



ST HELENA

REVISED EDITION OF THE LAWS, 2017

COURTS AND JUSTICE

CROWN PROCEEDINGS ORDINANCE, 1993¹

Ordinance 7 of 1993

Replacing an Ordinance originally in force 1 January 1948

Amended by Ordinances 8 of 2004 and 1 of 2008

No subsidiary legislation to 1 November 2017

CROWN PROCEEDINGS ORDINANCE, 1993

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¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

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AN ORDINANCE to declare the law relating to the civil liabilities and rights of the Crown and to civil proceedings by and against the Crown; to declare the law relating to the civil liabilities of persons other than the Crown, in certain cases involving the affairs or property of the Crown, and for connected purposes.

PART I PRELIMINARY

Short title and commencement

1. This Ordinance may be cited as the Crown Proceedings Ordinance, 1993 and is deemed to have come into force on 1st January, 1948.

Interpretation

2. (1) Any reference in this Ordinance to the provisions of this Ordinance, unless the context otherwise requires, include a reference to rules of court made for the purposes of this Ordinance.

(2) In this Ordinance, unless the context otherwise requires—
 “agent”, when used in relation to the Crown, includes an independent contractor employed by the Crown;
 ‘civil proceedings’ includes proceedings for the recovery of fines or penalties, and applications in the Supreme Court under the Supreme Court (Miscellaneous Applications) Rules, 1992;

“**officer**”, in relation to the Crown, includes the Governor and any servant of Her Majesty in right of Her Government of St Helena;

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

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

“**statutory duty**” means any duty imposed by or under any Ordinance.

PART II SUBSTANTIVE LAW

Right to sue the Crown

3. If –

(a) any person has a claim against the Crown after the commencement of this Ordinance; and

(b) had this Ordinance not been passed, the claim might have been enforced, subject to the grant of the Governor’s *fiat*, by petition of right,

then, subject to this Ordinance, the claim may be enforced as of right, and without the *fiat* of the Governor, by proceedings taken against the Crown for that purpose in accordance with this Ordinance.

Liability of the Crown in tort

4. (1) Subject to this Ordinance, the Crown is 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 the person’s 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.

(1A) No proceedings lie against the Crown by virtue of subsection (1)(a) in respect of any act or omission of a person who is a servant or agent of the Crown unless the act or omission would, apart from this Ordinance, have given rise to a cause of action in tort against that person or that person’s estate.

(2) If the Crown is bound by a statutory duty which is binding also upon persons other than the Crown and its officers, then, subject to this Ordinance, the Crown is, in respect of a failure to comply with that duty, subject to any liabilities in tort to which it would be so subject if it were a private person of full age and capacity.

(3) If 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 are 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 or officer of the Crown in respect of any tort committed by that department or officer applies in relation to the Crown, in the case of proceedings against the Crown under this section in respect of a tort committed by that department or officer, as it would have applied in relation to that department or officer if the proceedings against the Crown had been proceedings against that department or officer.

(5) No proceedings 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 the person, or any responsibilities which the person has in connection with the execution of judicial process.

(6) No proceedings 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 duties as an officer of the Crown wholly out of the Consolidated Fund.

Provisions as to industrial property

5. (1) If after the commencement of this Ordinance any servant or agent of the Crown infringes a patent, a registered trade mark, or any copyright, and the infringement is committed with the authority of the Crown, then, subject to this Ordinance, civil proceedings in respect of the infringement lie against the Crown.

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

Application of law as to indemnity, contribution and contributory negligence

6. If the Crown is subject to any liability by virtue of this Part, the law relating to indemnity and contribution is 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.

Saving in respect of acts done under prerogative and statutory powers

7. (1) Nothing in Part II extinguishes or abridges any powers or authorities which, if this Ordinance 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 written law.

(2) If in any proceedings under this Ordinance it is material to decide 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 or omission was necessary for any such purpose as is mentioned in subsection (1), issue a certificate to the effect that the act or omission

was necessary for that purpose; and the certificate is, in those proceedings, conclusive as to the matter so certified.

PART III JURISDICTION AND PROCEDURE

Institution of civil proceedings

8. (1) The Magistrates' Court has jurisdiction with respect to civil causes and matters instituted by or against the Crown to the same extent as it would have in any civil cause or matter instituted between subjects.

(2) Notwithstanding subsection (1), the Attorney General may apply to the Chief Justice for an order that any proceedings by or against the Crown, which may be or have been instituted in the Magistrates' Court, be transferred to the Supreme Court, and the Chief Justice may make any order that appears to the Chief Justice best to serve the interests of justice.

(3) All civil proceedings by or against the Crown must be instituted and proceeded with in the Magistrates' Court or the Supreme Court, as the case may be, and in accordance with rules of court.

