
STATUTORY INSTRUMENTS

1989 No. 1339

The Limitation (Northern Ireland) Order 1989

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;
 - (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⁽¹⁾, 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 in-patient 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.

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.

(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—

(1) 1986 NI 4

- (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(2) (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”.

(7) Where an action is for damages for libel or slander, in paragraph (1) for the words from “six years” to “occurred” substitute “three years from the date when the person ceased to be under a disability”.

(8) Where an action is to recover an amount recoverable under section 1 of the Civil Liability (Contribution) Act 1978(3), in paragraph (1) for “six years” substitute “two years”.

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.

(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—

(2) 1987 NI 20

(3) 1978 c. 47

- (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(4).

(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.

(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(5).

(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.

(4) 1987 NI 20

(5) 1977 NI 18

Discretionary extension of time limit: actions for libel or slander

51. Where a person to whom a cause of action for libel or slander has accrued has not brought such an action for damages within the period of three years mentioned in Article 6(2) (or, where applicable, the period allowed by Article 48(1) as modified by Article 48(7)) because all or any of the facts relevant to that cause of action did not become known to him until after the expiration of that period, such an action for damages—

- (a) may be brought by him at any time before the expiration of one year from the earliest date on which he knew all the facts relevant to that cause of action; but
- (b) is not to be so brought without the leave of the High Court.

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
- (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 subparagraph (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,

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(6).

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(7), 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.

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.

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)).