

The relevant Limitation Act 1980 provisions for Clinical Negligence actions:

Part I Ordinary Time Limits for Different Classes of Action

...Actions Founded on tort

Section 2. Time limit for actions founded on tort

...Actions founded on simple contract

Section 5. Time limit for actions founded on simple contract

...Actions in respect of wrongs causing personal injuries or death, etc

Section 11. Special time limit for actions in respect of personal injuries

Section 12. Special time limit for actions under Fatal Accidents legislation

Section 13. Operation of time limit under section 12 in relation to different dependants

Section 14. Definition of date of knowledge for purposes of sections 11 to 12

Part II Extension of Exclusion of Ordinary Time Limits

...Fraud concealment and mistake

Section 32. Postponement of limitation in case of fraud, concealment or mistake

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

There are interesting provisions in the LA 1980, as amended, that are relevant date of knowledge and other points in cases such as Defective Products (Section 11A and the Consumer Protection Act 1987) and Deaths Caused by Automated Vehicles (Section 11B and the Automated and Electric Vehicles Act 2018), which are not addressed in this clinical negligence briefing.

To avoid considering the detail of the sections of the LA 1980 and this article by moving between two screens, I set out the relevant LA 1980 provisions in full here for easy reference:

Limitation Act 1980

Section 2. Time limit for actions founded on tort.

An action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued.

Section 5. Time limit for actions founded on simple contract.

An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.

Section 11. Special time limit for actions in respect of personal injuries.

11(1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

... 11(2) None of the time limits given in the preceding provisions of this Act shall apply to an action to which this section applies.

11 (3) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (4) or (5) below.

11 (4) Except where subsection (5) below applies, the period applicable is **three years** from—

(a) the date on which the cause of action accrued; or

(b) the date of knowledge (if later) of the person injured.

11 (5) If the person injured dies before the expiration of the period mentioned in subsection (4) above, the period applicable as respects the cause of action surviving for the benefit of his estate by virtue of section 1 of the Law Reform (Miscellaneous Provisions) Act 1934 shall be three years from—

(a) the date of death; or

(b) the date of the personal representative's knowledge; whichever is the later.

11 (6) For the purposes of this section "personal representative" includes any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate) but not anyone appointed only as a special personal representative in relation to settled land; and regard shall be had to any knowledge acquired by any such person while a personal representative or previously.

11 (7) If there is more than one personal representative, and their dates of knowledge are different, subsection (5)(b) above shall be read as referring to the earliest of those dates.

Section 12. Special time limit for actions under Fatal Accidents legislation.

12 (1) An action under the Fatal Accidents Act 1976 shall not be brought if the death occurred when the person injured could no longer maintain an action and recover damages in respect of the injury (whether because of a time limit in this Act or in any other Act, or for any other reason). Where any such action by the injured person would have been barred by the time limit in section 11, 11A or 11B of this Act, no account shall be taken of the possibility of that time limit being overridden under section 33 of this Act.

12 (2) None of the time limits given in the preceding provisions of this Act shall apply to an action under the Fatal Accidents Act 1976, but no such action shall be brought after the expiration of three years from—

(a) the date of death; or

(b) the date of knowledge of the person for whose benefit the action is brought; whichever is the later.

12 (3) An action under the Fatal Accidents Act 1976 shall be one to which sections 28, 33, 33B and 35 of this Act apply, and the application to any such action of the time limit under subsection (2) above shall be subject to section 39; but otherwise Parts II and III of this Act shall not apply to any such action.

[section 33B “Extension of time limits because of alternative dispute resolution in certain cross border or domestic contractual disputes” ...” so will not be relevant to clinical negligence actions,

and section 39 “Saving for other limitation enactment... 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” which may be relevant to, for example, maritime accidents, injuries and treatments and is addressed below.]

Section 13. Operation of time limit under section 12 in relation to different dependants.

13 (1) Where there is more than one person for whose benefit an action under the Fatal Accidents Act 1976 is brought, section 12(2)(b) of this Act shall be applied separately to each of them.

13 (2) Subject to subsection (3) below, if by virtue of subsection (1) above the action would be outside the time limit given by section 12(2) as regards one or more, but not all, of the persons for whose benefit it is brought, the court shall direct that any person as regards whom the action would be outside that limit shall be excluded from those for whom the action is brought.