(4) In this section the expression "**rules of court**" means, in relation to any claim against the Crown in the Supreme Court which falls within the jurisdiction of that court as a prize court, rules of court made under section 3 of the Prize Courts Act, 1894 (UK).

Interpleader

9. 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 to them.

Parties to proceedings

10. Civil proceedings by or against the Crown must be instituted by or against the Attorney General.

Service of documents

11. All documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown must be served on the Attorney General.

Nature of relief

12. (1) In any civil proceedings by or against the Crown the court, subject to this Ordinance, has power to make all orders that it has power to make in proceedings between

subjects, and otherwise to give any appropriate relief the case requires.

(1A) If in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court must not grant an injunction or make an order for specific performance, but may instead make an order declaratory of the rights of the parties.

(1B) In any proceedings against the Crown for the recovery of land or other property the court must not make an order for the recovery of the land or the delivery of the property, but may instead make an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession of it.

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

Appeals and stay of execution

13. Subject to this Ordinance all enactments and rules of court relating to appeals and stay of execution apply, with any necessary modification, to civil proceedings by or against the Crown as they apply to proceedings between subjects.

Scope of Part III

14. (1) Subject to this section, any reference in this Part to civil proceedings by the Crown is to be construed as a reference to the following proceedings only:

- (a)* proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Ordinance had not been passed, might have been enforced or vindicated or obtained by an action at the suit of any Government department or any officer of the Crown as such;
- (b)* all such proceedings as the Crown is entitled to bring by virtue of this Ordinance, and the expression “**civil proceedings by or against the Crown**” is to be construed accordingly.

(2) Subject to this section, any reference in this Part to civil proceedings against the Crown is to be construed as a reference to the following proceedings only:

- (a)* proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Ordinance had not been passed, might have been enforced or vindicated or obtained by an action against the Attorney General, any Government department, or any officer of the Crown as such;
- (b)* all such proceedings as any person is entitled to bring against the Crown by virtue of this Ordinance, and the expression “**civil proceedings by or against the Crown**” is to be construed accordingly.

(3) Notwithstanding anything in the preceding provisions of this section, the provisions of this Part do not have effect with respect to any of the following proceedings, that is

to say:

- (a) proceedings brought by the Attorney General on the relation of some other person;
- (b) proceedings by or against the Registrar of Lands.

PART IV JUDGMENTS AND EXECUTION

Interest on debts, damages and costs

15. (1) The provisions of any law relating to the payment of interest on judgment debts in proceedings between subjects apply to judgment debts due from or to the Crown.

- (2) If any costs are awarded to or against the Crown –
 - (a) interest is payable upon those costs unless the court otherwise orders; and
 - (b) any interest so payable must be at the same rate as that at which interest is payable upon judgment debts due from or to the Crown.

(3) The provisions of any law empowering a court of record to award interest on debts and damages apply to judgments given in proceedings by and against the Crown.

Satisfaction of orders against the Crown

16. (1) If in any civil proceedings by or against the Crown, or in connection with any arbitration to which the Crown is a party, any order (including an order for costs) is made in favour of any person against the Crown, the proper officer of the court must on an application for the purpose made by or on behalf of that person:

- (a) not less than 21 days ~~from~~ after the date of the order; or
- (b) if the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed,

whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order.

(1A) If the court so directs, a separate certificate must be issued with respect to the costs (if any) ordered to be paid to the applicant.

(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney General.

(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate must state the amount so payable, and the Financial Secretary must, except as provided in this Ordinance, pay to the person entitled the amount appearing by the certificate to be due to the person, together with the interest if any, lawfully due on that amount.

(4) Except as provided in this section, no execution or attachment or process in the nature of execution may be issued out of the court for enforcing payment by the Crown of any

such money or costs, and no person is individually liable under any order for the payment by the Crown of any such money or costs.

Execution by the Crown

17. (1) Subject to this Ordinance, any order made in favour of the Crown against any person in any civil proceedings to which the Crown is a party may be enforced in the same manner as an order made in an action between subjects, and not otherwise.

(2) Sections 4 and 5 of the Debtors Act, 1869 (UK) (which provide respectively for the abolition of imprisonment for debt, and for saving the power of committal in case of small debts) apply to sums of money payable and debts due to the Crown, subject to subsection (2A).

(2A) For the purpose of the application of section 4 of the Act to any sum of money payable or debt due to the Crown, the section has effect as if there were included among the exceptions mentioned in it default in payment of any sum payable in respect of estate duty.

(3) This section does not affect any procedure which immediately before the commencement of this Ordinance was available for enforcing an order made in favour of the Crown in proceedings brought by the Crown for the recovery of any fine or penalty, or the forfeiture or condemnation of any goods, or the forfeiture of any ship or any share in a ship.

