



# Crown Proceedings Act 1947

## 1947 CHAPTER 44

### PART I

#### SUBSTANTIVE LAW.

#### **1 Right to sue the Crown.**

Where any person has a claim against the Crown after the commencement of this Act, and, if this Act had not been passed, the claim might have been enforced, subject to the grant of His Majesty's fiat, by petition of right, or might have been enforced by a proceeding provided by any statutory provision repealed by this Act, then, subject to the provisions of this Act, the claim may be enforced as of right, and without the fiat of His Majesty, by proceedings taken against the Crown for that purpose in accordance with the provisions of this Act

#### **2 Liability of the Crown in tort.**

- (1) Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject:—
- (a) in respect of torts committed by its servants or agents ;
  - (b) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; and
  - (c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property:

Provided that no proceedings shall lie against the Crown by virtue of paragraph (a) of this subsection in respect of any act or omission of a servant or agent of the Crown unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in tort against that servant or agent or his estate.

- (2) Where the Crown is bound by a statutory duty which is binding also upon persons other than the Crown and its officers, then, subject to the provisions of this Act, the Crown shall, in respect of a failure to comply with that duty, be subject to all those

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liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity.

- (3) Where any functions are conferred or imposed upon an officer of the Crown as such either by any rule of the common law or by statute, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Crown in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.
- (4) Any enactment which negatives or limits the amount of the liability of any Government department or officer of the Crown in respect of any tort committed by that department or officer shall, in the case of proceedings against the Crown under this section in respect of a tort committed by that department or officer, apply in relation to the Crown as it would have applied in relation to that department or officer if the proceedings against the Crown had been proceedings against that department or officer.
- (5) No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.
- (6) No proceedings shall lie against the Crown by virtue of this section in respect of any act, neglect or default of any officer of the Crown, unless that officer has been directly or indirectly appointed by the Crown and was at the material time paid in respect of his duties as an officer of the Crown wholly out of the Consolidated Fund of the United Kingdom, moneys provided by Parliament, the Road Fund, or any other Fund certified by the Treasury for the purposes of this subsection or was at the material time holding an office in respect of which the Treasury certify that the holder thereof would normally be so paid.

### **3 Provisions as to industrial property.**

- (1) Where after the commencement of this Act any servant or agent of the Crown infringes a patent, or infringes a registered trade mark, or infringes any copyright (including, any copyright in a design subsisting under the Patents and Designs Acts, 1907 to 1946), and the infringement is committed with the authority of the Crown, then, subject to the provisions of this Act, civil proceedings in respect of the infringement shall lie against the Crown.
- (2) Nothing in the preceding subsection or in any other provision of this Act shall affect the rights of any Government department under section twenty-nine or section fifty-eight A of the Patents and Designs Act, 1907, or the rights of the Minister of Supply under section twelve of the Atomic Energy Act 1946.
- (3) Save as expressly provided by this section, no proceedings shall lie against the Crown by virtue of this Act in respect of the infringement of a patent, in respect of the infringement of a registered trade mark, or in respect of the infringement of any such copyright as is mentioned in subsection (1) of this section.

#### **4 Application of law as to indemnity, contribution, joint and several tortfeasors, and contributory negligence.**

- (1) Where the Crown is subject to any liability by virtue of this Part of this Act, the law relating to indemnity and contribution shall be enforceable by or against the Crown in respect of the liability to which it is so subject as if the Crown were a private person of full age and capacity.
- (2) Without prejudice to the effect of the preceding subsection, Part II of the Law Reform (Married Women and Tortfeasors) Act, 1935 (which relates to proceedings against, and contribution between, joint and several tortfeasors) shall bind the Crown.
- (3) Without prejudice to the general effect of section one of this Act, the Law Reform (Contributory Negligence) Act, 1945 (which amends the law relating to contributory negligence) shall bind the Crown.

#### **5 Liability in respect of Crown ships, and &c.**

- (1) The provisions of the Merchant Shipping Acts, 1894 to 1940, which limit the amount of the liability of the owners of ships shall, with any necessary modifications, apply for the purpose of limiting the liability of His Majesty in respect of His Majesty's ships ; and any provision of the said Acts which relates to or is ancillary to or consequential on the provisions so applied shall have effect accordingly.
- (2) Without prejudice to the provisions of the preceding subsection, where a ship is built at any port or place within His Majesty's dominions, and His Majesty is interested in her by reason of the fact that she is built by or on behalf of or to the order of His Majesty in right of His Government in the United Kingdom, the provisions of the Merchant Shipping Acts, 1894 to 1940, which limit the amount of the liability of the owners of ships shall, with any necessary modifications, apply for the purpose of limiting the liabilities in respect of that ship of His Majesty, her builders, her owners, and any other persons interested in her ; and any provision of the said Acts which relates to or is ancillary to or consequential on the provisions so applied shall have effect accordingly.

