

CHAPTER 5

THE GOVERNMENT PROCEEDINGS ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 5

THE GOVERNMENT PROCEEDINGS ACT

An Act to provide for the rights and liabilities of the Government in civil matters, for the procedure in civil proceedings by or against the Government and for related matters.

[1st January, 1975]

[G.N. No. 308 of 1974]

Acts Nos.

16 of 1967

40 of 1974

30 of 1994

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh5s1]1. Short title

This Act may be cited as the Government Proceedings Act.

[PCh5s2]2. Interpretation

(1) In this Act, unless the context requires otherwise—

"agent", when used in relation to the Government, includes an independent contractor employed by the Government;

"civil proceedings" include proceedings in the High Court or a magistrate's court for the recovery of fines or penalties;

"Minister" means the Minister for the time being responsible for legal affairs;

"officer" in relation to the Government includes the President, a Minister and any servant of the Government;

"proceedings against the Government" include a claim by way of set-off or counterclaim raised in proceedings initiated by the Government;

"statutory duty" means any duty imposed by or under any written law.

(2) Any reference in Part IV or Part V to civil proceedings by or against the Government, or to civil proceedings to which the Government is a party, shall be construed as including a reference to civil proceedings to which the Attorney-General, or any officer of the Government as such, is a party:

Provided that the Government shall not, for the purposes of Part IV or Part V, be deemed to be a party to any proceedings by reason only that they are brought by the Attorney-General upon the relation of some other person.

PART II

SUBSTANTIVE LAW (ss 3-5)

[PCh5s3]3. Liability of Government in civil proceedings

(1) Subject to the provisions of this Act and any other written law, the Government shall be subject to all proceedings those liabilities in contract, quasi-contract, detinue, tort and in other respects to which it would be subject if it were a private person

of full age and capacity and any claim arising therefrom may be enforced against the Government in accordance with the provisions of this Act.

(2) No proceedings shall lie against the Government in tort in respect of any act or omission of a servant or agent of the Government unless the act or omission would, but for the provisions of this Act, have given rise to a cause of action in tort against that servant or agent or his estate.

(3) Where the Government is bound by a statutory duty which is binding also upon persons other than the Government and its officers, then the Government shall, subject to the provisions of this Act, in respect of a failure to comply with that duty, be subject to all those liabilities in tort to which it would be so subject if it were a private person of full age and capacity.

(4) Where any functions are conferred or imposed upon an officer of the Government as such either by any rule of the common law or by any written law and that officer commits a tort while performing or purporting to perform those functions, the liability of Government in respect of the tort shall be such as it would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Government.

(5) No proceedings shall lie against the Government 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.

[PCh5s4]4. Application of law as to indemnity and contribution

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

[PCh5s5]5. Saving in respect of acts done under statutory powers

Nothing in this Part shall extinguish or abridge any powers or authorities which, but for this Act, would have been exercised by virtue of any powers or authority conferred on the Government by any written law.

PART III

JURISDICTION AND PROCEDURE (ss 6-14)

[PCh5s6]6. Civil proceedings against Government, etc. Acts Nos. 40 of 1974 s. 2; 30 of 1994 s. 2

(1) Notwithstanding any other provision of this Act, civil proceedings may be instituted against the Government subject to the provisions of this section.

(2) No suit against the Government shall be instituted, and heard unless the claimant previously submits to the Government Minister, Department or officer concerned a notice of not less than ninety days of his intention to sue the Government, specifying the basis of his claim against the Government, and he shall send a copy of his claim to the Attorney-General.

(3) All suits against the Government shall, after the expiry of the notice be brought against the Attorney-General, and a copy of the plaint shall be served upon the

Government Ministry, Department or Officer that is alleged to have committed the civil wrong on which the civil suit is based.

(4) All suits against the Government shall be instituted in the High Court by delivering in the Registry of the High Court within the area where the claim arose.

(5) Notwithstanding the provisions of subsection (3), the Attorney General may, unless another person ought to be sued be sued or be joined as a co-defendant, in proceedings against the Government.

(6) The provisions of the Public Officers (Recovery of of Debts) Act *, shall apply to any officer who occasions the Government to incur loss, costs or damages as a result of his failure to obtain legal representation in the suit.

