

Torture (Damages) (No. 2) Bill

CONTENTS

- 1 Action for damages for torture
- 2 Limitation
- 3 Amendment of State Immunity Act 1978
- 4 Amendment of Civil Procedure Rules 1998
- 5 Meaning of “torture”
- 6 Choice of law
- 7 Retrospective effect
- 8 Short title, commencement and extent

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TO

Make provision for actions for damages for torture; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Action for damages for torture

- (1) A person who commits torture, wherever committed, shall be liable to an action for damages in civil proceedings.
- (2) Where the torture occurs in a State outside of the United Kingdom, this Act shall apply only when no adequate and effective remedy for damages is available in the State in which the torture is alleged to have been committed. 5
- (3) In this Act, references to damages shall include aggravated and exemplary damages and damages for loss of income.
- (4) Notwithstanding section 1(2)(a)(i) and (ii) of the Law Reform (Miscellaneous Provisions) Act 1934 (c. 41) (effect of death on certain causes of action), the damages recoverable by virtue of that section for the benefit of the estate of a deceased person in respect of torture include aggravated and exemplary damages and damages for loss of income. 10
- (5) In this Act references to a person shall include a State, meaning any foreign or commonwealth State (including the United Kingdom); and references to a State include references to— 15
 - (a) the sovereign or other head of that State in his public capacity;
 - (b) the government of that State;
 - (c) any department of that government; and
 - (d) where the act or omission constituting the torture is carried out by an entity which is distinct from the executive organs of the government and capable of suing and being sued, that entity which will be considered a State for the purposes of this Act where the act or omission in question is done by it in the exercise of sovereign authority. 20

- (6) Where an action is commenced under this Act, a defendant shall not be entitled to claim immunity.

2 Limitation

Notwithstanding anything in the Limitation Act 1980 (c. 58), an action for damages under this Act in respect of torture or death caused by torture may be brought at any time within the period of six years beginning with the date when it first became reasonably practicable for the person concerned to bring an action. 5

3 Amendment of State Immunity Act 1978

In Part 1 of the State Immunity Act 1978 (c. 33), after section 5 insert – 10

“5A Liability for torture

A State is not immune in respect of proceedings instituted against it under the Torture (Damages) Act 2009.”

4 Amendment of Civil Procedure Rules 1998

In section 3.1 of Practice Direction B of the Civil Procedure Rules 1998 (service out of the jurisdiction where permission is required) insert – 15

“Claims in respect of torture

- (8A) A claim is made in respect of torture (within the meaning of the Torture (Damages) Act 2009) or death caused by such torture.”

5 Meaning of “torture” 20

- (1) Subject to subsection (5) below, for the purposes of this Act a public official or person acting in an official capacity, whatever his nationality, commits torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his duties. 25
- (2) Subject to subsection (5) below, for the purposes of this Act a person not falling within subsection (1) above commits torture, whatever his nationality, if – 30
- (a) in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence of –
- (i) a public official, or
- (ii) a person acting in an official capacity; and
- (b) the official or other person is performing or purporting to perform his official duties when he instigates the infliction of that pain or suffering or consents to or acquiesces in it. 35
- (3) Subject to subsection (5) below, where a person commits torture in circumstances falling within subsection (2) above, the official or other person concerned, whatever his nationality, also commits torture for the purposes of this Act.
- (4) It is immaterial whether the pain or suffering is – 40

- (a) physical or psychological; or
- (b) caused by an act or omission.

- (5) An act or omission does not constitute torture for the purposes of this Act if the pain or suffering that is inflicted thereby arises only as a result of sanctions which are held lawful under international law. 5
- (6) This section is without prejudice to any international instrument or legislation in England and Wales which contains provisions of wider application.

6 Choice of law

Wherever an act of torture is committed, the applicable law for all proceedings instituted under this Act shall be the law of England and Wales. 10

7 Retrospective effect

An action may be brought under this Act in respect of any act of torture occurring on or after 29 September 1988.

8 Short title, commencement and extent

- (1) This Act may be cited as the Torture (Damages) Act 2009. 15
- (2) This Act shall come into force on such day as the Secretary of State may by order appoint.
- (3) This Act extends to England and Wales only.

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*Presented by Mr Andrew Dismore
supported by
Mr Virendra Sharma, John Austin,
Clive Efford, Ms Karen Buck,
Siobhain McDonagh, Rob Marris
and Mr Chris Mullin.*

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