Regulation of Investigatory Powers Act 2000

2000 CHAPTER 23

PART IV

SCRUTINY ETC. OF INVESTIGATORY POWERS AND OF THE FUNCTIONS OF THE INTELLIGENCE SERVICES

Modifications etc. (not altering text)

C1 Pt. IV (ss. 26-48): power to apply (with modifications) conferred (1.10.2002) by 2002 c. 30, **s. 19(2)(b)**; S.I. 2002/2306, **art. 2(b)(v)**

C2 Pt. 4 modified (1.4.2004) by The Independent Police Complaints Commission (Investigatory Powers) Order 2004 (S.I. 2004/815), **art. 3** (as amended (E.W.) (8.1.2018) by The Independent Office for Police Conduct (Transitional and Consequential) Regulations 2017 (S.I. 2017/1250), regs. 1, **10(6)** (with reg. 37))

Commissioners

[F1]57 Interception of Communications Commissioner.

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Textual Amendments

F1 S. 57 repealed (1.9.2017) by Investigatory Powers Act 2016 (c. 25), **ss. 240(2)(a)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(i) (with regs. 6-11)

[F2]58 Co-operation with and reports by s. 57 Commissioner.

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Status: *Point in time view as at 31/12/2018. This version of this part contains provisions that are prospective.*
Changes to legislation: *Regulation of Investigatory Powers Act 2000, Part IV is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F2 S. 58 repealed (1.9.2017) by Investigatory Powers Act 2016 (c. 25), **ss. 240(2)(a)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(i) (with regs. 6-11)

[F3]59 Intelligence Services Commissioner.

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Textual Amendments

F3 S. 59 repealed (1.9.2017) by Investigatory Powers Act 2016 (c. 25), **ss. 240(2)(b)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(i) (with regs. 6-11)

[F4]59A Additional functions of the Intelligence Services Commissioner

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Textual Amendments

F4 S. 59A repealed (1.9.2017) by Investigatory Powers Act 2016 (c. 25), **ss. 240(2)(b)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(i) (with regs. 6-11)

[F5]60 Co-operation with and reports by s. 59 Commissioner.

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Textual Amendments

F5 S. 60 repealed (1.9.2017) by Investigatory Powers Act 2016 (c. 25), **ss. 240(2)(b)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(i) (with regs. 6-11)

61 Investigatory Powers Commissioner for Northern Ireland.

(1) The Prime Minister, after consultation with the First Minister and deputy First Minister in Northern Ireland, shall appoint a Commissioner to be known as the Investigatory Powers Commissioner for Northern Ireland.

(2) The Investigatory Powers Commissioner for Northern Ireland shall keep under review the exercise and performance in Northern Ireland, by the persons on whom they are conferred or imposed, of any powers or duties under Part II which are conferred or imposed by virtue of an order under section 30 made by the Office of the First Minister and deputy First Minister in Northern Ireland.

(3) The Investigatory Powers Commissioner for Northern Ireland shall give the Tribunal all such assistance (including his opinion as to any issue falling to be determined by the Tribunal) as the Tribunal may require—

(a) in connection with the investigation of any matter by the Tribunal; or

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(b) otherwise for the purposes of the Tribunal's consideration or determination of any matter.

(4) It shall be the duty of—

(a) every person by whom, or on whose application, there has been given or granted any authorisation the function of giving or granting which is subject to review by the Investigatory Powers Commissioner for Northern Ireland,

(b) every person who has engaged in conduct with the authority of such an authorisation,

(c) every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (a), and

(d) every person who holds or has held any office, rank or position with any public authority for whose benefit (within the meaning of Part II) activities which are or may be subject to any such review have been or may be carried out,

to disclose or provide to that Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions.

(5) As soon as practicable after the end of each calendar year, the Investigatory Powers Commissioner for Northern Ireland shall make a report to the First Minister and deputy First Minister in Northern Ireland with respect to the carrying out of that Commissioner's functions.

(6) The First Minister and deputy First Minister in Northern Ireland shall lay before the Northern Ireland Assembly a copy of every annual report made by the Investigatory Powers Commissioner for Northern Ireland under subsection (5), together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (7).

(7) If it appears to the First Minister and deputy First Minister in Northern Ireland, after consultation with the Investigatory Powers Commissioner for Northern Ireland, that the publication of any matter in an annual report would be contrary to the public interest or prejudicial to—

(a) the prevention or detection of serious crime, or

(b) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by that Commissioner,

they may exclude that matter from the copy of the report as laid before the Northern Ireland Assembly.

(8) A person shall not be appointed under this section as the Investigatory Powers Commissioner for Northern Ireland unless he holds or has held office in Northern Ireland—

(a) in any capacity in which he is or was the holder of a high judicial office (within the meaning of **[**[F6]Part 3 of the Constitutional Reform Act 2005**]**); or

(b) as a county court judge.

(9) The Investigatory Powers Commissioner for Northern Ireland shall hold office in accordance with the terms of his appointment; and there shall be paid to him out of the Consolidated Fund of Northern Ireland such allowances as the Department of Finance and Personnel may determine.

(10) The First Minister and deputy First Minister in Northern Ireland shall, after consultation with the Investigatory Powers Commissioner for Northern Ireland,

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provide him with such staff as they consider necessary for the carrying out of his functions.

Textual Amendments

F6 Words in s. 61(8)(a) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 145, 148, **Sch. 17 para. 30(3)**; S.I. 2009/1604, **art. 2(e)**

Modifications etc. (not altering text)

C3 S. 61: power to repeal conferred (1.9.2017) by Investigatory Powers Act 2016 (c. 25), **ss. 240(5)(a)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(i) (with regs. 6-11)

[F7]62 Additional functions of Chief Surveillance Commissioner.

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Textual Amendments

F7 S. 62 repealed (1.9.2017) by Investigatory Powers Act 2016 (c. 25), **ss. 240(2)(c)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(i) (with regs. 6-11)

[F8]63 Assistant Surveillance Commissioners.

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Textual Amendments

F8 S. 63 repealed (1.9.2017) by Investigatory Powers Act 2016 (c. 25), **ss. 240(2)(c)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(i) (with regs. 6-11)

64 Delegation of [[F9]functions of the Investigatory Powers Commissioner for Northern Ireland].

(1) Anything authorised or required by or under any enactment [F10]...to be done by **[**[F11]the Investigatory Powers Commissioner for Northern Ireland**]** may be done by any member of the staff of that Commissioner who is authorised for the purpose (whether generally or specifically) by that Commissioner.