[PCh5s7]7. Civil proceedings against Government to be instituted only in High Court Act No. 40 of 1974 s. 3

Notwithstanding any other written law, no civil proceedings against the Government may be instituted in any court other than the High Court.

[PCh5s8]8. Application of general law of procedure

Subject to the provisions of this Act, all civil proceedings by or against the Government shall be instituted and proceeded with in accordance with the procedure applicable in like proceedings between private persons.

[s. 7A]

[PCh5s9]9. Interpleader

The Government may institute or be made a party to inter-pleader proceedings in the same manner in which a private person may institute such proceedings or be a party

thereto and may be made a party to such proceedings notwithstanding that the proceedings have been instituted by a court broker or other like officer.

[s. 8]

[PCh5s10]10. Attorney-General or other designated officers to be parties to proceedings

Subject to the provisions of any other written law, civil proceedings by or against the Government shall be instituted by or against the Attorney-General:

Provided that the Minister may by order published in the Gazette direct that any particular civil proceedings or class of civil proceedings be instituted by any officer designated in the order instead of by the Attorney-General.

[s. 9]

[PCh5s11]11. Transfer of proceedings where set-off or counter claim is made Act No. 40 of 1974 s. 4

If in any case proceedings have been instituted by the Government in a magistrate's court and the defendant satisfies the court that—

- (a) he has a claim against the Government;
 - (b) he has obtained consent under section 6 for pursuing his claim against the Government; and
 - (c) the claim against the Government may conveniently be pursued by way of set-off or counter-claim in the proceedings instituted by the Government,
- the magistrate's court shall transfer the proceedings to the High Court for trial.

[s. 10]

[PCh5s12]12. Nature of relief Act No. 30 of 1994 s. 3

In any civil proceedings by or against the Government the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between private persons and otherwise to give such appropriate relief as the case may require.

[s. 11]

[PCh5s13]13. Costs in civil proceedings to which the Government is a party

In any civil proceedings to which the Government 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 private persons and the court shall have power to make an order for the payment of costs by or to the Government accordingly:

Provided that—

(a) in the case of proceedings to which by reason of any law or otherwise the Attorney-General, a Government department or any officer of the Government as such is authorised to be made a party, the court shall have regard to the nature of the proceedings and the character and circumstances in which the Attorney-General, the department or the officer of the Government appears, and may in the exercise of its discretion order any other party to the proceedings to pay the costs of the Attorney-General, department or officer, whatever may be the result of the proceedings; and

(b) nothing in this section shall affect the power of the court to order or any law providing for, the payment of costs out of any particular fund or property, or any law

expressly relieving any department or officer of the Government of the liability to pay costs.

[s. 12]

[PCh5s14]14. Appeals and stay of execution

Subject to the provisions of this Act, any written law relating to appeals and stay of execution shall, with necessary modifications, apply to civil proceedings by or against the Government as it applies to proceedings between private persons.

[s. 13]

PART IV

JUDGEMENTS AND EXECUTION (ss 15-17)

[PCh5s15]15. Interest

(1) The provisions of any written law relating to the payment of interest where a decree is for the payment of money and to the payment of interest on costs shall apply in the case of Government as they do in the case of a private person.

(2) [Transitional provisions.]

[s. 14]

[PCh5s16]16. Satisfaction of orders against the Government

(1) Where in any civil proceedings by or against the Government, any order, including an order as to costs, is made by a court in favour of a person against the Government or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person, 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 ordered to be paid to the applicant.

(2) If the order provides for the payment of money by way of damages or other relief, or of costs, the certificate shall state the amount so payable and the Permanent Secretary to the Treasury or such other Government accounting officer as may be appropriate shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with any interest, lawfully due thereon: Provided that the court by which any such order as is mentioned in this section is made or any court to which an appeal against the order lies may, if it considers it reasonable to do so direct that, pending an appeal or other legal proceedings, payment of the whole or part of any amount so payable shall be suspended and if the certificate has not been issued may order any such directions to be inserted therein.

(3) Save as is provided in this section, no execution, attachment or similar process shall be issued out of any court for enforcing payment by the Government of any money or costs referred to in this section; and no person shall be individually liable under any order for payment by the Government or any Government department or any officer of the Government as such of the money or costs.

(4) [Transitional provisions.]

