

LIMITATION OF ACTIONS

Law Com No 270

EXECUTIVE SUMMARY

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The current law on limitation periods suffers from a number of problems. The Limitation Act 1980 makes different provision in respect of different causes of action. It is not always clear which category a cause of action falls into, and thus how it should be treated for limitation purposes. The date on which the limitation period starts to run does not always take account of the claimant's knowledge of the relevant facts, leading in some cases to unfairness. In some cases the Act provides no protection to the claimant under a disability; in others, the protection given is too extensive, giving the claimant unlimited protection at the expense of the defendant even when the claimant has a representative who is fully aware of the relevant facts. Cases such as *Brocklesbury v Armitage & Guest*¹ have shown that the provisions of the Act on deliberate concealment do not work well with the limitation regime applying to claims for latent damage other than personal injuries, and that they can penalise defendants who had no intention of concealing information from the claimant. In addition, the Act cannot readily be applied to new causes of action, such as claims for restitution.

In this Report we recommend that these problems should be resolved by the introduction of a single, core limitation regime, which will apply, as far as possible, to all claims for a remedy for a wrong, claims for the enforcement of a right and claims for restitution. This regime will consist of:

- A primary limitation period of three years starting from the date on which the claimant knows, or ought reasonably to know (a) the facts which give rise to the cause of action; (b) the identity of the defendant; and (c) if the claimant has suffered injury, loss or damage or the defendant has received a benefit, that the injury, loss, damage or benefit was significant.
- A long-stop limitation period of 10 years, starting from the date of the accrual of the cause of action or (for those claims in tort where loss is an essential element of the cause of action, or claims for breach of statutory duty) from the date of the act or omission which gives rise to the cause of action (but for personal injuries claims see below).

We recommend that the above core regime should apply without any qualification to the following actions: the majority of tort claims, contract claims, restitutionary claims, claims for breach of trust and related claims, claims on a judgment or arbitration award, and claims on a statute.

¹ [2001] 1 All ER 172.

The core regime will be modified in its application to claims in respect of personal injuries. The court should have a discretion to disapply the primary limitation period, and no long-stop limitation period will apply. All personal injury claims will be subject to this modified regime, whether the claim concerned is made in negligence or trespass to the person.

We recommend that claims to recover land and related claims, though not subject to the core regime, should be subject to a limitation period of the same length as the long-stop limitation period, running from the date on which the cause of action accrues.

We also recommend that the core regime should extend, but with some qualifications, to the following claims: claims under the Law Reform (Miscellaneous Provisions) Act 1934, the Fatal Accidents Act 1976 and the Consumer Protection Act 1987; claims for conversion; claims by a subsequent owner of damaged property; claims in relation to mortgages and charges; and claims under the Companies Act 1985 and in insolvency proceedings. Subject to a few exceptions, we do not propose to alter other specific limitation periods laid down in enactments other than the Limitation Act 1980.

We further recommend that where the core regime applies to common law remedies for a cause of action, it should also apply to equitable remedies for that cause of action; but that delay may still bar a remedy before the limitation period under the core regime has expired. We recommend that the core regime should apply to all claims unless excluded by another provision of the proposed Bill (or any other enactment).

During the claimant's minority the initial limitation period should not run. The long-stop limitation period should run during minority, but not so as to bar an action before the claimant reaches the age of 21. Adult disability (including supervening disability) should suspend the initial limitation period, but will not affect the long-stop limitation period.

However, the protection given to the adult claimant suffering from a disability will not be unlimited. Where the claimant under a disability has suffered personal injury (to which no long stop period will apply) and is in the care of a responsible adult ten years after the later of (a) the act or omission giving rise to the claim and (b) the onset of disability, the primary limitation period should run from the date the responsible adult knew or ought to have known the relevant facts unless the responsible adult is a defendant to the claim.

The long-stop limitation period should not run where the defendant has concealed relevant facts, but only if the concealment was dishonest. Acknowledgments and part payments should start time running again, but not once the initial or long-stop limitation period has expired.

The parties may agree that the limitation regime we recommend should not apply to disputes between them, or should only apply in modified form. They will not however be able to reduce the protection afforded by our provisions on concealment, minority or other disability nor to modify the application of the long-stop limitation period to claims under the Consumer Protection Act 1987.

THE LAW COMMISSION

Item 2 of the Seventh Programme of Law Reform: Limitation of Actions

LIMITATION OF ACTIONS

To the Right Honourable the Lord Irvine of Lairg, Lord High Chancellor of Great Britain

PART I

INTRODUCTION

1. THE SCOPE OF THIS REVIEW

- 1.1 In our Sixth Programme of Law Reform we recommended that “there should be a comprehensive review of the law on limitation periods with a view to its simplification and rationalisation.” The first stage of this review was completed with the publication of our Consultation Paper, *Limitation of Actions*, in January 1998. We received a very large number of responses (182) to the Consultation Paper, and we have derived enormous assistance from them. We are most grateful to consultees for the time which has been spent in considering, and responding to, our provisional proposals. A list of those who responded is included in Appendix B to this Report.
- 1.2 In this Report we now make our final recommendations for the reform of the law on limitation periods for civil claims. The prosecution of criminal offences is therefore by its nature excluded. We are also of the view that our recommendations should not apply to applications related to matrimonial and family proceedings. It would be inappropriate, for example, for an application in relation to the care of children following a divorce to be subject to a limitation period. We therefore propose to exclude any claim relating to ‘family proceedings’.² Similarly, our recommendations will not extend to purely administrative claims, such as an application for directions by a trustee.
- 1.3 In a number of cases, claims which would otherwise come within our recommended limitations regime are subject to a limitation period which is prescribed in an enactment other than the Limitation Act 1980. With a few exceptions,³ we do not propose to include these claims within our regime. This will, for example, exclude applications for judicial review, and claims under the Human Rights Act 1998, from the scope of the new Act. The other major exclusion from our review is what we described, in our Consultation Paper, as

² ‘Family proceedings’, for this purposes, will be defined by reference to s 32 of the Matrimonial and Family Proceedings Act 1984, including claims relating to matrimonial causes, legitimacy, adoptions, applications for consent to the marriage of a minor or a declaration under s 27B(5) of the Marriage Act 1949, and under Part III of the Family Law Act 1986.

³ Which are discussed at paras 4.279 - 4.288 below.

“purely procedural” aspects of the law. With one exception, relating to the rules governing the addition of new claims to existing actions,⁴ we do not make recommendations in respect of any areas that are dealt with by Rules of Court or under the courts’ inherent jurisdiction to determine matters of practice and procedure.⁵ Our recommendations will be limited to claims for substantive relief - that is, claims for a remedy for a wrong, the enforcement of a right, or for restitution.

