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**Changes to legislation:** There are currently no known outstanding effects for the Overseas Operations (Service Personnel and Veterans) Act 2021, SCHEDULE 4. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 4

Section 10

#### LIMITATION PERIODS: NORTHERN IRELAND

#### PART 1

##### COURT'S DISCRETION TO DISAPPLY TIME LIMITS

- 1 (1) Article 50 of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) (court's power to override certain time limits) is amended as follows.
- (2) After paragraph (1) insert—
- “(1A) The court must not under this Article disapply any provision of Article 7 in its application to an overseas armed forces action if the action was brought after the expiration of the period of six years from the Article 7 relevant date (see paragraph (8)).
- (1B) An “overseas armed forces action” means an action, or cause of action, which—
- (a) is against the Ministry of Defence, the Secretary of State for Defence, or any member of Her Majesty's forces,
  - (b) is brought in connection with overseas operations (see paragraph (8)), and
  - (c) relates to damage that occurred outside the British Islands.
- (1C) In paragraph (1B), “damage” means—
- (a) in the case of an overseas armed forces action for which a period of limitation is fixed by Article 7, the personal injuries to which the action relates;
  - (b) in the case of an overseas armed forces action for which a period of limitation is fixed by Article 9(3), the death to which the action relates (and where a person sustains personal injuries outside the British Islands which are a substantial cause of their later death in any of the British Islands, or vice versa, the death is for the purposes of paragraph (1B)(c) to be treated as occurring where the injuries were sustained).”
- (3) After paragraph (3) insert—
- “(3A) But where the reason why the person injured could no longer maintain an action was because of the time limit in Article 7, the court may disapply Article 9(2) in its application to an overseas armed forces action only if the person died within the period of six years beginning with the Article 7 relevant date (ignoring, for this purpose, the reference to Article 7(5) in paragraph (a) of the definition of that term).

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(3B) The court must not under this Article disapply Article 9(3) in its application to an overseas armed forces action if the action was brought after the expiration of the period of six years from the Article 9 relevant date (see paragraph (8)).”

(4) After paragraph (6) insert—

“(6A) In acting under this Article in relation to an overseas armed forces action—

- (a) when considering the factor mentioned in paragraph (4)(b), the court must have particular regard to—
  - (i) the likely impact of the operational context on the ability of members of Her Majesty's forces to remember relevant events or actions fully or accurately, and
  - (ii) the extent of dependence on the memories of members of Her Majesty's forces, taking into account the effect of the operational context on their ability to record, or to retain records of, relevant events or actions; and
- (b) the court must also have particular regard to the likely impact of the action on the mental health of any witness or potential witness who is a member of Her Majesty's forces.

(6B) In paragraph (6A) references to “the operational context” are to the fact that the events to which the action relates took place in the context of overseas operations, and include references to the exceptional demands and stresses to which members of Her Majesty's forces are subject.”

(5) After paragraph (7) insert—

“(7A) In the application of paragraph (1A), (3A) or (3B) to an overseas armed forces action in respect of which a limitation period has been suspended in accordance with section 1(1) of the Limitation (Enemies and War Prisoners) Act 1945, any reference to the period of six years is to be treated as a reference to the period of six years plus—

- (a) the period during which the limitation period was suspended, and
- (b) any extra period after the suspension ended during which the action could have been brought only because of an extension provided for by section 1(1) of that Act.”

(6) For paragraph (8) substitute—

“(8) In this Article—

“the Article 7 relevant date” means the latest of the following—

- (a) the date from which the period of three years starts to run in accordance with Article 7(4) or (5);
- (b) where Article 48 applies, the date from which the period of three years mentioned in paragraph (1) of that Article (as that paragraph has effect with the modification made by paragraph (5) of that Article) starts to run;
- (c) where Article 71(1)(a) or (b) applies, the date from which the period of three years starts to run in accordance with paragraph (1) of that Article;

“the Article 9 relevant date” means the latest of the following—

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(a) the date from which the period of three years starts to run in accordance with Article 9(3);

(b) where Article 48 applies, the date from which the period of three years mentioned in paragraph (1) of that Article (as that paragraph has effect with the modification made by paragraph (5) of that Article) starts to run;

“the British Islands” means the United Kingdom, the Channel Islands and the Isle of Man;

“the court” means the court in which the action has been brought;

“Her Majesty's forces” has the same meaning as in the Armed Forces Act 2006 (see section 374 of that Act);

“overseas operations” means any operations outside the British Islands, including peacekeeping operations and operations for dealing with terrorism, civil unrest or serious public disorder, in the course of which members of Her Majesty's forces come under attack or face the threat of attack or violent resistance.”

