

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,733 of 10th September, 2009

B. 30/09

BILL

FOR

AN ACT to amend the Limitation Act.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Limitation (Amendment) Act 2009 and comes into operation on the day of publication.

Amendment of the Limitation Act.

2.(1) The Limitation Act is amended in accordance with this section.

(2) Section 4 of the Limitation Act is amended in subsection (1) by substituting “Subject to sections 10A and 10B, the” for “The”.

(3) The Limitation Act is amended by inserting the following sections after section 10–

**“Special time limit for negligence actions where facts relevant to
cause of action are not known at date of accrual.**

10A.(1) This section applies to any action for damages for negligence, other than one to which section 5 of this Act applies, where the starting date for reckoning the period of limitation under subsection (3)(b) falls after the date on which the cause of action accrued.

(2) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (3).

(3) That period is either–

- (a) six years from the date on which the cause of action accrued; or
- (b) three years from the starting date as defined by subsection (4), if that period expires later than the period mentioned in paragraph (a).

(4) For the purposes of this section, the starting date for reckoning the period of limitation under subsection (3)(b) is the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such action.

(5) In subsection (4) “the knowledge required for bringing an action for damages in respect of the relevant damage” means knowledge both–

- (a) of the material facts about the damage in respect of which damages are claimed; and
- (b) of the other facts relevant to the current action mentioned in subsection (7).

(6) For the purposes of subsection (5)(a), the material facts about the damage are such facts about the damage as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(7) The other facts referred to in subsection (5)(b) are–

- (a) that the damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence;

- (b) the identity of the defendant; and
- (c) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant.

(8) Knowledge that any acts or omissions did or did not, as a matter of law, involve negligence is irrelevant for the purposes of subsection (5).

(9) For the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

- (a) from facts observable or ascertainable by him; or
- (b) from facts ascertainable by him with the help of appropriate expert advice which is reasonable for him to seek,

but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

Overriding time limit for negligence actions not involving personal injuries.

10B.(1) An action for damages for negligence, other than one to which section 5 applies, shall not be brought after the expiration of fifteen years from the date (or, if more than one, from the last of the dates) on which there occurred any act or omission—

- (a) which is alleged to constitute negligence; and
- (b) to which the damage in respect of which damages are claimed is alleged to be attributable (in whole or in part).

(2) This section bars the right of action in a case to which subsection (1) applies notwithstanding that—

- (a) the cause of action has not yet accrued; or
- (b) where section 10A applies to the action, the date which is for the purposes of that section the starting date for reckoning the period mentioned in subsection (3)(b) of that section has not yet occurred,

before the end of the period of limitation prescribed by this section.”.

(4) The Limitation Act is amended by inserting the following section after section 28—

“Extension for cases where the limitation period is the period under section 10A(3)(b).

28A.(1) Subject to subsection (2), if in the case of any action for which a period of limitation is prescribed by section 10A—

- (a) the period applicable in accordance with subsection (3) of that section is the period mentioned in paragraph (b) of that subsection;
- (b) on the date which is for the purposes of that section the starting date for reckoning that period the person by reference to whose knowledge that date fell to be determined under subsection (4) of that section was under a disability; and
- (c) section 28 does not apply,

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 period mentioned above has expired.

(2) An action may not be brought by virtue of subsection (1) after the end of the period of limitation prescribed by section 10B.”.

(5) The Limitation Act is amended by renumbering section 32 as subsection (1) and inserting the following subsection—

“(2) Sections 10A and 10B shall not apply to any action to which subsection (1)(b) applies.”.

Transitional provisions.

3.(1) Nothing in this Act shall—

- (a) enable any action to be brought which was barred by the Limitation Act before this Act comes into force; or
- (b) affect any action commenced before this Act comes into force.

(2) Subject to subsection (1), this Act shall have effect in relation to causes of action accruing before, as well as in relation to causes of action accruing after, this Act comes into force.

EXPLANATORY MEMORANDUM

This Bill amends the Limitation Act in relation to actions for damages for negligence not involving personal injuries so that the normal six year limitation period may not apply where the facts relevant to a cause of action are not known at the date of accrual of the cause of action.

Instead the limitation period may be three years from the earliest date on which the claimant had knowledge of the facts and right to bring such a claim. It also imposes a long-stop limitation of fifteen years in relation to such claims.

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