



Limitation Act 1963

CHAPTER 47

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ELIZABETH II



1963 CHAPTER 47

An Act to extend in certain cases the time-limit for bringing legal proceedings where damages are claimed which consist of or include damages or solatium in respect of personal injuries (including any disease or impairment of a person's physical or mental condition) or in respect of a person's death; to limit the time within which proceedings for contribution may be brought under section 6 of the Law Reform (Married Women and Tortfeasors) Act 1935 or section 3 (2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940; to make further provision as to the application of the Limitation (Enemies and War Prisoners) Act 1945 to Northern Ireland; and for purposes connected with the matters aforesaid. [31st July 1963]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

AMENDMENT OF LAW OF ENGLAND AND WALES

1.—(1) Section 2 (1) of the Limitation Act 1939 (which, in the case of certain actions, imposes a time-limit of three years for bringing the action) shall not afford any defence to an action to which this section applies, in so far as the action relates to any cause of action in respect of which—

Extension of time-limit for certain actions.

- (a) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section, and

PART I

(b) the requirements of subsection (3) of this section are fulfilled.

(2) 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.

(3) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which—

- (a) either was after the end of the three-year period relating to that cause of action or was not earlier than twelve months before the end of that period, and
- (b) in either case, was a date not earlier than twelve months before the date on which the action was brought.

(4) Nothing in this section shall be construed as excluding or otherwise affecting—

- (a) any defence which, in any action to which this section applies, may be available by virtue of any enactment other than section 2 (1) of the Limitation Act 1939 (whether it is an enactment imposing a period of limitation or not) or by virtue of any rule of law or equity, or
- (b) the operation of any enactment or rule of law or equity which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.

Application
for leave of
court.

2.—(1) Any application for the leave of the court for the purposes of the preceding section shall be made *ex parte*, except in so far as rules of court may otherwise provide in relation to applications which are made after the commencement of a relevant action.

(2) Where such an application is made before the commencement of any relevant action, the court shall grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if such an action were brought forthwith and the like evidence were adduced in that action, that

evidence would, in the absence of any evidence to the contrary, be sufficient—

PART I

- (a) to establish that cause of action, apart from any defence under section 2 (1) of the Limitation Act 1939, and
- (b) to fulfil the requirements of subsection (3) of the preceding section in relation to that cause of action.

(3) Where such an application is made after the commencement of a relevant action, the court shall grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient—

- (a) to establish that cause of action, apart from any defence under section 2 (1) of the Limitation Act 1939, and
- (b) to fulfil the requirements of subsection (3) of the preceding section in relation to that cause of action,

and it also appears to the court that, until after the commencement of that action, it was outside the knowledge (actual or constructive) of the plaintiff that the matters constituting that cause of action had occurred on such a date as (apart from the preceding section) to afford a defence under section 2 (1) of the Limitation Act 1939.

(4) No appeal shall lie from any decision of the Court of Appeal on an appeal against a decision on an application under this section.

(5) In this section “relevant action”, in relation to an application for the leave of the court, means any action in connection with which the leave sought by the application is required.

3.—(1) In relation to any action to which section 1 of this Act applies, being an action in respect of one or more causes of action surviving for the benefit of the estate of a deceased person by virtue of section 1 of the Law Reform (Miscellaneous Provisions) Act 1934, subsections (1), (3) and (4) of section 1 of this Act and the last preceding section shall have effect subject to the provisions of subsections (4) and (5) of this section.

Application
of ss. 1 and 2
to actions
after death
of injured
person.

(2) Subsections (1), (3) and (4) of section 1 of this Act and the last preceding section shall have effect, subject to the provisions of subsections (4) to (6) of this section, in relation to an action brought by virtue of the Fatal Accidents Acts for damages in respect of a person's death, as they have effect in relation to an action to which section 1 of this Act applies.

(3) In the following provisions of this section, and in sections 1 and 2 of this Act as modified by those provisions, “the

PART I deceased” means the person referred to in subsection (1) or subsection (2) of this section, as the case may be.

