



Crown Proceedings Act 1947

1947 CHAPTER 44 10 and 11 Geo 6

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

Supplemental

35 [F¹Rules of court^{F1}]

- (1) Any power to make rules of court^{F2}... shall include power to make rules for the purpose of giving effect to the provisions of this Act, and any such rules may contain provisions to have effect in relation to any proceedings by or against the Crown in substitution for or by way of addition to any of the provisions of the rules applying to proceedings between subjects.
- (2) Provision shall be made by rules of court^{F3}... with respect to the following matters:—
 - (a) for providing for service of process, or notice thereof, in the case of proceedings by the Crown against persons, whether British subjects or not, who are not resident in the United Kingdom;
 - (b) for securing that where any civil proceedings are brought against the Crown in accordance with the provisions of this Act [F⁴the claimant shall provide the Crown with information]^{F4} as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned;
 - (c) F⁵
 - (d) F⁵
 - (e) F⁵
 - (f) for enabling evidence to be taken on commission in proceedings by or against the Crown;
 - (g) for providing:—
 - (i) that a person shall not be entitled to avail himself of any set-off or counterclaim in any proceedings by the Crown for the recovery of taxes, duties or penalties, or to avail himself in proceedings of any

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other nature by the Crown of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties;

- (ii) that a person shall not be entitled without the leave of the court to avail himself of any set-off or counterclaim in any proceedings by the Crown if either the subject matter of the set-off or counterclaim does not relate to the Government department in the name of which the proceedings are brought or the proceedings are brought in the name of the Attorney General;
- (iii) that the Crown, when sued in the name of a Government department, shall not, without the leave of the court, be entitled to avail itself of any set-off or counterclaim if the subject matter thereof does not relate to that department; and
- (iv) that the Crown, when sued in the name of the Attorney General, shall not be entitled to avail itself of any set-off or counterclaim without the leave of the court.

(3) Provision may be made by rules of court for regulating any appeals to the High Court, whether by way of case, stated or otherwise, under enactments relating to the revenue, and any rules made under this subsection may revoke any enactments or rules in force immediately before the commencement of this Act so far as they regulate any such appeals, and may make provision for any matters for which provision was made by any enactments or rules so in force.

Textual Amendments

- F1 S. 35: sidenote substituted (1.10.2005) by [The Civil Procedure \(Modification of Crown Proceedings Act 1947\) Order 2005 \(S.I. 2005/2712\)](#), art. 2, **Sch. 1 para. 8(a)** (with art. 4)
- F2 Words in s. 35(1) repealed (1.10.2005) by [The Civil Procedure \(Modification of Crown Proceedings Act 1947\) Order 2005 \(S.I. 2005/2712\)](#), art. 2, **Sch. 1 para. 8(b)** (with art. 4)
- F3 Words in s. 35(2) repealed (1.10.2005) by [The Civil Procedure \(Modification of Crown Proceedings Act 1947\) Order 2005 \(S.I. 2005/2712\)](#), art. 2, **Sch. 1 para. 8(c)(i)** (with art. 4)
- F4 Words in s. 35(2)(b) substituted (1.10.2005) by [The Civil Procedure \(Modification of Crown Proceedings Act 1947\) Order 2005 \(S.I. 2005/2712\)](#), art. 2, **Sch. 1 para. 8(c)(ii)** (with art. 4)
- F5 S. 35(2)(c)-(e) repealed (1.10.2005) by [The Civil Procedure \(Modification of Crown Proceedings Act 1947\) Order 2005 \(S.I. 2005/2712\)](#), art. 2, **Sch. 1 para. 8(c)(iii)** (with art. 4)

Modifications etc. (not altering text)

- C1 S. 35(2)(g)(i) extended by [Taxes Management Act 1970 \(c. 9\)](#), s. 69
- C2 S. 35(2)(b)(g)(i) extended by [Finance Act 1988 \(c.39, SIF 63:1\)](#), s. 58, Sch. 5 para. 11(1)

F6³⁶

Textual Amendments

- F6 S. 36 repealed (5.11.1993) by [1993 c. 50](#), s. 1(1)(2), **Sch. 1 Pt. I** Gp. 1, 51Sch. 2 Pt. II para. 27.

