



# 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 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.

- (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.

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

- (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

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*Status: This is the original version (as it was originally enacted).*

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- than if the action had been brought within the time allowed by section 11 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, 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.
- (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 Fatal Accidents Act 1976.
- (7) In this section " the court" means the court in which the action has been brought.
- (8) References in this section to section 11 include references to that section as extended by any of the preceding provisions of this Part of this Act or by any provision of Part III of this Act