(4) Section 1 (1) of this Act shall not have effect in relation to any action falling within subsection (1) or subsection (2) of this section unless the action is brought before the end of the period of twelve months from the date on which the deceased died.

(5) For the purposes of the application of subsection (3) of section 1 of this Act to an action falling within subsection (1) or subsection (2) of this section,—

- (a) any reference in the said subsection (3) to the plaintiff shall be construed as a reference to the deceased, and
- (b) the requirements of that subsection shall be taken to be fulfilled in relation to a cause of action if either the matters specified in that subsection (as modified by the preceding paragraph) are proved or it is proved that the material facts relating to that cause of action were or included facts of a decisive character which at all times until his death were outside the knowledge (actual or constructive) of the deceased ;

and any reference in this Part of this Act to the requirements of the said subsection (3) shall, in relation to an action falling within subsection (1) or subsection (2) of this section, be construed as a reference to the requirements of the said subsection (3) as modified by this subsection.

(6) In the application of this Part of this Act to an action brought by virtue of the Fatal Accidents Acts,—

- (a) any reference to a cause of action to which an action relates shall be construed as a reference to a cause of action in respect of which it is claimed that the deceased could (but for his death) have maintained an action and recovered damages, and
- (b) any reference to establishing a cause of action shall be construed as a reference to establishing that the deceased could (but for his death) have maintained an action and recovered damages in respect thereof.

Time-limit for claiming contribution between tortfeasors.

4.—(1) Where under section 6 of the Law Reform (Married Women and Tortfeasors) Act 1935 a tortfeasor (in this section referred to as “the first tortfeasor”) becomes entitled after the passing of this Act to a right to recover contribution in respect of any damage from another tortfeasor, no action to recover contribution by virtue of that right shall (subject to subsection (3) of this section) be brought after the end of the period of two years from the date on which that right accrued to the first tortfeasor.

(2) For the purposes of this section the date on which a right to recover contribution in respect of any damage accrues to a tortfeasor (in this subsection referred to as “the relevant date”) shall be ascertained as follows, that is to say—

- (a) if the tortfeasor is held liable in respect of that damage by a judgment given in any civil proceedings, or an award made on any arbitration, the relevant date shall be the date on which the judgment is given, or the date of the award, as the case may be ;
- (b) if, in any case not falling within the preceding paragraph, the tortfeasor admits liability in favour of one or more persons in respect of that damage, the relevant date shall be the earliest date on which the amount to be paid by him in discharge of that liability is agreed by or on behalf of the tortfeasor and that person, or each of those persons, as the case may be ;

and for the purposes of this subsection no account shall be taken of any judgment or award given or made on appeal in so far as it varies the amount of damages awarded against the tortfeasor.

(3) Sections 22(1) and 26 of the Limitation Act 1939 (which make provision for cases of disability, fraud and mistake) shall each have effect as if any reference therein to that Act included a reference to subsection (1) of this section, and section 2(1) of the Limitation (Enemies and War Prisoners) Act 1945 shall be amended by adding at the end of the definition of “statute of limitation” the words “subsection (1) of section four of the Limitation Act 1963” :

Provided that the said section 22(1) shall not apply to any action by virtue of this subsection unless the plaintiff proves that the person under the disability was not, at the time when the right to recover contribution accrued to him, in the custody of a parent, and, where it so applies, shall have effect as if for the words “six years” there were substituted the words “two years”.

(4) In relation to torts falling within Article 29 in Schedule 1 to the Carriage by Air Act 1961, the preceding subsections shall have effect in substitution for the limitation imposed by subsection (2) of section 5 of that Act ; and accordingly in that subsection the words from “but no action” onwards are hereby repealed :

Provided that this subsection shall not affect any action for a contribution where before the passing of this Act judgment has been obtained against the person seeking to obtain the contribution.

