



BRITISH INDIAN OCEAN TERRITORY

**REVISED ORDINANCES OF THE
BRITISH INDIAN OCEAN TERRITORY**

**THE CROWN PROCEEDINGS
ORDINANCE 1984**

CHAPTER D.2

Revised Edition

Showing the law as at 1 September 2020

Published by Authority

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This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Ordinance 2015 and contains a consolidation of the following laws:

The Crown Proceedings Ordinance 1984 - Ordinance No.2 of 1984

As amended by:

Ordinance No.5 of 2014

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**REVISED ORDINANCES OF THE BRITISH INDIAN OCEAN
TERRITORY**

THE CROWN PROCEEDINGS ORDINANCE 1984

CHAPTER D.2

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**REVISED ORDINANCES OF THE BRITISH INDIAN OCEAN
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THE CROWN PROCEEDINGS ORDINANCE 1984

CHAPTER D.2

An Ordinance to amend the law relating to the civil liabilities and rights of the Crown and to civil proceedings by and against the Crown, to amend 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.

Citation.

1. This Ordinance may be cited as the Crown Proceedings Ordinance, ROBIOT c.D.2.

Definitions.

2. (1) Any reference in this Ordinance to the provisions of this Ordinance shall, unless the context otherwise requires, include a reference to rules of court from time to time in force in relation to 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 in the Supreme Court for the recovery of fines or penalties;

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 Ordinance.

(3) References in this Ordinance to any enactment shall be construed as references to that enactment as amended by or under any other enactment, including this Ordinance.

PART I

SUBSTANTIVE LAW

Right to sue Crown.

3. Where any person has a claim against the Crown after the commencement of this Ordinance, 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.

Liability of the Crown in tort.

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 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 subsection (1)(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 his 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 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 shall, in the case of proceedings against

the Crown under this section in respect of a tort committed by that department or officer, apply in relation to the Crown 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 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 him, or any responsibilities which he 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 duties as an officer of the Crown wholly out of the Consolidated Fund or moneys provided by Parliament.

Provisions as to industrial property.

5. (1) Where after the commencement of this Ordinance any servant or agent of the Crown infringes a patent, or infringes a registered trade mark, or infringes any copyright 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, in respect of the infringement of a registered trade mark, or in respect of the infringement of any such copyright as is mentioned in subsection (1) of this section.

Application of law as to indemnity, contribution, joint and several tortfeasors, and contributory negligence.

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 the liability to which it is so subject as if the Crown were a private person of full age and capacity.

Persons who may claim in respect of postal packets.

7. (1) No relief shall be available under section 25(3) of the Post Office Ordinance 1967, 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 the said subsection 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 all claims in respect of the packet under the said subsection:

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 unable or unwilling to enforce their remedies in respect of the packet under the said subsection, the court may, upon such terms as to security for costs and otherwise as the court thinks just, allow that other person to bring proceedings under the said subsection in the name of the sender or the addressee of the packet.

Any reference in this subsection to the sender or addressee of the packet includes a reference to his personal representatives.

(2) Where by virtue of subsection (1) of this section 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 person.

(3) No proceedings shall lie against the Crown under section 25(3) of the Post Office Ordinance, 1967 unless the proceedings are begun within the twelve months beginning with the date on which the packet in question was posted.

(4) In this section the expression **postal packet** has the same meaning as in the Post Office Ordinance 1967.

Provisions relating to the armed forces.

8. (1) Nothing done or omitted to be done by a member of the armed forces of the Crown while on duty as such shall subject either him or the Crown to liability in tort for causing the death of another person, or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the armed forces of the Crown if –

(a) at the time when that thing is suffered by that other person, he is either on duty as a member of the armed forces of the Crown or is, though not on duty as such, on any land, premises, ship, hovercraft, aircraft or vehicle for the time being used for the purposes of the armed forces of the Crown; and

(b) a Secretary of State, where that other person is a member of the armed forces of the Crown in right of its Government in the United Kingdom, certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to an award under the Royal Warrant, Order in Council or Order of Her Majesty relating to the disablement or death of members of the force of which he is a member:

Provided that this subsection shall not exempt a member of the said forces from liability in tort in any case in which the court is satisfied that the act or omission was not connected with the execution of his duties as a member of those forces.

(2) No proceedings in tort shall lie against the Crown for death or personal injury due to anything suffered by a member of the armed forces of the Crown if –

(a) that thing is suffered by him in consequence of the nature or condition of any such land, premises, ship, hovercraft, aircraft or vehicle as described in subsection (1)(a), or in consequence of the nature or condition of any equipment or supplies used for the purposes of those forces; and

(b) a Secretary of State, in the case of a member of the armed forces of the Crown in right of its Government in the United Kingdom, certifies as mentioned in subsection (1) of this section,

nor shall any act or omission of an officer of the Crown subject him to liability in tort for death or personal injury, in so far as the death or personal injury is due to anything suffered by a member of the armed forces of the Crown being a thing as to which the conditions set out in subsection (2) are satisfied.

(3) A certificate of a Secretary of State –

(a) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Crown in right of its Government in the United Kingdom; or

(b) that at any particular time any land, premises, ship, hovercraft, aircraft, vehicle, equipment or supplies was or was not, or were or were not, used for the purposes of the said forces,

shall, for the purposes of this section, be conclusive as to the fact which it certifies.