[F12](2) . . . . . .

Textual Amendments

F9 Words in s. 64 heading substituted (1.9.2017) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 80(2)** (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(j)

F10 Words in s. 64(1) omitted (1.9.2017) by virtue of Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 80(3)(a)** (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(j)

F11 Words in s. 64(1) substituted (1.9.2017) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 80(3)(b)** (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(j)

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F12 S. 64(2) omitted (1.9.2017) by virtue of Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 80(4)** (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(j)

The Tribunal

65 The Tribunal.

(1) There shall, for the purpose of exercising the jurisdiction conferred on them by this section, be a tribunal consisting of such number of members as Her Majesty may by Letters Patent appoint.

(2) The jurisdiction of the Tribunal shall be—

(a) to be the only appropriate tribunal for the purposes of section 7 of the [M1]Human Rights Act 1998 in relation to any proceedings under subsection (1)(a) of that section (proceedings for actions incompatible with Convention rights) which fall within subsection (3) of this section;

(b) to consider and determine any complaints made to them which, in accordance with subsection (4) [F13]. . . , are complaints for which the Tribunal is the appropriate forum;

(c) to consider and determine any reference to them by any person that he has suffered detriment as a consequence of any prohibition or restriction, by virtue of section 17, on his relying in, or for the purposes of, any civil proceedings on any matter; and

(d) to hear and determine any other such proceedings falling within subsection (3) as may be allocated to them in accordance with provision made by the Secretary of State by order.

(3) Proceedings fall within this subsection if—

(a) they are proceedings against any of the intelligence services;

(b) they are proceedings against any other person in respect of any conduct, proposed conduct, by or on behalf of any of those services;

(c) they are proceedings brought by virtue of section 55(4); **[**[F14] or**]**

[F15](ca) . . . . . .

[F15](cb) . . . . . .

(d) they are proceedings relating to the taking place in any challengeable circumstances of any conduct falling within subsection (5).

(4) The Tribunal is the appropriate forum for any complaint if it is a complaint by a person who is aggrieved by any conduct falling within subsection (5) which he believes—

(a) to have taken place in relation to him, to any of his property, to any communications sent by or to him, or intended for him, or to his use of any postal service, telecommunications service or telecommunication system; and

(b) to have taken place in challengeable circumstances or to have been carried out by or on behalf of any of the intelligence services.

[F16](4A) . . . . . .

(5) Subject to subsection (6), conduct falls within this subsection if (whenever it occurred) it is—

(a) conduct by or on behalf of any of the intelligence services;

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(b) conduct for or in connection with the interception of communications in the course of their transmission by means of a postal service or telecommunication system;

[[F17](ba) conduct for or in connection with the obtaining of secondary data from communications transmitted by means of such a service or system;

(bb) the issue, modification, renewal or service of a warrant under Part 2 or Chapter 1 of Part 6 of the Investigatory Powers Act 2016 (interception of communications);**]**

(c) **[**[F18]conduct of a kind which may be permitted or required by an authorisation or notice under Part 3 of that Act or a warrant under Chapter 2 of Part 6 of that Act (acquisition of communications data);

(cza) the giving of an authorisation or notice under Part 3 of that Act or the issue, modification, renewal or service of a warrant under Chapter 2 of Part 6 of that Act;

(czb) conduct of a kind which may be required or permitted by a retention notice under Part 4 of that Act (retention of communications data) but excluding any conduct which is subject to review by the Information Commissioner;

(czc) the giving or varying of a retention notice under that Part of that Act;

(czd) conduct of a kind which may be required or permitted by a warrant under Part 5 or Chapter 3 of Part 6 of that Act (equipment interference);

(cze) the issue, modification, renewal or service of a warrant under Part 5 or Chapter 3 of Part 6 of that Act;

(czf) the issue, modification, renewal or service of a warrant under Part 7 of that Act (bulk personal dataset warrants);

(czg) the giving of an authorisation under section 219(3)(b) (authorisation for the retention, or retention and examination, of material following expiry of bulk personal dataset warrant);

(czh) the giving or varying of a direction under section 225 of that Act (directions where no bulk personal dataset warrant required);

(czi) conduct of a kind which may be required by a notice under section 252 or 253 of that Act (national security or technical capability notices);

(czj) the giving or varying of such a notice;

(czk) the giving of an authorisation under section 152(5)(c) or 193(5)(c) of that Act (certain authorisations to examine intercepted content or protected material);

(czl) any failure to—

(i) cancel a warrant under Part 2, 5, 6 or 7 of that Act or an authorisation under Part 3 of that Act;

(ii) cancel a notice under Part 3 of that Act;

(iii) revoke a notice under Part 4, or section 252 or 253, of that Act; or

(iv) revoke a direction under section 225 of that Act;

(czm) any conduct in connection with any conduct falling within paragraph (c), (czb), (czd) or (czi);**]**

[[F19](ca) the carrying out of surveillance by a foreign police or customs officer (within the meaning of section 76A);**]**

(d) **[**[F20]other**]** conduct to which Part II applies;

(e) the giving of a notice under section 49 or any disclosure or use of a key to protected information;

(f) any entry on or interference with property or any interference with wireless telegraphy.

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(6) For the purposes only of subsection (3), nothing mentioned in paragraph (d) or (f) of subsection (5) shall be treated as falling within that subsection unless it is conduct by or on behalf of **[**[F21]an immigration officer or**]** a person holding any office, rank or position with—

(a) any of the intelligence services;

(b) any of Her Majesty's forces;

(c) any police force;

[[F22](ca) the Police Investigations and Review Commissioner;**]**

[[F23](d) the National Crime Agency;**]**

[[F24](dza) the Competition and Markets Authority;**]**

[F25](da) . . . . . .

[[F26](f) the Commissioners for Her Majesty's Revenue and Customs;**]**

and section 48(5) applies for the purposes of this subsection as it applies for the purposes of Part II.

[[F27](6A) Subsection (6) does not apply to anything mentioned in paragraph (d) or (f) of subsection (5) which also falls within paragraph (czd) of that subsection.**]**

(7) For the purposes of this section conduct takes place in challengeable circumstances if **[**[F28]it is conduct of a public authority and**]** —

(a) it takes place with the authority, or purported authority, of anything falling within subsection (8); or

(b) the circumstances are such that (whether or not there is such authority) it would not have been appropriate for the conduct to take place without it, or at least without proper consideration having been given to whether such authority should be sought;

but **[**[F29], subject to subsection (7ZA),**]** conduct does not take place in challengeable circumstances to the extent that it is authorised by, or takes place with the permission of, a judicial authority.