PART I

(5) In this section references to an action, to section 22(1) or section 26 of the Limitation Act 1939, and to subsection (2) of section 5 of the Carriage by Air Act 1961, shall be construed as including references respectively to an arbitration, to the said section 22(1) or, as the case may be, section 26 as applied to arbitrations by section 27(1) of the Limitation Act 1939, and to subsection (2) as extended by subsection (3) of section 5 of the Carriage by Air Act 1961; and subsections (3) to (7) of section 27 of the Limitation Act 1939 (which relate to the application of that Act to arbitrations) shall apply for the purposes of this section.

Supplementary provisions.

5. Section 28 of the Limitation Act 1939 (which relates to claims by way of set-off or counterclaim) and section 30 of that Act (which relates to proceedings by or against the Crown) shall apply for the purposes of this Part of this Act as they apply for the purposes of that Act.

Transitional provisions.

6.—(1) Subject to the following provisions of this section, the provisions of this Part of this Act (other than section 4 thereof) shall have effect in relation to causes of action which accrued before, as well as causes of action which accrue after, the passing of this Act, and shall have effect in relation to any cause of action which accrued before the passing of this Act notwithstanding that an action in respect thereof has been commenced and is pending at the passing of this Act.

(2) In the application of section 2 of this Act to an action which is pending at the passing of this Act, subsection (3) of that section shall have effect with the omission of the words from “and it also appears” to the end of the subsection.

(3) For the purposes of this section an action shall not be taken to be pending at any time after a final order or judgment has been made or given therein, notwithstanding that an appeal is pending or that the time for appealing has not expired; and accordingly section 1 of this Act shall not have effect in relation to a cause of action in respect of which a final order or judgment has been made or given before the passing of this Act.

Interpretation of Part I.

7.—(1) In this Part of this Act “the court”, in relation to an action, means the court in which the action has been, or is intended to be, brought, and “the Fatal Accidents Acts” means the Fatal Accidents Acts 1846 to 1959.

(2) In this Part of this Act any reference to the three-year period relating to a cause of action is a reference to the period of three years from the date on which that cause of action accrued:

Provided that—

- (a) in relation to any cause of action in respect of which, by virtue of section 22 of the Limitation Act 1939

(which relates to persons under a disability), an action could have been brought after the end of the period of three years from the date on which that cause of action accrued, any reference in this Part of this Act to the three-year period relating to that cause of action shall be construed as a reference to the period up to the end of which an action could, by virtue of that section, have been brought in respect thereof ;

- (b) in relation to a cause of action in respect of which, by virtue of section 26 of the Limitation Act 1939 (which relates to cases of fraud or mistake), the period of limitation did not begin to run until a date after the cause of action accrued, any reference in this Part of this Act to the three-year period relating to that cause of action shall be construed as a reference to the period of three years from the date on which, by virtue of that section, the period of limitation began to run.

(3) In this Part of this Act any reference to the material facts relating to a cause of action is a reference to any one or more of the following, that is to say—

- (a) the fact that personal injuries resulted from the negligence, nuisance or breach of duty constituting that cause of action ;
- (b) the nature or extent of the personal injuries resulting from that negligence, nuisance or breach of duty ;
- (c) the fact that the personal injuries so resulting were attributable to that negligence, nuisance or breach of duty, or the extent to which any of those personal injuries were so attributable.

(4) For the purposes of this Part of this Act any of the material facts relating to a cause of action shall be taken, at any particular time, to have been facts of a decisive character if they were facts which a reasonable person, knowing those facts and having obtained appropriate advice with respect to them, would have regarded at that time as determining, in relation to that cause of action, that (apart from any defence under section 2 (1) of the Limitation Act 1939) an action would have a reasonable prospect of succeeding and of resulting in the award of damages sufficient to justify the bringing of the action.