This subsection shall have effect only in respect of the period from and including the launching of the ship until the time of her completion, and shall not in any event have effect in respect of any period during which His Majesty is not so interested in the ship as aforesaid. In relation to a ship built to the order of His Majesty in right of His Government in the United Kingdom, the time of her completion shall be taken for the purposes of this subsection to be the time when His Majesty, acting in His said right, finally takes delivery of her under the building contract.

- (3) Where any ship has been demised or sub-demised by His Majesty acting in right of His Government in the United Kingdom, then, whether or not the ship is registered for the purposes of the Merchant Shipping Acts, 1894 to 1940, the provisions of those Acts which limit the amount of the liability of the owners of ships shall, in respect of the period for which the demise or sub-demise continues, apply, with any necessary modifications, for the purpose of limiting the liabilities in respect of the ship of any person entitled to her by demise or sub-demise ; and any provision of the said Acts which relates to or is ancillary to or consequential on the provisions so applied shall have effect accordingly.

This subsection shall be deemed always to have had effect.

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- (4) Where by virtue of any arrangement between His Majesty and some other person (not being a servant of His Majesty) that other person (hereinafter referred to as "the manager") is entrusted with the management of any of His Majesty's ships, the provisions of the Merchant Shipping Acts, 1894 to 1940, which limit the amount of the liability of the owners of ships shall apply for the purpose of limiting the manager's liability in respect of the ship while so entrusted; and any provision of the said Acts which relates to or is ancillary to or consequential on the provisions so applied shall have effect accordingly.

This subsection shall be deemed always to have had effect.

- (5) Where for the purposes of any enactment as applied by this section it is necessary to ascertain the tonnage of any ship, and that ship is not registered for the purposes of the Merchant Shipping Acts, 1894 to 1940, the tonnage of the ship shall be taken for the purposes of that enactment to be the tonnage arrived at by :—
- (a) ascertaining her tonnage in accordance with section seventy-seven of the Merchant Shipping Act, 1894, and the Rules contained in the Second Schedule to that Act, or those Rules as modified or altered from time to time under subsection (7) of the said section seventy-seven, and deducting from her tonnage as so ascertained ten per cent. thereof; or
  - (b) where it is impossible to ascertain her tonnage as provided by paragraph (a) of this subsection, taking her estimated tonnage as certified for the purposes of this paragraph, and deducting from her estimated tonnage as so certified ten per cent. thereof.

Where it is necessary to ascertain the tonnage of a ship in the manner provided by paragraph (b) of this subsection, the Chief Ships Surveyor of the Ministry of Transport, or the officer for the time being discharging the functions of the said Surveyor, shall, upon the direction of the court concerned, and after considering such evidence of the dimensions of the ship as it may be practicable to obtain, estimate what her tonnage would have been found to be if she could have been duly measured for the purpose, and issue a certificate stating her tonnage as so estimated by him.

- (6) For the purposes of this section the expression "ship" has the meaning assigned to it by section seven hundred and forty-two of the Merchant Shipping Act, 1894, but includes also :—
- (a) any vessel which is a ship as defined by section four of the Merchant Shipping (Liability of Shipowners) Act, 1898; and
  - (b) every description of lighter, barge or like vessel used in navigation in Great Britain, however propelled, so, however, that a vessel used exclusively in non-tidal waters, other than harbours, shall not for the purposes of this paragraph be deemed to be used in navigation."
- (7) Any reference in this section to the provisions of the Merchant Shipping Acts, 1894 to 1940, which limit the amount of the liability of the owners of ships shall be construed as including a reference to any provision of those Acts which negatives the liability of the owner of a ship, and accordingly any reference in this section to limiting the liability of any person shall be construed as including a reference to negating his liability.
- (8) Relief shall not be available by virtue of the Merchant Shipping (Liability of Shipowners) Act, 1898, in any case in which it is available by virtue of this section.

## **6 Application to Crown ships of rules as to division of loss, and &c.**

The provisions of sections one, two and three of the Maritime Conventions Act, 1911 (which relate to the apportionment of damage or loss caused by vessels) shall apply in the case of vessels belonging to His Majesty as they apply in the case of other vessels.

