



National Security Act 2023

2023 CHAPTER 32

PART 5

TERRORISM

Damages in national security proceedings

PROSPECTIVE

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

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Section 85. (See end of Document for details)

(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—

- (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

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

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