[s. 15]

[PCh5s17]17. Execution by the Government

Subject to the provisions of this Act, any order made in favour of the Government against any person in any civil proceedings to which the Government is a party may only be enforced in the same manner as an order made in an action between private persons.

[s. 16]

PART V

OTHER PROVISIONS (ss 18-23)

[PCh5s18]18. Discovery

(1) Subject to and in accordance with any written law—

(a) in any civil proceedings in the High Court or a magistrate's court to which the Government is a party, the Government may be required by the court to make discovery of documents and produce documents for inspection; and

(b) in any such proceedings as are mentioned in paragraph (a) of this subsection, the Government may be required by the court to answer interrogatories:

Provided that this section shall be without prejudice to any law or 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 the powers conferred by paragraph (b) of subsection (1) shall direct by what officer of the Government the interrogatories are to be answered.

(3) Without prejudice to the proviso to subsection (1) any rules of court made for the purposes of this section shall be such as to secure that the existence of a document is

not disclosed if, in the opinion of a Minister, it would be injurious to the public interest to disclose the existence thereof.

[s. 17]

[PCh5s19]19. Right of Government to rely on existing laws

This Act shall not prejudice the right of the Government to rely on the provisions of any law and in any civil proceedings against the Government the provisions of any law which could, if the proceedings were between private persons, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part may, subject to any express provision to the contrary, be so relied upon by the Government.

[s. 18]

[PCh5s20]20. Limitation of actions

Nothing in this Act shall prejudice the right of the Government to rely upon any written law relating to the limitation of time for bringing proceedings.

[s. 19]

[PCh5s21]21. Rules 1

(1) The Chief Justice may make rules for the purpose of giving effect to the provisions of this Act, and such rules may contain provisions to have effect in relation to any proceedings by or against the Government in substitution for or by way of addition to any of the provisions regulating procedure in proceedings between private persons.

(2) Provisions shall be made in rules made under subsection (1) with respect to the following matters—

(a) securing that where civil proceedings are brought against the Government in accordance with the provisions of this Act, the plaintiff shall, before the Government is required to take any step in the proceedings, provide the Government with such information as the Government may reasonably require as to the circumstances in which it is alleged that the liability of the Government has arisen and as to the departments and officers of the Government concerned;

(b) providing that in the case of proceedings against the Government the plaintiff shall not enter judgement against the Government in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the Government;

(c) excluding proceedings brought against the Government from the operation of any rule of court providing for summary judgement without trial, and enabling any such proceedings to be entered, where appropriate, into any special list which may be kept for the trial of short causes in which leave to defend is given under any such rule of court as is referred to in this paragraph; and

(d) providing that a person shall not be entitled to avail himself of any set-off or counter-claim in any proceedings by the Government for the recovery of taxes, duties or penalties, or to avail himself in proceedings of any other nature by the Government of any set-off or counter-claim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

(3) Rules (including the Government Proceedings (Procedure) Rules) made under subsection (1) in relation to the Civil Procedure Rules 2 shall be read and construed as one

with the Civil Procedure Rules and shall have the same effect as rules made under the Civil Procedure Code *.

[s. 20]

[PCh5s22]22. Pending proceedings

Except as is otherwise in this Act expressly provided, the provisions of this Act shall not affect proceedings which have been instituted before the commencement of this Act.

[s. 21]

[PCh5s23]23. Repeal of R.L. Cap. 5

[Repeals Act No. 16 of 1967.]

[s. 22.]

[PCh5s24]24. Savings

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

(a) subject the Government to any greater liability in respect of the acts or omissions of any independent contractor employed by the Government than that to which the Government would be subject in respect of such acts or omissions if it were a private person;

(b) affect any written law, rule of evidence or presumption relating to the extent to which the Government is bound by any law; or

(c) affect any liability imposed on the Administrator-General under the Administrator-General (Powers and Functions) Act * or the Public Trustee under the Public Trustee Act *.

(2) Where any property vests in the Government by virtue of any enactment or rule of law which operates independently of the acts or the intention of the Government, the Government shall not by virtue of this Act be subject to any liability in tort by reason only of the property being so vested; but the provisions of this subsection shall be without prejudice to the liability of the Government under this Act in respect of any period after the Government or any person acting for the Government has in fact taken possession or control of any such property or entered into occupation thereof.

(3) This Act 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 Act, notwithstanding that by reason of the provisions of this Act some other and further remedy is available.