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STATUTORY INSTRUMENTS

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**1989 No. 1339 (N.I. 11)**

**The Limitation (Northern Ireland) Order 1989**

- - - - - 2nd August 1989

**Modifications etc. (not altering text)**

- C1** Order applied (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), **298(4)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

**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<sup>F1</sup> 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<sup>F2</sup>, 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<sup>F3</sup> Part I of the Arbitration Act 1996<sup>F4</sup>;

“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

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within the meaning of the Rent (Northern Ireland) Order 1978<sup>F5</sup>, 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;

“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<sup>F6</sup>);

“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<sup>F7</sup> (which relates to the Church Temporalities Fund); and
- (b) any periodic sum payable to the Crown Estate Commissioners under the Crown Estate Act 1961<sup>F8</sup>, 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<sup>F9</sup>;

“statutory provision” has the same meaning as in section 1( f) of the Interpretation Act (Northern Ireland) 1954<sup>F10</sup>;

- (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—
- (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<sup>F11</sup>, 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.

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(10) For the purposes of section 42 of the Northern Ireland Constitution Act 1973<sup>F12</sup> (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.

<b>F1</b>	1954 c. 33 (NI)
<b>F2</b>	1970 c. 8 (NI)
<b>F3</b>	1996 c. 23
<b>F4</b>	1996 c. 23
<b>F5</b>	1978 NI 20
<b>F6</b>	1985 NI 5
<b>F7</b>	1920 c. 67
<b>F8</b>	1961 c. 55
<b>F9</b>	1958 c. 10 (NI)
<b>F10</b>	1954 c. 33 (NI)
<b>F11</b>	1970 c. 18 (NI)
<b>F12</b>	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<sup>F13</sup>; or
  - (iii) an amount recoverable under section 1 of the Civil Liability (Contribution) Act 1978<sup>F14</sup>.

<b>F13</b>	1986 NI 6
<b>F14</b>	1978 c. 47

#### 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

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- (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<sup>F15</sup>.

F15 1882 c. 61

#### **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.

(2) [<sup>F16</sup>Subject to Article 51, an action for damages for—

- (a) libel or slander; or  
(b) slander of title, slander of goods or other malicious falsehood,

may not be brought after the expiration of one year from the date on which the cause of action accrued.]

F16 1996 c. 31

#### **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.

[<sup>F17</sup>(1A) This Article does not apply to any action brought for damages under Article 5 of the Protection from Harassment (Northern Ireland) Order 1997.]

(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

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section 14 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937<sup>F18</sup> 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<sup>F19</sup> (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
- (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—

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- (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.

**F17** 1997 NI 9  
**F18** 1937 c. 9 (NI)  
**F19** 1987 NI 20

**Modifications etc. (not altering text)**

**C2** Art. 7 modified (14.12.2011) by Damages (Asbestos-related Conditions) Act (Northern Ireland) 2011 (c. 28), ss. 4(1), 3(2) (with s. 5(2)); S.R. 2011/409, art. 2

**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<sup>F20</sup>.

(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<sup>F21</sup> 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<sup>F22</sup> have the same meanings in this Article or that Article

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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.

**F20** 1987 NI 20  
**F21** 1937 c. 9 (NI)  
**F22** 1987 NI 20

### **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<sup>F23</sup> 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.

**F23** 1977 NI 18

#### **Modifications etc. (not altering text)**

**C3** Art. 9 modified (14.12.2011) by [Damages \(Asbestos-related Conditions\) Act \(Northern Ireland\) 2011](#) (c. 28), ss. 4(1), **3(2)** (with s. 5(2)); S.R. 2011/409, **art. 2**

### **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.

(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—

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- (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<sup>F24</sup> 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.

**F24** 1978 c. 47

### **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<sup>F25</sup> a deed or] an instrument under seal other than an action upon<sup>F25</sup> a deed or] 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

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- (iv) arrears of an annuity charged on personal property;
- (b) an action to enforce an award where the arbitration agreement is<sup>F25</sup> a deed or under seal];
- (c) an action to recover a debt created by Article 25(2) or 474 of the Companies (Northern Ireland) Order 1986<sup>F26</sup>.

**F25** 2005 NI 7

**F26** 1986 NI 6

#### **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.

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(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<sup>F27</sup> (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.

**F27** 1969 c. 16 (NI)

### **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—

- (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,

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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—

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- (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.