2. PROBLEMS WITH THE CURRENT LAW

- 1.4 In the Consultation Paper we identified the major problems of the current law:⁶ it is unfair, complex, uncertain and outdated.
- 1.5 Traditionally, the limitation period has started from the date the cause of action accrued, whether or not the claimant knows of the potential claim. This caused injustice where the injury suffered by the claimant did not become apparent for several years. Provision has been made for such cases of latent damage in actions for personal injuries,⁷ under the Consumer Protection Act 1987⁸ and in some other cases.⁹ However, the provision for latent damage does not extend to most causes of action. Outside the areas of personal injuries and consumer protection, the limitation period will only run from the date the claimant knows the relevant facts if the claim is brought in negligence. Even where the claim is for personal injuries, provision for latent damage does not extend to deliberately caused injuries. Here the limitation period remains six years, running from the date of accrual of the cause of action. This has led to the anomalous result that a claimant who has been sexually abused by her father may have longer to bring a claim for damages against her mother for negligently failing to prevent the abuse than to bring a claim against her father for actually committing the abuse.¹⁰
- 1.6 It is necessary to balance the interests of the claimant (who wishes to have as long as possible to bring a claim) and the defendant (who must be protected from

⁴ We consider that it is necessary to deal with this for two reasons. First, this area is governed by section 35 of the Limitation Act 1980, and cannot be reformed without primary legislation. Secondly, as discussed in our Consultation Paper (at paras 9.28 - 9.33) the rules under the current law have proved difficult to apply.

⁵ Examples of these “procedural matters” include applications to extend the period for which a claim form is valid (Civil Procedure Rules 1998 (“CPR”), r 7.6), matters which must be specifically included in the particulars of claim or the claim form (CPR, Parts 8 and 16), the rules governing the amendment of statements of case (CPR, Part 17) and applications to strike out an action for abuse of process (CPR, r 3.4).

⁶ Limitation of Actions, Consultation Paper No 151 (1998), paras 1.1 - 1.5 and 11.1 - 11.15.

⁷ Limitation of Actions, Consultation Paper No 151 (1998), paras 1.13 - 1.14 and 3.29 - 3.76.

⁸ Limitation of Actions, Consultation Paper No 151 (1998), paras 1.19 and 3.101 - 3.104.

⁹ Limitation of Actions, Consultation Paper No 151 (1998), para 1.18 and 3.87 - 3.3.100.

¹⁰ *S v W* [1995] 1 FLR 862; *Stubbings v Webb* [1993] AC 498.

stale claims) in setting a limitation period. It will never be possible to achieve complete fairness between the parties (indeed the imposition of any limitation period could be regarded as doing 'rough justice' to the claimant). However the balance struck under the present law does not give sufficient recognition to the interests of the claimant. And even though the changes referred to have resulted in some improvement, in each case a different regime has been adopted, introducing needless complexity into the law.

- 1.7 The law lacks certainty in some areas. For example, it is unclear precisely what "actions to recover sums recoverable by virtue of an enactment" are under section 9 of the Limitation Act 1980.¹¹ The correct interpretation of the provisions in the Limitation Act 1980 on breach of trust,¹² on conversion¹³ and on actual and constructive knowledge¹⁴ is also unclear.
- 1.8 The law is outdated in some respects. The traditional limitation period of six years which applies to some actions founded on tort and actions founded on breach of (simple) contract originated in the Limitation Act 1623 when communication and gathering information was far more difficult than it is today. The law has also preserved some traditional distinctions which no longer have any relevance, such as the restriction of the concept of acknowledgments to claims for specified amounts¹⁵ and the distinction between actions on a simple contract (subject to the six year limitation period) and actions on a specialty (subject to a twelve year limitation period).
- 1.9 More importantly, the Limitation Act 1980 cannot be applied straightforwardly to causes of action such as the newly recognised law of restitution founded on unjust enrichment. This has been recently illustrated by *Kleinwort Benson Ltd v Lincoln City Council*.¹⁶ The House of Lords recognised that money paid under a mistake of law should be recoverable, and held that section 32(1) of the Limitation Act 1980 applied, so that the period of limitation does not begin to run until the claimant could with reasonable diligence have discovered the mistake. Where the 'mistake' results from a 'change' in the common law after the relevant payment has been made, the limitation period under the current law will only begin to run when the claimant should have discovered the 'change', no matter how long before the 'change' the payment has been made. This led Lord Goff of Chieveley to remark:

I realise that this consequence may not have been fully appreciated at the time when this provision was enacted, and further that the recognition of the right at common law to recover money on the

¹¹ Limitation of Actions, Consultation Paper No 151 (1998), paras 7.10 - 7.16.

¹² Limitation of Actions, Consultation Paper No 151 (1998), paras 4.6 - 4.13.

¹³ Limitation of Actions, Consultation Paper No 151 (1998), paras 3.108 - 3.115.

¹⁴ Limitation of Actions, Consultation Paper No 151 (1998), paras 3.52 - 3.65.

¹⁵ Previously known as "liquidated damages".

¹⁶ [1999] 2 AC 349.

ground that it was paid under a mistake of law may call for legislative reform to provide for some time limit to the right of recovery in such cases.¹⁷

3. THE PROVISIONAL PROPOSALS IN OUR CONSULTATION PAPER

1.10 In our Consultation Paper on limitation periods we proposed to resolve the problems identified above by applying a single, unified, limitations regime as far as possible to all causes of action. The main elements of this “core regime” were provisionally recommended to be as follows:

- (1) There would be an initial limitation period of three years that would run from when the claimant knows, or ought reasonably to know, that he or she has a cause of action.
- (2) There would be a long-stop limitation period of ten years, or in personal injury claims of thirty years, that would run from the date of the act or omission which gives rise to the claim.
- (3) The claimant’s disability (including supervening disability) would extend the initial limitation period (unless, possibly, there is a representative adult other than the defendant). Adult disability would not extend the long-stop limitation period (and we sought views as to whether minority should do so). Deliberate concealment (initial and subsequent) would extend the long-stop. Acknowledgments and part payments should start time running again but not once the initial or long-stop limitation period has expired.
- (4) The courts would *not* have a discretion to disapply a limitation period.

1.11 With two exceptions, the main elements of the core regime, and in particular the move to a limitation period starting from the date on which the facts establishing the claimant’s cause of action are discoverable by the claimant, were welcomed by the majority of consultees. The two exceptions were, first, our proposal that there should be a long-stop of thirty years applying to actions for personal injury; and, secondly, our proposal to remove the courts’ discretion to disapply the limitation period in relation to personal injury claims. With some hesitation, we have been persuaded by consultees’ responses that these two provisional proposals should not form part of our final recommendations.

4. OUTLINE OF OUR MAIN RECOMMENDATIONS

1.12 We recommend that there should be a core limitation regime¹⁸ which will apply to claims for a remedy for a wrong, claims for the enforcement of a right and claims for restitution, as follows:

¹⁷ [1998] 2 AC 349, 389.

¹⁸ Which will be enacted in Parts I and III of the Bill: the “standard limitations provisions” and “general modifications of the standard limitations provisions”.

