



**BERMUDA  
1966 : 59**

**CROWN PROCEEDINGS ACT 1966**

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[17 May 1966]

*[preamble and words of enactment omitted]*

### **Interpretation**

1 In this Act—

"the Crown" includes a Minister, Government Department and a Government Board;

"court" means a court of competent jurisdiction;

"servant of the Crown" means any person whose remuneration is derived either directly or indirectly from the Consolidated Fund of Bermuda in relation to any functions, duties or responsibilities the performance or discharge of which may form the subject of proceedings under this Act;

"agent of the Crown" includes an independent contractor employed by the Crown;

"armed forces of the Crown in right of its Government in the United Kingdom" means all and any of Her Majesty's Forces, and shall be construed as including a reference to—

- (i) the Women's Royal Naval Service;
- (ii) the Queen Alexandra's Royal Naval Nursing Service;
- (iii) any other organization established under the control of the Ministry of Defence of the United Kingdom;

"local forces of Bermuda" means the military forces raised under the authority of the Defence Act 1965 [*title 7 item 21*];

"member of the armed forces of the Crown in right of its Government in the United Kingdom" and "member of the local forces of Bermuda" shall be construed as including a reference to any member for the time being of those forces irrespective of the rank or rating held by such member;

"Crown ship or vessel" includes a ship or vessel—

- (i) owned and operated by the Crown; or
- (ii) on time charter to the Crown; or
- (iii) demised or sub-demised to the Crown;

"operated by the Crown" means, in relation to a Crown ship or vessel, that such Crown ship or vessel is in charge of a servant of the Crown, and for the purposes of this Act all members for the time being of the crew of such Crown ship or vessel shall be deemed to be servants of the Crown;

"postal packet" means a letter, post card, reply post card, newspaper, book-packet, pattern or sample packet, or parcel, an official notice, and every packet or article transmissible by post;

"inland", in relation to any postal packet, or any description thereof, means posted in Bermuda and addressed to some place in Bermuda.

*[Section 1 amended by 2002:35 s.255(2) & Sch 10 para 4 effective 7 April 2003]*

**Right to sue Crown**

2 Where any person has a claim against the Crown, and, if this Act had not been passed, the claim might have been enforced, subject to the grant of a fiat, by petition of right, then, subject to this Act, the claim may be enforced as of right, and without a fiat, by proceedings against the Crown in accordance with this Act.

**Liability of Crown in tort**

3 (1) Subject to this Act, the Crown shall be subject to all those liabilities in tort to which it would be subject if it were a private person of full age and capacity—

- (a) in respect of torts committed by its servants or agents;
- (b) in respect of any breach of those duties which a private 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) in respect of any act of a servant or agent of the Crown unless that act would, apart from 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 servants, then, subject to 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.

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(3) Where any functions or duties are conferred or imposed upon a servant of the Crown as such either by a rule of the common or by statute, and that servant commits a tort while performing or purporting to perform those functions or duties, the liabilities of the Crown in respect of the tort shall be such as they would have been if those functions or duties 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 Minister, Government Department, Government Board or other duly constituted Government authority, or of a servant of the Crown in respect of any tort committed by that Minister, department, board, authority or servant shall, in the case of proceedings against the Crown under this section in respect of a tort committed by that Minister, department, board, authority or servant, apply in relation to the Crown as it would have applied in relation to that Minister, department, board, authority, or servant if the proceedings against the Crown had been proceedings against that Minister, department, board, authority, or servant.

(5) No proceedings shall lie against the Crown by virtue of this section in respect of any act by any person while discharging or purporting to discharge any responsibilities of a judicial nature which may be vested in him, or while discharging or purporting to discharge any responsibilities which may rest upon him in connection with the execution of any judicial process.

### **Industrial property**

4 (1) Where after 31 May 1966 any servant or agent of the Crown infringes a patent, or infringes a registered trade mark, or infringes any copyright or design right (including any copyright in a design subsisting under the Patents and Designs Act 1930 [*title 17 item 33*]) and the infringement is committed with the authority of the Crown, then, subject to this Act, civil proceedings in respect of the infringement shall lie against the Crown:

Provided that nothing in this section or in any other provision of this Act shall affect the rights under section 12 of the Patents and Designs Act 1930 [*title 17 item 33*], of any officer or authority administering any department of the service of the Crown.

