



# National Security Act 2023

## 2023 CHAPTER 32

### PART 5

#### TERRORISM

PROSPECTIVE

#### *Damages in national security proceedings*

#### **84 National security proceedings**

- (1) Sections 85 and 86 apply to proceedings (“national security proceedings”) before a court which—
- (a) are commenced on or after the date this section comes into force,
  - (b) are brought against the Crown on any grounds (unless they are brought under section 7(1)(a) of the Human Rights Act 1998), and
  - (c) relate to national security.
- (2) For the purposes of this section—
- (a) proceedings relate to national security where a party to those proceedings has, at any stage, presented evidence or made submissions to the court relating to national security;
  - (b) the circumstances in which evidence or submissions are to be taken to relate to national security include, in particular, where the evidence or submissions relate to—
    - (i) the use of investigatory powers or surveillance powers under the Regulation of Investigatory Powers Act 2000, or the use of similar powers overseas in the interests of national security;
    - (ii) the activities of the intelligence services in the United Kingdom or overseas, or the activities of similar services overseas;

*Status: This version of this cross heading contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Cross Heading: Damages in national security proceedings. (See end of Document for details)*

- (iii) investigations or other activities in connection with preventing the commission of terrorism offences or other involvement in terrorism-related activity in the United Kingdom or overseas.

#### Commencement Information

**II** S. 84 not in force at Royal Assent, see [s. 100\(1\)](#)

### 85 Duty to consider reduction in damages payable by the Crown

- (1) This section applies where—
- (a) liability of the Crown to the claimant has been established by the court in national security proceedings,
  - (b) the court is permitted to award damages, payable by the Crown, to the claimant in those proceedings in respect of that liability,
  - (c) the Crown has made an application to the court for consideration of the factors mentioned in subsection (3) (the “national security factors”), and
  - (d) the court has not refused the application.
- (2) Where this section applies, the court must, in deciding what remedy (if any) to award to the claimant in respect of the liability, consider the national security factors.
- (3) The national security factors are—
- (a) whether the claimant has committed wrongdoing that—
    - (i) involves the commission of a terrorism offence or other involvement in terrorism-related activity, and
    - (ii) has a connection with the conduct of the Crown complained of in the proceedings, and
  - (b) if the claimant has committed such wrongdoing—
    - (i) the extent of that wrongdoing and of its connection with the conduct of the Crown, and
    - (ii) the matters mentioned in [subsection \(4\)](#).
- (4) The matters are whether and to what extent—
- (a) there was a risk of harm the Crown sought to prevent or limit in carrying out the conduct complained of in the proceedings;
  - (b) there was a limitation on the ability of the Crown to prevent the conduct occurring, including on the basis of—
    - (i) the conduct having occurred overseas, or
    - (ii) the conduct having been carried out in conjunction with a third party.
- (5) Where the court would (but for this subsection) award damages to the claimant of a particular amount, the court must decide whether, in light of its consideration of the national security factors, it is appropriate for it to reduce the amount of damages (including to nil).
- (6) But the court may not decide to reduce damages it would otherwise award to the claimant under section 8 of the Human Rights Act 1998 (judicial remedies).
- (7) Nothing in this section—

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- (a) prevents a court from considering the national security factors of its own motion where this section does not apply;
- (b) affects any other power the court may have to reduce damages or to refuse to award damages, including by reason of—
  - (i) the claimant’s wrongdoing,
  - (ii) the claimant’s failure to mitigate any harm they have suffered, or
  - (iii) the claimant’s contribution to that harm;
- (c) affects any existing rule of law otherwise limiting the scope of liability of the Crown.

#### Commencement Information

**I2** S. 85 not in force at Royal Assent, see [s. 100\(1\)](#)

### 86 Section 85: supplementary

- (1) An application for consideration of the national security factors may be made at any time before the final disposal of the national security proceedings (or, in Scotland, before final judgment in the proceedings within the meaning given by section 136 of the [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#)), including at a time before any liability of the Crown has been established.
- (2) The application must—
  - (a) set out how the Crown considers the national security factors to apply, and the Crown’s reasons;
  - (b) set out the extent to which the Crown considers that damages should be reduced in light of the national security factors, and the Crown’s reasons;
  - (c) otherwise be made in accordance with rules of court.
- (3) The court may refuse the application if, in the court’s view, consideration of the national security factors would—
  - (a) cause unreasonable delay to the national security proceedings, or
  - (b) unreasonably prejudice another party to the proceedings.

#### Commencement Information

**I3** S. 86 not in force at Royal Assent, see [s. 100\(1\)](#)

### 87 Sections 84 to 86: interpretation

In sections 84 to 86 and this section—

“claimant” means a person claiming a remedy of any kind against the Crown in national security proceedings;

“court” includes a tribunal;

“intelligence service” means—

- (a) the Security Service;
- (b) the Secret Intelligence Service;
- (c) the Government Communications Headquarters;

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“involvement in terrorism-related activity” has the same meaning as in the Terrorism Prevention and Investigation Measures Act 2011 (see section 4 of that Act);

“national security factors” means the factors set out for consideration in section 85(3);

“national security proceedings” has the meaning given by section 84;

“rules of court” includes tribunal procedure rules;

“terrorism offence” means any of the following (whenever committed)—

- (a) an offence listed in—
  - (i) Schedule A1 to the Sentencing Code (terrorism offences: England and Wales), or
  - (ii) Schedule 1A to the Counter-Terrorism Act 2008 (terrorism offences: Scotland and Northern Ireland);
- (b) a service offence as respects which the corresponding civil offence is so listed; and for this purpose “service offence” and “corresponding civil offence” have the same meanings as in the Counter-Terrorism Act 2008 (see section 95 of that Act);
- (c) an offence that—
  - (i) was abolished on or before the date this section comes into force, and
  - (ii) if committed on or after the date on which it was abolished, would have constituted an offence referred to in paragraph (a) or (b);
- (d) an offence determined to have a terrorist connection under—
  - (i) section 69 of the Sentencing Code (in the case of an offender sentenced in England and Wales), including as applied by section 238(6) of the Armed Forces Act 2006,
  - (ii) section 30 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Northern Ireland, or an offender sentenced in England and Wales before the Sentencing Code applied), or
  - (iii) section 32 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced for a service offence before the Sentencing Code applied);
- (e) an offence proved to have been aggravated by reason of having a terrorist connection under section 31 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Scotland).

#### Commencement Information

**I4** S. 87 not in force at Royal Assent, see [s. 100\(1\)](#)

**Status:**

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**Changes to legislation:**

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