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## 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<sup>F28</sup>, 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.

**F28** 1970 c. 18 (NI)

## 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—

- (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.

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(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,



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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<sup>F29</sup>, 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.

**F29** 1970 c. 18 (NI)

### **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<sup>F30</sup> (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.

**F30** 1920 c. 67

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### **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

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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

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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<sup>F31</sup>.

(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.

**F31** 1955 c. 24 (NI)

## 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;

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- (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<sup>F32</sup>, 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 inpatient 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.

**F32** 1986 NI 4

#### **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.

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(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.

(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<sup>F33</sup> (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”.

[<sup>F34</sup>(7) Where the action is one to which Article 6(2) applies, paragraph (1) has effect—

- (a) in the case of an action for libel and slander, as if for the words from “at any time” to “occurred” there were substituted the words “by him at any time before the expiration of one year from the date on which he ceased to be under a disability”; and
- (b) in the case of an action for slander of title, slander of goods or other malicious falsehood, as if for the words “six years” there were substituted the words “one year”.]

(8) Where an action is to recover an amount recoverable under section 1 of the Civil Liability (Contribution) Act 1978<sup>F35</sup>, in paragraph (1) for “six years” substitute “two years”.

<b>F33</b>	1987 NI 20
<b>F34</b>	1996 c. 31
<b>F35</b>	1978 c. 47

### **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.

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(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—

- (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<sup>F36</sup>.

(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.

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(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<sup>F37</sup>.

(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.

**F36** 1987 NI 20

**F37** 1977 NI 18

**[<sup>F38</sup> Court's power to override time limit: actions for defamation or malicious falsehood.**

**51.**—(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—

- (a) the provisions of Article 6(2) 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) 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) in a case where the reason, or one of the reasons, for the delay was that all or any of the facts relevant to the cause of action did not become known to the plaintiff until after the expiration of the period mentioned in Article 6(2)—
  - (i) the date on which any such facts did become known to him, and
  - (ii) the extent to which he acted promptly and reasonably once he knew whether or not the facts in question might be capable of giving rise to an action; and
- (c) the extent to which, having regard to the delay, relevant evidence is likely—
  - (i) to be unavailable, or
  - (ii) to be less cogent than if the action had been brought within the time allowed by Article 6(2).

(3) In the case of an action for slander of title, slander of goods or other malicious falsehood brought by a personal representative—

- (a) the references in paragraph (2) to the plaintiff shall be construed as including the deceased person to whom the cause of action accrued and any previous personal representative of that person; and
- (b) nothing in Article 48(3) shall be construed as affecting the court's discretion under this Article.

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

**F38** 1996 c. 31



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VALID FROM 18/04/2011

## *[<sup>F39</sup>Mediation*

**F39** Art. 51A and preceding cross-heading inserted (18.4.2011) by Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), reg. 10(2) (with reg. 1(2))

### **Extension of time limits: mediation**

**51A.**—(1) Paragraph (2) applies where—

- (a) there is mediation in relation to a relevant cross border dispute giving rise to an action for which a time limit is fixed by this Order; and
- (b) the time limit would, apart from this Article, expire—
  - (i) in the period of 8 weeks after the date on which the mediation ends;
  - (ii) on the date on which the mediation ends; or
  - (iii) after the date on which all of the parties to the dispute agree to participate in the mediation but before the date on which the mediation ends.

(2) Where this paragraph applies, the time limit is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.

(3) For the purposes of paragraph (1) and (2), a mediation in relation to a relevant cross-border dispute ends on the date of the first of these to occur—

- (a) all of the parties reach an agreement in resolution of the dispute;
- (b) all of the parties agree to end the mediation;
- (c) a party notifies all of the other parties of that party's withdrawal,
- (d) a period of 14 days expires after a request made by one party to another party for confirmation of whether the other party has withdrawn and the other party does not respond in that period, or
- (e) a period of 14 days expires after the date on which the mediator's tenure ends (by reason of death, resignation or otherwise) and a replacement mediator has not been appointed in that period.

(4) In this Article—

“the Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters;

“mediation” and “mediator” have the meanings given by Article 3 of the Directive; and

“relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive.]

## *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

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- (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 sub# paragraph ( 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,

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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<sup>F40</sup>.

**F40** 1891 c. 39

#### *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

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- (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;

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(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<sup>F41</sup>, 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.

