



BRITISH ANTARCTIC TERRITORY

THE CROWN PROCEEDINGS ORDINANCE 2020

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THE CROWN PROCEEDINGS ORDINANCE 2020

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BRITISH ANTARCTIC TERRITORY

Enacted by the Commissioner,
Ben Merrick,
XX XXXX 2020

Ordinance No. 4 of 2020

THE CROWN PROCEEDINGS ORDINANCE 2020

AN ORDINANCE to make provision relating to the civil liabilities and rights of the Crown and to civil proceedings by and against the Crown, to make provision relating to the civil liabilities of persons other than the Crown in certain cases involving the affairs or property of the Crown, and to make provision for matters incidental thereto.

PART 1

PRELIMINARY

Citation and commencement.

1. This Ordinance may be cited as the Crown Proceedings Ordinance 2020 and shall come into force on XXXXX.

Interpretation.

2. (1) In this Ordinance, unless the contrary intention appears –

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

“civil proceedings” includes proceedings in the Supreme Court or the Magistrate’s Court for the recovery of fines or penalties;

“Crown”, except in sections 8 and 13(2) and in paragraph (a) of the proviso to section 19(1), and without prejudice to sections 3, 25(2)(b), 25(2)(c) and 25(3), means Her Majesty in right of Her Government of the Territory;

“Her Majesty’s aircraft” does not include aircraft belonging to Her Majesty otherwise than in right of Her Government in the United Kingdom;

“Her Majesty’s ships” means ships of which the beneficial interest is vested in Her 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 sub-demised to or in the exclusive possession of the Crown, except that the said expression does not include any ship in which Her Majesty is interested otherwise than in right of Her Government in the United Kingdom unless that ship is for the time being demised or sub-demised to Her Majesty in right of Her said Government or in the exclusive possession of Her Majesty in that right:

“officer”, in relation to the Crown, includes the Commissioner and any servant of Her Majesty in right of Her Government of the Territory;

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

“proceedings against the Crown” includes 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 written law for the time being in force in the Territory;

“Territory” means the British Antarctic Territory as defined by section 2 of the British Antarctic Territory Order 1989.

(2) Any reference in this Ordinance to the provisions of this Ordinance shall, unless the contrary intention appears, include a reference to rules of court for the time being in force in relation to this Ordinance or, as may be appropriate, to such directions in relation to this Ordinance as are referred to in section 24(2).

(3) Any reference in Part 4 or Part 5 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 officer of the Crown as such is a party:

Provided that the Crown shall not, for the purposes of Part 4 or Part 5, be deemed to be a party to any proceedings by reason only of the fact that they are brought by the Attorney General if they are so brought by the Attorney General upon the relation of some other person.

PART 2 – SUBSTANTIVE LAW

Right to sue the Crown.

3. (1) Where any person has a claim against the Crown as defined in subsection (2), then, subject to the provisions of this Ordinance, the claim may be enforced by proceedings taken against the Crown for that purpose in accordance with the provisions of this Ordinance.

(2) The reference to a claim against the Crown in subsection (1) shall be construed as meaning a claim against the Government of the British Antarctic Territory.

4. (1) Subject to the provisions of this Ordinance, the Crown shall be 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 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 or omission of a servant or agent of the Crown unless the act or omission would, apart from the provisions of this Ordinance, have given rise to a cause of action in tort against that servant or agent or that person's estate.

(2) Where the Crown is bound by a statutory duty which is binding also upon persons other than the Crown and its officers, then, subject to the provisions of this Ordinance, 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.

(3) Where 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 shall be 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 written law for the time being in force in the Territory which negatives or limits the amount of the liability of the Crown or an officer of the Crown in respect of any tort committed by such officer shall, in case of proceedings against the Crown under this section in respect of a tort committed by such officer, apply in relation to the Crown as it would have applied in relation to such officer of the proceedings against the Crown had been proceedings against the said officer.

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

(6) No proceedings shall 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 his or her duties as an officer of the Crown

wholly out of the public funds of the Territory or was at the material time holding an office in respect of which the Commissioner certifies that the holder thereof would normally be so paid.

Industrial property.

5. (1) Where any servant or agent of the Crown infringes a patent or a registered trademark or any copyright (including a copyright in a design) and the infringement is committed with the authority of the Crown, then, subject to the provisions of this Ordinance, civil proceedings in respect of the infringement shall lie against the Crown.

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

Indemnity and contribution.

6. Where the Crown is subject to any liability by virtue of this Part, the law relating to indemnity and contribution shall be enforceable by or against the Crown in respect of that liability as if the Crown were a private person of full age and capacity.

Postal services.

7. Save as may for the time being be provided by or under any Ordinance specifically regulating the provision of postal services in or to and from the Territory, no proceedings in tort shall lie against the Crown for anything done or omitted to be done in relation to such services by any person while employed as a servant or agent of the Crown nor shall any officer of the Crown be subject, except at the suit of the Crown, to any civil liability for anything so done or omitted to be done.