[[F30](7ZA) The exception in subsection (7) so far as conduct is authorised by, or takes place with the permission of, a judicial authority does not include conduct authorised by an approval given **[**[F31]by a Judicial Commissioner or under section 32A of this Act or section 75 of the Investigatory Powers Act 2016**]**.**]**

[[F32](7ZB) For the purposes of this section conduct also takes place in challengeable circumstances if it is, or purports to be, conduct falling within subsection (5)(bb), (cza), (czc), (cze), (czf), (czg), (czh), (czj), (czk) or (czl) or (so far as the conduct is, or purports to be, the giving of a notice under section 49) subsection (5)(e).**]**

[[F33](7A) For the purposes of this section conduct also takes place in challengeable circumstances if it takes place, or purports to take place, under section 76A.**]**

(8) The following fall within this subsection—

(a) **[**[F34]a warrant under Part 2, 5, 6 or 7 of the Investigatory Powers Act 2016;**]**

(b) **[**[F34]an authorisation or notice under Part 3 of that Act;

(ba) a retention notice under Part 4 of that Act;

(bb) a direction under section 225 of that Act;

(bc) a notice under section 252 or 253 of that Act;**]**

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(c) an authorisation under Part II of this Act or under any enactment contained in or made under an Act of the Scottish Parliament which makes provision equivalent to that made by that Part;

(d) a permission for the purposes of Schedule 2 to this Act;

(e) a notice under section 49 of this Act; or

(f) an authorisation under section 93 of the [M3]Police Act 1997.

(9) Schedule 3 (which makes further provision in relation to the Tribunal) shall have effect.

[[F35](9A) In subsection (5)(ba) the reference to obtaining secondary data from communications transmitted by means of a postal service or telecommunication system is to be read in accordance with section 16 of the Investigatory Powers Act 2016.**]**

(10) In this section—

(a) references to a key and to protected information shall be construed in accordance with section 56;

(b) references to the disclosure or use of a key to protected information taking place in relation to a person are references to such a disclosure or use taking place in a case in which that person has had possession of the key or of the protected information; and

(c) references to the disclosure of a key to protected information include references to the making of any disclosure in an intelligible form (within the meaning of section 56) of protected information by a person who is or has been in possession of the key to that information;

and the reference in paragraph (b) to a person's having possession of a key or of protected information shall be construed in accordance with section 56.

(11) In this section "judicial authority" means—

(a) any judge of the High Court or of the Crown Court or any Circuit Judge;

(b) any judge of the High Court of Justiciary or any sheriff;

(c) any justice of the peace;

(d) any county court judge or resident magistrate in Northern Ireland;

(e) any person holding any such judicial office as entitles him to exercise the jurisdiction of a judge of the Crown Court or of a justice of the peace.

Textual Amendments

F13 Words in s. 65(2)(b) omitted (21.1.2011) by virtue of Identity Documents Act 2010 (c. 40), ss. 12, 14(2), **Sch. para. 14(2)**

F14 Word at the end of s. 65(3)(c) inserted (21.1.2011) by Identity Documents Act 2010 (c. 40), ss. 12, 14(2), **Sch. para. 14(3)(a)**

F15 S. 65(3)(ca)(cb) and word omitted (21.1.2011) by virtue of Identity Documents Act 2010 (c. 40), ss. 12, 14(2), **Sch. para. 14(3)(b)**

F16 S. 65(4A) omitted (21.1.2011) by virtue of Identity Documents Act 2010 (c. 40), ss. 12, 14(2), **Sch. para. 14(4)**

F17 S. 65(5)(ba)(bb) inserted (27.6.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(1)(b)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/652, reg. 11(e)(i)

F18 S. 65(5)(c)-(czm) substituted for s. 65(5)(c) (12.3.2018 for specified purposes, 27.6.2018 for specified purposes, 22.8.2018 for specified purposes, 5.2.2019 for specified purposes, 22.7.2020 in so far as not already in force) by Investigatory Powers Act 2016 (c. 25), **ss. 243(1)(c)**, 272(1) (with Sch. 9

paras. 7, 8, 10); S.I. 2018/341, reg. 2(c)(i); S.I. 2018/652, reg. 11(e)(ii); S.I. 2018/873, reg. 3(g)(i); S.I. 2019/174, reg. 2(g); S.I. 2020/766, reg. 2(b)

F19 S. 65(5)(ca) inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 90, 94, **Sch. 5 para. 79(a)(i)**; S.I. 2004/786, **art. 3(1)(2)**

F20 Word in s. 65(5)(d) inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 90, 94, **Sch. 5 para. 79(a)(ii)**; S.I. 2004/786, **art. 3(1)(2)**

F21 Words in s. 65(6) inserted (5.12.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(1)(d)(i)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/1246, reg. 3(h)

F22 S. 65(6)(ca) inserted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 33(21)(a)**

F23 S. 65(6)(d) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 96**; S.I. 2013/1682, art. 3(v)

F24 S. 65(6)(dza) inserted (5.12.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(1)(d)(ii)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/1246, reg. 3(h)

F25 S. 65(6)(da) omitted (1.4.2013) by virtue of The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 33(21)(b)**

F26 S. 65(6)(f) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 24**; S.I. 2008/219, **art. 2(b)**

F27 S. 65(6A) inserted (5.12.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(1)(e)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/1246, reg. 3(h)

F28 Words in s. 65(7) inserted (27.6.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(1)(f)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/652, reg. 11(e)(iii)

F29 Words in s. 65(7) inserted (1.11.2012) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 9 para. 12(2)** (with s. 97); S.I. 2012/2075, art. 4(d)

F30 S. 65(7ZA) inserted (1.11.2012) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 9 para. 12(3)** (with s. 97); S.I. 2012/2075, art. 4(d)

F31 Words in s. 65(7ZA) substituted (30.8.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(1)(g)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/940, reg. 2(1)(c) (with regs. 2(2), 7)

F32 S. 65(7ZB) inserted (12.3.2018 for specified purposes, 27.6.2018 for specified purposes, 22.8.2018 for specified purposes, 5.2.2019 for specified purposes, 22.7.2020 in so far as not already in force) by Investigatory Powers Act 2016 (c. 25), **ss. 243(1)(h)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/341, reg. 2(c)(ii); S.I. 2018/652, reg. 11(e)(iv); S.I. 2018/873, reg. 3(g)(ii); S.I. 2019/174, reg. 2(h); S.I. 2020/766, reg. 2(b)

