



Limitation Act 1980

1980 CHAPTER 58

PART III

MISCELLANEOUS AND GENERAL

^{F1}34

Textual Amendments

^{F1} S. 34 repealed (31.1.1997) by 1996 c. 23, s. 107(2), Sch. 4; S.I. 1996/3146, art. 3

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 any 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

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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 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.

^{F2}(9)

Textual Amendments	
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(5)(a) modified (22.7.2004 with effect as mentioned in s. 320(2) of the ammended act) by Finance Act 2004 (c. 12) , s. 320

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36 Equitable jurisdiction and remedies.

- (1) The following time limits under this Act, that is to say—
- (a) the time limit under section 2 for actions founded on tort;
 - [^{F3}(aa) the time limit under section 4A for actions for libel or slander, or for slander of title, slander of goods or other malicious falsehood;]
 - (b) the time limit under section 5 for actions founded on simple contract;
 - (c) the time limit under section 7 for actions to enforce awards where the submission is not by an instrument under seal;
 - (d) the time limit under section 8 for actions on a specialty;
 - (e) the time limit under section 9 for actions to recover a sum recoverable by virtue of any enactment; and
 - (f) the time limit under section 24 for actions to enforce a judgment;
- shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any such time limit may be applied by the court by analogy in like manner as the corresponding time limit under any enactment repealed by the ^{M1}Limitation Act 1939 was applied before 1st July 1940.
- (2) Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

Textual Amendments

F3 S. 36(1)(aa) (which was inserted by 1985 c. 61, ss. 57(5), 69(5), **Sch. 9 para. 14**) substituted (4.9.1996) by 1996 c. 31, ss. **5(5)(6)**, 19 (with s. 20(2))

Marginal Citations

M1 1939 c. 21

37 Application to the Crown and the Duke of Cornwall.

- (1) Except as otherwise expressly provided in this Act, and without prejudice to section 39, this Act shall apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects.
- (2) Notwithstanding subsection (1) above, this Act shall not apply to—
- (a) any proceedings by the Crown for the recovery of any tax or duty or interest on any tax or duty;
 - (b) any forfeiture proceedings under the customs and excise Acts (within the meaning of the ^{M2}Customs and Excise Management Act 1979); or
 - (c) any proceedings in respect of the forfeiture of a ship.
- In this subsection “duty” includes any debt due to Her Majesty under section 16 of the Tithe ^{M3}Act 1936, and “ship” includes every description of vessel used in navigation not propelled by oars.
- (3) For the purposes of this section, proceedings by or against the Crown include—
- (a) proceedings by or against Her Majesty in right of the Duchy of Lancaster;
 - (b) proceedings by or against any Government department or any officer of the Crown as such or any person acting on behalf of the Crown; and
 - (c) proceedings by or against the Duke of Cornwall.

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- (4) For the purpose of the provisions of this Act relating to actions for the recovery of land and advowsons, references to the Crown shall include references to Her Majesty in right of the Duchy of Lancaster; and those provisions shall apply to lands and advowsons forming part of the possessions of the Duchy of Cornwall as if for the references to the Crown there were substituted references to the Duke of Cornwall as defined in the ^{M4}Duchy of Cornwall Management Act 1863.
- (5) For the purposes of this Act a proceeding by petition of right (in any case where any such proceeding lies, by virtue of any saving in section 40 of the ^{M5}Crown Proceedings Act 1947, notwithstanding the general abolition by that Act of proceedings by way of petition of right) shall be treated as being commenced on the date on which the petition is presented.
- (6) Nothing in this Act shall affect the prerogative right of Her Majesty (whether in right of the Crown or of the Duchy of Lancaster) or of the Duke of Cornwall to any gold or silver mine.

Marginal Citations

- M2** 1979 c. 2(40:1)
M3 1936 c. 43(98:5)
M4 1863 c. 49(29:10)
M5 1947 c. 44(39A)

38 Interpretation.

- (1) In this Act, unless the context otherwise requires—
- “action” includes any proceeding in a court of law, including an ecclesiastical court;
- “land” includes corporeal hereditaments, tithes and rent-charges and any legal or equitable estate or interest therein ^{F4}. . . but except as provided above in this definition does not include any incorporeal hereditament;
- “personal estate” and “personal property” do not include chattels real;
- “personal injuries” includes any disease and any impairment of a person’s physical or mental condition, and “injury” and cognate expressions shall be construed accordingly;
- “rent” includes a rentcharge and a rentservise;
- “rentcharge” means any annuity or periodical sum of money charged upon or payable out of land, except a rent service or interest on a mortgage on land;
- “settled land”, “statutory owner” and “tenant for life” have the same meanings respectively as in the ^{M6}Settled Land Act 1925;
- “trust” and “trustee” have the same meanings respectively as in the ^{M7}Trustee Act 1925; and
- ^{F5} . . .
- (2) For the purposes of this Act a person shall be treated as under a disability while he is an infant, or of unsound mind.
- (3) For the purposes of subsection (2) above a person is of unsound mind if he is a person who, by reason of mental disorder [^{F6}is incapable of managing and administering his

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property and affairs; and in this section “mental disorder” has the same meaning as in the ^{M8}Mental Health Act 1983]

