



# Crown Proceedings Act 1947

## 1947 CHAPTER 44

### PART V

#### APPLICATION TO SCOTLAND.

#### **41 Application of Act to Scotland.**

The provisions of this Part of this Act shall have effect for the purpose of the application of this Act to Scotland.

#### **42 Exclusion of certain provisions.**

Section one, Part II (except section thirteen so far as relating to proceedings mentioned in the First Schedule and section twenty-one), Part III (except section twenty-six) and section twenty-eight of this Act shall not apply to Scotland.

#### **43 Interpretation for purposes of application to Scotland.**

In the application of this Act to Scotland :—

- (a) for any reference to the High Court (except a reference to that Court as a prize court) there shall be substituted a reference to the Court of Session ; for any reference to the county court there shall be substituted a reference to the sheriff court; the expression " plaintiff " means pursuer ; the expression " defendant " means defender ; the expression " county court rules " means Act of Sederunt applying to the sheriff court; and the expression " injunction " means interdict ;
- (b) the expression " tort " means any wrongful or negligent act or omission giving rise to liability in reparation, and any reference to liability or right or action or proceedings in tort shall be construed accordingly; and for any reference to Part II of the Law Reform (Married Women and Tortfeasors) Act, 1935, there shall be substituted a reference to section three of the Law Reform (Miscellaneous Provisions) (Scotland) Act, 1940.

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*Status: This is the original version (as it was originally enacted).*

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#### **44 Proceedings against the Crown in the sheriff court.**

Subject to the provisions of this Act and to any enactment limiting the jurisdiction of the sheriff court (whether by reference to the subject matter of the proceedings or otherwise) civil proceedings against the Crown may be instituted in the sheriff court in like manner as if the proceedings were against a subject :

Provided that where in any proceedings against the Crown in the sheriff court a certificate by the Lord Advocate is produced to the effect that the proceedings may involve an important question of law, or may be decisive of other cases, or are for other reasons more fit for trial in the Court of Session, the proceedings shall be remitted to the Court of Session, and where any proceedings have been so remitted to the Court of Session, and it appears to that Court that the remit has occasioned additional expense to the pursuer, the Court shall take account of the additional expense so occasioned in deciding any question as to expenses.

#### **45 Satisfaction of orders granted against the Crown in Scotland.**

- (1) Where in any civil proceedings by or against the Crown or to which the Crown has been made a party, any order (including an award of expenses) is made by any court in favour of any person against the Crown or against a Government department or against an officer of the Crown as such, the clerk of court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order, or, in a case where there is an award of expenses and the expenses require to be taxed, at any time after taxation whichever is the later, issue to that person a certified copy of the order of the court.
- (2) A copy of any such order may be served by the person in whose favour the order is made upon the person for the time being named in the record as the solicitor, or the person acting as solicitor, for the Crown or for the Government department or officer concerned.
- (3) If the order decerns for the payment of any money by way of damages or otherwise or of any expenses, the appropriate Government department shall, subject as hereinafter provided, pay to the person entitled or to his solicitor the amount appearing from the order to be due to him together with the interest, if any, lawfully due thereon :

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that pending an appeal or otherwise payment of the whole of any amount so payable, or any part thereof, shall be suspended.

- (4) No such order as aforesaid shall warrant any diligence or execution against any person to enforce payment of any such money or expenses as aforesaid, and no person shall be individually liable under any order for the payment by the Crown, or any Government department or any officer of the Crown as such, of any such money or expenses.

#### **46 Provisions as to arrestment.**

Arrestment in the hands of the Crown or of a Government department or of any officer of the Crown as such shall be competent in any case where arrestment in the hands of a subject would have been competent :

Provided that nothing in the foregoing provisions shall warrant the arrestment of:—

- (a) any wages or salary payable to any officer of the Crown as such ;

- (b) any money which is subject to the provisions of any enactment prohibiting or restricting assignation or charging or taking in execution ; or
- (c) any money payable by the Crown to any person on account of a deposit in the Post Office Savings Bank.

#### **47 Recovery of documents in possession of Crown.**

Subject to and in accordance with Acts of Sederunt applying to the Court of Session and the sheriff court, commission and diligence for the recovery of documents in the possession of the Crown may be granted in any action whether or not the Crown is a party thereto, in like manner in all respects as if the documents were in the possession of a subject:

Provided that—

- (i) this subsection shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that its disclosure would be injurious to the public interest; and
- (ii) the existence of a document shall 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.

#### **48 Application of 56 and 57 Vict. c. 61 to the Crown.**

The Public Authorities Protection Act, 1893, shall, in its application to any civil proceedings against the Crown, have effect as if in paragraph (a) of section one thereof for any reference to six months there were substituted a reference to twelve months.

#### **49 Application to Scotland of s. 26.**

Section twenty-six of this Act shall have effect as if for subsection (2) thereof there were substituted the following subsection:—

“(2) The exception in respect of taxes contained in section four of the Debtors (Scotland) Act, 1880, from the enactment therein contained abolishing imprisonment for debt shall apply only in respect of death duties and purchase tax.”

#### **50 Application to Scotland of s. 34.**

Section thirty-five of this Act shall have effect as if for subsection (2) thereof there were substituted the following subsection:—

- “(2) The following provisions shall apply as regards proceedings in the Court of Session or the sheriff court:—
- (a) where decree in absence has been granted against the Crown the decree shall not be operative without the leave of the court obtained on an application of which notice has been given to the Crown ;
  - (b) 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 ;

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- (c) 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 the subject matter of the set-off or counterclaim does not relate to the Government department on whose behalf the proceedings are brought ;
- (d) the Crown, in any proceedings against a Government department, or against the Lord Advocate on behalf 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.”

**51 Application to Scotland of ss. 36 and 38.**

- (1) Section thirty-six of this Act shall have effect as if the words from "and for the purposes" to the end of the section were omitted.
- (2) Section thirty-eight of this Act shall have effect as if in subsection (4) thereof:—
  - (i) there were included a reference to this Part of this Act;
  - (ii) for the reference to the Attorney General there were substituted a reference to the Lord Advocate ;
  - (iii) the proviso were omitted.