F33 S. 65(7A) inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 90, 94, **Sch. 5 para. 79(b)**; S.I. 2004/786, **art. 3(1)(2)**

F34 S. 65(8)(a)-(bc) substituted for s. 65(8)(a) (12.3.2018 for specified purposes, 27.6.2018 for specified purposes, 22.8.2018 for specified purposes, 1.11.2018 for specified purposes, 5.2.2019 in so far as not already in force) by Investigatory Powers Act 2016 (c. 25), **ss. 243(1)(i)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/341, reg. 2(c)(iii); S.I. 2018/652, reg. 11(e)(v); S.I. 2018/873, regs. 3(g)(iii), 4(d); S.I. 2019/174, reg. 2(i)

F35 S. 65(9A) inserted (27.6.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(1)(j)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/652, reg. 11(e)(vi)

Modifications etc. (not altering text)

C4 S. 65 extended (S.) (29.9.2000) by 2000 asp 11, **ss. 23(1)(2)**, 32(2) (with s. 30); S.I. 2000/341, **art. 2**

C5 S. 65 modified (8.3.2018) by The Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018 (S.I. 2018/341), **reg. 7**

C6 S. 65(8) modified (temp.) (29.5.2018) by The Investigatory Powers Act 2016 (Commencement No. 5 and Transitional and Saving Provisions) Regulations 2018 (S.I. 2018/652), **reg. 19(5)**

C7 S. 65(8)(a) modified (20.8.2018) by The Investigatory Powers Act 2016 (Commencement No. 8 and Transitional and Saving Provisions) Regulations 2018 (S.I. 2018/940), **reg. 8(1)**

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Commencement Information

I1 S. 65 partly in force; s. 65 not in force at Royal Assent see s. 83(2); s. 65(1)(2)(a)(b)(3)(a)(b)(d)(4)(5)(a)(b)(d)(f)(6)(7)(8)(a)(c)(f)(9)(11) in force at 2.10.2000 by S.I. 2000/2543, art. 3 (subject to transitional provisions in art. 6); s. 65(5)(c)(8)(b) in force at 5.1.2004 by S.I. 2003/3140, **art. 2**; s. 65(3)(c)(5)(e)(8)(d)(e)(10) in force at 1.10.2007 by S.I. 2007/2196, **art. 2(f)**

Marginal Citations

M1 1998 c.42
M2 1985 c. 56.
M3 1997 c. 50.

PROSPECTIVE

66 Orders allocating proceedings to the Tribunal.

(1) An order under section 65(2)(d) allocating proceedings to the Tribunal—
- (a) may provide for the Tribunal to exercise jurisdiction in relation to that matter to the exclusion of the jurisdiction of any court or tribunal; but
- (b) if it does so provide, must contain provision conferring a power on the Tribunal, in the circumstances provided for in the order, to remit the proceedings to the court or tribunal which would have had jurisdiction apart from the order.

(2) In making any provision by an order under section 65(2)(d) the Secretary of State shall have regard, in particular, to—
- (a) the need to secure that proceedings allocated to the Tribunal are properly heard and considered; and
- (b) the need to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well-being of the United Kingdom or the continued discharge of the functions of any of the intelligence services.

(3) The Secretary of State shall not make an order under section 65(2)(d) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

67 Exercise of the Tribunal's jurisdiction.

(1) Subject to subsections (4) and (5), it shall be the duty of the Tribunal—
- (a) to hear and determine any proceedings brought before them by virtue of section 65(2)(a) or (d); and
- (b) to consider and determine any complaint or reference made to them by virtue of section 65(2)(b) or (c).

(2) Where the Tribunal hear any proceedings by virtue of section 65(2)(a), they shall apply the same principles for making their determination in those proceedings as would be applied by a court on an application for judicial review.

(3) Where the Tribunal consider a complaint made to them by virtue of section 65(2)(b), it shall be the duty of the Tribunal—

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Changes to legislation: *Regulation of Investigatory Powers Act 2000, Part IV is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) to investigate whether the persons against whom any allegations are made in the complaint have engaged in relation to—
  (i) the complainant,
  (ii) any of his property,
  (iii) any communications sent by or to him, or intended for him, or
  (iv) his use of any postal service, telecommunications service or telecommunication system,

  in any conduct falling within section 65(5);

(b) to investigate the authority (if any) for any conduct falling within section 65(5) which they find has been so engaged in; and

(c) in relation to the Tribunal's findings from their investigations, to determine the complaint by applying the same principles as would be applied by a court on an application for judicial review.

(4) The Tribunal shall not be under any duty to hear, consider or determine any proceedings, complaint or reference if it appears to them that the bringing of the proceedings or the making of the complaint or reference is frivolous or vexatious.

(5) Except where the Tribunal, having regard to all the circumstances, are satisfied that it is equitable to do so, they shall not consider or determine any complaint made by virtue of section 65(2)(b) if it is made more than one year after the taking place of the conduct to which it relates.

(6) Subject to any provision made by rules under section 69, where any proceedings have been brought before the Tribunal or any reference made to the Tribunal, they shall have power to make such interim orders, pending their final determination, as they think fit.

(7) Subject to any provision made by rules under section 69, the Tribunal on determining any proceedings, complaint or reference shall have power to make any such award of compensation or other order as they think fit; and, without prejudice to the power to make rules under section 69(2)(h), the other orders that may be made by the Tribunal include—

(a) an order quashing or cancelling any warrant or authorisation;

[[F36](aza) an order quashing or cancelling a notice under Part 3 of the Investigatory Powers Act 2016 or a retention notice under Part 4 of that Act;

(azb) an order quashing or revoking a direction under section 225 of that Act;

(azc) an order quashing or revoking a notice under section 252 or 253 of that Act;**]**

[[F37](aa) an order quashing an order under section 23A or 32A by the relevant judicial authority (within the meaning of that section);**]** and

(b) an order requiring the destruction of any records of information which—
  (i) has been obtained in exercise of any power conferred by a warrant or authorisation; or
  (ii) is held by any public authority in relation to any person.

(8) **[**[F38]Except as provided by virtue of section 67A,**]** determinations, awards, orders and other decisions of the Tribunal (including decisions as to whether they have jurisdiction) shall not be subject to appeal or be liable to be questioned in any court.

[F39](9) . . . . . .

[F39](10) . . . . . .

[F39](11) . . . . . .

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[F39](12) . . . . . .