(7) In paragraph (9), after “this Article” insert “—

(a) to the British Islands include the territorial sea adjacent to the United Kingdom and the territorial sea adjacent to any of the Channel Islands or the Isle of Man (and the reference to any of the British Islands is to be read accordingly);

(b) to a member of Her Majesty's forces, in relation to an overseas armed forces action, include an individual who was a member of Her Majesty's forces at the time of the events to which the action relates;

(c)”.  
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#### Commencement Information

**II**    [Sch. 4 para. 1](#) in force at 30.6.2021 by [S.I. 2021/678](#), [reg. 2](#)

## PART 2

### RESTRICTION OF FOREIGN LIMITATION LAW

2    (1) The Foreign Limitation Periods (Northern Ireland) Order 1985 (S.I. 1985/754 (N.I. 5)) is amended as follows.

(2) In Article 3 (application of foreign limitation law), in paragraph (1)(a), after “proceedings” insert “, subject to Article 3A ”.

(3) After Article 3 insert—

*“Overseas armed forces actions: restriction of foreign limitation law*

3A (1) Paragraph (3) applies where—

(a) the law of another country relating to limitation applies by reason of Article 3(1)(a) in respect of a matter for the purposes of an overseas armed forces tort action, and

(b) the commencement condition applies in relation to that action,

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and in this Article the law relating to limitation that applies for the purposes of that action is referred to as “the relevant foreign limitation law”.

- (2) The commencement condition applies in relation to an overseas armed forces tort action if the action commenced on a date which is after the end of the period of 6 years beginning with—
  - (a) the date on which any limitation period specified in the relevant foreign limitation law began to run, or
  - (b) where the relevant foreign limitation law has the effect that the action may be commenced within an indefinite period, the first date on which the action could have been commenced.
- (3) The relevant foreign limitation law is to be treated as providing the defendant with a complete defence to the action so far as relating to the matter (where that would not otherwise be the case).
- (4) An “overseas armed forces tort action” means an action—
  - (a) which is an overseas armed forces action as defined in Article 50(1B) of the Limitation (Northern Ireland) Order 1989, and
  - (b) which (under the law of the other country that falls to be taken into account) corresponds to—
    - (i) an action to which Article 7 of that Order applies (personal injuries),
    - (ii) an action in respect of false imprisonment, or
    - (iii) an action under the Fatal Accidents (Northern Ireland) Order 1977 (death).
- (5) In the application of paragraph (2) to an action in respect of which—
  - (a) in accordance with the relevant foreign limitation law, a limitation period specified in that law has been suspended or interrupted for a period by reason of a person's lacking legal capacity or being under a disability, or
  - (b) in accordance with the relevant foreign limitation law, a period during which a person lacks legal capacity or is under a disability has been disregarded in computing a limitation period specified in that law,

the reference to the period of 6 years is to be treated as a reference to the period of 6 years plus the period of suspension or interruption or (as the case may be) the period that was so disregarded.
- (6) In the application of paragraph (2) to an action in respect of which a limitation period specified in the relevant foreign limitation law has been suspended in accordance with section 1(1) of the Limitation (Enemies and War Prisoners) Act 1945, the reference to the period of 6 years is to be treated as a reference to the period of 6 years plus—
  - (a) the period during which the limitation period was suspended, and
  - (b) any extra period after the suspension ended during which the action could have been brought only because of an extension provided for by section 1(1) of that Act.”

- (4) In Article 8 (transitional provisions), after paragraph (2) insert—

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“(3) Article 3A (overseas armed forces actions: restriction of foreign limitation law) applies to an action commenced in Northern Ireland on or after the date on which that Article comes into force, whenever the events to which the action relates took place.”

(5) In Article 9 (disapplication of provisions where the law applicable to limitation is determined by other instruments), in paragraph (1), after “Articles 3” insert “, 3A”.

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#### Commencement Information

**I2** [Sch. 4 para. 2](#) in force at 30.6.2021 by [S.I. 2021/678](#), [reg. 2](#)

**Changes to legislation:**

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