
Changes to legislation: There are currently no known outstanding effects for the Overseas Operations (Service Personnel and Veterans) Act 2021, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 8

LIMITATION PERIODS: ENGLAND AND WALES

PART 1

COURT'S DISCRETION TO DISAPPLY TIME LIMITS

- 1 (1) Section 33 of the Limitation Act 1980 (discretionary exclusion of time limit for actions in respect of personal injuries or death) is amended as follows.
- (2) After subsection (1) insert—
- “(1ZA) The court shall not under this section disapply any provision of section 11 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 section 11 relevant date (see subsection (7)).
- (1ZB) 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 subsection (7)), and
 - (c) relates to damage that occurred outside the British Islands.
- (1ZC) In subsection (1ZB), “damage” means—
- (a) in the case of an overseas armed forces action for which a period of limitation is prescribed by section 11, 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 prescribed by section 12(2), 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 subsection (1ZB)(c) to be treated as occurring where the injuries were sustained).”
- (3) After subsection (2) insert—
- “(2A) But where the reason why the person injured could no longer maintain an action was because of the time limit in section 11, the court may disapply section 12(1) in its application to an overseas armed forces action only if the person died within the period of six years beginning with the section 11 relevant date (ignoring, for this purpose, the reference to section 11(5) in paragraph (a) of the definition of that term).

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(2B) The court shall not under this section disapply section 12(2) 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 section 12 relevant date (see subsection (7)).”

(4) After subsection (5) insert—

“(5A) In acting under this section in relation to an overseas armed forces action—

- (a) when considering the factor mentioned in subsection (3)(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.

(5B) In subsection (5A) 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 subsection (6) insert—

“(6A) In the application of subsection (1ZA), (2A) or (2B) 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 subsection (7) substitute—

“(7) In this section—

“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;

“the section 11 relevant date” means the latest of the following—

- (a) the date from which the period of three years starts to run in accordance with section 11(4) or (5);

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- (b) where section 28 applies, the date from which the period of three years mentioned in subsection (1) of that section (as that subsection has effect with the modification made by subsection (6) of that section) starts to run;
 - (c) where section 32(1)(a) or (b) applies, the date from which the period of three years starts to run in accordance with subsection (1) of that section;
“the section 12 relevant date” means the latest of the following—
 - (a) the date from which the period of three years starts to run in accordance with section 12(2);
 - (b) where section 28 applies, the date from which the period of three years mentioned in subsection (1) of that section (as that subsection has effect with the modification made by subsection (6) of that section) starts to run.”
- (7) In subsection (8), after “this section” in the first place it occurs, 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)”.

Commencement Information

II Sch. 2 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 Act 1984 is amended as follows.
- (2) In section 1 (application of foreign limitation law), in subsection (1)(a), after “subject to” insert “ section 1ZA and ”.
- (3) After section 1 insert—

“1ZA Overseas armed forces actions: restriction of foreign limitation law

- (1) Subsection (3) applies where—
- (a) the law of another country relating to limitation applies by reason of section 1(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, and in this section the law relating to limitation that applies for the purposes of that action is referred to as “the relevant foreign limitation law”.

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- (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 six 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 section 33(1ZB) of the Limitation Act 1980, and
 - (b) which (under the law of the other country that falls to be taken into account) corresponds to—
 - (i) an action to which section 11 of that Act applies (personal injuries),
 - (ii) an action in respect of false imprisonment, or
 - (iii) an action under the Fatal Accidents Act 1976 (death).
- (5) In the application of subsection (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 six years is to be treated as a reference to the period of six 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 subsection (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 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.”
- (4) In section 7 (short title etc), after subsection (3) insert—
- “(3A) Section 1ZA (overseas armed forces actions: restriction of foreign limitation law) applies to an action commenced in England and Wales on or after the date on which that section comes into force, whenever the events to which the action relates took place.”

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- (5) In section 8 (disapplication of provisions where the law applicable to limitation is determined by other instruments), in the heading and in subsection (1), after “1,” insert “ 1ZA, ”.

Commencement Information

I2 Sch. 2 para. 2 in force at 30.6.2021 by S.I. 2021/678, reg. 2

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