

SCHEDULES

SCHEDULE 1

LIMITATION OF ACTIONS UNDER PART I

PART II

SCOTLAND

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

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

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

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

“PART IIA

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

Prescription of Obligations

22A Ten years' prescription of obligations.

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

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- (b) an appeal against such a decision is competent with leave, and the time limit for leave has expired and no application has been made or leave has been refused;
- (c) leave to appeal against such a decision is granted or is not required, and no appeal is made within the time limit for appeal; or
- (d) the claim is abandoned;

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

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

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

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

Limitation of actions

22B 3 year limitation of actions.

- (1) This section shall apply to an action to enforce an obligation arising from liability under section 2 of the 1987 Act (to make reparation for damage caused wholly or partly by a defect in a product), except where section 22C of this Act applies.
- (2) Subject to subsection (4) below, an action to which this section applies shall not be competent unless it is commenced within the period of 3 years after the earliest date on which the person seeking to bring (or a person who could at an earlier date have brought) the action was aware, or on which, in the opinion of the court, it was reasonably practicable for him in all the circumstances to become aware, of all the facts mentioned in subsection (3) below.
- (3) The facts referred to in subsection (2) above are—
 - (a) that there was a defect in a product;
 - (b) that the damage was caused or partly caused by the defect;
 - (c) that the damage was sufficiently serious to justify the pursuer (or other person referred to in subsection (2) above) in bringing an action to which this section applies on the assumption that the defender did not dispute liability and was able to satisfy a decree;
 - (d) that the defender was a person liable for the damage under the said section 2.

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- (4) In the computation of the period of 3 years mentioned in subsection (2) above, there shall be disregarded any period during which the person seeking to bring the action was under legal disability by reason of nonage or unsoundness of mind.
- (5) The facts mentioned in subsection (3) above do not include knowledge of whether particular facts and circumstances would or would not, as a matter of law, result in liability for damage under the said section 2.
- (6) Where a person would be entitled, but for this section, to bring an action for reparation other than one in which the damages claimed are confined to damages for loss of or damage to property, the court may, if it seems to it equitable to do so, allow him to bring the action notwithstanding this section.

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

- (1) This section shall apply to an action to enforce an obligation arising from liability under section 2 of the 1987 Act (to make reparation for damage caused wholly or partly by a defect in a product) where a person has died from personal injuries and the damages claimed include damages for those personal injuries or that death.
- (2) Subject to subsection (4) below, an action to which this section applies shall not be competent unless it is commenced within the period of 3 years after the later of—
 - (a) the date of death of the injured person;
 - (b) the earliest date on which the person seeking to make (or a person who could at an earlier date have made) the claim was aware, or on which, in the opinion of the court, it was reasonably practicable for him in all the circumstances to become aware—
 - (i) that there was a defect in the product;
 - (ii) that the injuries of the deceased were caused (or partly caused) by the defect; and
 - (iii) that the defender was a person liable for the damage under the said section 2.
- (3) Where the person seeking to make the claim is a relative of the deceased, there shall be disregarded in the computation of the period mentioned in subsection (2) above any period during which that relative was under legal disability by reason of nonage or unsoundness of mind.
- (4) Where an action to which section 22B of this Act applies has not been brought within the period mentioned in subsection (2) of that section and the person subsequently dies in consequence of his injuries, an action to which this section applies shall not be competent in respect of those injuries or that death.
- (5) Where a person would be entitled, but for this section, to bring an action for reparation other than one in which the damages claimed are confined to damages for loss of or damage to property, the court may, if it seems to it equitable to do so allow him to bring the action notwithstanding this section.

Status: This is the original version (as it was originally enacted).

- (6) In this section 'relative' has the same meaning as in the Damages (Scotland) Act 1976.
- (7) For the purposes of subsection (2)(b) above there shall be disregarded knowledge of whether particular facts and circumstances would or would not, as a matter of law, result in liability for damage under the said section 2.

Supplementary

22D Interpretation of this Part.

- (1) Expressions used in this Part and in Part I of the 1987 Act shall have the same meanings in this Part as in the said Part I.
 - (2) For the purposes of section 1(1) of the 1987 Act, this Part shall have effect and be construed as if it were contained in Part I of that Act.
 - (3) In this Part, 'the 1987 Act' means the Consumer Protection Act 1987.”
- 11 Section 23 shall cease to have effect, but for the avoidance of doubt it is declared that the amendments in Part II of Schedule 4 shall continue to have effect.
- 12 In paragraph 2 of Schedule 1, after sub-paragraph (gg) there shall be inserted the following sub-paragraph—
- “(ggg) to any obligation arising from liability under section 2 of the Consumer Protection Act 1987 (to make reparation for damage caused wholly or partly by a defect in a product);”.