- (1) There should be a primary limitation period of three years starting from the date that the claimant knows, or ought reasonably to know:
 - (a) the facts which give rise to the cause of action;
 - (b) the identity of the defendant; and
 - (c) if the claimant has suffered injury, loss or damage or the defendant has received a benefit, that the injury, loss, damage or benefit was significant.
- (2) For the purposes of the definition of the date of knowledge, the injury, loss, damage or benefit will be considered to be significant if
 - (a) the claimant knows the full extent of the injury, loss, or damage suffered by the claimant or benefit obtained by the defendant or
 - (b) if a reasonable person would think that, on the assumption that the defendant does not dispute liability and is able to satisfy a judgment, it is worth making a civil claim.
- (3) The courts will not have a discretion to disapply the primary limitation period, except in relation to claims in respect of personal injuries.
- (4) There should be a long-stop limitation period of ten years, starting from the date of the accrual of the cause of action or (for those claims in tort where loss is an essential element of the cause of action, or claims for breach of statutory duty) from the date of the act or omission which gives rise to the cause of action (but for personal injuries claims see below).
- (5) During the claimant's minority the primary limitation period should not run. The long-stop limitation period should run during minority, but not so as to bar an action before the claimant reaches the age of twenty-one.
- (6) Adult disability (including supervening disability) should suspend the primary limitation period. Adult disability should not affect the long-stop limitation period.
- (7) The long-stop limitation period should not run where the defendant has dishonestly concealed relevant facts.
- (8) Acknowledgments and part payments should start time running again, but not once the primary or long-stop limitation period has expired.
- (9) The parties may agree that the limitation regime we recommend should not apply to disputes between them, or should only apply in modified form. They will not however be able to modify our provisions on concealment, minority or other disability or the application of the long-stop limitation period to claims under the Consumer Protection Act 1987.

1.13 We recommend that the above core regime should apply without any qualification to the following actions:

- (1) tort claims (except for personal injury claims, and conversion claims);
- (2) contract claims (on both simple contracts and specialties);
- (3) restitutionary claims;
- (4) claims for breach of trust and related claims, including claims in respect of the personal estate of a deceased person;¹⁹
- (5) claims on a judgment or arbitration award; and
- (6) claims on a statute.

1.14 The core regime will be modified in its application to claims in respect of personal injuries. The court should have a discretion to disapply the primary limitation period, and no long-stop limitation period will apply. However, the protection given to the adult claimant suffering from a disability will not be unlimited. Where the claimant under a disability is in the care of a responsible adult ten years after the later of (a) the act or omission giving rise to the claim and (b) the onset of disability, the primary limitation period should run from the date the responsible adult knew or ought to have known the relevant facts unless the responsible adult is a defendant to the claim. All personal injury claims will be subject to this regime, whether the claim concerned is made in negligence or trespass to the person (including claims in respect of personal injury).

1.15 We also recommend that the core regime should extend, but with some qualifications, to the following claims:

- (1) claims under the Law Reform (Miscellaneous Provisions) Act 1934 and the Fatal Accidents Act 1976;
- (2) claims under the Consumer Protection Act 1987;
- (3) conversion;
- (4) claims by a subsequent owner of damaged property;
- (5) claims for a contribution or an indemnity;
- (6) claims in relation to mortgages and charges; and
- (7) claims under the Companies Act 1985 and insolvency proceedings.

¹⁹ Though we do make special provision in respect of bare trusts and future interests, and we except claims made by the Attorney General or the Charity Commissioners. See paras 4.105 - 4.106, 4.110 - 4.112 and 4.116 - 4.119 below.

- 1.16 We recommend that claims to recover land and related claims, though not subject to the core regime, should be subject to a limitation period of the same length as the long-stop limitation period, running from the date on which the cause of action accrues.
- 1.17 We further recommend that actions against public authorities should not be subject to special (shorter) limitation periods; that where the core regime applies to common law remedies for a cause of action, it should also apply to equitable remedies for that cause of action; but that delay may still bar a remedy before the limitation period under the core regime has expired. Subject to a few exceptions, we do not propose to alter specific limitation periods laid down in enactments other than the Limitation Act 1980. We recommend that the core regime would apply to all actions unless excluded by another provision of the proposed Bill (or any other enactment).
- 1.18 We have considered our recommendations in the light of the European Convention of Human Rights. Any law which imposes a limitation period on the time within which a claimant may bring a civil claim limits the claimant's right of access to the court. This is not an absolute right under the Convention, but any limitations imposed on it must not restrict or reduce the claimant's right of access to the court to such an extent that the essence of the right is impaired. In addition, such limitations must pursue a legitimate aim and be proportionate to that aim in order to comply with Article 6 of the Convention.
- 1.19 The European Court of Human Rights has considered the extent to which statutory limitation periods are compatible with Article 6 of the Convention in *Stubbings v United Kingdom* in the context of a claim for damages for sexual abuse. It noted the margin of appreciation afforded to states to regulate the right of access to the courts, and recognised that limitation periods serve a legitimate aim and in the case in question were proportionate. The Court suggested however that the law on limitation periods as applied to claims in relation to sexual abuse might have to be reconsidered in the light of developing awareness of the problems of such claimants. In the course of our review we have therefore given this issue particular attention,²⁰ as well as considering generally whether our recommendations comply with the European Convention on Human Rights.
- 1.20 We are satisfied that the recommendations we make in this report are compatible with the Convention rights implemented in the Human Rights Act 1998.

5. THE STRUCTURE OF THIS REPORT

- 1.21 The rest of this Report is set out as follows. In part II we describe the present law on limitations in outline, and the developments in the law which have taken place since the publication of the Consultation Paper in some detail. In part III we discuss the core regime in the light of the comments we have received from consultees, and in part IV we discuss the application of the core regime to a

²⁰ See paras 3.125, 3.162 and 4.23 - 4.33 below.

number of causes of action which are regarded as in some way problematic under the current law, and which are therefore accorded special treatment. In part V we set out our final recommendations in relation to a number of additional issues connected with the law on limitation periods. We summarise our recommendations in part VI.

PART VI

SUMMARY OF RECOMMENDATIONS

We recommend that:-

When should time start to run?