**F41** [1896 c. 47](#)

### **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.

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### *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—

- (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

*Art. 72 rep. by 1996 c. 23*

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## **[<sup>F42</sup>Actions for recovery of property obtained through unlawful conduct etc.**

**72A.**—(1) None of the time limits fixed by Parts II and III applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (civil recovery of proceeds of unlawful conduct).

(2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twelve years from the date on which the Director's cause of action accrued.

(3) Proceedings under that Chapter are brought when—

- (a) a claim form is issued, or
- [ an application is made for a property freezing order, or]

<sup>F43</sup>(aa)

- (b) an application is made for an interim receiving order,

whichever is the [<sup>F44</sup>earliest].

(4) The Director's cause of action accrues in respect of any recoverable property—

- (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained,
- (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(5) If—

- (a) a person would (but for a time limit fixed by this Order) have a cause of action in respect of the conversion of a chattel, and
- (b) proceedings are started under that Chapter for a recovery order in respect of the chattel,

Article 17(2) does not prevent his asserting on an application under section 281 of that Act that the property belongs to him, or the court making a declaration in his favour under that section.

(6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by Article 17(2).

(7) Expressions used in this Article and Part 5 of that Act have the same meaning in this Article as in that Part.]

**F42** 2002 c. 29

**F43** 2005 c. 15

**F44** 2005 c. 15

## **Actions for recovery of property for purposes of an external order**

**[<sup>F45</sup>72B.**—(1) None of the time limits fixed [<sup>F45</sup>by Parts 2 and 3 of this Order applies to any proceedings under Chapter 2 of Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (civil proceedings for the realisation of property to give effect to an external order).

(2) Proceedings under that Chapter for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twelve years from the date on which the Director's cause of action accrued.

(3) Proceedings under that Chapter are brought when—

- (a) a claim form is issued, or
- (b) an application is made for a property freezing order, or



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- (c) an application is made for an interim receiving order, whichever is earliest.
- (4) The Director's cause of action accrues in respect of any recoverable property—
- (a) in the case of proceedings for a recovery order in respect of property obtained, or believed to have been obtained, as a result of or in connection with criminal conduct, when the property is so obtained,
  - (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained, or believed to have been obtained, as a result of or in connection with criminal conduct which it represents is so obtained.
- (5) If—
- (a) a person would (but for a time limit fixed by this Order) have a cause of action in respect of the conversion of a chattel, and
  - (b) proceedings are started under that Chapter for a recovery order in respect of the chattel, Article 17(2) of this Order does not prevent his asserting on an application under article 192 of that Order that the property belongs to him, or the court making a declaration in his favour under that article.
- (6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by Article 17(2) of this Order.
- (7) In this Article—
- (a) “criminal conduct” is to be construed in accordance with section 447(8) of the Proceeds of Crime Act 2002, and
  - (b) expressions used in this Article which are also used in Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 have the same meaning in this Article as in that Part.]

**F45** Art. 72B inserted (1.1.2006) by [Proceeds of Crime Act 2002 \(External Requests and Orders\) Order 2005 \(S.I. 2005/3181\)](#), [arts. 1, 201\(3\)](#)

VALID FROM 06/04/2010

**[<sup>F46</sup>Actions for exploitation proceeds orders**

**72C.**—(1) None of the time limits given in the preceding provisions of this Order applies to proceedings under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc) for an exploitation proceeds order.

(2) Proceedings under that Part for such an order are not to be brought after the expiration of 6 years from the date on which the enforcement authority's cause of action accrued.

(3) Proceedings under that Part for such an order are brought when an application is made for the order.

(4) Where exploitation proceeds have been obtained by a person from a relevant offence, an enforcement authority's cause of action under that Part in respect of those proceeds accrues when the enforcement authority has actual knowledge that the proceeds have been obtained.

(5) Expressions used in this Article and that Part have the same meaning in this Article as in that Part.]

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**F46** Art. 72C inserted (6.4.2010) by Coroners and Justice Act 2009 (c. 25), ss. 171(2), 182(5) (with s. 180); S.I. 2010/816, art. 2, Sch. para. 11

### **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;

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“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.