13 (3) The court shall not give such a direction if it is shown that if the action were brought exclusively for the benefit of the person in question it would not be defeated by a defence of limitation (whether in consequence of section 28 of this Act or an agreement between the parties not to raise the defence, or otherwise).

Section 14. Definition of date of knowledge for purposes of sections 11 to 12

14 (1) Subject to subsections (1A) and (1B) below, in sections 11 and 12 of this Act references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts—

- (a) that the injury in question was significant; and
- (b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; and
- (c) the identity of the defendant; and
- (d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant; and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

14 (2) For the purposes of this section an injury is significant if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

14 (3) For the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

- (a) from facts observable or ascertainable by him; or
- (b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek; but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

Section 28 Extension of limitation period in case of disability.

28(1) Subject to the following provisions of this section, if on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before

the expiration of six years from the date when he ceased to be under a disability or died (whichever first occurred) notwithstanding that the period of limitation has expired.

... 28(6) If the action is one to which section 11, 11B or 12(2) of this Act applies, subsection (1) above shall have effect as if for the words “six years” there were substituted the words “three years”.

Section 32 Postponement of limitation period in case of fraud, concealment or mistake.

32(1) Subject to subsections (3), (4A) and (4B) below, where in the case of any action for which a period of limitation is prescribed by this Act, either—

(a) the action is based upon the fraud of the defendant; or

(b) any fact relevant to the plaintiff’s right of action has been deliberately concealed from him by the defendant; or

(c) the action is for relief from the consequences of a mistake; the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it. References in this subsection to the defendant include references to the defendant’s agent and to any person through whom the defendant claims and his agent.

32(2) For the purposes of subsection (1) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.

32(3) Nothing in this section shall enable any action—

(a) to recover, or recover the value of, any property; or

(b) to enforce any charge against, or set aside any transaction affecting, any property; to be brought against the purchaser of the property or any person claiming through him in any case where the property has been purchased for valuable consideration by an innocent third party since the fraud or concealment or (as the case may be) the transaction in which the mistake was made took place.

32(4) A purchaser is an innocent third party for the purposes of this section—

(a) in the case of fraud or concealment of any fact relevant to the plaintiff’s right of action, if he was not a party to the fraud or (as the case may be) to the concealment of that fact and did not at the time of the purchase know or have reason to believe that the fraud or concealment had taken place; and

(b) in the case of mistake, if he did not at the time of the purchase know or have reason to believe that the mistake had been made.

32(4A) Subsection (1) above shall not apply in relation to the time limit prescribed by section 11A(3) of this Act or in relation to that time limit as applied by virtue of section 12(1) of this Act.

32(4B) Subsection (1) above shall not apply in relation to the time limit prescribed by section 11B(2) or (4) of this Act or in relation to that time limit as applied by virtue of section 12(1) of this Act.

32(5) Sections 14A and 14B of this Act shall not apply to any action to which subsection (1)(b) above applies (and accordingly the period of limitation referred to in that subsection, in any case to which either of those sections would otherwise apply, is the period applicable under section 2 of this Act).

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

33(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, 11A, 11B or 12 of this Act prejudice the plaintiff [claimant] 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.

33(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)).

33 (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.

33 (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).

33(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 Consumer Protection Act 1987.

33(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.

33(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, 11A(4) or 11B(2) or (4). 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.

33(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).

33(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)).

33 (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, by section 11A, 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.

33(4) In a case where the person injured died when, because of section 11, 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.

33(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.

33(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.

33(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.

33(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.

33(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.]

33(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);

(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.]

33(8) References in this section —

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

Section 35 New claims in pending actions: rules of court.

35(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.

35(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.

35(3) Except as provided by section 33 of this Act or by rules of court, neither the High Court nor 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.

35(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.

35(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.

35(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.

35(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.

35(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.

Section 38 Interpretation.

38(1) In this Act, unless the context otherwise requires—

...“personal injuries” includes any disease and any impairment of a person's physical or

38(2) For the purposes of this Act a person shall be treated as ‘under a disability’ while he is an infant or lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct legal proceedings.

