



National Security Act 2023

2023 CHAPTER 32

PART 5

TERRORISM

PROSPECTIVE

Damages in national security proceedings

84 National security proceedings

- (1) Sections 85 and 86 apply to proceedings (“national security proceedings”) before a court which—
 - (a) are commenced on or after the date this section comes into force,
 - (b) are brought against the Crown on any grounds (unless they are brought under section 7(1)(a) of the Human Rights Act 1998), and
 - (c) relate to national security.
- (2) For the purposes of this section—
 - (a) proceedings relate to national security where a party to those proceedings has, at any stage, presented evidence or made submissions to the court relating to national security;
 - (b) the circumstances in which evidence or submissions are to be taken to relate to national security include, in particular, where the evidence or submissions relate to—
 - (i) the use of investigatory powers or surveillance powers under the Regulation of Investigatory Powers Act 2000, or the use of similar powers overseas in the interests of national security;
 - (ii) the activities of the intelligence services in the United Kingdom or overseas, or the activities of similar services overseas;

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Changes to legislation: There are currently no known outstanding effects for the National Security Act 2023, Part 5. (See end of Document for details)

- (iii) investigations or other activities in connection with preventing the commission of terrorism offences or other involvement in terrorism-related activity in the United Kingdom or overseas.

Commencement Information

II S. 84 not in force at Royal Assent, see [s. 100\(1\)](#)

85 Duty to consider reduction in damages payable by the Crown

- (1) This section applies where—
- (a) liability of the Crown to the claimant has been established by the court in national security proceedings,
 - (b) the court is permitted to award damages, payable by the Crown, to the claimant in those proceedings in respect of that liability,
 - (c) the Crown has made an application to the court for consideration of the factors mentioned in subsection (3) (the “national security factors”), and
 - (d) the court has not refused the application.
- (2) Where this section applies, the court must, in deciding what remedy (if any) to award to the claimant in respect of the liability, consider the national security factors.
- (3) The national security factors are—
- (a) whether the claimant has committed wrongdoing that—
 - (i) involves the commission of a terrorism offence or other involvement in terrorism-related activity, and
 - (ii) has a connection with the conduct of the Crown complained of in the proceedings, and
 - (b) if the claimant has committed such wrongdoing—
 - (i) the extent of that wrongdoing and of its connection with the conduct of the Crown, and
 - (ii) the matters mentioned in [subsection \(4\)](#).
- (4) The matters are whether and to what extent—
- (a) there was a risk of harm the Crown sought to prevent or limit in carrying out the conduct complained of in the proceedings;
 - (b) there was a limitation on the ability of the Crown to prevent the conduct occurring, including on the basis of—
 - (i) the conduct having occurred overseas, or
 - (ii) the conduct having been carried out in conjunction with a third party.
- (5) Where the court would (but for this subsection) award damages to the claimant of a particular amount, the court must decide whether, in light of its consideration of the national security factors, it is appropriate for it to reduce the amount of damages (including to nil).
- (6) But the court may not decide to reduce damages it would otherwise award to the claimant under section 8 of the Human Rights Act 1998 (judicial remedies).
- (7) Nothing in this section—

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- (a) prevents a court from considering the national security factors of its own motion where this section does not apply;
- (b) affects any other power the court may have to reduce damages or to refuse to award damages, including by reason of—
 - (i) the claimant’s wrongdoing,
 - (ii) the claimant’s failure to mitigate any harm they have suffered, or
 - (iii) the claimant’s contribution to that harm;
- (c) affects any existing rule of law otherwise limiting the scope of liability of the Crown.

Commencement Information

I2 S. 85 not in force at Royal Assent, see [s. 100\(1\)](#)

86 Section 85: supplementary

- (1) An application for consideration of the national security factors may be made at any time before the final disposal of the national security proceedings (or, in Scotland, before final judgment in the proceedings within the meaning given by section 136 of the [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#)), including at a time before any liability of the Crown has been established.
- (2) The application must—
 - (a) set out how the Crown considers the national security factors to apply, and the Crown’s reasons;
 - (b) set out the extent to which the Crown considers that damages should be reduced in light of the national security factors, and the Crown’s reasons;
 - (c) otherwise be made in accordance with rules of court.
- (3) The court may refuse the application if, in the court’s view, consideration of the national security factors would—
 - (a) cause unreasonable delay to the national security proceedings, or
 - (b) unreasonably prejudice another party to the proceedings.