*Para.(2)—Amendments*

*Para.(3)—Repeals*

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## SCHEDULES

### SCHEDULE 1

#### ACCRUAL OF RIGHTS OF ACTION TO RECOVER LAND

##### Accrual of right of action: present interests in land

1. Where the person bringing an action to recover land, or some person through whom he claims—

- (a) has been in possession of the land; and
- (b) has, while entitled to possession of the land, been dispossessed or discontinued his possession,

the right of action is to be treated as having accrued on the date of the dispossession or discontinuance.

2. Where—

- (a) any person brings an action to recover any land of a deceased person, whether under a will or on intestacy; and
- (b) the deceased person—
  - (i) was on the date of death in possession of the land or, in the case of a rentcharge created by will or taking effect upon his death, in possession of the land charged; and
  - (ii) was the last person entitled to the land to be in possession of it,

the right of action is to be treated as having accrued on the date of his death.

3. Where—

- (a) any person brings an action to recover land, being an estate or interest in possession assured, otherwise than by will, to him or to some person through whom he claims, by a person who, at the date when the assurance took effect—
  - (i) was in possession of the land; or
  - (ii) as respects a rentcharge created by the assurance, was in possession of the land charged; and
- (b) no person has been in possession of the land by virtue of the assurance,

the right of action is to be treated as having accrued on the date when the assurance took effect.

##### Accrual of right of action: future interests in land

4. The right of action to recover any land is, where—

- (a) the estate or interest claimed was an interest in reversion or remainder or any future estate or interest; and
- (b) no person has taken possession of the land by virtue of the estate or interest claimed,

to be treated as having accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest.

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### Accrual of right of action: certain tenancies

5.—(1) Subject to paragraph (2), for the purposes of this Order—

- (a) a tenancy from year to year or other period, without a lease in writing, is to be treated as being determined at the expiration of the first year or other period, and
- (b) accordingly, the right of action of the person entitled to the land subject to the tenancy is to be treated as having accrued on the date on which the tenancy is determined.

(2) Where any rent or other periodic payment has subsequently been received in respect of the tenancy, the right of action is to be treated as having accrued on the date of the last receipt of rent or other periodic payment.

6.—(1) Where—

- (a) any person is in possession of land by virtue of a lease in writing by which a yearly conventional rent of not less than ten pounds is reserved; and
- (b) the rent is received by some person (in this paragraph referred to as “the wrongful recipient”) wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease; and
- (c) no rent is subsequently received by the person rightfully so entitled,

the right of action of the last#named person to recover the land is to be treated as having accrued at the date when the rent was first received by the wrongful recipient and not at the date of the determination of the lease.

(2) Sub#paragraph (1) does not apply to a lease granted by the Crown or a lease the lessor's interest under which is vested in the Crown.

### Accrual of right of action: forfeiture or breach of condition

7.—(1) A right of action to recover land by virtue of a forfeiture or breach of condition is to be treated as having accrued on the date on which the forfeiture was incurred or the condition broken.

(2) Where—

- (a) a right of action to recover land by virtue of a forfeiture or breach of condition has accrued to a person entitled to an estate or interest in reversion or remainder; and
- (b) the land was not recovered by virtue of the forfeiture or breach,

the right of action to recover the land is not to be treated as having accrued to that person until his estate or interest fell into possession, as if no such forfeiture or breach of condition had occurred.

### Right of action not to accrue without adverse possession

8.—(1) No right of action to recover land is to be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run (in this paragraph referred to as “adverse possession”).

(2) Where—

- (a) under paragraphs 1 to 7 a right of action to recover land is treated as accruing on a certain date; and
- (b) no person is in adverse possession of the land on that date,

the right of action is not to be treated as accruing unless and until adverse possession is taken of the land.

(3) Where—

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- (a) a right of action to recover land has accrued; and
- (b) after the accrual, before the right of action is barred, the land ceases to be in adverse possession,

the right of action is no longer to be treated as having accrued and no fresh right of action is to be treated as accruing unless and until the land is again taken into adverse possession.

(4) For the purposes of this paragraph—

- (a) possession of any land subject to a rentcharge by a person (other than the person entitled to the rentcharge) who does not pay the rentcharge is to be treated as adverse possession of the rentcharge; and
- (b) receipt of the conventional rent under a lease by a person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease is to be treated as adverse possession of the land.

(5) For the purpose of determining whether a person occupying any land is in adverse possession of the land it is not to be assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the fact that his occupation is not inconsistent with the latter's present or future enjoyment of the land.

