Limitation Act 1980

1980 CHAPTER 58

PART II

EXTENSION OR EXCLUSION OF ORDINARY TIME LIMITS

Discretionary exclusion of time limit for actions in respect of personal injuries or death

33 Discretionary exclusion of time limit for actions in respect of personal injuries or death.

(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—

(a) the provisions of section 11 **[**[F1], 11A, 11B**]** or 12 of this Act prejudice the plaintiff or any person whom he represents; and

(b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents;

the court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relates.

[[F2](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;

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(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).**]**

[[F3](1A) The court shall not under this section disapply—

(a) subsection (3) of section 11A; or

(b) where the damages claimed by the plaintiff are confined to damages for loss of or damage to any property, any other provision in its application to an action by virtue of Part I of the [M1] Consumer Protection Act 1987. **]**

[[F4](1B) Where the damages claimed are confined to damages for loss of or damage to any property, the court shall not under this section disapply any provision in its application to an action under section 2 of the Automated and Electric Vehicles Act 2018.**]**

(2) The court shall not under this section disapply section 12(1) except where the reason why the person injured could no longer maintain an action was because of the time limit in section 11 **[**[F5], 11A(4) or 11B(2) or (4)**]**.

If, for example, the person injured could at his death no longer maintain an action under the [M2]Fatal Accidents Act 1976 because of the time limit in Article 29 in Schedule 1 to the [M3]Carriage by Air Act 1961, the court has no power to direct that section 12(1) shall not apply.

[[F6](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).

(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)).**]**

(3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

(a) the length of, and the reasons for, the delay on the part of the plaintiff;

(b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11 **[**[F7], by section 11A**][**[F8], by section 11B**]** or (as the case may be) by section 12;

(c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;

(d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;

(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;

(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

(4) In a case where the person injured died when, because of section 11 **[**[F9], 11A(4) or 11B(2) or (4)**]**, he could no longer maintain an action and recover damages in respect of the injury, the court shall have regard in particular to the length of, and the reasons for, the delay on the part of the deceased.

(5) In a case under subsection (4) above, or any other case where the time limit, or one of the time limits, depends on the date of knowledge of a person other than the plaintiff, subsection (3) above shall have effect with appropriate modifications, and shall have effect in particular as if references to the plaintiff included references to any person whose date of knowledge is or was relevant in determining a time limit.

[[F10](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.**]**

(6) A direction by the court disapplying the provisions of section 12(1) shall operate to disapply the provisions to the same effect in section 1(1) of the [M4]Fatal Accidents Act 1976.

[[F11](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.**]**

[[F12](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

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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);

(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.**]**

(8) References in this section **[**[F13]—

(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)**]** to section 11 **[**[F14], 11A or 11B**]** include references to that section as extended by any of the **[**[F15]provisions of this Part of this Act other than this section**]** or by any provision of Part III of this Act.

Textual Amendments

F1 Words in s. 33(1)(a) substituted (21.4.2021) by Automated and Electric Vehicles Act 2018 (c. 18), s. 21, **Sch. para. 16(2)**; S.I. 2021/396, reg. 3(c)(d)

F2 S. 33(1ZA)-(1ZC) inserted (30.6.2021) by Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23), s. 14(2), **Sch. 2 para. 1(2)**; S.I. 2021/678, reg. 2

F3 S. 33(1A) inserted (1.3.1988) by Consumer Protection Act 1987 (c. 43, SIF 109:1), ss. 6(6), 50(2), **Sch. 1 para. 6(b)**

F4 S. 33(1B) inserted (21.4.2021) by Automated and Electric Vehicles Act 2018 (c. 18), s. 21, **Sch. para. 16(3)**; S.I. 2021/396, reg. 3(c)(d)

F5 Words in s. 33(2) substituted (21.4.2021) by Automated and Electric Vehicles Act 2018 (c. 18), s. 21, **Sch. para. 16(4)**; S.I. 2021/396, reg. 3(c)(d)

F6 S. 33(2A)(2B) inserted (30.6.2021) by Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23), s. 14(2), **Sch. 2 para. 1(3)**; S.I. 2021/678, reg. 2

F7 Words inserted (1.3.1988) by Consumer Protection Act 1987 (c. 43, SIF 109:1), ss. 6(6), 50(2), **Sch. 1 para. 6(d)**

F8 Words in s. 33(3)(b) inserted (21.4.2021) by Automated and Electric Vehicles Act 2018 (c. 18), s. 21, **Sch. para. 16(5)**; S.I. 2021/396, reg. 3(c)(d)

F9 Words in s. 33(4) substituted (21.4.2021) by Automated and Electric Vehicles Act 2018 (c. 18), s. 21, **Sch. para. 16(4)**; S.I. 2021/396, reg. 3(c)(d)

F10 S. 33(5A)(5B) inserted (30.6.2021) by Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23), s. 14(2), **Sch. 2 para. 1(4)**; S.I. 2021/678, reg. 2

F11 S. 33(6A) inserted (30.6.2021) by Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23), s. 14(2), **Sch. 2 para. 1(5)**; S.I. 2021/678, reg. 2

F12 S. 33(7) substituted (30.6.2021) by Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23), s. 14(2), **Sch. 2 para. 1(6)**; S.I. 2021/678, reg. 2

F13 Words in s. 33(8) inserted (30.6.2021) by Overseas Operations (Service Personnel and Veterans) Act 2021 (c. 23), s. 14(2), **Sch. 2 para. 1(7)**; S.I. 2021/678, reg. 2

F14 Words in s. 33(8) substituted (21.4.2021) by Automated and Electric Vehicles Act 2018 (c. 18), s. 21, **Sch. para. 16(6)**; S.I. 2021/396, reg. 3(c)(d)

F15 Words in s. 33(8) substituted (with application in accordance with regs. 3, 4 of the amending S.I.) by Cross-Border Mediation (EU Directive) Regulations 2011 (S.I. 2011/1133), regs. 2, **25**

Marginal Citations

M1 1987 c. 43**(109:1)**

M2 1976 c. 30**(122:3)**

M3 1961 c. 27**(9)**

M4 1976 c. 30**(122:3)**

Changes to legislation:
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