(2) Save as expressly provided by this section, no proceedings shall lie against the Crown by virtue of this Act in respect of the infringement of any patent, of any registered trade mark or of any such copyright as is mentioned in subsection (1).

*[Third Schedule to 1991:39 paragraph 1(1) provides: Any reference to a trade mark in a provision to which this paragraph applies shall include a reference to a service mark and accordingly any reference to a registered trade mark includes a reference to a registered service mark.]*

*[Section 4 amended by 1991:39 effective 18 June 1993, and by 2004:5 effective 8 February 2008]*

**Crown ships: sections 181 and 182 of Merchant Shipping Act 2002 apply**

5 (1) Sections 181 and 182 of the Merchant Shipping Act 2002 and Schedule 6 shall apply in relation to Her Majesty's ships as they apply in relation to other ships.

(2) In this section "ships" has the same meaning as in the Merchant Shipping Act 2002.

*[Section 5 substituted by 2002:35 s.255(2) & Sch 10 para 6 effective 7 April 2003]*

6 *[Repealed by UK SI 1980/1510 published in GN 593/1980]*

**Limited liability of Crown as dockowner**

7 The provisions of the Merchant Shipping Act 2002 which limit the amount of the liability of the owners of docks, slips, quays, wharves, piers, stages, landing places and jetties shall apply for the purpose of limiting the liability of the Crown in its capacity as owner or manager of any such dock, slip, quay, wharf, pier, stage, landing place or jetty.

*[Section 7 amended by 2002:35 s.255(2) & Sch 10 para 5 effective 7 April 2003]*

**Salvage claims**

8 (1) Subject to this Act, the law relating to salvage, whether of life or of property, shall apply in relation to salvage services rendered after 31 May 1966 in assisting any Crown ship or vessel, or in saving life therefrom, or in saving any cargo or apparel belonging to the Crown in the same manner as if the ship, cargo, or apparel belonged to a private person.

(2) For the purposes of this section, the expression "Crown ship or vessel" includes a ship or vessel entrusted to a manager by the Crown in a like manner to a ship or vessel so entrusted in the circumstances set out in section 5(4).

**Postal packets**

9 (1) Except as hereinafter provided, no proceedings in tort shall lie against the Crown in respect of anything done or omitted to be done in relation to a postal packet, by any person employed as a servant or agent of the Crown; nor shall any servant of the Crown be subject, except at the suit of the Crown, to any civil liability for such act or omission aforesaid.

(2) Notwithstanding section 22 of the Post Office Act 1900 *[title 24 item 1]*, proceedings shall lie against the Crown under this subsection

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in respect of loss or damage to a registered inland postal packet, in so far as such loss or damage is due to any wrongful act, or to any neglect or default of a servant or agent of the Crown while performing or purporting to perform his functions as such in relation to the receipt, carriage, delivery or other dealing with such packet:

Provided that—

- (a) [omitted] [spent]
- (b) the amount recoverable in any proceedings under this subsection shall not exceed the market value of the packet in question (excluding the market value of any information or message contained therein) at the time when the cause of action arises; and
- (c) the Crown shall not be liable under this subsection in respect of any packet unless such conditions as are prescribed by Regulations made under the authority of the Post Office Act 1900 [*title 24 item 1*], in relation to registered inland postal packets have been complied with in relation to that packet.

(3) For the purposes of any proceedings under subsection (2), it shall be presumed, until the contrary is shown on behalf of the Crown, that the loss of or damage to the packet was due to some wrongful act, or to some neglect or default of a person employed as a servant or agent of the Crown while performing or purporting to perform his functions as such in relation to the receipt, carriage, delivery or other dealing with the packet.

(4) No relief shall be available under subsection (2) except upon a claim by the sender or the addressee of the packet in question; and the sender or addressee of the packet shall be entitled to claim any relief available under subsection (2) in respect of the packet, whether or not he is the person damnified by the injury complained of, and to give a good discharge in respect of the packet under subsection (2):

Provided that where the court is satisfied, upon an application by any person who is not the sender or addressee of the packet, that the sender and the addressee are either unable or unwilling to enforce their claims in respect of the packet under subsection (2), the court may, upon such terms as to security for costs and otherwise as the court may determine, allow that other person to bring proceedings under subsection (2) in the name of the sender or of the addressee of the packet.