Textual Amendments

F36 S. 67(7)(aza)-(azc) inserted (12.3.2018 for specified purposes, 22.8.2018 for specified purposes, 5.2.2019 in so far as not already in force) by Investigatory Powers Act 2016 (c. 25), **ss. 243(2)(a)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/341, reg. 2(c)(iv); S.I. 2018/873, reg. 3(h); S.I. 2019/174, reg. 2(j)(i)

F37 S. 67(7)(aa) inserted (1.11.2012) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 9 para. 13** (with s. 97); S.I. 2012/2075, art. 4(d)

F38 Words in s. 67(8) substituted (31.12.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 242(2)(a)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/1379, reg. 2

F39 S. 67(9)-(12) omitted (31.12.2018) by virtue of Investigatory Powers Act 2016 (c. 25), **ss. 242(2)(b)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/1379, reg. 2

Modifications etc. (not altering text)

C8 S. 67(7) applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(i) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), **ss. 15**, 53 (with s. 20); S.I. 2007/2045, **art. 2(2)(3)(j)** (with art. 3))

C9 S. 67(8) applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(i) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), **ss. 15**, 53 (with s. 20); S.I. 2007/2045, **art. 2(2)(3)(j)** (with art. 3))

Commencement Information

I2 S. 67 partly in force; s. 67 not in force at Royal Assent see s. 83(1); s. 67(2)-(8)(10)-(12) in force at 2.10.2000 and s. 67(1) in force 2.10.2000 for certain purposes by S.I.2543, art. 3

[[F40]67A Appeals from the Tribunal

(1) A relevant person may appeal on a point of law against any determination of the Tribunal of a kind mentioned in section 68(4) or any decision of the Tribunal of a kind mentioned in section 68(4C).

(2) Before making a determination or decision which might be the subject of an appeal under this section, the Tribunal must specify the court which is to have jurisdiction to hear the appeal (the "relevant appellate court").

(3) This court is whichever of the following courts appears to the Tribunal to be the most appropriate—
  (a) the Court of Appeal in England and Wales,
  (b) the Court of Session.

(4) The Secretary of State may by regulations, with the consent of the Northern Ireland Assembly, amend subsection (3) so as to add the Court of Appeal in Northern Ireland to the list of courts mentioned there.

(5) The Secretary of State may by regulations specify criteria to be applied by the Tribunal in making decisions under subsection (2) as to the identity of the relevant appellate court.

(6) An appeal under this section—
  (a) is to be heard by the relevant appellate court, but

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(b) may not be made without the leave of the Tribunal or, if that is refused, of the relevant appellate court.

(7) The Tribunal or relevant appellate court must not grant leave to appeal unless it considers that—

(a) the appeal would raise an important point of principle or practice, or

(b) there is another compelling reason for granting leave.

(8) In this section—

"relevant appellate court" has the meaning given by subsection (2),

"relevant person", in relation to any proceedings, complaint or reference, means the complainant or—

(a) in the case of proceedings, the respondent,

(b) in the case of a complaint, the person complained against, and

(c) in the case of a reference, any public authority to whom the reference relates.**]**

Textual Amendments

F40 S. 67A inserted (31.12.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 242(1)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/1379, reg. 2 (with reg. 3)

68 Tribunal procedure.

(1) Subject to any rules made under section 69, the Tribunal shall be entitled to determine their own procedure in relation to any proceedings, complaint or reference brought before or made to them.

(2) The Tribunal shall have power—

(a) in connection with the investigation of any matter, or

(b) otherwise for the purposes of the Tribunal's consideration or determination of any matter,

to require a relevant Commissioner appearing to the Tribunal to have functions in relation to the matter in question to provide the Tribunal with all such assistance (including that Commissioner's opinion as to any issue falling to be determined by the Tribunal) as the Tribunal think fit.

(3) Where the Tribunal hear or consider any proceedings, complaint or reference relating to any matter, they shall secure that every relevant Commissioner appearing to them to have functions in relation to that matter—

(a) is aware that the matter is the subject of proceedings, a complaint or a reference brought before or made to the Tribunal; and

(b) is kept informed of any determination, award, order or other decision made by the Tribunal with respect to that matter.

(4) Where the Tribunal determine any proceedings, complaint or reference brought before or made to them, they shall give notice to the complainant which (subject to any rules made by virtue of section 69(2)(i)) shall be confined, as the case may be, to either—

(a) a statement that they have made a determination in his favour; or

(b) a statement that no determination has been made in his favour.

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[[F41](4A) Where the Tribunal make any determination of a kind mentioned in subsection (4), they must also give notice to—

(a) in the case of proceedings, the respondent,

(b) in the case of a complaint, the person complained against, and

(c) in the case of a reference, any public authority to whom the reference relates.

(4B) A notice under subsection (4A) is (subject to any rules made by virtue of section 69(2)(j)) to be confined, as the case may be, to either—

(a) a statement that they have made a determination in the complainant's favour, or

(b) a statement that no determination has been made in the complainant's favour.

(4C) Where the Tribunal make any decision which—

(a) is a final decision of a preliminary issue in relation to any proceedings, complaint or reference brought before or made to them, and

(b) is neither a determination of a kind mentioned in subsection (4) nor a decision relating to a procedural matter,

they must give notice of that decision to every person who would be entitled to receive notice of the determination under subsection (4) or (4A).

(4D) A notice under subsection (4C) is (subject to any rules made by virtue of section 69(2)(i) or (j)) to be confined to a statement as to what the decision is.

(4E) Subsections (4C) and (4D) do not apply so far as—

(a) the Tribunal are prevented from giving notice of a decision to a person by rules made by virtue of section 69(4) or decide under such rules not to give such a notice, or

(b) the giving of such a notice is inconsistent with such rules.**]**

(5) Where—

(a) the Tribunal make a determination in favour of any person by whom any proceedings have been brought before the Tribunal or by whom any complaint or reference has been made to the Tribunal, and

(b) the determination relates to any act or omission by or on behalf of the Secretary of State or to conduct for which any warrant, authorisation or permission **[**[F42], or notice under Part 4 of the Investigatory Powers Act 2016 or under section 252 or 253 of that Act or direction under section 225 of that Act,**]** was issued, granted or given by the Secretary of State,

they shall make a report of their findings to the Prime Minister.

(6) It shall be the duty of the persons specified in subsection (7) to disclose or provide to the Tribunal all such documents and information as the Tribunal may require for the purpose of enabling them—

(a) to exercise the jurisdiction conferred on them by or under section 65; or

(b) otherwise to exercise or perform any power or duty conferred or imposed on them by or under this Act **[**[F43]or the Investigatory Powers Act 2016**]**.