- (1) The primary limitation period should start to run from the ‘date of knowledge’ rather than, for example, the date the cause of action accrues** (Paragraph 3.7, Draft Bill, Cl 1(1)).
- (2) The date of knowledge (which is when the primary limitation period should start to run) should be the date when the claimant has (actual or constructive) knowledge of the following facts:-**
 - (a) the facts which give rise to the cause of action;**
 - (b) the identity of the defendant; and**
 - (c) where injury, loss or damage has occurred or a benefit has been received, that the injury, loss, damage or benefit are significant.** (Paragraph 3.32, Draft Bill, Cl 2(1)).
- (3) For the purposes of the definition of the date of knowledge, a claimant will be deemed to know that the injury, loss, damage or benefit is significant if**
 - (a) the claimant knows the full extent of the injury, loss, damage suffered by the claimant (or any other relevant person), or (in relation to a claim for restitution) of any benefit obtained by the defendant (or any other relevant person); or**

a reasonable person would think that, on the assumption that the defendant does not dispute liability and is able to satisfy a judgment, a civil claim was worth making in respect of the injury, loss, damage or benefit concerned. (Paragraph 3.33, Draft Bill, Cl 2(5)).
- (4) For the purposes of the test for the ‘date of knowledge’, the claimant is presumed to know the law, so that the claimant’s lack of knowledge that the facts would or would not, as a matter of law, give rise to a cause of action shall be irrelevant.** (Draft Bill, Cl 2(2)).
This will not apply to
 - (a) a cause of action in respect of breach of duty where the breach of duty concerned is a failure to give correct advice as to the law, and the fact that correct advice had not (or**

may not) have been given shall be treated as one of the facts giving rise to the cause of action (Draft Bill, Cl 2(3)); or

- (b) a cause of action in respect of restitution based on a mistake of law, and the fact that a mistake of law has been, or may have been, made, shall be treated as one of the facts giving rise to the cause of action. (Paragraph 3.39, Draft Bill, Cl 2(4)).**
- (5) ‘Actual knowledge’ should not be defined in the proposed legislation and should be treated as a straightforward issue of fact which does not require elaboration. (Paragraph 3.44).**
- (6) The claimant should be considered to have constructive knowledge of the relevant facts when the claimant in his or her circumstances and with his or her abilities ought reasonably to have known of the relevant facts. (Paragraph 3.50, Draft Bill, Cl 4(1)(a), 4(2)).**
- (7) Unless the claimant has acted unreasonably in not seeking advice from an expert, the claimant should not be treated as having constructive knowledge of any fact which an expert might have acquired. Where an expert has been consulted, the claimant will not be deemed to have constructive knowledge of any information which the expert either acquired, but failed to communicate to the claimant, or failed to acquire. (Paragraph 3.60, Draft Bill, Cl 4(1)(b)).**
- (8) A claimant is to be treated as knowing any fact of which his or her agent has actual knowledge if, the agent in question**

 - (a) is under a duty to communicate that fact to the principal, or**
 - (b) has authority to act in relation to the cause of action.**

but if this does not apply, no person shall be treated as having knowledge of a fact merely because an agent of his has knowledge of a fact (Paragraph 3.62, Draft Bill, Cl 4(3)).
- (9) Our provisions in respect of ‘corporate knowledge’ should apply to the following ‘relevant bodies’: all corporations (whether bodies corporate or corporations sole), and all other bodies which have a right to sue or be sued in their own names, including Government departments which are ‘authorised departments’ in accordance with section 17 of the Crown Proceedings Act 1947 and partnerships. (Paragraph 3.66, Draft Bill, Cl 5(2)).**
- (10) A relevant body should be considered to have actual or constructive knowledge when that knowledge is imputed to the body under our recommendations in relation to agency, or when**

- (a) an officer of the body (including a partner in the case of a partnership), or a person with authority to take the relevant decisions on its behalf; or**
- (b) an employee of the relevant body who is under a duty to disclose that information to someone with that authority or to any other employee**

has that knowledge. For these purposes, decisions in relation to the claim are (a) a decision to seek legal advice in relation to the claim and (b) a decision whether or not to issue proceedings in relation to the claim. (Paragraph 3.78, Draft Bill, Cl 5(1), (3) and (5)).

- (11) Where an officer of the body, or a person with authority to act on the information on behalf of the relevant body, or any employee of the relevant body who is under a duty to communicate that information to a person with that authority or another employee**
 - (a) is a defendant to the claim of the relevant body; or**
 - (b) has dishonestly concealed information relevant to that claim from someone whose knowledge would be attributed to the relevant body under the rule set out in paragraph (10) above**

that person's knowledge shall not be regarded as the knowledge of the relevant body. (Paragraph 3.80, Draft Bill, Cl 5(4), (5)).

- (12) Where a claim is brought by two or more claimants who are jointly entitled to the remedy sought, the start of the primary limitation period shall be calculated separately for each claimant, by reference to the knowledge of that claimant. A defence may only be raised against those claimants against whom the primary limitation period has expired. (Paragraph 3.87, Draft Bill, Cl 6(1), (2)).**
- (13) Where a claim must be brought by two or more claimants acting as trustees or personal representatives, the primary limitation period in respect of that claim should start from the earliest date on which one of the trustees or personal representatives has actual or constructive knowledge of the relevant facts. (Paragraph 3.91, Draft Bill, Cl 6(3), (4)).**
- (14) Where a cause of action has been assigned to the claimant:**
 - (a) the expiry of the primary limitation period in relation to a claim by any person in whom the cause of action was vested before the claimant will give rise to a defence (Draft Bill, Cl 7(2));**

- (b) where the primary limitation period had started to run in relation to a claim by any person in whom the cause of action was vested before it was assigned to the claimant because that person acquired the relevant knowledge at the time when he or she had the right to bring a claim, it will continue to run against the claimant (Draft Bill, Cl 7(3), (6));**
- (c) where the primary limitation period has not started to run before the date of the assignment it will run from the later of**
 - (i) the date of the assignment and**
 - (ii) the date of knowledge of the claimant (Paragraph 3.94), Draft Bill, Cl 7(4)).**

How long should the primary limitation period be?

- (15) The primary limitation period applying under the core regime should be three years. (Paragraph 3.98, Draft Bill, Cl 1(1)).**

The long-stop limitation period

- (16) A claim, other than in respect of a personal injury, should be subject to a long-stop limitation period of ten years. (Paragraph 3.101, Draft Bill, Cl 1(2)).**
- (17) No long-stop limitation period should be applied to claims in respect of personal injuries to the claimant (or, in the case of an action brought under the Law Reform (Miscellaneous Provisions) Act 1934 or the Fatal Accidents Act 1976, to the deceased). (Paragraph 3.107, Draft Bill, Cl 9).**
- (18) The long-stop limitation period should, as a general rule, start to run from the date on which the cause of action accrues, but that there should be an exception for those claims in tort where injury, loss or damage is an essential element of the cause of action and for claims for breach of statutory duty. In these cases, the long-stop limitation period will start to run from the date of the act or omission that gives rise to the cause of action. (Paragraph 3.113, Draft Bill, Cl 3).**

Factors extending or excluding the limitation periods

- (19) During the period when the claimant lacks capacity because he or she is under the age of eighteen**
 - (a) the primary limitation period shall not run;**
 - (b) any long-stop limitation period shall run but will end on the later of the following dates:**