(5) Any reference in subsection (4) to the sender or to the addressee of the packet shall be deemed to include a reference to his personal representatives.

(6) Where by virtue of subsection (4) any person recovers any money or property which, apart from that subsection, would have been recoverable by some other person, the money or property so recovered shall be held on trust for that other person.

(7) No claim for salvage shall lie against the Crown by virtue of section 7 in respect of anything done to, or suffered in relation to any postal packet in the course of the transmission of such postal packet by sea.

(8) Any reference in this section to a postal packet shall be construed as including a reference to the contents of such postal packet.

**Armed forces**

10 *[Repealed by 1991:20 effective 30 May 1991 but power retained to revive section 10 in certain circumstances]*

**Savings; acts done under prerogative and statutory powers**

11 (1) Nothing in the foregoing provisions 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 enactment, and, in particular, nothing in the foregoing provisions of this Act shall extinguish or abridge any powers or authorities exercisable by the Crown, whether in time of peace or of war, for the purpose of the defence of Bermuda 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, the Governor may, if satisfied that the act was necessary for any such purpose as is mentioned in subsection (1), issue a certificate to the effect that the act was necessary for that purpose; and the certificate shall, in those proceedings, be conclusive as to the matter so certified.

**Proceedings as though between subject and subject**

12 All proceedings instituted against the Crown under this Act shall be commenced and enforced in the same manner in all respects as in like proceedings between subject and subject.

**Interpleader**

13 The Crown may obtain relief by way of interpleader proceedings, and may be made a party to such proceedings, in the same manner in which a subject may obtain relief by way of such proceedings or be made a party thereto.

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### **Parties to proceedings**

14 (1) Proceedings against the Crown under this Act shall be instituted against the appropriate Minister in his style as such or, as the case may be, against the appropriate Government Board, in the corporate name of the Government Board, or if none of the Ministers or Government Boards is appropriate or the person instituting the proceedings has any reasonable doubt whether and if so which Minister or Government Board is appropriate, then against the Attorney-General in his title as such.

(2) Where any proceedings are instituted against the Crown under this Act, an application may at any stage of such proceedings be made to the court by or on behalf of the Attorney-General to have such Minister or Government Board as may be specified in that application substituted for him as defendant to the proceedings; and where any such proceedings are brought against a Minister or Government Board, an application may at any stage of the proceedings be made to the court on behalf of that Minister or Government Board to have the Attorney-General or such of the Ministers or Government Boards as may be specified in the application substituted for the Minister or Government Board on whose behalf the application is made.

Upon any such application the court may if it thinks fit make an order granting the application on such terms as the court may determine; and on such an order being made the proceedings shall continue as if they had been commenced against the Minister or Government Board specified in that behalf in the order, or, as the case may require, against the Attorney-General.

(3) No proceedings instituted in accordance with this Act against the Attorney-General shall abate or be affected by any change in the person holding the office of Attorney-General.

### **Service on Attorney General**

15 All documents required to be served on the Crown for the purpose of or in connection with any proceedings instituted under this Act shall be served on the Attorney-General.

### **Nature of relief**

16 (1) In any proceedings against the Crown instituted under this Act, the court shall have power to make all such orders as it has power to make in like proceedings between subject and subject, and otherwise to give such appropriate relief as the case may require:

Provided that—

(a) where in any proceedings against the Crown any such relief is sought as might in proceedings between subject and subject be granted by way of injunction or specific performance, the court shall not



grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

(b) in any proceedings against the Crown for the recovery of land or other property the court shall not make an order for the recovery of the land or for the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession thereof.

(2) The court shall not in any civil proceedings grant any injunction or make any order against a servant of the Crown if the effect of granting such injunction or making such order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

(3) No execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of any money, and no person shall be individually liable under any order for the payment by the Crown of any money.

**Costs as though in cases between subjects**

17 In any civil proceedings under this Act to which the Crown is a party, the costs of and incidental to the proceedings shall be awarded in the same manner and on the same principles as in cases between subjects.

