

## SCHEDULES

### SCHEDULE 1

Section 6.

#### LIMITATION OF ACTIONS UNDER PART I

#### PART I

##### ENGLAND AND WALES

- 1 After section 11 of the Limitation Act 1980 (actions in respect of personal injuries) there shall be inserted the following section—

**“11A Actions in respect of defective products.**

- (1) This section shall apply to an action for damages by virtue of any provision of Part I of the Consumer Protection Act 1987.
- (2) None of the time limits given in the preceding provisions of this Act shall apply to an action to which this section applies.
- (3) An action to which this section applies shall not be brought after the expiration of the period of ten years from the relevant time, within the meaning of section 4 of the said Act of 1987; and this subsection shall operate to extinguish a right of action and shall do so whether or not that right of action had accrued, or time under the following provisions of this Act had begun to run, at the end of the said period of ten years.
- (4) Subject to subsection (5) below, an action to which this section 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, shall not be brought after the expiration of the period 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 subsection (4) above, that subsection shall have effect as respects the cause of action surviving for the benefit of his estate by virtue of section 1 of the Law Reform (Miscellaneous Provisions) Act 1934 as if for the reference to that period there were substituted a reference to the period of three years from whichever is the later of—
  - (a) the date of death; and

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- (b) the date of the personal representative's knowledge.
- (6) For the purposes of this section '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) but not anyone appointed only as a special personal representative in relation to settled land; and regard shall be had to any knowledge acquired by any such person while a personal representative or previously.
- (7) If there is more than one personal representative and their dates of knowledge are different, subsection (5)(b) above shall be read as referring to the earliest of those dates.
- (8) Expressions used in this section or section 14 of this Act and in Part I of the Consumer Protection Act 1987 have the same meanings in this section or that section as in that Part; and section 1(1) of that Act (Part I to be construed as enacted for the purpose of complying with the product liability Directive) shall apply for the purpose of construing this section and the following provisions of this Act 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.”
- 2 In section 12(1) of the said Act of 1980 (actions under the Fatal Accidents Act 1976), after the words "section 11" there shall be inserted the words "or 11A".
- 3 In section 14 of the said Act of 1980 (definition of date of knowledge), in subsection (1) at the beginning there shall be inserted the words "Subject to subsection (1A) below," and after that subsection there shall be inserted the following subsection—
- “(1A) In section 11A of this Act and in section 12 of this Act so far as that section applies to an action by virtue of section 6(1)(a) of the Consumer Protection Act 1987 (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 shall 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 I of that Act in respect of the loss or damage.”
- 4 In section 28 of the said Act of 1980 (extension of limitation period in case of disability), after subsection (6) there shall be inserted the following subsection—

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- “(7) If the action is one to which section 11A of this Act applies or one by virtue of section 6(1)(a) of the Consumer Protection Act 1987 (death caused by defective product), subsection (1) above—
- (a) shall not apply to the time limit prescribed by subsection (3) of the said section 11A or to that time limit as applied by virtue of section 12(1) of this Act; and
  - (b) in relation to any other time limit prescribed by this Act shall have effect as if for the words 'six years' there were substituted the words 'three years'.”
- 5 In section 32 of the said Act of 1980 (postponement of limitation period in case of fraud, concealment or mistake)—
- (a) in subsection (1), for the words "subsection (3)" there shall be substituted the words "subsections (3) and (4A)"; and
  - (b) after subsection (4) there shall be inserted the following subsection—
- “(4A) Subsection (1) above shall not apply in relation to the time limit prescribed by section 11 A(3) of this Act or in relation to that time limit as applied by virtue of section 12(1) of this Act.”
- 6 In section 33 of the said Act of 1980 (discretionary exclusion of time limit)—
- (a) in subsection (1). after the words "section 11" there shall be inserted the words "or 11A";
  - (b) after the said subsection (1) there shall be inserted the following subsection—
- “(1A) The court shall not under this section disapply—
- (a) subsection (3) of section 11A; 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 I of the Consumer Protection Act 1987.”:
- (c) in subsections (2) and (4), after the words "section 11" there shall be inserted the words "or subsection (4) of section 11A";
  - (d) in subsection (3)(b) after the words "section 11" there shall be inserted the words ", by section 11A": and
  - (e) in subsection (8) after the words "section 11" there shall be inserted the words "or 11A".

## PART II

### SCOTLAND

- 7 The Prescription and Limitation (Scotland) Act 1973 shall be amended as follows.
- 8 In section 7(2), after the words "not being an obligation" there shall be inserted the words "to which section 22A of this Act applies or an obligation".
- 9 In Part II, before section 17, there shall be inserted the following section—

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**“16A Part II not to extend to product liability.**

—This Part of this Act does not apply to any action to which section 22B or 22C of this Act applies.”