- (4) Without prejudice to the generality of subsection (3) above, a person shall be conclusively presumed for the purposes of subsection (2) above to be of unsound mind—
- (a) while he is liable to be detained or subject to guardianship under [^{F7}the Mental Health Act 1983 (otherwise than by virtue of section 35 or 89)]; and
 - [^{F8}(b) while he is receiving treatment [^{F9}for mental disorder] as an in-patient in any hospital within the meaning of the Mental Health Act 1983 [^{F10}or independent hospital or care home within the the meaning of the Care Standards Act 2000] without being liable to be detained under the said Act of 1983 (otherwise than by virtue of section 35 or 89), being treatment which follows without any interval a period during which he was liable to be detained or subject to guardianship under the ^{M9}Mental Health Act 1959, or the said Act of 1983 (otherwise than by virtue of section 35 or 89) or by virtue of any enactment repealed or excluded by the Mental Health Act 1959].
- (5) Subject to subsection (6) below, a person shall be treated as claiming through another person if he became entitled by, through, under, or by the act of that other person to the right claimed, and any person whose estate or interest might have been barred by a person entitled to an entailed interest in possession shall be treated as claiming through the person so entitled.
- (6) A person becoming entitled to any estate or interest by virtue of a special power of appointment shall not be treated as claiming through the appointor.
- (7) References in this Act to a right of action to recover land shall include references to a right to enter into possession of the land or, in the case of rentcharges and tithes, to distrain for arrears of rent or tithe, and references to the bringing of such an action shall include references to the making of such an entry or distress.
- (8) References in this Act to the possession of land shall, in the case of tithes and rentcharges, be construed as references to the receipt of the tithe or rent, and references to the date of dispossession or discontinuance of possession of land shall, in the case of rent charges, be construed as references to the date of the last receipt of rent.
- (9) References in Part II of this Act to a right of action shall include references to—
- (a) a cause of action;
 - (b) a right to receive money secured by a mortgage or charge on any property;
 - (c) a right to recover proceeds of the sale of land; and
 - (d) a right to receive a share or interest in the personal estate of a deceased person.
- (10) References in Part II to the date of the accrual of a right of action shall be construed—
- (a) in the case of an action upon a judgment, as references to the date on which the judgment became enforceable; and
 - (b) in the case of an action to recover arrears of rent or interest, or damages in respect of arrears of rent or interest, as references to the date on which the rent or interest became due.

Textual Amendments

- F4** Words in the definition of "land" repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch. 4** (with ss. 24(2), 25(4)(5)); S.I. 1996/2974, **art. 2**

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- F5** Definition of "trust for sale" repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch. 4** (with ss. 24(2), 25(4) (5)); S.I. 1996/2974, **art. 2**
- F6** Words in s. 38(3) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 8(a)**; S.I. 2001/4150, **art. 3(3)(a)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **arts. 2, 3** (with transitional provisions in **Schs. 1-3** and savings in art. 3(4)-(10))
- F7** Words substituted by virtue of **Mental Health Act 1983** (c. 20, SIF 85), s. 148, **Sch. 4 para. 55(b)(i)**
- F8** S. 38(4)(b) substituted by **Mental Health Act 1983** (c. 20, SIF 85), s. 148, **Sch. 4 para. 55(b)(ii)**
- F9** Words in s. 38(4)(b) inserted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 8(b)**; S.I. 2001/4150, **art. 3(3)(a)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **arts. 2, 3** (with transitional provisions in **Schs. 1-3** and savings in art. 3(4)-(10))
- F10** Words in s. 38(4)(b) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 8(b)**; S.I. 2001/4150, **art. 3(3)(a)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **arts. 2, 3** (with transitional provisions in **Schs. 1-3** and savings in art. 3(4)-(10))

Marginal Citations

- M6** 1925 c. 18(98:3)
- M7** 1925 c. 19(98:4)
- M8** 1980 c. 20.
- M9** 1959 c. 72(85)

39 Saving for other limitation enactments.

This Act shall not apply to any action or arbitration for which a period of limitation is prescribed by or under any other enactment (whether passed before or after the passing of this Act) or to any action or arbitration to which the Crown is a party and for which, if it were between subjects, a period of limitation would be prescribed by or under any such other enactment.

40 Transitional provisions, amendments and repeals.

- (1) Schedule 2 to this Act, which contains transitional provisions, shall have effect.
- (2) The enactments specified in Schedule 3 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential on the provisions of this Act; but the amendment of any enactment by that Schedule shall not be taken as prejudicing the operation of section 17(2) of the ^{M10}Interpretation Act 1978 (effect of repeals).
- ^{X1}(3) The enactments specified in Schedule 4 to this Act are hereby repealed to the extent specified in column 3 of that Schedule.

Editorial Information

- X1** The text of s. 40(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

Marginal Citations

- M10** 1978 c. 30(115:1)

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41 Short title, commencement and extent.

- (1) This Act may be cited as the Limitation Act 1980.
- (2) This Act, except section 35, shall come into force on 1st May 1981.
- (3) Section 35 of this Act shall come into force on 1st May 1981 to the extent (if any) that the section substituted for section 28 of the ^{M11}Limitation Act 1939 by section 8 of the ^{M12}Limitation Amendment Act 1980 is in force immediately before that date; but otherwise section 35 shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint, and different days may be appointed for different purposes of that section (including its application in relation to different courts or proceedings).
- (4) The repeal by this Act of section 14(1) of the ^{M13}Limitation Act 1963 and the corresponding saving in paragraph 2 of Schedule 2 to this Act shall extend to Northern Ireland, but otherwise this Act does not extend to Scotland or to Northern Ireland.

Modifications etc. (not altering text)

C3 Power of appointment conferred by s. 41(3) fully exercised: 1.5.1981 appointed by [S.I. 1981/588](#), [art. 2](#)

Marginal Citations

M11 [1939 c. 21](#)

M12 [1980 c. 24\(79\)](#)

M13 [1963 c. 47](#)

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