Commencement Information

I3 S. 86 not in force at Royal Assent, see [s. 100\(1\)](#)

87 Sections 84 to 86: interpretation

In sections 84 to 86 and this section—

“claimant” means a person claiming a remedy of any kind against the Crown in national security proceedings;

“court” includes a tribunal;

“intelligence service” means—

- (a) the Security Service;
- (b) the Secret Intelligence Service;
- (c) the Government Communications Headquarters;

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“involvement in terrorism-related activity” has the same meaning as in the Terrorism Prevention and Investigation Measures Act 2011 (see section 4 of that Act);

“national security factors” means the factors set out for consideration in section 85(3);

“national security proceedings” has the meaning given by section 84;

“rules of court” includes tribunal procedure rules;

“terrorism offence” means any of the following (whenever committed)—

- (a) an offence listed in—
 - (i) Schedule A1 to the Sentencing Code (terrorism offences: England and Wales), or
 - (ii) Schedule 1A to the Counter-Terrorism Act 2008 (terrorism offences: Scotland and Northern Ireland);
- (b) a service offence as respects which the corresponding civil offence is so listed; and for this purpose “service offence” and “corresponding civil offence” have the same meanings as in the Counter-Terrorism Act 2008 (see section 95 of that Act);
- (c) an offence that—
 - (i) was abolished on or before the date this section comes into force, and
 - (ii) if committed on or after the date on which it was abolished, would have constituted an offence referred to in paragraph (a) or (b);
- (d) an offence determined to have a terrorist connection under—
 - (i) section 69 of the Sentencing Code (in the case of an offender sentenced in England and Wales), including as applied by section 238(6) of the Armed Forces Act 2006,
 - (ii) section 30 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Northern Ireland, or an offender sentenced in England and Wales before the Sentencing Code applied), or
 - (iii) section 32 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced for a service offence before the Sentencing Code applied);
- (e) an offence proved to have been aggravated by reason of having a terrorist connection under section 31 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Scotland).

Commencement Information

I4 S. 87 not in force at Royal Assent, see [s. 100\(1\)](#)

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PROSPECTIVE

Freezing and forfeiture of damages

88 Damages at risk of being used for the purposes of terrorism

[Schedule 16](#) makes provision in relation to damages at risk of being used for the purposes of terrorism.

Commencement Information

I5 S. 88 not in force at Royal Assent, see [s. 100\(1\)](#)

PROSPECTIVE

Legal aid

89 Legal aid for individuals convicted of terrorism offences

- (1) The Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.
- (2) In section 9(1) (general cases), at the end insert—

“This is subject to section 9A (limits on access to civil legal services for individuals convicted of terrorism offences).”
- (3) After section 9 insert—

“9A Limits on access to civil legal services for individuals convicted of terrorism offences

- (1) Civil legal services described in Part 1 of Schedule 1 other than those in paragraph 12 of Schedule 1 (“general case services”) are only to be available to an individual convicted of a terrorism offence (an “offender”) under this Part if—
 - (a) the Director has made a determination under section 9(1)(b) (a “general case determination”) in relation to the offender (and has not withdrawn the determination), and
 - (b) the Director determines that one or more of Conditions A to G are met.
- (2) Condition A is met where the offender was convicted of the terrorism offence before 19 February 2001.
- (3) Condition B is met where the offender was under the age of 18 on the date they applied for the general case determination (the “application date”).
- (4) Condition C is met where the offender was convicted of the terrorism offence more than 30 years before the application date.

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- (5) Condition D is met where the offender was convicted of the terrorism offence—
- (a) when they were under the age of 18, and
 - (b) more than 15 years before the application date.
- (6) Condition E is met where the offender applied for the general case determination before—
- (a) the commencement date, or
 - (b) the date on which they were convicted of the terrorism offence.
- (7) Condition F is met where the Director has made (and not withdrawn) an exceptional case determination, within the meaning given by section 10(3), in relation to the offender and the general case services.
- (8) Condition G is met where—
- (a) the general case services are those described in paragraph 11, 33, 34 or 35 of Schedule 1 (services in relation to domestic violence and housing), and
 - (b) the offender—
 - (i) was or is a victim of domestic violence occurring after the relevant date, or
 - (ii) is at risk of being a victim of domestic violence.
- (9) In subsection (8)—
- “domestic violence” has the meaning given in paragraph 12(9) of Schedule 1;
- “relevant date” means the date five years before the application date.
- (10) Regulations may make provision specifying for the purposes of this section when an individual is deemed to have applied for a general case determination.
- (11) In this section, “terrorism offence” means any of the following (whenever committed)—
- (a) an offence listed in—
 - (i) Schedule A1 to the Sentencing Code (terrorism offences: England and Wales), or
 - (ii) Schedule 1A to the Counter-Terrorism Act 2008 (terrorism offences: Scotland and Northern Ireland);
 - (b) a service offence as respects which the corresponding civil offence is so listed;
 - (c) an offence that—
 - (i) was abolished on or before the commencement date, and
 - (ii) if committed on or after the date on which it was abolished, would have constituted an offence referred to in paragraph (a) or (b);
 - (d) an offence determined to have a terrorist connection under—
 - (i) section 69 of the Sentencing Code (in the case of an offender sentenced in England and Wales), including as applied by section 238(6) of the Armed Forces Act 2006,