- (i) **the date on which the claimant reaches the age of twenty-one; or**
 - (ii) **the date ten years after the starting date for the long-stop limitation period.** (Paragraph 3.121, Draft Bill, Cl 28).
- (20) **There should be no specific provision for the psychological incapacity suffered by victims of sexual abuse.** (Paragraph 3.125).
- (21) **During the period when a claimant over eighteen lacks capacity because he or she is unable by reason of mental disability to make a decision for him or herself on the matters in question, or he or she is unable to communicate his or her decision on that matter because of mental disability or physical impairment** (Draft Bill, Cl 29(6)):
 - (a) **subject to sub-paragraph (c) below, the primary limitation period should not run.** (Draft Bill, Cl 29(2))

This will apply whether the lack of capacity exists on the date when the cause of action accrues (so that the primary limitation period does not start running), or develops after that date (suspending the primary limitation period after it has begun to run). When the claimant regains capacity, the primary limitation period will continue to run from the point at which it was suspended, so that the claimant has the benefit of the unexpired part of the limitation period;
 - (b) **in claims which are not related to personal injuries, a long-stop limitation period should run;**
 - (c) **in personal injury cases, after a period of ten years from the accrual of the cause of action or, if later, from the onset of the lack of capacity, the primary limitation period should run but with the knowledge of the claimant's Representative Adult regarded as the knowledge of the claimant, except where the cause of action is against the Representative Adult. Where the claimant was a minor at the end of the ten year period, the primary limitation period shall not run by reference to the knowledge of the Representative Adult until the claimant's majority.** (Paragraph 3.133, Draft Bill, Cl 29(3), (4) and (5)).
- (22) **'Mental disability' for the purposes of this definition is defined as 'a disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning'.** (Paragraph 3.133, Draft Bill, Cl 29(7)).

- (23) A person is a Representative Adult if he or she is the member of the claimant's family who is responsible for the day to day care of the claimant, or a person who is authorised under Part VII of the Mental Health Act 1983 to conduct proceedings in the name of the claimant. (Paragraph 3.133, Draft Bill, Cl 29(8)).**
- (24) Where:**
- (a) the defendant or any person through whom the defendant claims (or any of their agents) has concealed any of the relevant facts from the claimant or any person through whom he claims (or any of their agents) (whether before or after the cause of action has accrued) and**
 - (b) the concealment was dishonest**
- the long-stop limitation period or any limitation period agreed between the parties should be suspended from the date on which the fact was concealed until the date on which it was discovered (or should have been discovered) by the claimant (or any person through whom he or she claims) (Paragraph 3.145, Draft Bill, Cl 26(1), (2), (4)).**
- (25) The defendant will be regarded as concealing a fact from the claimant**
- (a) if the defendant takes any action, or is a party to any action the effect of which is to prevent the claimant discovering that fact for some time, or**
 - (b) if the defendant fails to disclose that fact to the claimant in breach of a duty to do so (Paragraph 3.145, Draft Bill, Cl 26(6)).**
- (26) The long-stop limitation period applying to a claim by the purchaser of defective property will be extended where the defendant has dishonestly concealed the relevant facts from the seller of that property. (Paragraph 3.145, Draft Bill, Cl 26(3)).**
- (27) The long-stop limitation period applying to a claim against a bona fide purchaser of property to recover that property (or its value) or to enforce a charge (or set aside a transaction) affecting it will not be extended by dishonest concealment if**
- (a) the purchase took place after the concealment and**
 - (b) the purchaser was not party to the concealment and had no reason to suppose that it had taken place. (Paragraph 3.145, Draft Bill, Cl 26(5)).**

- (28) A written acknowledgment or a part payment, by the defendant (or someone previously liable to the claim), and irrespective of the nature of the claim, should restart the running of time for both the primary and long-stop limitation periods applying to the claim. This applies whether the acknowledgment or payment was made before or after the cause of action accrued (Paragraph 3.155, Draft Bill, Cl 27(1), (7), (8)).**
- (29) A written acknowledgment or a part payment should not be effective to revive a cause of action once the primary or long-stop limitation period has expired (Paragraph 3.155, Draft Bill, Cl 27(1)(c)).**
- (30) Subject to special rules applying to mortgages and for the possession of land (and in the case of trustees and personal representatives), only the acknowledgor, the person making the part payment or the principal of the agent giving the acknowledgment or making the part payment, and his or her successors, should be bound by the acknowledgment or part payment (Paragraph 3.155, Draft Bill, Cl 27(2), (4), (5), (9)).**
- (31) Similarly, where an acknowledgment or part payment is made to one or more of a number of joint (or joint and several) claimants (who are not trustees or personal representatives), only the person (or persons) to whom it is made may rely on it to extend the limitation period (Paragraph 3.155, Draft Bill, Cl 27(3), (4)).**
- (32) Where the purchaser of defective property has a cause of action under section 3 of the Latent Damage Act 1986, an acknowledgment made by the defendant to the previous owner of that property in relation to the original cause of action will also extend the limitation period apply to a claim brought by the purchaser against the defendant (Paragraph 3.155, Draft Bill, Cl 27(6)).**
- (33) As under the present law, the acknowledgment shall be valid only if made to the person, or to the agent of the person, whose title or claim is being acknowledged or in respect of whose claim the payment is being made. (Paragraph 3.155, Draft Bill, Cl 27(1), (9)).**

A judicial discretion?

- (34) In respect of a personal injury claim, the court may direct that the limitation period which would otherwise bar the claimant's claim shall be disapplied if, but only if, it is satisfied that it would be unjust not to give such a direction having regard to**
- (a) any hardship which would be caused to the defendant if the direction were given; and**

- (b) any hardship which would be caused to the claimant if the direction were not given** (Paragraph 3.169, Draft Bill, Cl 12(1), (2)).
- (35) The court shall take into account the following factors in the exercise of its discretion:**
 - (a) the length of, and the reasons for, the delay on the part of the claimant;**
 - (b) the effect of the passage of time on the ability of the defendant to defend the claim;**
 - (c) the effect of the passage of time on the cogency of any evidence which might be called by the claimant or the defendant;**
 - (d) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he or she responded to requests reasonably made by the claimant for information or inspection for the purpose of ascertaining facts which were or might be relevant to the claim;**
 - (e) the extent to which the claimant acted promptly and reasonably once he or she knew that the facts gave rise to a claim;**
 - (f) the steps, if any, taken by the claimant to obtain medical, legal or other expert advice and the nature of any such advice he or she may have received;**
 - (g) any alternative remedy or compensation available to the claimant; and**
 - (h) the strength of the claimant's case.**

In addition the court should be empowered to consider any other relevant circumstances. (Paragraph 3.169, Draft Bill, Cl 12(3)).

Agreements to change the limitation period

- (36) Subject to (37) and (38) below, nothing in the new Act shall prevent the making of an agreement which modifies or disapplies any of its provisions or makes alternative provision** (Paragraph 3.175, Draft Bill, Cl 31(1)).
- (37) Any clause in such an agreement which affects the limitation period will be valid only if it is shown by the party seeking to rely on it to be fair and reasonable within the meaning of section 11 of the Unfair Contract Terms Act 1977** (Paragraph 3.175, Draft Bill, Cl 31(3)).

