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STATUTORY INSTRUMENTS

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**1989 No. 1339**

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

**PART IV**

**EXTENSION AND EXCLUSION OF TIME LIMITS**

*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
- (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;
- (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(1), a tenant against whom an ejection 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 ejection, are not statute-barred debts.

### **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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(1) 1896 c. 47