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37 Financial provisions.

- (1) Any expenditure incurred by or on behalf of the Crown in right of His Majesty's Government in the United Kingdom by reason of the passing of this Act shall be defrayed out of money provided by Parliament.
- (2) Any sums payable to the Crown in right of His Majesty's Government in the United Kingdom by reason of the passing of this Act shall be paid into the Exchequer.

38 Interpretation.

- (1) Any reference in this Act to the provisions of this Act shall, unless the context otherwise requires, include a reference to rules of court ^{F7}... made for the purposes of this Act.

- (2) In this Act, except in so far as the context otherwise requires or it is otherwise expressly provided, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“Agent,” when used in relation to the Crown, includes an independent contractor employed by the Crown;

“Civil proceedings” includes proceedings in the High Court or the county court for the recovery of fines or penalties, but does not include proceedings on the Crown side of the King's Bench Division;

“His Majesty's aircraft” does not include aircraft belonging to His Majesty otherwise than in right of His Government in the United Kingdom [^{F8}or the Scottish Administration];

“His Majesty's ships” means ships of which the beneficial interest is vested in His Majesty or which are registered as Government ships for the purposes of the [^{F9}Merchant Shipping Act 1995], or which are for the time being demised or subdemised to or in the exclusive possession of the Crown, except that the said expression does not include any ship in which His Majesty is interested otherwise than in right of His Government in the United Kingdom [^{F8}or the Scottish Administration] unless that ship is for the time being demised or subdemised to His Majesty in right of His said Government [^{F8}or Administration] or in the exclusive possession of His Majesty in that right;

“Officer,” in relation to the Crown, includes any servant of His Majesty, and accordingly (but without prejudice to the generality of the foregoing provision) includes a Minister of the Crown [^{F8}and a member of the Scottish Executive];

“Order” includes a judgment, decree, rule, award or declaration;

“Prescribed” means prescribed by rules of court ^{F10}...;

“Proceedings against the Crown” includes a claim by way of set-off or counterclaim raised in proceedings by the Crown;

“Ship” has the [^{F9}the same meaning as in the Merchant Shipping Act 1995];

“Statutory duty” means any duty imposed by or under any Act of Parliament.

- (3) Any reference in this Act to His Majesty in His private capacity shall be construed as including a reference to His Majesty in right of His Duchy of Lancaster and to the Duke of Cornwall.
- (4) Any reference in Parts III or IV of this Act to civil proceedings by or against the Crown, or to civil proceedings to which the Crown is a party, shall be construed as including

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a reference to civil proceedings to which the Attorney General, or any Government department, or any officer of the Crown as such is a party:

Provided that the Crown shall not for the purposes of Parts III and IV of this Act be deemed to be a party to any proceedings by reason only that they are brought by the Attorney General upon the relation of some other person.

(5) . . . ^{F11}

(6) References in this Act to any enactment shall be construed as references to that enactment as amended by or under any other enactment, including this Act.

Textual Amendments

- F7** Words in s. 38(1) repealed (1.10.2005) by [The Civil Procedure \(Modification of Crown Proceedings Act 1947\) Order 2005 \(S.I. 2005/2712\)](#), art. 2, **Sch. 1 para. 9(a)** (with art. 4)
- F8** Words in s. 38(2) inserted (20.5.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 7(2)**; (with s. 126(3)-(11)); [S.I. 1998/3178](#), art. 2(2), **Sch. 4**
- F9** Words in s. 38(2) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 21** (with s. 312(1), [Sch. 14 para. 1](#))
- F10** S. 38(2): words in definition of "Prescribed" repealed (1.10.2005) by [The Civil Procedure \(Modification of Crown Proceedings Act 1947\) Order 2005 \(S.I. 2005/2712\)](#), art. 2, **Sch. 1 para. 9(b)** (with art. 4)
- F11** S.38(5) repealed (with saving) by [Armed Forces Act 1981 \(c.55, SIF 7:1\)](#), s. 28(2), **Sch. 5 Pt. I** note