**Appeals and stay of execution**

18 Subject to this Act, all enactments and rules of court relating to appeals and stay of execution shall, with any necessary modifications, apply to proceedings instituted against the Crown under this Act as they apply to like proceedings between subject and subject.

**Discovery**

19 (1) Subject to and in accordance with the rules of court—

(a) in any proceedings to which the Crown is a party, the Crown may be required by the court to make discovery of documents or to 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 nothing in this section shall be deemed to abrogate any rule of law which authorizes or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of such document or the answering of such question would be against the public interest.

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(2) Without prejudice to the proviso to subsection (1), any rules made for the purposes of this section shall be so framed as to secure that the existence of a document will not be disclosed if, in the opinion of the Governor, it would be against the public interest to disclose the existence thereof.

### **Proceedings in rem excluded**

20 (1) Nothing in this Act shall authorize proceedings in rem in respect of any claim against the Crown, or the arrest, detention or sale of any Crown ship or vessel, or of any cargo or other property belonging to the Crown, or to accord to any person any lien on any such ship, vessel, cargo or other property.

(2) Where proceedings in rem have been instituted against any such ship, vessel, 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 in the reasonable belief that the ship, vessel, cargo or other property did not belong to the Crown, order the proceedings shall be treated as if they were in personam duly instituted against the Crown under 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 may determine; and where the court makes any such order, it may make such consequential order or orders as the court deems expedient.

### **Limitation of actions**

21 (1) No action shall be maintainable to enforce any claim or lien against a Crown ship or vessel in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damage for loss of life or personal injuries suffered by any person on board that ship or vessel, caused by the fault of the said Crown ship or vessel, whether such ship or vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage, loss or injury was caused or the salvage service was rendered, and an action shall not be maintainable to enforce any contribution in respect of an overpaid proportion of any damages for loss of life, or personal injuries unless proceedings therein are commenced within twelve months from the date of payment:

Provided that the court may extend any such period to such extent and on such conditions as the court thinks fit.

(2) Subject to subsection (1), nothing in this Act shall prejudice the right of the Crown to rely upon the law relating to the limitation of time for the bringing of proceedings.

**Crown may take advantage of statutory provision although not named therein**

22 Nothing in this Act shall prejudice the right of the Crown to take advantage of any enactment although not named therein; and it is hereby declared that in any proceedings against the Crown under this Act, any enactment which could, if the proceedings were between subject and subject, be relied upon by the defendant as a defence to such 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.

**No abatement on demise of Crown**

23 No claim against the Crown under this Act shall abate or be affected by the demise of the Crown.

**Public expense**

24 Any expenditure incurred by or on behalf of the Crown in right of Her Majesty's Government in Bermuda by reason of the passing of this Act shall be defrayed out of moneys provided by the Legislature.

**Savings**

25 (1) Nothing in this Act shall apply to proceedings against, or authorize proceedings in tort to be brought against Her Majesty in her private capacity.

(2) Nothing in this Act shall affect the law and practice in Prize.

(3) Except as herein otherwise expressly provided, nothing in this Act shall—

- (a) affect the law relating to any criminal proceedings; or
- (b) authorize 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 Her Majesty's Government in Bermuda, or affect proceedings against the Crown in respect of any such alleged liability; or
- (c) subject the Crown to any greater liabilities in respect of the acts of any independent contractor employed by the Crown than those to which a private person would be subject in respect of those acts; or
- (d) affect any rules of evidence or any presumption relating to the extent to which the Crown is bound by any Act of the Legislature of Bermuda; or

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(e) affect any right of the Crown to control or otherwise intervene in proceedings affecting the rights, property or profits of the Crown.

(4) A certificate under the hand of the Deputy Governor to the effect that any alleged liability of the Crown arises otherwise than in respect of Her Majesty's Government in Bermuda shall, for the purposes of this Act, be conclusive as to the matter so certified.

### **Abolition of other proceedings**

26 Subject to this Act, all civil proceedings against the Crown, other than civil proceedings maintainable between subject and subject, are hereby abolished.

### **Transitional**

27 [omitted]

### **Commencement and consequential amendment**

28 [omitted]

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*[Amended by:*

1969 : 182

1971 : 83

UK SI 1980/1510 (GN 593/1980)

1991 : 20

1991 : 39

2002 : 35

2004 : 5]