



# Limitation Act 1980

## 1980 CHAPTER 58

### PART III

#### MISCELLANEOUS AND GENERAL

#### **35 New claims in pending actions: rules of court.**

- (1) For the purposes of this Act, any new claim made in the course of any action shall be deemed to be a separate action and to have been commenced—
  - (a) in the case of a new claim made in or by way of third party proceedings, on the date on which those proceedings were commenced; and
  - (b) in the case of any other new claim, on the same date as the original action.
- (2) In this section a new claim means any claim by way of set-off or counterclaim, and any claim involving either—
  - (a) the addition or substitution of a new cause of action; or
  - (b) the addition or substitution of a new party;and “third party proceedings” means any proceedings brought in the course of any action by any party to the action against a person not previously a party to the action, other than proceedings brought by joining any such person as defendant to any claim already made in the original action by the party bringing the proceedings.
- (3) Except as provided by section 33 of this Act or by rules of court, neither the High Court nor [<sup>F1</sup>the county] court shall allow a new claim within subsection (1)(b) above, other than an original set-off or counterclaim, to be made in the course of any action after the expiry of any time limit under this Act which would affect a new action to enforce that claim.

For the purposes of this subsection, a claim is an original set-off or an original counterclaim if it is a claim made by way of set-off or (as the case may be) by way of counterclaim by a party who has not previously made any claim in the action.

- (4) Rules of court may provide for allowing a new claim to which subsection (3) above applies to be made as there mentioned, but only if the conditions specified in

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*Changes to legislation: There are currently no known outstanding effects for the Limitation Act 1980, Section 35. (See end of Document for details)*

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subsection (5) below are satisfied, and subject to any further restrictions the rules may impose.

- (5) The conditions referred to in subsection (4) above are the following—
- (a) in the case of a claim involving a new cause of action, if the new cause of action arises out of the same facts or substantially the same facts as are already in issue on any claim previously made in the original action; and
  - (b) in the case of a claim involving a new party, if the addition or substitution of the new party is necessary for the determination of the original action.
- (6) The addition or substitution of a new party shall not be regarded for the purposes of subsection (5)(b) above as necessary for the determination of the original action unless either—
- (a) the new party is substituted for a party whose name was given in any claim made in the original action in mistake for the new party's name; or
  - (b) any claim already made in the original action cannot be maintained by or against an existing party unless the new party is joined or substituted as plaintiff or defendant in that action.
- (7) Subject to subsection (4) above, rules of court may provide for allowing a party to any action to claim relief in a new capacity in respect of a new cause of action notwithstanding that he had no title to make that claim at the date of the commencement of the action.

This subsection shall not be taken as prejudicing the power of rules of court to provide for allowing a party to claim relief in a new capacity without adding or substituting a new cause of action.

- (8) Subsections (3) to (7) above shall apply in relation to a new claim made in the course of third party proceedings as if those proceedings were the original action, and subject to such other modifications as may be prescribed by rules of court in any case or class of case.

<sup>F2</sup>(9) .....

#### Textual Amendments

- F1** Words in s. 35(3) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 102](#); [S.I. 2014/954](#), art. 2(c) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F2** S. 35(9) repealed by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), s. 152(4), [Sch. 7](#)

#### Modifications etc. (not altering text)

- C1** S. 35 extended by [Merchant Shipping \(Liner Conferences\) Act 1982 \(c. 37, SIF 111\)](#), s. 8(2)(c) and [Foreign Limitation Periods Act 1984 \(c. 16, SIF 79\)](#), [ss. 1, 2, 7\(3\)](#)
- C2** S. 35 applied by [Competition Act 1998 \(c. 41\)](#), Sch. 8A para. 26(1) (as inserted (9.3.2017) by [S.I. 2017/385](#), reg. 1(2), [Sch. 1 para. 4](#) (with [Sch. 1 para. 5](#)))
- C3** S. 35 applied (9.6.2018) by [The Trade Secrets \(Enforcement, etc.\) Regulations 2018 \(S.I. 2018/597\)](#), regs. 1(1), [9\(a\)](#) (with [reg. 19](#))
- C4** S. 35(5)(a) modified (22.7.2004 with effect as mentioned in s. 320(2) of the amended act) by [Finance Act 2004 \(c. 12\)](#), s. 320

**Changes to legislation:**

There are currently no known outstanding effects for the Limitation Act 1980, Section 35.