Acts done under prerogative and statutory powers.

8. (1) Nothing in this Part shall extinguish or abridge any powers or authorities which, if this Ordinance had not been enacted, would have been exercisable by virtue of the prerogative of the Crown or any powers or authorities conferred on the Crown or the Commissioner by any written law for the time being in force in the Territory, and, in particular, nothing in this Part shall extinguish or abridge any powers or authorities exercisable by the Crown, whether in time of peace or of war, for the purpose of defence or for the purpose of training, or maintaining the efficiency of, any of the armed forces of the Crown.

(2) Where in any proceedings under this Ordinance 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 Commissioner 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 shall, in those proceedings, be conclusive as to the matter so certified.

PART 3 – JURISDICTION AND PROCEDURE

Courts which may entertain civil proceedings.

9. (1) Subject to sections 18, 21(2) and 21(3) of the Administration of Justice Ordinance 2020, all civil proceedings by or against the Crown shall be instituted and proceeded with in the Supreme Court or the Magistrate’s Court and in accordance with rules of court (or such directions as are referred to in section 24(2)) and not otherwise.

(2) 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.

Interpleader.

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

Parties to the proceedings.

11. Save as otherwise provided by any written law for the time being in force in the Territory, civil proceedings by or against the Crown shall be instituted by or against the Attorney General in accordance with section 6 of the Attorney General Ordinance 2020.

Service of documents.

12. 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 shall be served on the Attorney General, and may be so served by being sent by post to the Attorney General in the care of the Commissioner or otherwise as may be provided by rules of court or by such directions as are referred to in section 24(2).

Nature of relief.

13. (1) In any civil proceedings by or against the Crown the court shall, subject to the provisions of this Ordinance, have the power to make all such orders as it has power to make in proceedings between subjects, 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 subjects 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 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 the property or to the possession thereof.

(2) The court shall 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.

14. Subject to the provisions of this Ordinance, all written laws for the time being in force in the Territory relating to appeals and stay of execution shall, with any necessary modification, apply to civil proceedings by or against the Crown as they apply to proceedings between subjects.

Scope of this Part.

15. (1) Subject to subsection (2), in this Part –

(a) any reference to civil proceedings by the Crown shall be construed as a reference to proceedings for the enforcement or vindication of any right or the obtaining of any relief as, under any law for the time being in force in the Territory (including this Ordinance), may be claimed by the Crown or by any officer of the Crown as such;

(b) any reference to civil proceedings against the Crown shall be construed as a reference to proceedings for the enforcement or vindication of any right or the obtaining of any relief as, under any law for the time being in force in the Territory (including this Ordinance), may be claimed by any person against the Crown;

and the expression “civil proceedings by or against the Crown” shall be construed accordingly.

(2) The provisions of this Part shall not have effect with respect to proceedings brought by the Attorney General on the relation of some other person or to proceedings brought by or against the Attorney General on behalf of the Crown in its capacity as *parens patriae* in matters relating to charities.

PART 4 – JUDGMENTS AND EXECUTION

Interest on debts, damages and costs.

16. (1) The provisions of any law for the time being in force in the Territory relating to the payment of interest on judgment debts in proceedings between subjects shall apply to judgment debts due from or to the Crown.

(2) Where any costs are awarded to or against the Crown in the Supreme Court or the Magistrate’s Court, interest shall be payable upon those costs unless the court otherwise orders, and any interest so payable shall 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 for the time being in force in the Territory empowering a court to award interest on debts and damages shall apply to judgments given in proceedings by and against the Crown.

Satisfaction of orders against the Crown.

17. (1) Where 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 by any court in favour of any person against the Crown, the Registrar or Clerk or other proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of 21 days from the date of the order or, 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 containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall 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 upon the Attorney General by the person in whose favour the order is made, and may be so served in the manner specified in section 12.

(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Commissioner shall, subject as hereinafter provided, pay to the person entitled or to that person's legal representative the amount appearing by the certificate to be due to that person together with the interest, if any, lawfully due thereon:

Provided that the court by which any such order 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, and, if the certificate has not been issued, may order any such direction to be inserted therein.

(4) Save as aforesaid, 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 such money or costs as aforesaid, and the Attorney General or other officer of the Crown as the party in whose name civil proceedings by or against the Crown have been instituted shall not be personally liable under any order for the payment by the Crown, or the Attorney General or other officer of the Crown as such, of any such money or costs.

Execution by the Crown.

18. (1) Subject to the provisions of 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) Nothing in this section shall affect any procedure which is otherwise available under any law for the time being in force in the Territory 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.

(3) For the purposes of subsection (2), “ship” includes any vessel used for transporting people or goods by sea.