Attachment of moneys payable by the Crown

18. (1) If –

- (a)* any money is payable by the Crown to a person who, under a court order, is liable to pay any money to any other person; and
- (b)* that other person would, if the money so payable by the Crown were money payable by a subject, be entitled under rules of court to obtain an order for the attachment of the money as a debt due or accruing due, or an order for the appointment of a sequestrator or receiver to receive the money on the person's behalf,

the Court may, subject to this Ordinance and in accordance with rules of court, make an order restraining the first-mentioned person from receiving that money and directing payment of it to that other person, or to the sequestrator or receiver.

(2) No such order may be made in respect 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 assignment or charging or taking in execution; or
- (c)* any money payable by the Crown to any person on account of a deposit in the Bank of St Helena Limited.

PART V MISCELLANEOUS

Discovery

- 19.** (1) Subject to and in accordance with rules of court—
- (a) in any civil proceedings 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, the Crown may be required by the court to answer interrogatories.

(1A) This section does not affect 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.

(1B) Any order of the court made pursuant to subsection (1)(b) must direct by what officer of the Crown the interrogatories are to be answered.

(2) Without affecting subsection (1A), any rules made for the purposes of this section must be such as to secure that the existence of a document will not be disclosed if, in the opinion of the Governor, it would be injurious to the public interest to disclose the existence of it.

Exclusion of proceedings *in rem* against the Crown

20. (1) Nothing in this Ordinance authorises proceedings *in rem* in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty's ships or aircraft, or 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) If proceedings *in rem* have been instituted in any court against any ship, aircraft, cargo or other property as mentioned in subsection (1), 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 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 are to be treated as if they were—

- (a) *in personam* duly instituted against the Crown in accordance with this Ordinance; or
- (b) duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances,

and that the proceedings are to continue accordingly.

(3) An order under subsection (2) may be made upon any terms the court thinks just; and if the court makes any such order it may make any consequential orders it thinks expedient.

Application to the Crown of certain legislative provisions

21. (1) This Ordinance does not affect the right of the Crown to take advantage of the provisions of any written law although not named in it; and in any civil proceedings against the Crown the provisions of any written law 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) Order 28 of the Civil Procedure Rules, 1969 (which empowers the court in certain circumstances to order the arrest of a defendant about to quit St Helena) applies, with any necessary modifications, to civil proceedings by the Crown.

No abatement on demise of Crown

22. No claim by or against the Crown, and no proceedings for the enforcement of any such claim, abates or is affected by the demise of the Crown.

Rules of court

23. Any power to make rules of court includes power to make rules for the purpose of giving effect to this Ordinance, and any such rules may contain provisions to have effect in relation to any proceedings by or against the Crown in substitution for or in addition to any of the provisions of the rules applying to proceedings between subjects.

Financial provisions

24. (1) Any expenditure incurred by or on behalf of the Crown in right of the Government of St Helena because of the passing of this Ordinance must be defrayed out of moneys provided by the Government of St Helena.

(2) Any sums payable to the Crown in right of the Government of St Helena because of the passing of this Ordinance must be paid into the Consolidated Fund.

Savings

25. (1) This Ordinance does not apply to proceedings by or against, or authorise proceedings in tort to be brought against, Her Majesty in Her private capacity.

- (2) Unless otherwise expressly stated, this Ordinance does not—
- (a) affect the law relating to prize salvage, or apply to proceedings in causes or matters within the jurisdiction of the Supreme Court as a prize court or to any criminal proceedings;
 - (b) authorise proceedings to be taken against the Crown under or in accordance with this Ordinance in respect of any alleged liability of the Crown arising otherwise than in respect of the Government of St Helena or affect proceedings against the Crown in respect of any such alleged liability;
 - (c) affect any proceedings by the Crown otherwise than in right of the Government of St Helena;
 - (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;
- (e) affect any rules of evidence or any presumption relating to the extent to which the Crown is bound by any written law;
 - (f) 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.

(2A) Without affecting subsection (2), Part IV does not apply to the Crown except in right of the Government of St Helena.

- (3) A certificate of the Governor to the effect—
- (a) that any alleged liability of the Crown arises otherwise than in respect of the Government of St Helena; or
 - (b) that any proceedings by the Crown are proceedings otherwise than in right of the Government of St Helena,

is, for the purpose of this Ordinance, conclusive as to the matter so certified.

(4) If 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 is not by virtue of this Ordinance subject to any liabilities in tort only because of property being so vested; but this subsection does not affect the liabilities of the Crown under this Ordinance 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 of it.

(5) This Ordinance does not 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 Ordinance, notwithstanding that under this Ordinance some other and further remedy is available.
