



Justice and Security (Northern Ireland) Act 2007

2007 CHAPTER 6

Human Rights Commission

15 Investigations: evidence

After section 69 of the Northern Ireland Act 1998 (Human Rights Commission functions) insert—

“69A Investigations: evidence

- (1) For the purpose of an investigation under section 69(8) the Commission may by notice in writing require a person—
 - (a) to provide information in his possession,
 - (b) to produce documents in his possession, or
 - (c) to give oral evidence.
- (2) A notice may include provision about—
 - (a) the form of information, documents or evidence;
 - (b) timing.
- (3) A notice—
 - (a) may not require a person to provide information that he is prohibited from disclosing by virtue of an enactment,
 - (b) may not require a person to do anything that he could not be compelled to do in proceedings before the High Court, and
 - (c) may not require a person to attend at a place unless the Commission undertakes to pay the expenses of his journey.
- (4) The Commission may issue a notice under subsection (1) only if it has—
 - (a) considered whether the matter to which the notice relates has already been sufficiently investigated by another person, and

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- (b) concluded that it has not.
- (5) The recipient of a notice may apply to a county court to have the notice cancelled on the grounds that the requirement imposed by the notice—
 - (a) is unnecessary having regard to the purpose of the investigation to which the notice relates,
 - (b) contravenes subsection (4) or section 69D, or
 - (c) is otherwise unreasonable.
- (6) Subsection (7) applies where the Commission thinks that a person—
 - (a) has failed without reasonable excuse to comply with a notice, or
 - (b) is likely to fail without reasonable excuse to comply with a notice.
- (7) The Commission may apply to a county court for an order requiring a person to take such steps as may be specified in the order to comply with the notice.
- (8) A person commits an offence if without reasonable excuse he—
 - (a) fails to comply with a notice,
 - (b) fails to comply with an order under subsection (7),
 - (c) falsifies anything provided or produced in accordance with a notice or order, or
 - (d) makes a false statement in giving oral evidence in accordance with a notice.
- (9) A person who is guilty of an offence under subsection (8) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) A notice under this section may not require the Public Prosecution Service for Northern Ireland to supply documents or evidence about a decision whether or not to institute or continue criminal proceedings.

69B Investigations: national security

- (1) Where a person is given a notice under section 69A(1) he shall disregard it, and notify the Commission that he is disregarding it, in so far as he thinks it would require him—
 - (a) to disclose sensitive information within the meaning of paragraph 4 of Schedule 3 to the Intelligence Services Act 1994 (c. 13) (Intelligence and Security Committee),
 - (b) to disclose information which might lead to the identification of an employee or agent of an intelligence service (other than one whose identity is already known to the Commission),
 - (c) to disclose information which might provide details of processes used in recruiting, selecting or training employees or agents of an intelligence service,
 - (d) to disclose information which might provide details of, or cannot practicably be separated from, information falling within any of paragraphs (a) to (c),
 - (e) to make a disclosure of information relating to an intelligence service which would prejudice the interests of national security, or

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- (f) to make a disclosure of information relating to the Police Service of Northern Ireland which would prejudice the interests of national security.
- (2) Where in response to a notice under section 69A(1) a person gives a notice to the Commission under subsection (1) above—
- (a) section 69A(7) and (8) shall not apply in relation to that part of the notice under section 69A(1) to which the notice under subsection (1) above relates,
 - (b) the Commission may apply to the tribunal established by section 65 of the Regulation of Investigatory Powers Act 2000 (c. 23) for an order requiring the person to take such steps as may be specified in the order to comply with the notice,
 - (c) the following provisions of that Act shall apply in relation to proceedings under this subsection as they apply in relation to proceedings under that Act (with any necessary modifications)—
 - (i) section 67(7), (8) and (10) to (12) (determination),
 - (ii) section 68 (procedure), and
 - (iii) section 69 (rules), and
 - (d) the tribunal shall determine proceedings under this subsection by considering the opinion of the person who gave the notice under subsection (1) above in accordance with the principles that would be applied by a court on an application for judicial review of the giving of the notice.
- (3) Where the Commission receives information or documents from or relating to an intelligence service in response to a notice under section 69A(1), the Commission shall store and use the information or documents in accordance with any arrangements specified by the Secretary of State.
- (4) The recipient of a notice under section 69A(1) may apply to the High Court to have the notice cancelled on the grounds that the requirement imposed by the notice is undesirable for reasons of national security, other than for the reason that it would require a disclosure of a kind to which subsection (1) above applies.
- (5) An investigation under section 69(8) may not consider—
- (a) whether an intelligence service has acted (or is acting) in a way which is incompatible with a person's human rights, or
 - (b) other matters concerning human rights in relation to an intelligence service.
- (6) In this section “intelligence service” means—
- (a) the Security Service,
 - (b) the Secret Intelligence Service, and
 - (c) the Government Communications Headquarters.”

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