(5) Subject to the next following subsection, for the purposes of this Part of this Act a fact shall, at any time, be taken to have been outside the knowledge (actual or constructive) of a person if, but only if,—

- (a) he did not then know that fact ;
- (b) in so far as that fact was capable of being ascertained by him, he had taken all such action (if any) as it was

PART I

reasonable for him to have taken before that time for the purpose of ascertaining it; and

- (c) in so far as there existed, and were known to him, circumstances from which, with appropriate advice, that fact might have been ascertained or inferred, he had taken all such action (if any) as it was reasonable for him to have taken before that time for the purpose of obtaining appropriate advice with respect to those circumstances.

(6) In the application of the last preceding subsection to a person at a time when he was under a disability and was in the custody of a parent, any reference to that person in paragraph (a), paragraph (b) or paragraph (c) of that subsection shall be construed as a reference to that parent.

(7) Subject to the preceding provisions of this section, expressions used in this Part of this Act and in the Limitation Act 1939 have the same meanings in this Part of this Act as in that Act.

(8) In this section "appropriate advice", in relation to any fact or circumstances, means the advice of competent persons qualified, in their respective spheres, to advise on the medical, legal and other aspects of that fact or those circumstances, as the case may be.

PART II

AMENDMENT OF LAW OF SCOTLAND

Extension of
time-limit for
certain actions.

8.—(1) Section 6 (1) of the Law Reform (Limitation of Actions, etc.) Act 1954 (which, in the case of certain actions, imposes a time-limit of three years for bringing the action) shall not afford any defence to an action to which this section applies, in so far as the action relates to any right of action in respect of which the requirements of subsection (3) of this section are fulfilled.

(2) This section applies to any action of damages in Scotland where the damages claimed consist of, or include, damages or solatium in respect of personal injuries sustained by the pursuer or any other person.

(3) The requirements of this subsection are fulfilled in relation to a right of action if it is proved that the material facts relating to that right of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the pursuer until a date which—

- (a) either was after the end of the three-year period relating to that right of action or was not earlier than twelve months before the end of that period, and

(b) in either case, was a date not earlier than twelve months before the date on which the action was brought. PART II

(4) Nothing in this section shall be construed as excluding or otherwise affecting—

(a) any defence which, in any action to which this section applies, may be available by virtue of any enactment other than section 6 (1) of the Law Reform (Limitation of Actions, etc.) Act 1954 (whether it is an enactment imposing a period of limitation or not) or by virtue of any rule of law, or

(b) the operation of any enactment or rule of law which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the right of action accrued.

9.—(1) In relation to any action to which section 8 of this Act applies, being an action brought by or on behalf of a person to whom a right of action has (apart from subsection (4) of this section) accrued on the death of another person (in this section referred to as “the deceased”) in consequence of personal injuries sustained by the deceased, the last preceding section shall have effect subject to the following provisions of this section. Actions in respect of death of injured person.

(2) Subsection (1) of the last preceding section shall not have effect in relation to any action falling within this section unless the action is brought before the end of the period of twelve months from the date on which the deceased died.

(3) For the purposes of the application of subsection (3) of the last preceding section to an action falling within this section—

(a) any reference in the said subsection (3) to the pursuer shall be construed as a reference to the deceased, and

(b) the requirements of that subsection shall be taken to be fulfilled in relation to a right of action if either the matters specified in that subsection (as modified by the preceding paragraph) are proved or it is proved that the material facts relating to that right of action were or included facts of a decisive character which at all times until his death were outside the knowledge (actual or constructive) of the deceased ;

and any reference in subsection (1) of that section to the requirements of the said subsection (3) shall, in relation to an action falling within this section, be construed as a reference to the requirements of the said subsection (3) as modified by this subsection.

(4) In relation to an action falling within this section—

(a) the death of the deceased shall not, and

PART II

(b) any circumstances falling within the next following subsection shall,

be regarded for the purposes of this Part of this Act as constituting a right of action.

(5) The circumstances referred to in paragraph (b) of the last preceding subsection include any circumstances which would have constituted a right of action in relation to an action brought by the deceased before his death in respect of the personal injuries which caused his death.

Time-limit for claiming contribution between wrongdoers.