- (38) An agreement will be unenforceable to the extent that its terms modify or disapply, or make provision in place of the Act's provision in relation to disability, dishonest concealment or the ten year limitation period applying to claims under the Consumer Protection Act 1987. (Paragraph 3.175, Draft Bill, Cl 31(2)).**

Application of the core regime

- (39) The cause of action in relation to a claim for repayment of a 'qualifying loan' should not accrue until a written demand for repayment has been made. "Qualifying loan" for the purposes of this recommendation will have the same meaning as in section 6 of the Limitation Act 1980. (Paragraph 4.6, Draft Bill, Cl 32).**
- (40) Specialties should be subject to the core regime (Paragraph 4.9).**
- (41) Claims under the Law Reform (Miscellaneous Provisions) Act 1934 should be subject to the core regime, save that (as under the present law in relation to the survival of personal injury claims) the primary limitation period should start from the later of the date the cause of action was discoverable by the claimant (that is, the personal representative) or the date of death of the deceased. (Draft Bill, Cl 10). As regards the survival of personal injury claims, where, as we have seen, we recommend no long-stop limitation period and a judicial discretion to disapply the primary limitation period, the court in exercising that discretion shall take into account the deceased's delay as well as that of the personal representative. (Paragraph 4.15, Draft Bill, Cl 12(4), (8)(b)).**
- (42) Claims under the Fatal Accidents Act 1976 should be treated as analogous to personal injury claims under our core regime (so that proceedings in respect of such claims should not be subject to a long-stop limitation period and there should be a judicial discretion to disapply the primary limitation period) save that the date of knowledge should refer to the knowledge of the dependants for whom the claim is brought. (Paragraph 4.22, Draft Bill, Cl 11, Cl 12(5), (6)).**
- (43) Claims by child abuse victims should be subject to the core regime as modified in relation to other personal injury claims. (Paragraph 4.32).**
- (44) The core regime should apply to claims under the Consumer Protection Act 1987, subject to the following modifications:**
- (a) The starting date for the long-stop limitation period will be the date on which the defective product is supplied by the producer of the product, or by the person who imported the product into a Member State of the European Union. (Draft Bill, Cl 8(1), (2)).**

- (b) The long-stop limitation period will apply to all claims under the Consumer Protection Act 1987, including personal injury claims. (Draft Bill, Cl 8(2), (4)).**
 - (c) The expiry of the long-stop limitation period will extinguish the claimant's right of action. (Draft Bill, Cl 8(3)).**
 - (d) The court's discretion to disapply the limitation period in respect of personal injury claims will only apply to the primary limitation period. (Draft Bill, Cl 8(4)).**
 - (e) The parties may agree to extend the primary limitation period applicable to a claim under the Consumer Protection Act 1987. Otherwise, the starting date of the initial and long-stop limitation period and the length of those periods so far as they apply to a claim under that Act may not be changed by agreement between the parties. (Paragraph 4.37, Draft Bill, Cl 31(2)).**
- (45) Claims for defamation and for malicious falsehood should be subject to the core regime. (Paragraph 4.46).**
 - (46) All claims for conversion should be subject to the primary limitation period of the core regime. For claims which are related to theft, that period will not start to run until the claimant knows, or ought to know, not only the facts giving rise to the cause of action, but also the whereabouts of the stolen property. (Paragraph 4.67, Draft Bill, Cl 14(2), (5)).**
 - (47) In respect of claims for conversion which are not thefts or related to a theft, the long-stop limitation period should run from the date of the first conversion only. (Paragraph 4.67, Draft Bill, Cl 14(1)).**
 - (48) In respect of claims for conversion which constitute thefts or are subsequent to a theft, the long-stop limitation period should not commence until the date on which the goods are purchased by a person acting in good faith. It will run from that date in favour of the good faith purchaser and anyone claiming through him. (Paragraph 4.67, Draft Bill, Cl 14(3), (5)).**
 - (49) The claimant's title to goods which have been converted shall be extinguished on the expiry of the long-stop limitation period. (Paragraph 4.67, Draft Bill, Cl 14(4)).**
 - (50) A cause of action shall accrue to the subsequent owner of damaged property as provided for in section 3 of the Latent Damage Act 1986; that is where**

- (a) a cause of action has accrued to any person in respect of any negligence to which damage to any property is attributable (in whole or in part); and**
- (b) the subsequent owner acquires an interest in the property after the date on which that cause of action accrued, but before any person with an interest in the property has the knowledge relevant to the date of knowledge for a claim in respect of that cause of action.**

The claim by the subsequent owner shall be subject to the core regime. (Paragraph 4.75, Draft Bill, Sch 3, para 23).

- (51) The core regime should apply to restitutionary actions** (Paragraph 4.79).
- (52) The core regime should apply to claims for contribution under section 1 of the Civil Liability (Contribution) Act 1978, and that the provisions of the Limitation Act, section 10 (which define the date on which the cause of action for such claims accrues) should be retained to define the starting date for the long-stop limitation period** (Paragraph 4.83, Draft Bill, Cl 13).
- (53) The core regime should apply to claims for a contractual indemnity. This will mean that where there is a chain of indemnity claims, a new long-stop limitation period will arise in respect of each new claim in the chain.** (Paragraph 4.93).
- (54) Subject to our recommendations in paragraph 56 below all claims for breach of trust should be subject to the core regime** (Paragraph 4.101).
- (55) Claims to recover trust property should be subject to the core regime; but**

in the case of a claim for the recovery of trust property held on a bare trust, the cause of action shall not accrue unless and until the trustee acts in breach of trust. (Paragraph 4.106, Draft Bill, Cl 22(2)).

- (56) Legislation should provide that where a claim by one beneficiary has become time-barred, that beneficiary should not be permitted to benefit from a successful claim by another beneficiary whose claim is not time-barred** (Draft Bill, Cl 22(4)).

Pursuant to the application of the core regime, there is no need to provide a trustee with protection equivalent to that which is currently found in Limitation Act 1980, section 21(2).

Neither the primary limitation period nor the long-stop limitation period should apply to claims for breach of trust or to recover

trust property which are brought by either the Attorney General or the Charity Commissioners. (Paragraph 4.112, Draft Bill, Cl 22(3)).

