



# Crown Proceedings Act 1947

1947 CHAPTER 44 10 and 11 Geo 6

## PART I

### SUBSTANTIVE LAW

#### Modifications etc. (not altering text)

- C1** Pt. I (ss. 1-12) extended (8.5.1998) by [1997 c. 66, s. 39\(3\)](#); S.I. 1998/1028, [art. 2](#)
- C2** Part I amended by [Plant Varieties and Seeds Act 1964 \(c. 14\), s. 14\(3\)](#)

#### **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Majesty's fiat, by petition of right, or might have been enforced by a proceeding provided by any statutory provision repealed by this Act, then, subject to the provisions of this Act, the claim may be enforced as of right, and without the fiat of His Majesty, by proceedings taken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

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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 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 [<sup>F1</sup>, part of the Scottish Administration] or officer of the Crown in respect of any tort committed by that department [<sup>F1</sup>, part] or officer shall, in the case of proceedings against the Crown under this section in respect of a tort committed by that department [<sup>F1</sup>, part] or officer, apply in relation to the Crown as it would have applied in relation to that department [<sup>F1</sup>, part] or officer if the proceedings against the Crown had been proceedings against that department [<sup>F1</sup>, part] 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 [<sup>F2</sup>the Scottish Consolidated Fund], . . . <sup>F3</sup>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.

#### Textual Amendments

- F1** Words in s. 2(4) inserted (20.5.1999) by S.I. 1999/1042, arts. 1(2)(b), 4, **Sch. 2, Pt. I** para. 4(2); S.I. 1998/3178, art. 2(2), **Sch. 4**
- F2** Words in s. 2(6) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2, Pt. I para. 21; S.I. 1998/3178, **art. 1(2)**
- F3** Words in s. 2(6) repealed by Statute Law (repeals) Act 1981 (c.19), **Sch. 1 Pt. I**

#### Modifications etc. (not altering text)

- C3** S. 2 applied by **Occupiers' Liability Act 1957** (c. 31), **s. 6** and **Occupiers' Liability (Scotland) Act 1960** (c. 30), **s. 4**

### [<sup>F4</sup>3] Infringement of intellectual property rights

- (1) Civil proceedings lie against the Crown for an infringement committed by a servant or agent of the Crown, with the authority of the Crown, of—:

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- (a) a patent,
- (b) a registered trade mark <sup>F5</sup> . . . ,
- (c) the right in a registered design,
- (d) design right, or
- (e) copyright;

but save as provided by this subsection no proceedings lie against the Crown by virtue of this Act in respect of an infringement of any of those rights.

(2) Nothing in this section, or any other provision of this Act, shall be construed as affecting—

- (a) the rights of a government department [<sup>F6</sup>or any part of the Scottish Administration] under section 55 of the Patents Act 1977, Schedule 1 to the Registered Designs Act 1949 or section 240 of the Copyright, Designs and Patents Act 1988 (Crown use of patents and designs), or
- (b) the rights of the Secretary of State under section 22 of the Patents Act 1977 or section 5 of the Registered Designs Act 1949 (security of information prejudicial to defence or public safety).]

#### Textual Amendments

- F4** S. 3 substituted by [Copyright, Designs and Patents Act 1988 \(c.48, SIF 67A\)](#), s.303(1), [Sch. 7 para. 4\(1\)\(2\)](#)
- F5** Words in s. 3(1)(b) repealed (31.10.1994) by [1994 c. 26, s. 106\(2\)](#), [Sch. 5](#); [S.I. 1994/2550](#), [art. 2](#)
- F6** Words in s. 3(2)(a) inserted (20.5.1999) by [S.I. 1999/1042](#), [art. 4](#), [Sch. 2](#), Pt. I para. 4(3); [S.I. 1998/3178](#), [art. 2\(2\)](#), [Sch. 4](#)

#### Modifications etc. (not altering text)

- C4** S. 3(1)(b) amended (31.10.1994) by [1994 c. 26, s. 106\(1\)](#), [Sch. 4 para. 1\(2\)](#); [S.I. 1994/2550](#), [art. 2](#)

## 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.

[<sup>F7</sup>(2) Without prejudice to the effect of the preceding subsection, Part II of the <sup>M1</sup>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 <sup>M2</sup>Law Reform (Contributory Negligence) Act 1945 (which amends the law relating to contributory negligence) shall bind the Crown.

#### Textual Amendments

- F7** S.4(2) repealed (E.W.) by [Civil Liability \(Contribution\) Act 1978 \(c. 47, SIF 122:3\)](#), s. 9(2), [Sch. 2](#)

#### Marginal Citations

- M1** [1935 c. 30](#).

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**M2** 1945 c. 28.

**F8** **5** .....

#### Textual Amendments

**F8** S. 5 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

**F9** **6** .....

#### Textual Amendments

**F9** S. 6 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

**F10** **7** .....

#### Textual Amendments

**F10** S. 7 repealed (1.1.1996) by 1995 c. 21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

**F11** **8** .....

#### Textual Amendments

**F11** S. 8 repealed (1.1.1996) by 1995 c.21, ss. 314(1), 316(2), **Sch. 12** (with s. 312(1), Sch. 14 para. 1)

**9** ..... **F12**

#### Textual Amendments

**F12** S. 9 repealed by **Post Office Act 1969** (c. 48), **Sch. 11 Pt. II**

**[<sup>F13</sup>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

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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 [<sup>F14</sup>Secretary of State] 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 [<sup>F14</sup>Secretary of State] 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) . . . <sup>F15</sup> 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
- (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.]

#### Textual Amendments

**F13** S.10 repealed by [Crown Proceedings \(Armed Forces\) Act 1987 \(c. 25, SIF 39A\)](#), **s. 1**, (subject to s.2 of that Act which confers power to revive s. 10 of the 1947 Act and to s. 5(2))

**F14** Words substituted by virtue of S.I.953/1198(1953 I, p.1228) art.4(4); [Ministry of Social Security Act 1966 \(c. 20\)](#), **s. 2(3)** and S.I. 1968/1699, **art. 5(4)**

**F15** Words repealed regards certificates issued before 1.4.1964 by S.I. 1964/488, **Sch. 1 Pt. II**

#### Modifications etc. (not altering text)

**C5** S. 10 extended by [Civil Defence \(Armed Forces\) Act 1954 \(c. 66\)](#), **s. 1(3)**

**C6** S. 10 extended to hovercraft by S.I. 1972/971, **art. 4**, **Sch. 1 Pt. A**

## 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

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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, . . . . .<sup>F16</sup> 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.

#### Textual Amendments

**F16** Words repealed regards certificates issued before 1.4.1964 by [S.I. 1964/488](#), [Sch. 1 Pt. II](#)

## 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.

**Changes to legislation:**

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