10.—(1) Where under section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 a person (in this section referred to as “the first wrongdoer”) becomes entitled after the passing of this Act to a right to recover from another person a contribution in respect of any damages or expenses, no action to recover a contribution by virtue of that right shall be brought after the end of the period of two years from the date on which that right accrued to the first wrongdoer.

(2) Section 6(2) of the Law Reform (Limitation of Actions, etc.) Act 1954 (which modifies the time-limit of three years for bringing an action in the case of persons under legal disability) shall have effect as if any reference therein to subsection (1) of that section included a reference to subsection (1) of this section :

Provided that in relation to any action to which the said section 6(2) applies by virtue of this subsection it shall have effect as if for the words “three years” therein there were substituted the words “two years”.

(3) The preceding provisions of this section, and the provisions of section 6(2) of the said Act of 1954 as extended by the last preceding subsection, shall have effect in relation to an arbitration to recover from a carrier a contribution in respect of damages to which Article 29 in Schedule 1 to the Carriage by Air Act 1961 applies, as they have effect in relation to an action for that purpose.

(4) For the purposes of this section an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbiter or to agree to the appointment of an arbiter, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

(5) In relation to wrongful acts or omissions falling within the said Article 29 this section shall have effect in substitution for the limitation imposed by section 5(2) of the said Act of 1961 ; and accordingly the following provisions of that Act are

hereby repealed, that is to say, in subsection (2) of section 5, the words from “but no action” to the end of the subsection; and, in paragraph (a) of section 11, heads (i) and (iii).

PART II

(6) Nothing in this section shall affect any action for a contribution where, before the passing of this Act, decree has been pronounced against the person seeking to obtain the contribution; and in this subsection “action” includes “arbitration” and “decree” includes “decree-arbitral”.

11. Section 1(1) of the Limitation (Enemies and War Prisoners) Act 1945 as set out in section 4(a) of that Act (which provides for the suspension of the limitation period for bringing an action where a party was an enemy or was detained in enemy territory) shall be amended by adding at the end of the said section 1(1) the words “section six of the Law Reform (Limitation of Actions, etc.) Act 1954, subsection (1) of section ten of the Limitation Act 1963”.

Amendment
of s. 1(1) of
Limitation
(Enemies
and War
Prisoners)
Act 1945.

12.—(1) Subject to the following provisions of this section, the provisions of this Part of this Act (other than section 10 thereof and section 11 so far as it relates to the said section 10) shall have effect in relation to rights of action which accrued before, as well as rights of action which accrue after, the passing of this Act, and shall have effect in relation to any right of action which accrued before the passing of this Act notwithstanding that an action in respect thereof has been commenced and is pending at the passing of this Act.

Transitional
provisions.

(2) For the purposes of this section an action shall not be taken to be pending at any time after a final order or decree has been made or pronounced therein, notwithstanding that an appeal is pending or that the time for appealing has not expired; and accordingly section 8 of this Act shall not have effect in relation to a right of action in respect of which a final order or decree has been made or pronounced before the passing of this Act.

13.—(1) Notwithstanding anything in any enactment relating to the trial by jury of actions, whether in the Court of Session or the sheriff court, no action relating to a right of action in respect of which the operation of section 6 (1) of the Law Reform (Limitation of Actions, etc.) Act 1954 is precluded by virtue of section 8 (1) of this Act shall be tried by jury.

Supplementary
provisions
relating to, and
interpretation
of, Part II.

(2) Any reference in this Part of this Act to the three-year period relating to a right of action is a reference to the period of three years from the date on which that right of action accrued:

Provided that, in relation to any right of action in respect of which, by virtue of subsection (2) of section 6 of the Law

PART II Reform (Limitation of Actions, etc.) Act 1954 (which relates to persons under a disability), an action could have been brought after the end of the period of three years from the date on which that right of action accrued, any reference in this Part of this Act to the three-year period relating to that right of action shall be construed as a reference to the period up to the end of which an action could, by virtue of that subsection, have been brought in respect thereof.