(7) Those persons are—

(a) every person holding office under the Crown;

[F44](b) . . . . . .

[F45](ba) . . . . . .

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(d) every person employed by or for the purposes of a police force;

[[F46](da) the Police Investigations and Review Commissioner and every member of the Commissioner's staff;**]**

(e) every person required for the purposes of **[**[F47]section 41, 126, 149, 168 or 190 of the Investigatory Powers Act 2016**]** to provide assistance with giving effect to **[**[F48]a warrant**]**;

(f) every person on whom an obligation to take any steps has been imposed under **[**[F49]section 252 or 253 of that Act**]**;

[[F50](g) every person by or to whom an authorisation under Part 3 of that Act has been granted;

(h) every person to whom a notice under Part 3 of that Act has been given;

(ha) every person to whom a retention notice under Part 4 of that Act or a notice under section 252 or 253 of that Act has been given;**]**

(i) every person by whom, or on whose application, there has been granted or given any authorisation under Part II of this Act or under Part III of the [M4]Police Act 1997;

(j) every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (i);

(k) every person who has engaged in any conduct with the authority of**[**[F51]—

(i) an authorisation under Part 3 of the Investigatory Powers Act 2016, Part 2 of this Act or Part 3 of the Police Act 1997, or

(ii) a warrant under Chapter 2 of Part 6 of the Investigatory Powers Act 2016;**]**

(l) every person who holds or has held any office, rank or position with a public authority for whose benefit any such authorisation **[**[F52]or warrant**]** has been or may be given;

(m) every person to whom a notice under section 49 has been given; and

(n) every person who is or has been employed for the purposes of any business of a person falling within paragraph (e), (f), (h) **[**[F53], (ha)**]** or (m).

(8) In this section "relevant Commissioner" means the **[**[F54]Investigatory Powers Commissioner or any other Judicial Commissioner or the Investigatory Powers Commissioner for Northern Ireland**]**.

Textual Amendments

F41 S. 68(4A)-(4E) inserted (31.12.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 242(3)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/1379, reg. 2

F42 Words in s. 68(5)(b) inserted (12.3.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(3)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/341, reg. 2(c)(v)

F43 Words in s. 68(6)(b) inserted (12.3.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(4)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/341, reg. 2(c)(vi)

F44 S. 68(7)(b) omitted (7.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 97**; S.I. 2013/1682, art. 3(v)

F45 S. 68(7)(ba) omitted (1.4.2013) by virtue of The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 33(22)(a)**

F46 S. 68(7)(da) inserted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 33(22)(b)**

F47 Words in s. 68(7)(e) substituted (27.6.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(5)(a)(i)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/652, reg. 11(e)(vii)

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F48 Words in s. 68(7)(e) substituted (27.6.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(5)(a)(ii)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/652, reg. 11(e)(vii)

F49 Words in s. 68(7)(f) substituted (12.3.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(5)(b)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/341, reg. 2(c)(vii)

F50 S. 68(7)(g)-(ha) substituted for s. 68(g)(h) (12.3.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(5)(c)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/341, reg. 2(c)(vii)

F51 Words in s. 68(7)(k) substituted (22.8.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(5)(d)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/873, reg. 3(i)

F52 Words in s. 68(7)(l) inserted (22.8.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(5)(e)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/873, reg. 3(i)

F53 Word in s. 68(7)(n) inserted (27.6.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(5)(f)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/652, reg. 11(e)(vii)

F54 Words in s. 68(8) substituted (12.3.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 243(6)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/341, reg. 2(c)(viii)

Modifications etc. (not altering text)

C10 S. 68 applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(ii) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), **ss. 15**, 53 (with s. 20); S.I. 2007/2045, **art. 2(2)(3)(j)** (with art. 3))

C11 S. 68 modified (8.3.2018) by The Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018 (S.I. 2018/341), **reg. 7**

C12 S. 68 modified (18.7.2018) by The Investigatory Powers Act 2016 (Commencement No. 7 and Transitional and Saving Provisions) Regulations 2018 (S.I. 2018/873), **reg. 10**

C13 S. 68(7) modified (temp.) (29.5.2018) by The Investigatory Powers Act 2016 (Commencement No. 5 and Transitional and Saving Provisions) Regulations 2018 (S.I. 2018/652), **reg. 19(5)**

C14 S. 68(7) modified (temp.) (29.5.2018) by The Investigatory Powers Act 2016 (Commencement No. 5 and Transitional and Saving Provisions) Regulations 2018 (S.I. 2018/652), **reg. 26**

C15 S. 68(7)(e) modified (temp.) (29.5.2018) by The Investigatory Powers Act 2016 (Commencement No. 5 and Transitional and Saving Provisions) Regulations 2018 (S.I. 2018/652), **reg. 19(3)(c)**

C16 S. 68(7)(e) modified (20.8.2018) by The Investigatory Powers Act 2016 (Commencement No. 8 and Transitional and Saving Provisions) Regulations 2018 (S.I. 2018/940), **reg. 8(2)**(3)

Commencement Information

I3 S. 68 wholly in force at 1.10.2007; s. 68 not in force at Royal Assent see s. 83(2); s. 68 in force except s. 68(7)(g)(h)(m) and s. 68(7)(n) in respect of s. 68(7)(m) at 2.10.2000 by S.I. 2000/2543, art. 3; s. 68(7)(g)(h) in force at 5.1.2004 by S.I. 2003/3140, **art. 2**; s. 68(7)(m) in force and (n) in force for certain purposes at 1.10.2007 by S.I. 2007/2196, **art. 2(g)**

Marginal Citations

M4 1997 c. 50.

69 Tribunal rules.

(1) The Secretary of State may make rules regulating—

(a) the exercise by the Tribunal of the jurisdiction conferred on them by or under section 65; and

(b) any matters preliminary or incidental to, or arising out of, the hearing or consideration of any proceedings, complaint or reference brought before or made to the Tribunal.