(4) For the purposes of this section **member of the armed forces of the Crown**, unless the context otherwise requires, means a member of the armed forces of the Crown in right of its Government in the United Kingdom.

(5) Nothing in this section shall be deemed by implication or otherwise to confer any right of action against the Crown in right of its Government in the United Kingdom.

Saving in respect of acts done under prerogative and statutory powers.

9. (1) Nothing in Part I of this Ordinance 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 statute or enactment, and, in particular, nothing in the said Part I 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 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 II

JURISDICTION AND PROCEDURE

Civil proceedings – how instituted.

10. (1) All civil proceedings by or against the Crown shall be instituted and proceeded with in the Supreme Court and in accordance with rules of court and not otherwise:

Provided that where any enactment now or at any time hereafter in force requires or permits civil proceedings to be taken in the Magistrate's Court such court shall have jurisdiction to hear and determine any such proceedings despite the Crown being a party thereto.

(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.

11. 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.

Parties to proceedings.

12. Civil proceedings by or against the Crown shall be instituted by or against the General Counsel.

Service of documents.

13. 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 General Counsel.

Nature of relief.

14. (1) In any civil proceedings by or against the Crown the court shall, subject to the provisions of this Ordinance, have 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 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.

15. Subject to the provisions of this Ordinance, all enactments and rules of court 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 Part II.

16. (1) Subject to the provisions of this section, any reference in this Part to civil proceedings by the Crown shall be construed as a reference to such proceedings as the Crown is entitled to bring by virtue of this Ordinance.

The expression **civil proceedings by or against the Crown** shall be construed accordingly.

(2) Subject to the provisions of this section, any reference in this Part to civil proceedings against the Crown shall be construed as a reference to such proceedings as any person is entitled to bring against the Crown by virtue of this Ordinance.

The expression **civil proceedings by or against the Crown** shall be construed accordingly.

(3) Despite anything in the preceding provisions of this section, the provisions of this Part shall not have effect with respect to proceedings brought by a Law Officer on the relation of some other person.

PART III

JUDGMENTS AND EXECUTION

Interest on debts, damages and costs.

17. (1) The provisions of any law 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, 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 empowering a Court of Record to award interest on debts and damages shall apply to judgments given in proceedings by and against the Crown.

(4) This section shall apply both in relation to proceedings pending at the commencement of this Ordinance and in relation to proceedings instituted thereafter.

Satisfaction of orders against the Crown.

18. (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 in favour of any person against the Crown, the 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 twenty-one days from the date of the order or, in case 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:

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 by the person in whose favour the order is made upon the General Counsel.

(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 to subsection (4) and sections 20 and 22, pay to the person entitled or to his solicitor the amount appearing by the certificate to be due to him together with the interest, if any, lawfully due thereon.

(4) Save as provided in this section, no execution or attachment or process in the nature thereof shall be issued out of the court for enforcing payment by the Crown of any such money or costs as referred to in subsection (1), and no person shall be individually liable under any order for the payment by the Crown of any such money or costs.

Execution by the Crown.

19. (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.

This subsection shall apply both in relation to proceedings pending at the commencement of this Ordinance and in relation to proceedings instituted thereafter.

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

Provided that for the purpose of the application of the said section 4 to any sum of money payable or debt due to the Crown, the section shall have effect as if there were included among the exceptions therein mentioned default in payment of any sum payable in respect of death duties.

(3) Nothing in this section shall 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 monies payable by the Crown.

20. Where any money is payable by the Crown to some person who, under any order of 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 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 behalf, the Supreme Court may, subject to the provisions of this Ordinance and in accordance with rules of court, 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 enactment prohibiting or restricting assignment or charging or taking in execution.

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous.

Discovery.

21. (1) Subject to and in accordance with rules of court –

- (a) in any civil proceedings in the Supreme 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 described in subsection (1)(a), 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 the Commissioner, it would be injurious to the public interest to disclose the existence thereof.

Exclusion of proceedings *in rem* against the Crown.

22. (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 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 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.

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.

Application to the Crown of certain statutory provisions.

23. (1) This Ordinance shall not prejudice the right of the Crown to take advantage of the provisions of an Act of Parliament or Ordinance although not named therein, and it is hereby declared that in any civil proceedings against the Crown the provisions of any Act of Parliament or Ordinance 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 6 of the Debtors Act 1869 (which empowers the 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 by the Crown.

No abatement on demise of Crown.

24. 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.

Supplemental.

Rules of court.

25. 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.

Pending proceedings.

26. Save as otherwise expressly provided, the provisions of this Ordinance shall not affect proceedings by or against the Crown which have been instituted before the commencement of this Ordinance.

Savings.

27. (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 therein otherwise expressly provided, 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 the Government of the 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 the Government of the 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 Act of Parliament or Ordinance; or

(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,

and, without prejudice to the general effect of the provisions of this section, Part III shall not apply to the Crown except in right of the Government of the Territory.

(3) A certificate of the Commissioner –

(a) to the effect that any alleged liability of the Crown arises otherwise than in respect of the Government of the Territory; or

(b) to the effect that any proceedings by the Crown are proceedings otherwise than in right of the Government of the 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 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 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, despite there being some other and further remedy by reason of the provisions of this Ordinance.