(3) For the purposes of this Part of this Act any reference in this Act to the material facts relating to a right of action is a reference to any one or more of the following, that is to say—

- (a) the fact that personal injuries resulted from a wrongful act or omission ;
- (b) the nature or extent of the personal injuries so resulting ;
- (c) the fact that the personal injuries so resulting were attributable to that wrongful act or omission, or the extent to which any of those personal injuries were so attributable.

(4) Subsections (4) to (6) and (8) of section 7 of this Act shall have effect for the purposes of this Part of this Act as they have effect for the purposes of Part I of this Act, with the substitution, in the said subsection (4), for the references to section 2 (1) of the Limitation Act 1939 and to a cause of action, of references respectively to section 6 (1) of the Law Reform (Limitation of Actions, etc.) Act 1954 and to a right of action.

(5) In this Part of this Act the expression “ wrongful ” includes “ negligent ”, and the expressions “ commencement ”, in relation to an action, and “ personal injuries ” have the same meanings as in section 6 of the Law Reform (Limitation of Actions, etc.) Act 1954.

PART III

SUPPLEMENTARY

Provisions
as to
Northern
Ireland.

14.—(1) Section 5 of the Limitation (Enemies and War Prisoners) Act 1945 (which, in relation to Northern Ireland, restricts the application of that Act to periods of limitation prescribed by enactments in force at the date of the passing of that Act) shall have effect as if for the words “ in force in Northern Ireland at the date of the passing of this Act ” there were substituted the words “ for the time being in force in Northern Ireland ”.

(2) If the Parliament of Northern Ireland enacts legislation whereby the right to recover contribution conferred by section 16 of the Law Reform (Miscellaneous Provisions) Act (Northern

Ireland) 1937 is made subject to a period of limitation of two years, and that period of limitation is not liable to be extended or postponed except in circumstances, and to an extent, corresponding to those provided for by section 4(3) of this Act, no limitation or restriction imposed by the Government of Ireland Act 1920 on the power of that Parliament to make laws shall be construed as preventing that Parliament (either by the same or any subsequent legislation) from repealing, in their application to Northern Ireland, the words repealed in relation to England and Wales by section 4(4) of this Act.

(3) If, in accordance with the last preceding subsection, the Parliament of Northern Ireland repeals those words in their application to Northern Ireland, that Parliament shall not have power to enact legislation whereby, in relation to torts falling within Article 29 in Schedule 1 to the Carriage by Air Act 1961, the period of limitation applicable to the right to recover contribution conferred by the said section 16, or by any enactment whereby that section is superseded, would be reduced below, or increased above, two years, or would be liable to be extended or postponed otherwise than as mentioned in the last preceding subsection.

15. Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment. Construction of references to enactments.

16.—(1) This Act may be cited as the Limitation Act 1963. Short title and extent.
 (2) Part II of this Act shall extend to Scotland only, and, except so far as otherwise provided in the said Part II, Part I of this Act shall not extend to Scotland.

(3) This Act, except section 14 thereof, shall not extend to Northern Ireland.

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Table of Statutes referred to in this Act

| Short Title | Session and Chapter |
|--|------------------------|
| Government of Ireland Act 1920 | 10 & 11 Geo. 5. c. 67. |
| Law Reform (Miscellaneous Provisions) Act 1934 | 24 & 25 Geo. 5. c. 41. |
| Law Reform (Married Women and Tortfeasors) Act 1935 | 25 & 26 Geo. 5. c. 30. |
| Limitation Act 1939 | 2 & 3 Geo. 6. c. 21. |
| Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 | 3 & 4 Geo. 6. c. 42. |
| Limitation (Enemies and War Prisoners) Act 1945 | 8 & 9 Geo. 6. c. 16. |
| Law Reform (Limitation of Actions, &c.) Act 1954 | 2 & 3 Eliz. 2. c. 36. |
| Carriage by Air Act 1961 | 9 & 10 Eliz. 2. c. 27. |

CH. 47

Limitation Act 1963

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