958 Act or (as the case may be) by any enactment repealed by that Act before this Order comes into force; or
- (b) affect any action commenced before this Order comes into force.

(2) Subject to paragraph (1), Articles 3 and 4 shall have effect in relation to causes of action accruing before, as well as in relation to causes of action accruing after, this Order comes into force.

(3) Article 5 shall only apply in cases where an interest in damaged property is acquired after this Order comes into force but shall so apply, subject to paragraph (4), irrespective of whether the original cause of action accrued before or after this Order comes into force.

(4) Where—

- (a) a person acquires an interest in damaged property in circumstances to which Article 5 would apart from this paragraph apply; but
- (b) the original cause of action accrued more than six years before this Order comes into force; a cause of action shall not accrue to that person by virtue of paragraph (1) of that Article unless section 70(1)(b) of the 1958 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.

G. I. de Deney
Clerk of the Privy Council

Status: This is the original version (as it was originally made).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the law of limitation of actions in negligence cases involving latent damage (other than personal injuries) and provides for the accrual, in certain circumstances, of a cause of action in negligence to successive owners in respect of latent damage to property. It also reduces the limitation period for libel actions from six years to three years, and authorises the High Court to extend the limitation period for defamation actions where relevant facts become known to the potential plaintiff only after that period has expired.