

## Limitation Act 2010: The new regime starts to bite from 1 January 2017

The Limitation Act 2010 came into force on 1 January 2011 but as most limitation periods are six years the limitation periods prescribed under the Act will need to be considered from 1 January 2017 onwards as this is six years after the Act came into force.

\*Jackie Frampton, Associate explains.

### The Limitation Act 2010

Most legal claims have to be brought within a certain time period (known as the limitation period). After this date passes, the claim becomes time-barred no matter how strong it is.

The previous legislation dealing with limitation, the Limitation Act 1950, was problematic as under that Act the limitation period started to run when a cause of action accrued. This could be difficult as in many cases a claim could accrue and limitation could expire before the plaintiff was aware that they had a claim. This could leave the plaintiff with no remedy as the claim was limitation-barred.

In order to deal with this problem, the 2010 Act introduces a three-tier system of limitation with primary, late knowledge and long stop periods. The late knowledge period will allow plaintiffs extra time to bring a claim where they did not have knowledge of the claim at the start of the limitation period (provided that they satisfy the requirements of the Act).

### When does limitation start to run?

Under the Limitation Act 1950, a limitation period commenced when the claim accrued. It can be difficult to ascertain when this occurs.

The question of when the claim accrues should not matter for most claims under the Limitation Act 2010 as limitation starts to run, for most purposes, from the date of the act or omission on which the claim is based.

Under the Limitation Act 2010, when the start date is for limitation purposes will depend on the type of relief sought rather than on the cause of action.

Primary limitation is 6 years for most acts or omissions but exceptions for:

- Defamation (2 years)
- Recovery of land (sixty or twelve years)

### Late Knowledge period

The late knowledge period is a new concept not found in the Limitation Act 1950.

In some cases it may take a number of years to become aware of the damage or of another element of the claim so plaintiffs could be unaware that they have a claim at the close of the primary period. The late knowledge period will apply where the plaintiff does not know particular relevant facts at the start of the claim's primary period.

If late knowledge can be proven, the limitation period expires three years after the late knowledge date so a claim must be brought within this period.

### Long stop period

The late knowledge period cannot be longer than the prescribed 15 year-long stop period after which the claim is entirely barred. The longstop period ends 15 years after the date of the act or omission on which the claim is based (the claim's **longstop period**).

### Other enactments

There are a number of other statutes which have their own limitation periods such as the Building Act 2004 and the Fair Trading Act 1986.

Some of these apply instead of the limitation periods contained in the Limitation Act and some apply as well as the Limitation Act periods.

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#### Contracting out

Section 41 allows for contracting out of the Act.

For example, parties to a dispute could agree to extend a limitation period while they attempt to negotiate a resolution to the dispute rather than filing proceedings just before a limitation period expires.

This could be a good way for some parties to save on litigation costs provided that they are both serious about resolving the dispute.

#### Conclusion

The Limitation Act 2010 has simplified the law of limitation periods but there are still a few grey areas in the Act which the courts will need to clarify over the coming years. The introduction of the late knowledge and long stop period should lead to fairer outcomes for plaintiffs.

When contemplating a legal claim it is crucial to seek legal advice as soon as possible in order to avoid the limitation period expiring. If this occurs, you can be left with no remedy no matter how strong your claim was.