10 After section 22, there shall be inserted the following new Part—

**“PART IIA**

PRESCRIPTION OF OBLIGATIONS AND LIMITATION OF ACTIONS  
 UNDER PART I OF THE CONSUMER PROTECTION ACT 1987

*Prescription of Obligations*

**22A Ten years' prescription of obligations.**

- (1) An obligation arising from liability under section 2 of the 1987 Act (to make reparation for damage caused wholly or partly by a defect in a product) shall be extinguished if a period of 10 years has expired from the relevant time, unless a relevant claim was made within that period and has not been finally disposed of, and no such obligation shall come into existence after the expiration of the said period.
- (2) If, at the expiration of the period of 10 years mentioned in subsection (1) above, a relevant claim has been made but has not been finally disposed of, the obligation to which the claim relates shall be extinguished when the claim is finally disposed of.
- (3) In this section—
  - (a) a decision disposing of the claim has been made against which no appeal is competent;
  - (b) an appeal against such a decision is competent with leave, and the time limit for leave has expired and no application has been made or leave has been refused;
  - (c) leave to appeal against such a decision is granted or is not required, and no appeal is made within the time limit for appeal; or
  - (d) the claim is abandoned;

a claim is finally disposed of when 'relevant claim' in relation to an obligation means a claim made by or on behalf of the creditor for implement or part implement of the obligation, being a claim made—

- (a) in appropriate proceedings within the meaning of section 4(2) of this Act; or
- (b) by the presentation of, or the concurring in, a petition for sequestration or by the submission of a claim under section 22 or 48 of the Bankruptcy (Scotland) Act 1985; or
- (c) by the presentation of, or the concurring in, a petition for the winding up of a company or by the submission of a claim in a liquidation in accordance with the rules made under section 411 of the Insolvency Act 1986;

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'relevant time' has the meaning given in section 4(2) of the 1987 Act.

- (4) Where a relevant claim is made in an arbitration, and the nature of the claim has been stated in a preliminary notice (within the meaning of section 4(4) of this Act) relating to that arbitration, the date when the notice is served shall be taken for those purposes to be the date of the making of the claim.

### *Limitation of actions*

#### **22B 3 year limitation of actions.**

- (1) This section shall apply to an action to enforce an obligation arising from liability under section 2 of the 1987 Act (to make reparation for damage caused wholly or partly by a defect in a product), except where section 22C of this Act applies.
- (2) Subject to subsection (4) below, an action to which this section applies shall not be competent unless it is commenced within the period of 3 years after the earliest date on which the person seeking to bring (or a person who could at an earlier date have brought) the action was aware, or on which, in the opinion of the court, it was reasonably practicable for him in all the circumstances to become aware, of all the facts mentioned in subsection (3) below.
- (3) The facts referred to in subsection (2) above are—
- (a) that there was a defect in a product;
  - (b) that the damage was caused or partly caused by the defect;
  - (c) that the damage was sufficiently serious to justify the pursuer (or other person referred to in subsection (2) above) in bringing an action to which this section applies on the assumption that the defender did not dispute liability and was able to satisfy a decree;
  - (d) that the defender was a person liable for the damage under the said section 2.
- (4) In the computation of the period of 3 years mentioned in subsection (2) above, there shall be disregarded any period during which the person seeking to bring the action was under legal disability by reason of nonage or unsoundness of mind.
- (5) The facts mentioned in subsection (3) above do not include knowledge of whether particular facts and circumstances would or would not, as a matter of law, result in liability for damage under the said section 2.
- (6) Where a person would be entitled, but for this section, to bring an action for reparation other than one in which the damages claimed are confined to damages for loss of or damage to property, the court may, if it seems to it equitable to do so, allow him to bring the action notwithstanding this section.

#### **22C Actions under the 1987 Act where death has resulted from personal injuries.**

- (1) This section shall apply to an action to enforce an obligation arising from liability under section 2 of the 1987 Act (to make reparation for damage

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caused wholly or partly by a defect in a product) where a person has died from personal injuries and the damages claimed include damages for those personal injuries or that death.

- (2) Subject to subsection (4) below, an action to which this section applies shall not be competent unless it is commenced within the period of 3 years after the later of—
- (a) the date of death of the injured person;
  - (b) the earliest date on which the person seeking to make (or a person who could at an earlier date have made) the claim was aware, or on which, in the opinion of the court, it was reasonably practicable for him in all the circumstances to become aware—
    - (i) that there was a defect in the product;
    - (ii) that the injuries of the deceased were caused (or partly caused) by the defect; and
    - (iii) that the defender was a person liable for the damage under the said section 2.
- (3) Where the person seeking to make the claim is a relative of the deceased, there shall be disregarded in the computation of the period mentioned in subsection (2) above any period during which that relative was under legal disability by reason of nonage or unsoundness of mind.
- (4) Where an action to which section 22B of this Act applies has not been brought within the period mentioned in subsection (2) of that section and the person subsequently dies in consequence of his injuries, an action to which this section applies shall not be competent in respect of those injuries or that death.
- (5) Where a person would be entitled, but for this section, to bring an action for reparation other than one in which the damages claimed are confined to damages for loss of or damage to property, the court may, if it seems to it equitable to do so allow him to bring the action notwithstanding this section.
- (6) In this section 'relative' has the same meaning as in the Damages (Scotland) Act 1976.
- (7) For the purposes of subsection (2)(b) above there shall be disregarded knowledge of whether particular facts and circumstances would or would not, as a matter of law, result in liability for damage under the said section 2.

### *Supplementary*

#### **22D Interpretation of this Part.**

- (1) Expressions used in this Part and in Part I of the 1987 Act shall have the same meanings in this Part as in the said Part I.
- (2) For the purposes of section 1(1) of the 1987 Act, this Part shall have effect and be construed as if it were contained in Part I of that Act.
- (3) In this Part, 'the 1987 Act' means the Consumer Protection Act 1987.”

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- 12 In paragraph 2 of Schedule 1, after sub-paragraph (gg) there shall be inserted the following sub-paragraph—
- “(ggg) to any obligation arising from liability under section 2 of the Consumer Protection Act 1987 (to make reparation for damage caused wholly or partly by a defect in a product);”.