- (57) Neither the primary limitation period nor the long-stop limitation period in respect of a claim for breach of trust or to recover trust property by a beneficiary with a future or contingent interest will start until that interest has fallen into possession.** (Paragraph 4.119, Draft Bill, Cl 22(1)).
- (58) The core regime should apply to claims in respect of the personal estate of a deceased person (including any claims in respect of a claim to arrears of interest on legacies).** (Paragraph 4.125).
- (59) A long-stop limitation period of ten years commencing on the date that the claimant's right to recover the land accrued (or, if later, the date on which the claimant's interest becomes an interest in possession) should apply to, and (subject to the recommendation in paragraph 65 below) be the sole limitation period for claims to recover land²¹** (Paragraph 4.135, Draft Bill, Cl 16(1), (2)).
- (60) A claimant entitled to a future interest to land which was in adverse possession before that interest fell into possession should be subject to a limitation period of ten years from the date on which his or her interest fell into possession rather than a reduced period** (Paragraph 4.135).
- (61) The expiry of the limitation period will extinguish the claimant's rights to the land in question, and after that period, no claim may be made.** (Paragraph 4.135, Draft Bill, Cl 18(1)).
- (62) The limitation period in relation to all claims to recover equitable interests in land should be the same as that which applies in relation to claims to recover legal interests in land.** (Draft Bill, Cl 17(2), (3)). **The further provisions presently contained in section 18(2) to 18(4) of the Limitation Act 1980 should be retained.** (Paragraph 4.137, Draft Bill, Cl 18(2), (3), (4)).
- (63) Claims brought by, or by a person claiming through, the Crown (subject to paragraph 65 below) or any spiritual or eleemosynary corporation sole to recover land should be subject to the same limitation period applying to a claim by any other party to recover land** (Paragraph 4.144).

²¹ Subject to the exceptions presently set out in Limitation Act 1980, s 15(3) and (5).

- (64) In any case where the land is vested in the incumbent from time to time of a benefice as a spiritual corporation sole but the benefice is vacant a claim to recover the land or any part of it may be made by**
- (a) the priest-in-charge of the benefice, or**
 - (b) by the sequestrators of the benefice.** (Paragraph 4.144, Draft Bill, Cl 17(5)).
- (65) The limitation period applicable to claims by the Crown to recover foreshore should be**
- (a) sixty years from the date of accrual of the right of action or**
 - (b) ten years from the date when the land ceased to be foreshore**
- whichever period first expires.** (Paragraph 4.147, Draft Bill, Cl 16(4), (7)).
- (66) Where the identity of the person in adverse possession of the land changes, a new cause of action shall accrue to the claimant, unless anyone in adverse possession of the land before the change continues to be in adverse possession after that date.** (Draft Bill, Sch 1, para 1(4), (5)(a))
- However, no new cause of action will accrue to the claimant**
- (a) where the second person in adverse possession claims possession through his or her predecessor** (Draft Bill, Sch 1, para 1(5)(b)) **and**
 - (b) where the squatter coming into possession is recovering possession of the land from a squatter who had previously dispossessed him or her** (Paragraph 4.150, Draft Bill, Sch 1, para 1(6)).
- (67) Claims to recover the proceeds of the sale of land should not be subject to the primary limitation period of three years from the date of knowledge but only to the long-stop limitation period of ten years running from the date when the vendor became entitled to recover the proceeds (by, for example, enforcing a lien over the land).** (Paragraph 4.151, Draft Bill, Cl 19).
- (68) The core regime should apply to claims to recover rent, claims to recover damages in respect of arrears of rent, and the levying of distress for unpaid rent.** (Paragraph 4.157).
- (69) The primary limitation period should not apply to claims to enforce a mortgage or charge over land; and**

the long-stop limitation period should apply to claims to enforce a mortgage or charge over land, running from the date on which the mortgagee's or chargee's right to enforce the mortgage or charge accrues (Paragraph 4.166, Draft Bill, Cl 15(2)).

- (70) **Claims to enforce a mortgage or charge over personal property should be subject to the core regime** (Paragraph 4.169).
- (71) **The primary limitation period should not apply to claims to enforce a mortgage or charge over both land and personal property; and**

the long-stop limitation period should apply to claims to enforce a mortgage or charge over land and personal property, running from the date on which the mortgagee's or chargee's right to enforce the mortgage or charge, *vis-à-vis* the land, accrues (Paragraph 4.173, Draft Bill, Cl 15(2), (9)).

- (72) **Only the long-stop limitation period should apply to claims to enforce an obligation secured by a mortgage or charge by suing on the covenant to repay.** (Paragraph 4.177, Draft Bill, Cl 15(2)(b)).
- (73) **Where a mortgage or charge comprises a future interest or a life insurance policy, the limitation period applying to claims to enforce the mortgage or charge should not begin to run until the future interest determines or the life insurance policy matures.** (Paragraph 4.181, Draft Bill, Cl 15(4)).
- (74) **Where a prior mortgagee is in possession of the property which is subject to the mortgage, the limitation period applicable to a claim by the subsequent mortgagee to recover arrears of interest (or damages in lieu) should (if necessary) be extended so that it does not end before the date one year after the prior mortgagee ceases to be in possession.** (Paragraph 4.184, Draft Bill, Cl 15(3)).
- (75) **The limitation period applying to foreclosure proceedings should be suspended during the period that the mortgagee is in possession of the mortgaged property.** (Paragraph 4.185, Draft Bill, Cl 15(5)).
- (76) **No limitation period should apply to claims by the mortgagor to redeem a mortgage over land.** (Paragraph 4.189, Draft Bill, Cl 15(1)).
- (77) **Claims to redeem mortgaged personal property should not be subject to a limitation period.** (Paragraph 4.194, Draft Bill, Cl 15(1)).
- (78) **The expiry of the limitation period applying to claims to enforce a mortgage should extinguish the claimant's interest in the mortgaged property.** (Paragraph 4.196, Draft Bill, Cl 15(6)).

- (79) Claims on a judgment and claims on an arbitration award should be subject to the core regime.** (Paragraph 4.200).
- (80) Claims on a statute should be subject to the core regime.** (Paragraph 4.202).
- (81) No special protection should be given in limitations law to public authorities.** (Paragraph 4.203).
- (82) Derivative claims should be subject to the core regime, but the start of the primary limitation period should be decided by reference to the knowledge of the shareholder who is bringing the claim.** (Paragraph 4.210, Draft Bill, Cl 24).
- (83) Applications under section 459 of the Companies Act 1985 should be subject to the core regime.** (Paragraph 4.218).
- (84) Claims brought by a debtor who is subject to a voluntary arrangement should be subject to the core regime.** (Paragraph 4.225).
- (85) The primary limitation period should be suspended in respect of claims by a company or partnership during any period in which the company or partnership is in either administration or administrative receivership, except where the administrative receiver is the defendant to the company's claim.** (Paragraph 4.234, Draft Bill, Sch 2, paras 1, 2).
- (86) Claims against a company or partnership in administration should be subject to the core regime.** (Paragraph 4.237).
- (87) Claims against a company in administrative receivership should be subject to the core regime.** (Paragraph 4.241).
- (88) Claims brought by a liquidator on behalf of a company or partnership in liquidation should be subject to the core regime, subject to the modification that**
- (a) where the primary limitation period in respect of a claim has started running against the company or partnership before it went into insolvent liquidation but has not expired by that date, it should be suspended for one year from the date of liquidation;**
 - (b) where the primary limitation period in respect of a claim has not started running before the date of liquidation, it should start on the later of**
 - (i) the date of knowledge of the liquidator; or**