(2) Without prejudice to the generality of subsection (1), rules under this section may—

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(a) enable the jurisdiction of the Tribunal to be exercised at any place in the United Kingdom by any two or more members of the Tribunal designated for the purpose by the President of the Tribunal;

(b) enable different members of the Tribunal to carry out functions in relation to different complaints at the same time;

(c) prescribe the form and manner in which proceedings are to be brought before the Tribunal or a complaint or reference is to be made to the Tribunal;

(d) require persons bringing proceedings or making complaints or references to take such preliminary steps, and to make such disclosures, as may be specified in the rules for the purpose of facilitating a determination of whether—

(i) the bringing of the proceedings, or

(ii) the making of the complaint or reference,

is frivolous or vexatious;

(e) make provision about the determination of any question as to whether a person by whom—

(i) any proceedings have been brought before the Tribunal, or

(ii) any complaint or reference has been made to the Tribunal,

is a person with a right to bring those proceedings or make that complaint or reference;

(f) prescribe the forms of hearing or consideration to be adopted by the Tribunal in relation to particular proceedings, complaints or references (including a form that requires any proceedings brought before the Tribunal to be disposed of as if they were a complaint or reference made to the Tribunal);

(g) prescribe the practice and procedure to be followed on, or in connection with, the hearing or consideration of any proceedings, complaint or reference (including, where applicable, the mode and burden of proof and the admissibility of evidence);

(h) prescribe orders that may be made by the Tribunal under section 67(6) or (7);

(i) require information about any determination, award, order or other decision made by the Tribunal in relation to any proceedings, complaint or reference to be provided (in addition to any statement under section 68(4) **[**[F55]or notice under section 68(4C)**]**) to the person who brought the proceedings or made the complaint or reference, or to the person representing his interests**[**[F56];

(j) require information about any determination, award, order or other decision made by the Tribunal in relation to any proceedings, complaint or reference to be provided (in addition to any statement under section 68(4A) or notice under section 68(4C)) to—

(i) in the case of proceedings, the respondent,

(ii) in the case of a complaint, the person complained against, and

(iii) in the case of a reference, any public authority to whom the reference relates,

or to the person representing their interests;

(k) make provision about the making and determination of applications to the Tribunal for permission to appeal**]**

(3) Rules under this section in relation to the hearing or consideration of any matter by the Tribunal may provide—

(a) for a person who has brought any proceedings before or made any complaint or reference to the Tribunal to have the right to be legally represented;

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(b) for the manner in which the interests of a person who has brought any proceedings before or made any complaint or reference to the Tribunal are otherwise to be represented;

(c) for the appointment in accordance with the rules, by such person as may be determined in accordance with the rules, of a person to represent those interests in the case of any proceedings, complaint or reference.

(4) The power to make rules under this section includes power to make rules—

(a) enabling or requiring the Tribunal to hear or consider any proceedings, complaint or reference without the person who brought the proceedings or made the complaint or reference having been given full particulars of the reasons for any conduct which is the subject of the proceedings, complaint or reference;

(b) enabling or requiring the Tribunal to take any steps in exercise of their jurisdiction in the absence of any person (including the person bringing the proceedings or making the complaint or reference and any legal representative of his);

(c) enabling or requiring the Tribunal to give a summary of any evidence taken in his absence to the person by whom the proceedings were brought or, as the case may be, to the person who made the complaint or reference;

(d) enabling or requiring the Tribunal to exercise their jurisdiction, and to exercise and perform the powers and duties conferred or imposed on them (including, in particular, in relation to the giving of reasons), in such manner provided for in the rules as prevents or limits the disclosure of particular matters.

(5) Rules under this section may also include provision—

(a) enabling powers or duties of the Tribunal that relate to matters preliminary or incidental to the hearing or consideration of any proceedings, complaint or reference to be exercised or performed by a single member of the Tribunal; and

(b) conferring on the Tribunal such ancillary powers as the Secretary of State thinks necessary for the purposes of, or in connection with, the exercise of the Tribunal's jurisdiction, or the exercise or performance of any power or duty conferred or imposed on them.

(6) In making rules under this section the Secretary of State shall have regard, in particular, to—

(a) the need to secure that matters which are the subject of proceedings, complaints or references brought before or made to the Tribunal are properly heard and considered; and

(b) the need to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well-being of the United Kingdom or the continued discharge of the functions of any of the intelligence services.

(7) Rules under this section may make provision by the application, with or without modification, of the provision from time to time contained in specified rules of court.

(8) Subject to subsection (9), no rules shall be made under this section unless a draft of them has first been laid before Parliament and approved by a resolution of each House.

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(9) Subsection (8) does not apply in the case of the rules made on the first occasion on which the Secretary of State exercises his power to make rules under this section.

(10) The rules made on that occasion shall cease to have effect at the end of the period of forty days beginning with the day on which they were made unless, before the end of that period, they have been approved by a resolution of each House of Parliament.

(11) For the purposes of subsection (10)—

(a) the rules' ceasing to have effect shall be without prejudice to anything previously done or to the making of new rules; and

(b) in reckoning the period of forty days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(12) The Secretary of State shall consult the Scottish Ministers before making any rules under this section; and any rules so made shall be laid before the Scottish Parliament.

Textual Amendments

F55 Words in s. 69(2)(i) inserted (31.12.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 242(4)(a)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/1379, reg. 2

F56 S. 69(2)(j)(k) inserted (31.12.2018) by Investigatory Powers Act 2016 (c. 25), **ss. 242(4)(b)**, 272(1) (with Sch. 9 paras. 7, 8, 10); S.I. 2018/1379, reg. 2

Modifications etc. (not altering text)

C17 S. 69 applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(iii) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), **ss. 15**, 53 (with s. 20); S.I. 2007/2045, **art. 2(2)(3)(j)** (with art. 3))

70 Abolition of jurisdiction in relation to complaints.

(1) The provisions set out in subsection (2) (which provide for the investigation etc. of certain complaints) shall not apply in relation to any complaint made after the coming into force of this section.

(2) Those provisions are—

(a) section 5 of, and Schedules 1 and 2 to, the [M5]Security Service Act 1989 (investigation of complaints about the Security Service made to the Tribunal established under that Act);

(b) section 9 of, and Schedules 1 and 2 to, the [M6]Intelligence Services Act 1994 (investigation of complaints about the Secret Intelligence Service or GCHQ made to the Tribunal established under that Act); and

(c) section 102 of, and Schedule 7 to, the [M7]Police Act 1997 (investigation of complaints made to the Surveillance Commissioners).

Marginal Citations

M5 1989 c. 5.

M6 1994 c. 13.

M7 1997 c. 50.

Status: *Point in time view as at 31/12/2018. This version of this part contains provisions that are prospective.*
Changes to legislation: *Regulation of Investigatory Powers Act 2000, Part IV is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Codes of practice

71 Issue and revision of codes of practice.

(1) The Secretary of State shall issue one or more codes of practice relating to the exercise and performance of the powers and duties mentioned in subsection (2).

