



# Crown Proceedings Act 1947

## 1947 CHAPTER 44

### PART IV

#### MISCELLANEOUS AND SUPPLEMENTAL.

##### *Miscellaneous.*

#### **28 Discovery.**

- (1) Subject to and in accordance with rules of court and county court rules :—
- (a) in any civil proceedings in the High Court or a county court to which the Crown is a party, the Crown may be required by the court to make discovery of documents and produce documents for inspection ; and
  - (b) in any such proceedings as aforesaid, the Crown may be required by the court to answer interrogatories :

Provided that this section shall be without prejudice to any rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

Any order of the court made under the powers conferred by paragraph (b) of this subsection shall, direct by what officer of the Crown the interrogatories are to be answered.

- (2) Without prejudice to the proviso to the preceding subsection, any rules made for the purposes of this section shall be such as to secure that the existence of a document will not be disclosed if, in the opinion of a Minister of the Crown, it would be injurious to the public interest to disclose the existence thereof.

#### **29 Exclusion of proceedings in rem against the Crown.**

- (1) Nothing in this Act shall authorise proceedings in rem in respect of any claim against the Crown, or the arrest, detention or sale of any of His Majesty's ships or aircraft, or

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of any cargo or other property belonging to the Crown, or give to any person any lien on any such ship, aircraft, cargo or other property.

- (2) Where proceedings in rem have been instituted in the High Court or in a county court against any such ship, aircraft, cargo or other property, the court may, if satisfied, either on an application by the plaintiff for an order under this subsection or an application by the Crown to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the ship, aircraft, cargo or other property did not belong to the Crown, order that the proceedings shall be treated as if they were in personam duly instituted against the Crown in accordance with the provisions of this Act, or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.

Any such order may be made upon such terms, if any, as the court thinks just; and where the court makes any such order it may make such consequential orders as the court thinks expedient.

### **30 Limitation of actions.**

- (1) Section eight of the Maritime Conventions Act, 1911 (which relates to the limitation of actions in respect of damage or loss caused to or by vessels and the limitation of actions in respect of salvage services) shall except in the case of proceedings in respect of any alleged fault of a ship of war or a ship for the time being appropriated to the service of the armed forces of the Crown or to the service of the Post Office, apply in the case of His Majesty's ships as it applies in the case of other vessels :

Provided that the said section eight, as applied by this section, shall have effect as if the words from " and shall, if satisfied " to the end of the said section eight were omitted therefrom.

- (2) Subject to the provisions of the preceding subsection, nothing in this Act shall prejudice the right of the Crown to rely upon the law relating to the limitation of time for bringing proceedings against public authorities.
- (3) In this section the expression " ship " includes any boat or other description of vessel used in navigation, and the expression " His Majesty's ships " shall be construed accordingly.

### **31 Application to the Crown of certain statutory provisions.**

- (1) This Act shall not prejudice the right of the Crown to take advantage of the provisions of an Act of Parliament although not named therein ; and it is hereby declared that in any civil proceedings against the Crown the provisions of any Act of Parliament which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown.
- (2) Section six of the Debtors Act, 1869 (which empowers the court in certain circumstances to order the arrest of- a defendant about to quit England) shall, with any necessary modifications, apply to civil proceedings in the High Court by the Crown.

**32 No abatement on demise of Crown.**

No claim by or against the Crown, and no proceedings for the enforcement of any such claim, shall abate or be affected by the demise of the Crown.

**33 Abolition of certain writs.**

No writ of extent or of diem clausit extremum shall issue after the commencement of this Act.

**34 Proceedings in courts other than the High Court and county courts.**

- (1) His Majesty may by Order in Council make such provision as appears to him to be expedient with respect to civil proceedings by or against the Crown in any court not being the High Court or a county court.
- (2) An Order in Council made under this section may in particular—
  - (a) define the jurisdiction of the court to which the Order relates in civil proceedings by or against the Crown ; and
  - (b) apply, in relation to civil proceedings by or against the Crown in the said court, any provisions of this Act which would not otherwise apply in relation to those proceedings with such additions exceptions and modifications as appear to His Majesty to be expedient.
- (3) The provisions of any such Order shall have effect notwithstanding any provision made by or under any enactment with respect to the court in question; and any such Order may provide for amending or revoking any provision so made as aforesaid.
- (4) An Order in Council made under this section may be varied or revoked by a further Order in Council made by His Majesty thereunder.
- (5) An Order in Council under this section shall be laid before Parliament as soon as may be after it is made, and, if either House of Parliament, within the next twenty-eight days on which that House has sat after such an Order is laid before it, resolves that the Order be annulled, the Order shall thereupon cease to have effect except as respects things previously done or omitted to be done, without prejudice, however, to the making of a new Order.

Notwithstanding anything in subsection (4) of section one of the Rules Publication Act, 1893, such an Order shall be deemed not to be a statutory rule to which that section applies.

*Supplemental.*

**35 Rules of court and county court rules.**

- (1) Any power to make rules of court or county court rules 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 and county court rules with respect to the following matters:—

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- (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 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 the plaintiff shall, before the Crown is required to take any step in the proceedings, provide the Crown with such information as the Crown may reasonably require 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) for providing that in the case of proceedings against the Crown the plaintiff shall not enter judgment against the Crown in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the Crown ;
  - (d) for excepting proceedings brought against the Crown from the operation of any rule of court providing for summary judgment without trial, and for enabling any such proceedings to be put in proper cases into any special list which may be kept for the trial of short-causes in which leave to defend is given under any such rule of court as aforesaid;
  - (e) for authorising the Crown to deliver interrogatories without the leave of a court in any proceedings for the enforcement of any right for the enforcement of which proceedings by way of English information might have been taken if this Act had not been passed, so, however, that the Crown shall not be entitled to deliver any third or subsequent interrogatories without the leave of the court;
  - (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 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.

### **36 Pending proceedings.**

Save as otherwise expressly provided, the provisions of this Act shall not affect proceedings by or against the Crown which have been instituted before the commencement of this Act; and for the purposes of this section proceedings against the Crown by petition of right shall be deemed to have been so instituted if a petition of right with respect to the matter in question has been left with a Secretary of State for submission to His Majesty before the commencement of this Act.

### **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 moneys 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 or county court rules 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 ;

" 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 Merchant Shipping Acts, 1894 to 1940, 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 unless that ship is for the time being demised or subdemised to His Majesty in right of His said Government 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 ;

" Order " includes a judgment, decree, rule, award or declaration ;

" Prescribed " means prescribed by rules of court or county court rules, as the case may be ;

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" Proceedings against the Crown " includes a claim by way of set-off or counterclaim raised in proceedings by the Crown:

" Ship " has the meaning assigned to it by section seven hundred and forty-two of the Merchant Shipping Act, 1894:

" 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 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) Any reference in this Act to the armed forces of the Crown shall be construed as including a reference to the following forces:—
- (a) the Women's Royal Naval Service ;
  - (b) the Queen Alexandra's Royal Naval Nursing Service ; and
  - (c) any other organisation established under the control of the Admiralty, the Army Council or the Air Council.
- (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.

### **39 Repeals, and &c.**

- (1) The enactments set out in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) For subsection (1) of section twenty-six of the Ministry of Transport Act, 1919, there shall be substituted the following-subsection :—

“(1) The Minister of Transport may for all purposes be described by that name.”

### **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, or affect proceedings against the Crown in respect of any such alleged liability as aforesaid ; or

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- (c) affect any proceedings by the Crown otherwise than in right of His Majesty's Government in the United Kingdom ; 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
- (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 or on the Consolidated Fund of the United Kingdom by the 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.

- (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.
- (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.