Modifications etc. (not altering text)

- C3** S. 38(3) applied (1.4.2000) by 1999 c. 28, s. **38(2)(b)**; [S.I. 2000/1066](#), art. 2
- C4** S. 38(3) applied by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. **159(5)**
- C5** S. 38(3) applied (27.8.1993) by 1992 c. 12, ss. **42(7)**, 51(2) (with ss. 42, 46).
- C6** S. 38(3) applied by 1991 c. 56, s. **221(5)** (as substituted (1.12.2000) by 1995 c. 25, s. 116, **Sch. 21 Pt. I para. 1(1)**; [S.I. 2000/3033](#), art. 2)
- C7** S. 38(3) applied by 1991 c. 57, s. **222(6)** (as substituted (1.7.1997 for specified purposes and otherwise *prosp.*) by 1995 c. 25, ss. 116, 125(3), **Sch. 21 Pt. I para. 2(4)**; [S.I. 1997/1626](#), art. **2(b)** (with art. 3))
- C8** S. 38(3) applied (1.4.1996) by 1995 c. 25, s. **115(6)**; [S.I. 1995/2950](#), art. **3(1)**, [S.I. 1996/186](#), art. 3
- C9** S. 38(3) applied (16.9.1996) by 1996 c. 6, s. **37(4)** (with s. 37); [S.I. 1996/2054](#), art. 2
- C10** S. 38(3) applied (*prosp.*) by 1998 c. 7, ss. **14(4)**, 15(1) (with s. 14)
- C11** S. 38(3) applied (1.3.1999) by 1998 c. 33, s. **28(4)**, (with s. 28)
- C12** S. 38(3) applied (1.2.2001) by 2000 c. 38, s. **106(4)** (with s. 106); [S.I. 2001/57](#), art. 3, **Sch. 2 Pt. I**
S. 38(3) applied (1.2.2001 for E., 1.8.2001 for W. and otherwise *prosp.*) by 2000 c. 38, ss. **196(5)**, [275\(1\)](#) (with s. 196); [S.I. 2001/57](#), art. 3(2), **Sch. 3 Pt. I**; [S.I. 2001/2788](#), art. 2, **Sch. 1 para. 17**
- C13** S. 38(3) applied (14.12.2001) by 2001 c. 24, s. **15(3)** (with s. 14(3))
- C13** S. 38(3) applied (8.10.2008 at 8:10 a.m.) by [The Landsbanki Freezing Order 2008 \(S.I. 2008/2668\)](#), art. **13(3)** (with art. 13)
- C14** S. 38(3): [Sch. 7](#) of the amending Act to be construed as if this provision were contained in that Schedule (27.11.2008) by virtue of [Counter-Terrorism Act 2008 \(c. 28\)](#), ss. 62, 100(2), **Sch. 7 para. 43(4)** (with s. 100(2), [Sch. 7 para. 43\(1\)-\(3\)](#))
- C15** S. 38(3) applied (24.4.2009) by [The Zimbabwe \(Financial Sanctions\) Regulations 2009 \(S.I. 2009/847\)](#), reg. **16(3)**
- C16** S. 38(3) applied (25.3.2010) by [Cluster Munitions \(Prohibitions\) Act 2010 \(c. 11\)](#), ss. **32(6)**, 34(1)
- C17** S. 38(3) amended by [Animals Act 1971 \(c. 22\)](#), s. **12(2)**

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(1) . . . ^{F12}

(2) . . . ^{F13}

Textual Amendments

F12 S. 39(1) repealed by Statute Law Revision Act 1950 (c. 6), Sch. 1

F13 S. 39(2) repealed by S.I. 1970/1681, art. 5(3), Sch. 4

40 Savings.

(1) Nothing in this Act shall apply to proceedings by or against, or authorise proceedings in tort to be brought against, His Majesty in His private capacity.