(2) Those powers and duties are those (excluding any power to make subordinate legislation **[**[F57]and subject to subsection (10)**]**) that are conferred or imposed otherwise than on **[**[F58]a Judicial Commissioner **][**[F59]or the relevant judicial authority (within the meaning of section 23A or 32A)**]** by or under—

(a) **[**[F60]Parts 2 and 3**]** of this Act;

(b) section 5 of the [M8]Intelligence Services Act 1994 (warrants for interference with property or wireless telegraphy for the purposes of the intelligence services); and

(c) Part III of the [M9]Police Act 1997 (authorisation by the police or **[**[F61]Her Majesty's Revenue and Customs**]** of interference with property or wireless telegraphy).

[F62](2A) . . . . . .

(3) Before issuing a code of practice under subsection (1), the Secretary of State shall—

(a) prepare and publish a draft of that code; and

(b) consider any representations made to him about the draft;

and the Secretary of State may incorporate in the code finally issued any modifications made by him to the draft after its publication.

(4) The Secretary of State shall lay before both Houses of Parliament every draft code of practice prepared and published by him under this section.

(5) A code of practice issued by the Secretary of State under this section shall not be brought into force except in accordance with an order made by the Secretary of State.

(6) An order under subsection (5) may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the bringing into force of the code brought into force by that order.

(7) The Secretary of State may from time to time—

(a) revise the whole or any part of a code issued under this section; and

(b) issue the revised code.

(8) Subsections **[**[F63](3)**]** to (6) shall apply (with appropriate modifications) in relation to the issue of any revised code under this section as they apply in relation to the first issue of such a code.

(9) The Secretary of State shall not make an order containing provision for any of the purposes of this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

[F64](10) . . . . . .

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Textual Amendments

F57 Words in s. 71(2) inserted (17.6.2011) by The Regulation of Investigatory Powers (Monetary Penalty Notices and Consents for Interceptions) Regulations 2011 (S.I. 2011/1340), regs. 1(2), **2(2)**

F58 Words in s. 71(2) substituted (1.9.2017) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 81** (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(j)

F59 Words in s. 71(2) inserted (1.11.2012) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 9 para. 14** (with s. 97); S.I. 2012/2075, art. 4(d)

F60 Words in s. 71(2)(a) substituted (27.12.2018) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 5(2)** (with Sch. 9 paras. 7, 8, 10); S.I. 2018/940, reg. 5(a)

F61 Words in s. 71(2)(c) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 25**; S.I. 2008/219, **art. 2(b)**

F62 S. 71(2A) omitted (27.12.2018) by virtue of Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 5(3)** (with Sch. 9 paras. 7, 8, 10); S.I. 2018/940, reg. 5(a)

F63 Word in s. 71(8) substituted (27.12.2018) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 5(4)** (with Sch. 9 paras. 7, 8, 10); S.I. 2018/940, reg. 5(a)

F64 S. 71(10) omitted (27.12.2018) by virtue of Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 47** (with Sch. 9 paras. 7, 8, 10); S.I. 2018/940, reg. 5(g)

Modifications etc. (not altering text)

C18 S. 71 modified (31.7.2014) by The Data Retention Regulations 2014 (S.I. 2014/2042), regs. 1(2), **10(3)**, 15(7)

C19 S. 71(2) modified (31.7.2014) by The Data Retention Regulations 2014 (S.I. 2014/2042), regs. 1(2), **10(2)**, 15(7)

C20 S. 71(10) modified (temp.) (29.5.2018) by The Investigatory Powers Act 2016 (Commencement No. 5 and Transitional and Saving Provisions) Regulations 2018 (S.I. 2018/652), **reg. 19(4)**

Commencement Information

I4 S. 71 not in force at Royal Assent see s. 83(2); s. 71 in force for certain purposes at 25.9.2000 and 2.10.2000 by S.I. 2000/2543, arts. 2, 3; s. 71 in force for certain other purposes at 13.8.2001 by S.I. 2001/2727, art. 2; s. 71 in force for further certain purposes at 1.10.2007 by S.I. 2007/2196, **art. 2(h)**

Marginal Citations

M8 1994 c. 13.

M9 1997 c. 50.

72 Effect of codes of practice.

(1) A person exercising or performing any power or duty in relation to which provision may be made by a code of practice under section 71 shall, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice for the time being in force under that section.

(2) A failure on the part of any person to comply with any provision of a code of practice for the time being in force under section 71 shall not of itself render him liable to any criminal or civil proceedings.

(3) A code of practice in force at any time under section 71 shall be admissible in evidence in any criminal or civil proceedings.

(4) If any provision of a code of practice issued or revised under section 71 appears to—

(a) the court or tribunal conducting any civil or criminal proceedings,

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(b) the Tribunal,

[[F65](ba) the Investigatory Powers Commissioner for Northern Ireland carrying out functions under this Act, or**]**

[[F65](bb) the Investigatory Powers Commissioner or any other Judicial Commissioner carrying out functions under this Act, the Investigatory Powers Act 2016 or the Police Act 1997,**]**

to be relevant to any question arising in the proceedings, or in connection with the exercise of that jurisdiction or the carrying out of those functions, in relation to a time when it was in force, that provision of the code shall be taken into account in determining that question.

[F66](5) . . . . . .

Textual Amendments

F65 S. 72(4)(ba)(bb) substituted (1.9.2017) for s. 72(4)(c)-(e) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 82(2)** (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(j)

F66 S. 72(5) omitted (1.9.2017) by virtue of Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 para. 82(3)** (with Sch. 9 paras. 7, 8, 10); S.I. 2017/859, reg. 2(j)

Modifications etc. (not altering text)

C21 S. 72(4) modified (31.7.2014) by The Data Retention Regulations 2014 (S.I. 2014/2042), regs. 1(2), **10(4)**, 15(7)

Commencement Information

I5 S. 72 not in force at Royal Assent see s. 83(2); s. 72 in force for certain purposes at 25.9.2000 and s. 72 in force at 2.10.2000 for certain other purposes by S.I. 2000/2543, arts. 2, 3; s. 72 in force for certain other purposes at 13.8.2001 by S.I. 2001/2727, art. 2; s. 72 in force for further certain purposes at 1.10.2007 by S.I. 2007/2196, **art. 2(h)**

Status:
Point in time view as at 31/12/2018. This version of this part contains provisions that are prospective.

Changes to legislation:
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