## **7 Liability in respect of Crown docks, harbours, and &c.**

- (1) It is hereby declared that the provisions of the Merchant Shipping Acts, 1894 to 1940, which limit the amount of the liability of the owners of docks and canals, and of harbour and conservancy authorities, apply for the purpose of limiting the liability of His Majesty in His capacity as the owner of any dock or canal, or in His capacity as a harbour or conservancy authority, and that all the relevant provisions of the said Acts have effect in relation to His Majesty accordingly.
- (2) In this section the expressions " dock", " harbour", " owner ", " harbour authority " and " conservancy authority " have respectively the same meanings as they have for the purposes of section two of the Merchant Shipping (Liability of Shipowners and others) Act, 1900.
- (3) In this section references to His Majesty include references to any Government department and to any officer of the Crown in his capacity as such.

## **8 Salvage claims against the Crown and Crown rights to salvage.**

- (1) Subject to the provisions of this Act, the law relating to civil salvage, whether of life or property, except sections five hundred and fifty-one to five hundred and fifty-four of the Merchant Shipping Act, 1894, or any corresponding provisions relating to aircraft, shall apply in relation to salvage services rendered after the commencement of this Act in assisting any of His Majesty's ships or aircraft, or in saving life therefrom, or in saving any cargo or apparel belonging to His Majesty in right of His Government in the United Kingdom, in the same manner as if the ship, aircraft, cargo or apparel belonged to a private person.
- (2) Where after the commencement of this Act salvage services are rendered by or on behalf of His Majesty, whether in right of His Government in the United Kingdom or otherwise, His Majesty shall be entitled to claim salvage in respect of those services to the same extent as any other salvor, and shall have the same rights and remedies in respect of those services as any other salvor.

## **9 Liability in connection with postal packets.**

- (1) Subject as hereinafter provided, no proceedings in tort shall lie against the Crown for anything done or omitted to be done in relation to a postal packet by any person while employed as a servant or agent of the Crown, or for anything done or omitted to be done in relation to a telephonic communication by any person while so. employed; nor shall any officer of the Crown be subject, except at the suit of the Crown, to any civil liability for any of the matters aforesaid.
- (2) Notwithstanding the provisions of section thirteen of the Post Office Act, 1908, proceedings shall lie against the Crown under this subsection in respect of loss of or damage to a registered inland postal packet, not being a telegram, in so far as the loss or damage is due to any wrongful act done or any neglect or default committed by a person employed as a servant or agent of the Crown while performing or purporting

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to perform his functions as such in relation to the receipt, carriage, delivery or other dealing with the packet:

Provided that:—

- (a) no proceedings shall be under this subsection in respect of any postal packet registered before the commencement of this Act;
- (b) the amount recoverable in any proceedings under this subsection shall not exceed the market value of the packet in question (excluding the market value of any message or information which it bears) at the time when the cause of action arises;
- (c) the amount recoverable in any such proceedings shall not in any event exceed the maximum amount which, under the Post Office Regulations, is available for compensating the persons aggrieved having regard to the fee paid in respect of the registration of the packet; and
- (d) the Crown shall not be liable under this subsection in respect of any packet unless such conditions as are prescribed by Post Office Regulations in relation to registered inland postal packets have been complied with in relation to that packet.

For the purposes of any proceedings under this subsection, it shall be presumed, until the contrary is shown on behalf of the Crown, that the loss of or damage to the packet was due to some wrongful act done, or some neglect or default committed, by a person employed as a servant or agent of the Crown while performing or purporting to perform his functions as such in relation to the receipt, carriage, delivery or other dealing with the packet.

- (3) No relief shall be available under subsection (2) of this section except upon a claim by the sender or the addressee of the packet in question ; and the sender or addressee of the packet shall be entitled to claim any relief available under the said subsection in respect of the packet, whether or not he is the person damaged by the injury complained of, and to give a good discharge in respect of all claims in respect of the packet under the said subsection :

Provided that where the court is satisfied, upon an application by any person who is not the sender or addressee of the packet, that the sender and the addressee are unable or unwilling to enforce their remedies in respect of the packet under the said subsection, the court may, upon such terms as to security for costs and otherwise as the court thinks just, allow that other person to bring proceedings under the said subsection in the name of the sender or the addressee of the packet.

Any reference in this subsection to the sender or addressee of the packet includes a reference to his personal representatives.

