
STATUTORY INSTRUMENTS

1989 No. 1339

The Limitation (Northern Ireland) Order 1989

PART IV

EXTENSION AND EXCLUSION OF TIME LIMITS

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.

[^{F1}(1A) The court must not under this Article disapply any provision of Article 7 in its application to an overseas armed forces action if the action was brought after the expiration of the period of six years from the Article 7 relevant date (see paragraph (8)).

(1B) An “overseas armed forces action” means an action, or cause of action, which—

- (a) is against the Ministry of Defence, the Secretary of State for Defence, or any member of Her Majesty's forces,
- (b) is brought in connection with overseas operations (see paragraph (8)), and
- (c) relates to damage that occurred outside the British Islands.

(1C) In paragraph (1B), “damage” means—

- (a) in the case of an overseas armed forces action for which a period of limitation is fixed by Article 7, the personal injuries to which the action relates;
- (b) in the case of an overseas armed forces action for which a period of limitation is fixed by Article 9(3), the death to which the action relates (and where a person sustains personal injuries outside the British Islands which are a substantial cause of their later death in any of the British Islands, or vice versa, the death is for the purposes of paragraph (1B)(c) to be treated as occurring where the injuries were sustained).]

(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^{F2}.

(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).

[^{F3}(3A) But where the reason why the person injured could no longer maintain an action was because of the time limit in Article 7, the court may disapply Article 9(2) in its application to an overseas armed forces action only if the person died within the period of six years beginning with the Article 7 relevant date (ignoring, for this purpose, the reference to Article 7(5) in paragraph (a) of the definition of that term).

(3B) The court must not under this Article disapply Article 9(3) in its application to an overseas armed forces action if the action was brought after the expiration of the period of six years from the Article 9 relevant date (see paragraph (8)).]

(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.

[^{F4}(6A) In acting under this Article in relation to an overseas armed forces action—

- (a) when considering the factor mentioned in paragraph (4)(b), the court must have particular regard to—
 - (i) the likely impact of the operational context on the ability of members of Her Majesty's forces to remember relevant events or actions fully or accurately, and
 - (ii) the extent of dependence on the memories of members of Her Majesty's forces, taking into account the effect of the operational context on their ability to record, or to retain records of, relevant events or actions; and
- (b) the court must also have particular regard to the likely impact of the action on the mental health of any witness or potential witness who is a member of Her Majesty's forces.

(6B) In paragraph (6A) references to “the operational context” are to the fact that the events to which the action relates took place in the context of overseas operations, and include references to the exceptional demands and stresses to which members of Her Majesty's forces are subject.]

(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^{F5}.

[^{F6}(7A) In the application of paragraph (1A), (3A) or (3B) to an overseas armed forces action in respect of which a limitation period has been suspended in accordance with section 1(1) of the Limitation (Enemies and War Prisoners) Act 1945, any reference to the period of six years is to be treated as a reference to the period of six years plus—

- (a) the period during which the limitation period was suspended, and
- (b) any extra period after the suspension ended during which the action could have been brought only because of an extension provided for by section 1(1) of that Act.]

[^{F7}(8) In this Article—

“the Article 7 relevant date” means the latest of the following—

- (a) the date from which the period of three years starts to run in accordance with Article 7(4) or (5);
- (b) where Article 48 applies, the date from which the period of three years mentioned in paragraph (1) of that Article (as that paragraph has effect with the modification made by paragraph (5) of that Article) starts to run;
- (c) where Article 71(1)(a) or (b) applies, the date from which the period of three years starts to run in accordance with paragraph (1) of that Article;

“the Article 9 relevant date” means the latest of the following—

- (a) the date from which the period of three years starts to run in accordance with Article 9(3);
- (b) where Article 48 applies, the date from which the period of three years mentioned in paragraph (1) of that Article (as that paragraph has effect with the modification made by paragraph (5) of that Article) starts to run;

“the British Islands” means the United Kingdom, the Channel Islands and the Isle of Man;

“the court” means the court in which the action has been brought;

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

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

(9) References in this Article [^{F8}—

- (a) to the British Islands include the territorial sea adjacent to the United Kingdom and the territorial sea adjacent to any of the Channel Islands or the Isle of Man (and the reference to any of the British Islands is to be read accordingly);
- (b) to a member of Her Majesty's forces, in relation to an overseas armed forces action, include an individual who was a member of Her Majesty's forces at the time of the events to which the action relates;
- (c) to Article 7, 8 or 9 include references to those Articles as extended by any other provision of this Order.

F1 Art. 50(1A)-(1C) inserted (30.6.2021) by [Overseas Operations \(Service Personnel and Veterans\) Act 2021 \(c. 23\), s. 14\(2\), Sch. 4 para. 1\(2\); S.I. 2021/678, reg. 2](#)

F2 1987 NI 20

F3 Art. 50(3A)(3B) inserted (30.6.2021) by [Overseas Operations \(Service Personnel and Veterans\) Act 2021 \(c. 23\), s. 14\(2\), Sch. 4 para. 1\(3\); S.I. 2021/678, reg. 2](#)

- F4** Art. 50(6A)(6B) inserted (30.6.2021) by Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23), s. 14(2), **Sch. 4 para. 1(4)**; S.I. 2021/678, reg. 2
- F5** 1977 NI 18
- F6** Art. 50(7A) inserted (30.6.2021) by Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23), s. 14(2), **Sch. 4 para. 1(5)**; S.I. 2021/678, reg. 2
- F7** Art. 50(8) substituted (30.6.2021) by Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23), s. 14(2), **Sch. 4 para. 1(6)**; S.I. 2021/678, reg. 2
- F8** Words in art. 50(9) inserted (30.6.2021) by Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23), s. 14(2), **Sch. 4 para. 1(7)**; S.I. 2021/678, reg. 2

[^{F9} 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.]

F9 1996 c. 31

Changes to legislation:

There are currently no known outstanding effects for the The Limitation (Northern Ireland) Order 1989, Cross Heading: Discretionary Power of Court to Override certain Time Limits.