- (ii) **the date one year after the date of the liquidation (or, where a claim is brought by the administrator, one year after the date of his or her appointment).**
(Paragraph 4.264, Draft Bill, Sch 2, para 4).
- (93) **Applications under sections 339 - 343 and 423 of the Insolvency Act 1986 should be subject to the core regime, subject to the modification that the primary limitation period should start on the later of:**
 - (a) **the date of knowledge of the trustee; or**
 - (b) **the date one year after the date of the bankruptcy order.**
(Paragraph 4.267, Draft Bill, Sch 2, para 7).
- (94) **Where the core regime applies to common law remedies available for a claim in respect of a particular cause of action, it should also apply to equitable remedies available for that cause of action**
(Draft Bill, Cl 1);

but no limitation period should apply to applications for specific performance where under the present law (as exemplified by *Williams v Greatrex*) delay does not operate to bar such applications. (Paragraph 4.273, Draft Bill, Cl 34(1)).
- (95) **Nothing in the new Limitation Act should be taken to prejudice any equitable jurisdiction of the court to refuse an application for equitable relief (whether final or interlocutory) on the grounds of delay (or because of any other equitable defence such as acquiescence), even though the limitation period applicable to the claim in question has not expired.** (Paragraph 4.278, Draft Bill, Cl 34(2)).
- (96) **The core regime should not apply where a limitation period has been prescribed in another enactment** (Draft Bill, Cl 36), **but that claims under:**
 - (a) **section 94 of the Rent Act 1977** (Draft Bill, Sch 3, paras 18, 19);
 - (b) **section 3 of the Vaccine Damage Payments Act 1979** (Draft Bill, Sch 3, para 20);
 - (c) **sections 113(1), 203(2) and 230 of the Copyright, Designs and Patents Act 1988 and section 18 of the Trade Marks Act 1994;** (Draft Bill, Sch 3, paras 25 - 29),
 - (d) **section 34 of the Land Compensation Act 1973** (Draft Bill, Sch 3, para 14) **and, for the avoidance of doubt**

- (e) **section 1 of the Defective Premises Act 1972** (Draft Bill, Cl 3(4) and Sch 3, para 11)

should be brought within the core regime. (Paragraph 4.287).

- (97) **Claims under section 83 of the Land Registration Act 1925, section 25 of the Law of Property Act 1969 and section 10 of the Local Land Charges Act 1975 should be subject to the primary limitation period running from the date of knowledge, but not the long-stop limitation period** (Paragraph 4.288, Draft Bill, Cl 20; Sch 3, paras 3, 9, 16).
- (98) **A new Limitations Act should include a ‘sweeping-up’ or ‘default’ clause. This will provide that the standard limitation defences which we propose apply to all civil claims. For these purposes, a civil claim means a claim in civil proceedings in which the claimant seeks**
- (a) **a remedy for a wrong,**
 - (b) **restitution, or**
 - (c) **the enforcement of a right** (Draft Bill, Cl 1).

There should be an exception to this general rule where other provision is made in the Bill itself, or in any other enactment (Paragraph 4.293, Draft Bill, Cl 36).

- (99) **As under the present law, no limitation period should apply to proceedings by the Crown for the recovery of any tax or duty.** (Paragraph 4.293, Draft Bill, Cl 35(2)).

Additional Issues

- (100) **No change is needed to the present position that the limitation period should stop running when proceedings are issued (or, if earlier, the date on which the claim form was received in the court office).** (Paragraph 5.4).
- (101) **The addition of new claims made between parties to existing proceedings after the expiry of the limitation period relevant to the new claim should be permitted where**
- (a) **the new claim arises out of the conduct, transaction or events on which a claim in the existing proceedings is based; and**
 - (b) **the existing proceedings were commenced within the relevant limitation period.**

We also recommend that the Rules Committee amend Rule 17.4(2) of the Civil Procedure Rules, which currently repeats the wording of the test laid down in Limitation Act 1980, section 35. (Paragraph 5.11, Draft Bill, Cl 25(2)).

(102) There should be no reform in relation to the addition of new claims to existing proceedings where the new claim involves the addition or substitution of new parties. (Paragraph 5.19, Draft Bill, Cl 25(3), (4)).

(103) No change should be made to the present law on the effect of the expiry of a limitation period. (Paragraph 5.23).

(104) The primary limitation period and the long-stop limitation period will be suspended during any period after the accrual of the cause of action in which the claimant is prevented from making a claim by any enactment or other rule of law (Draft Bill, Cl 30(1));

the claimant will not be considered to be under a restriction if

(a) the claim could have been made by a litigation friend,

(b) the claimant is prevented from making the claim only because of the terms of a contract or

if leave is required to make the claim, unless and until the claimant has taken all reasonable steps to obtain that leave (Paragraph 5.28, Draft Bill, Cl 30(2)).

(105) The burden of proof in relation to the primary limitation period and the date of knowledge of any person should be on the claimant (Draft Bill, Cl 37(1));

the burden of proof in relation to any other defence under the Bill should be placed on the defendant. (Paragraph 5.32, Draft Bill, Cl 37(2)).

(106) The new Act should come into force one year after the day on which it is passed (Draft Bill, Cl 40(1)).

The proposed new Act should apply to causes of action accruing before it commences, except where the claim has been barred by the expiry of a limitation period under the provisions of a previous Act or proceedings have been instituted in respect of a claim before the commencement of the Act. (Draft Bill, Cl 40(2), (3)(a), (b)).

Any claim arising under a contract entered into under seal before the commencement of the new Act shall be subject to a limitation

period of twelve years from the date of accrual of the cause of action. (Paragraph 5.40, Draft Bill, Cl 40(3)(c)).

(107) Where the cause of action accrued before commencement, and no limitation period applied to that claim under the previous law, the limitation period will expire on the later of

- (a) the date six years from commencement or**
- (b) on the expiry of the limitation period applying under the new Act.** (Draft Bill, Cl 40(4)).

In any other case, where the cause of action accrued before commencement, the limitation period will expire on the later of

- (a) the date on which time would have expired under the previous law or**
- (b) the date on which time would expire under the new Act.** (Paragraph 5.40, Draft Bill, Cl 40(5))

(108) In determining when the limitation period applicable under the previous law would have expired,

- (a) no account shall be taken of the effect of deliberate concealment under section 32(1)(b) of the 1980 Act** (Draft Bill, Cl 40(6)(a));
- (b) section 32(1)(a) and (c) of the 1980 Act shall be considered to extend the limitation period for no more than six years from the date on which the Act comes into force** (Paragraph 5.40 Draft Bill, Cl 40(6)(b)).

(Signed) ROBERT CARNWATH, *Chairman*
HUGH BEALE
CHARLES HARPUM
MARTIN PARTINGTON
ALAN WILKIE

MICHAEL SAYERS, *Secretary*
3 April 2001