(6) Sub#paragraph (5) does not prejudice a finding to the effect that a person's occupation of any land is by implied permission of the person entitled to the land where the finding is justified on the actual facts of the case.

Settled land and land held on trust for sale: effect of beneficiary's possession

9. Where—

- (a) any settled land, within the meaning of the Settled Land Acts 1882 to 1890; or
- (b) any land held on trust for sale,

is in the possession of a person entitled to a beneficial interest in the land 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 land is to be treated as accruing during that possession to any person in whom the land is vested as trustee or to any other person entitled to a beneficial interest in the land or the proceeds of sale.

## SCHEDULE 2

### TRANSITIONAL PROVISIONS

1. Nothing in this Order affects the operation of section 10 of the Statute of Limitations, as it had effect immediately before 1st January 1979 (the date of commencement of the Civil Liability (Contribution) Act 1978<sup>F47</sup>), in relation to any case where the damage in question occurred before that date.

**F47** 1978 c. 47

2. It is hereby declared that a decision taken at any time by a court to grant, or not to grant, leave under the Limitation Act (Northern Ireland) 1964<sup>F48</sup> (which, so far as it related to leave, was repealed by the Limitation (Northern Ireland) Order 1976<sup>F49</sup>) does not affect the determination of any question in proceedings under any provision of this Order which corresponds to a provision of the Limitation (Northern Ireland) Order 1976, but in such proceedings account may be taken of evidence admitted in proceedings under the Limitation Act (Northern Ireland) 1964.

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**F48** 1964 c. 1 (NI)

**F49** 1976 NI 18

3. Notwithstanding anything in Article 59(4) or in the repeals made by this Order, the Statute of Limitations continues to have effect in relation to any acknowledgment or payment made before the commencement of Article 9 of the Limitation Amendment (Northern Ireland) Order 1982<sup>F50</sup> (which amended sections 58 and 66 of the Statute of Limitations and made certain repeals in sections 59 and 67 of that Act so as to prevent the revival by acknowledgment or part payment of a right of action barred by that Act) as it had effect immediately before Article 9 came into operation.

**F50** 1982 NI 7

4. Article 74(2)( c ) is to be treated for the purposes of the Hovercraft Act 1968<sup>F51</sup> as if it were contained in an Act passed before that Act.

**F51** 1968 c. 59

5. In relation to a lease granted before the commencement of Article 6(3) of the Limitation Amendment (Northern Ireland) Order 1982 (which substituted “ten pounds a year” for “twenty shillings” in section 21 of the Statute of Limitations), paragraph 6(1)( a ) of Schedule 1 has effect as if for “ten pounds” there were substituted “ twenty shillings ”.

6.—(1) Nothing in this Order affects any right or title, subsisting immediately before the commencement of this Order, which has effect by virtue of the Judgment Mortgage (Ireland) Act 1850<sup>F52</sup> of a person who under that Act is a mortgagor or mortgagee of an estate or interest in land, or of any person claiming through him.

(2) Accordingly, the Statute of Limitations (as it was in force immediately before that commencement) shall continue to apply for the purpose of determining whether any such right of such a person (or of any person claiming through him) is barred, or whether the right or title of such a person (or of any person claiming through him) is extinguished.

**F52** 1850 c. 29

7.—(1) Nothing in this Order—

- (a) enables any action to be brought which was barred by this Order or (as the case may be) by the Statute of Limitations before the relevant date; or
- (b) affects any action or arbitration commenced before that date or the title to any property which is the subject of any such action or arbitration.

(2) In sub#paragraph (1) “the relevant date” means—

- (a) in relation to Article 73, 1st December 1982 (the date of commencement of Article 3 of the Limitation Amendment (Northern Ireland) Order 1982<sup>F53</sup> (which substituted the provisions reproduced in Article 73 for section 2 of the Statute of Limitations));
- (b) in relation to Articles 11, 12 and 49, 16th December 1987 (the date of commencement of the provisions of the Limitation (Amendment) (Northern Ireland) Order 1987<sup>F54</sup> which inserted the provisions reproduced in those Articles in the Statute of Limitations); and
- (c) in relation to any other provision of this Order, 11th April 1982 (the date of commencement of the Limitation Amendment (Northern Ireland) Order 1982, except Article 3).

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**F53** [1982 NI 7](#)  
**F54** [1987 NI 17](#)

### *Schedule 3 — Amendments*

### *Schedule 4 — Repeals*



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