- (4) Where by virtue of the last preceding subsection any person recovers any money or property which, apart from that subsection, would have been recoverable by some other person, the money or property so recovered shall be held on trust for that person.
- (5) Post Office Regulations may be made for prescribing the conditions to be observed for the purposes of this section in relation to registered inland postal-packets.
- (6) No claim for salvage shall lie against the Crown by virtue of section eight of this Act in respect of anything done to, or suffered in relation to, any postal packets while they are being carried by sea or by air.
- (7) In this section :—

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The expression " postal packet " has, subject as hereinafter provided, the same meaning as in the Post Office Act, 1908, and accordingly includes a telegram ;

The expression " Post Office Regulations " has the same meaning as in the Post Office Act, 1908;

The expression " inland postal packet " means a postal packet which is posted in the United Kingdom, the Channel Islands or the Isle of Man for delivery, at any place in the United Kingdom, the Channel Islands or the Isle of Man, to the person to whom it is addressed.

The expression " sender ", in relation to a postal packet, has such meaning as may be assigned to it by Post Office Regulations.

- (8) Any reference in this section to a postal packet shall be construed as including a reference to the contents of such a packet.

## **10 Provisions relating to the armed forces.**

- (1) Nothing done or omitted to be done by a member of the armed forces of the Crown while on duty as such shall subject either him or the Crown to liability in tort for causing the death of another person, or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the armed forces of the Crown if—

- (a) at the time when that thing is suffered by that other person, he is either on duty as a member of the armed forces of the Crown or is, though not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces of the Crown; and
- (b) the Minister of Pensions certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to an award under the Royal Warrant, Order in Council or Order of His Majesty relating to the disablement or death of members of the force of which he is a member:

Provided that this subsection shall not exempt a member of the said forces from liability in tort in any case in which the court is satisfied that the act or omission was not connected with the execution of his duties as a member of those forces.

- (2) No proceedings in tort shall lie against the Crown for death or personal injury due to anything suffered by a member of the armed forces of the Crown if—
- (a) that thing is suffered by him in consequence of the nature or condition of any such land, premises, ship, aircraft or vehicle as aforesaid, or in consequence of the nature or condition of any equipment or supplies used for the purposes of those forces ; and
- (b) the Minister of Pensions certifies as mentioned in the preceding subsection ;
- nor shall any act or omission of an officer of the Crown subject him to liability in tort for death or personal injury, in so far as the death or personal injury is due to anything suffered by a member of the armed forces of the Crown being a thing as to which the conditions aforesaid are satisfied.
- (3) The Admiralty or a Secretary of State, if satisfied that it is the fact:—
- (a) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Crown; or

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(b) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was or was not, or were or were not, used for the purposes of the said forces ;

may issue a certificate certifying that to be the fact ; and any such certificate shall, for the purposes of this section, be conclusive as to the fact which it certifies.

## **11 Saving in respect of acts done under prerogative and statutory powers.**

- (1) Nothing in Part I of this Act shall extinguish or abridge any powers or authorities which, if this Act had not been passed, would have been exercisable by virtue of the prerogative of the Crown, or any powers or authorities conferred on the Crown by any statute, and, in particular, nothing in the said Part I shall extinguish or abridge any powers or authorities exercisable by the Crown, whether in time of peace or of war, for the purpose of the defence of the realm or of training, or maintaining the efficiency of, any of the armed forces of the Crown.
- (2) Where in any proceedings under this Act it is material to determine whether anything was properly done or omitted to be done in the exercise of the prerogative of the Crown, the Admiralty or a Secretary of State may, if satisfied that the act or omission was necessary for any such purpose as is mentioned in the last preceding subsection, issue a certificate to the effect that the act or omission was necessary for that purpose ; and the certificate shall, in those proceedings, be conclusive as to the matter so certified.

## **12 Transitional provisions.**

- (1) When this Act comes into operation, the preceding provisions of this Part of this Act (except subsections (3) and (4) of section five thereof and any provision which is expressly related to the commencement of this Act) shall be deemed to have had effect as from the beginning of the thirteenth day of February, nineteen hundred and forty-seven:

Provided that where by virtue of this subsection proceedings are brought against the Crown in respect of a tort alleged to have been committed on or after the said thirteenth day of February and before the commencement of this Act, the Crown may rely upon the appropriate provisions of the law relating to the limitation of time for bringing proceedings as if this Act had at all material times been in force.

- (2) Where any civil proceedings brought before the commencement of this Act have not been finally determined, and the court for the time being seized of those proceedings is of opinion that having regard to the provisions of this section the Crown ought to be made a party to the proceedings for the purpose of disposing completely and effectually of the questions involved in the cause or matter before the court, the court may order that the Crown be made a party thereto upon such terms, if any, as the court thinks just, and may make such consequential orders as the court thinks expedient.