Attachment of moneys payable by the Crown.

19. (1) Where any money is payable by the Crown to some person who, under any order of any court, is liable to pay any money to any other person, and that other person would, if the money so payable by the Crown were money payable by a subject, be entitled under rules of court (or such directions as are referred to in section 24(2)) to obtain an order for the attachment thereof as a debt due or accruing due, or an order for the appointment of a sequestrator or receiver to receive the money on his or her behalf, the Supreme Court may, subject to the provisions of this Ordinance and in accordance with rules of court (or such directions as aforesaid) make an order restraining the first-mentioned person from receiving that money and directing payment thereof to that other person, or to the sequestrator or receiver:

Provided that no such order shall be made in respect of –

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

(b) any money which is subject to the provisions of any written law for the time being in force in the Territory prohibiting or restricting assignment or charging or taking in execution.

(2) In any case where, under section 21 of the Administration of Justice Ordinance 2020, the Magistrate’s Court would have jurisdiction to entertain proceedings in respect of the matter in dispute (that is to say, the money payable by the Crown), the reference in subsection (1) of this section to the Supreme Court shall be construed as including a reference to the Magistrate’s Court.

PART 5 – MISCELLANEOUS AND SUPPLEMENTAL

Discovery.

20. (1) Subject to and in accordance with rules of court (or such directions as are referred to in section 24(2)) –

(a) in any civil proceedings in the Supreme Court or the Magistrate’s 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 is 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.

(2) Any order of the court made under subsection (1)(b) shall direct by what officer of the Crown the interrogatories are to be answered.

(3) Without prejudice to the proviso to subsection (1), any rules of court made (or directions given) 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 the Commissioner, it would be injurious to the public interest to disclose its existence.

Exclusion of proceedings *in rem* against the Crown.

21. (1) Nothing in this Ordinance shall authorise proceedings *in rem* in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty's ships, hovercraft or aircraft, or of any cargo or other property belonging to the Crown, or give to any person any lien on any such ship, hovercraft, aircraft, cargo or other property.

(2) Where proceedings *in rem* have been instituted in the Supreme Court or the Magistrate's Court against any such ship, hovercraft, aircraft, cargo or other property, the court may, if satisfied, either on an application by the plaintiff for an order under this subsection or on 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, hovercraft, 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 Ordinance, 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.

(3) Any order made in accordance with subsection (2) may be on such terms, if any, as the court thinks just; and where the court makes any such order it may make such consequential orders as it thinks expedient.

Application to the Crown of certain statutory provisions.

22. (1) This Ordinance shall not prejudice the right of the Crown to take advantage of the provisions of any written law for the time being in force in the Territory although not named therein; and it is hereby declared that in any civil proceedings against the Crown the provisions of any such 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 on by the Crown.

(2) Section 6 of the Debtor's Act 1869 (as in force in the Territory by virtue of section 5 of the Administration of Justice Ordinance 2020 and which, as so in force, empowers a court in certain circumstances to order the arrest of a defendant about to quit the Territory) shall, with any necessary modifications, apply to civil proceedings in the Supreme Court or the Magistrate's Court by the Crown.

No abatement on demise of the Crown.

23. 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.

Rules of court and procedural directions.

24. (1) Any power to make rules of court shall include power to make rules for the purpose of giving effect to the provisions of 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 by way of addition to any of the provisions of the rules applying to proceedings between subjects.

(2) The references in subsection (1) to rules of court shall be construed as including references to directions given in exercise of a power conferred by any law for the time being in force in the Territory to give directions concerning the practice and procedure of courts.

Savings.

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

(2) Except as expressly provided in this Ordinance, nothing in this Ordinance shall –

(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 Her Majesty’s Government of the British Antarctic Territory, 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 Her Majesty’s Government of the British Antarctic Territory;

(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 for the time being in force in the Territory; or

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

and, without prejudice to the general effect of the foregoing provisions or to the restricted meaning given to the term “Crown” in this Ordinance by section

2(1), Part 4 shall not apply to the Crown except in right of Her Majesty's Government of the British Antarctic Territory.

(3) A certificate of the Commissioner –

(a) to the effect that any alleged liability of the Crown arises otherwise than in respect of Her Majesty's Government of the British Antarctic Territory; or

(b) to the effect that any proceedings by the Crown are proceedings otherwise than in right of Her Majesty's Government of the British Antarctic Territory,

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

(4) Where any property vests in the Crown by virtue of any rule of law for the time being in force in the Territory which operates independently of the acts or the intentions of the Crown, the Crown shall not by virtue of this Ordinance 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 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 thereof.

(5) This Ordinance shall not operate to limit the discretion of a court, under any other law for the time being in force in the Territory, to grant relief by way of an order in the nature of a mandatory order, notwithstanding that, in the case in question, some other and further remedy is available by reason of the provisions of this Ordinance.