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- (ii) section 30 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Northern Ireland, or an offender sentenced in England and Wales before the Sentencing Code applied), or
 - (iii) section 32 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced for a service offence before the Sentencing Code applied);
 - (e) an offence proved to have been aggravated by reason of having a terrorist connection under section 31 of the Counter-Terrorism Act 2008 (in the case of an offender sentenced in Scotland).
- (12) Where an offender has been convicted of more than one terrorism offence, “the terrorism offence” in this section means the terrorism offence the offender has most recently been convicted of.
- (13) In this section—
“commencement date” means the date on which section 89 of the National Security Act 2023 comes into force;
“service offence” and “corresponding civil offence” have the same meanings as in the Counter-Terrorism Act 2008 (see section 95 of that Act).
- (14) Nothing in this section affects the Director’s ability to make determinations under section 10 (exceptional cases).”
- (4) In section 12 (determinations)—
(a) in subsection (2), after “9” insert “, 9A”;
(b) in subsection (5), after “9” insert “, 9A”.

Commencement Information

I6 S. 89 not in force at Royal Assent, see [s. 100\(1\)](#)

90 Legal aid for individuals convicted of terrorism offences: data sharing

In the Legal Aid, Sentencing and Punishment of Offenders Act 2012, after section 9A (as inserted by section 89) insert—

“9B Information relating to convictions for terrorism offences

- (1) The Director may make an information request to a competent authority.
- (2) An information request under this section may be made only for the purpose of identifying—
 - (a) whether an individual who has applied for a determination under section 9 has been convicted of a terrorism offence, and
 - (b) if the individual has been so convicted, details relating to that conviction.
- (3) An information request under this section may in particular request the disclosure of any of the following—
 - (a) a relevant individual’s full name and any previous names;

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- (b) a relevant individual’s address and any previous addresses;
 - (c) a relevant individual’s date of birth;
 - (d) a relevant individual’s national insurance number;
 - (e) a number identifying a relevant individual in a system maintained by a body established in accordance with a collaboration agreement under section 22A of the Police Act 1996;
 - (f) a number identifying a relevant individual in a system maintained by the Secretary of State for the management of offenders;
 - (g) any convictions of a relevant individual;
 - (h) any details relating to those convictions, including the date of conviction and any sentence imposed.
- (4) A competent authority may disclose to the Director information specified in an information request made under this section.
- (5) The Director may, for the purposes of deciding whether general case services are to be available to an individual under this Part, process any personal data in respect of a relevant individual disclosed by a competent authority to the Director under this section.
- (6) This section does not authorise the disclosure or processing of information if the disclosure or processing would contravene the data protection legislation (but, in determining whether a disclosure or processing would do so, the powers conferred by this section are to be taken into account).
- (7) In this section—
- “competent authority” has the same meaning as in section 30 of the Data Protection Act 2018;
 - “general case services” and “terrorism offence” have the same meanings as in section 9A;
 - “personal data”, “processing” and “the data protection legislation” have the same meanings as in section 3 of the Data Protection Act 2018;
 - “relevant individual” means—
 - (a) an individual who has applied for a determination under section 9, or
 - (b) an individual who has been convicted of a terrorism offence.”

Commencement Information

I7 S. 90 not in force at Royal Assent, see [s. 100\(1\)](#)

91 Legal aid in relation to terrorism prevention and investigation measures

- (1) In Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services), in Part 1 (services), paragraph 45 is amended as follows.
- (2) Omit sub-paragraph (2).
- (3) For sub-paragraph (3) substitute—
 - “(3) Sub-paragraph (1) is subject to—

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- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraph 18 of that Part, and
- (b) the exclusion in Part 3 of this Schedule.”
- (4) In sub-paragraph (4) omit the definition of “control order proceedings”.

Commencement Information

18 S. 91 not in force at Royal Assent, see [s. 100\(1\)](#)

Amendments of the Terrorism Act 2000

92 Amendments of the Terrorism Act 2000

[Schedule 17](#) contains amendments of the Terrorism Act 2000.

Commencement Information

19 S. 92 not in force at Royal Assent, see [s. 100\(1\)](#)

110 [S. 92](#) in force at 20.12.2023 by [S.I. 2023/1272](#), [reg. 2\(d\)](#)

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