(2) Except as therein otherwise expressly provided, nothing in this Act shall:—

(a) affect the law relating to prize salvage, or apply to proceedings in causes or matters within the jurisdiction of the High Court as a prize court or to any criminal proceedings; or

(b) authorise proceedings to be taken against the Crown under or in accordance with this Act in respect of any alleged liability of the Crown arising otherwise than in respect of His Majesty's Government in the United Kingdom [^{F14}or the Scottish Administration], or affect proceedings against the Crown in respect of any such alleged liability as aforesaid; or

(c) affect any proceedings by the Crown otherwise than in right of His Majesty's Government in the United Kingdom [^{F14}or the Scottish Administration]; or

(d) subject the Crown to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the Crown than those to which the Crown would be subject in respect of such acts or omissions if it were a private person; or

[^{F15}(e) subject the Crown, in its capacity as a highway authority, to any greater liability than that to which a local authority is subject in that capacity; or]

(f) affect any rules of evidence or any presumption relating to the extent to which the Crown is bound by any Act of Parliament; or

(g) affect any right of the Crown to demand a trial at bar or to control or otherwise intervene in proceedings affecting its rights, property or profits; or

(h) affect any liability imposed on the public trustee [^{F16}or on the Consolidated Fund of the United Kingdom] by the ^{M1}Public Trustee Act 1906;

and, without prejudice to the general effect of the foregoing provisions, Part III of this Act shall not apply to the Crown except in right of His Majesty's Government in the United Kingdom [^{F14}or the Scottish Administration].

(3) A certificate of a Secretary of State:—

(a) to the effect that any alleged liability of the Crown arises otherwise than in respect of His Majesty's Government in the United Kingdom;

(b) to the effect that any proceedings by the Crown are proceedings otherwise than in right of His Majesty's Government in the United Kingdom;

shall, for the purposes of this Act, be conclusive as to the matter so certified.

[^{F17}(3A) A certificate of the Scottish Ministers to the effect that—

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- (a) any alleged liability of the Crown arises otherwise than in respect of the Scottish Administration,
- (b) any proceedings by the Crown are proceedings otherwise than in right of the Scottish Administration,

shall, for the purposes of this Act, be conclusive as to that matter.]

- (4) Where any property vests in the Crown by virtue of any rule of law which operates independently of the acts or the intentions of the Crown, the Crown shall not by virtue of this Act be subject to any liabilities in tort by reason only of the property being so vested; but the provisions of this subsection shall be without prejudice to the liabilities of the Crown under this Act in respect of any period after the Crown or any person acting for the Crown has in fact taken possession or control of any such property, or entered into occupation thereof.
- (5) This Act shall not operate to limit the discretion of the court to grant relief by way of mandamus in cases in which such relief might have been granted before the commencement of this Act, notwithstanding that by reason of the provisions of this Act some other and further remedy is available.

Textual Amendments

- F14** Words in s. 40(2) inserted (20.5.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 7(3)(a)** (with s. 126(3)-(11)); S.I. 1998/3178, art. 2(2), **Sch. 4**
 - F15** S. 40(2)(e) repealed (E.W.) by Highways (Miscellaneous Provisions) Act 1961 (c. 63), **s. 1(6)(8)**
 - F16** Words in s. 40(2)(h) repealed (E.W.) (7.11.2002) by 2002 c. 35, **s. 1(2)**
 - F17** S. 40(3A) inserted (20.5.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 7(3)(b)** (with s. 126(3)-(11)); S.I. 1998/3178, art. 2(2), **Sch. 4**
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Marginal Citations

- M1** 1906 c. 55.

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