



Regulation of Investigatory Powers Act 2000

2000 CHAPTER 23

PART IV

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

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 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), 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—

Status: This is the original version (as it was originally enacted).

- (a) they are proceedings against any of the intelligence services;
 - (b) they are proceedings against any other person in respect of any conduct, or proposed conduct, by or on behalf of any of those services;
 - (c) they are proceedings brought by virtue of section 55(4); or
 - (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.
- (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;
 - (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;
 - (c) conduct to which Chapter II of Part I applies;
 - (d) 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.
- (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 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;
 - (d) the National Criminal Intelligence Service;
 - (e) the National Crime Squad; or
 - (f) the Commissioners of Customs and Excise;
- and section 48(5) applies for the purposes of this subsection as it applies for the purposes of Part II.
- (7) For the purposes of this section conduct takes place in challengeable circumstances if—
- (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 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.

- (8) The following fall within this subsection—
- (a) an interception warrant or a warrant under the Interception of Communications Act 1985;
 - (b) an authorisation or notice under Chapter II of Part I of this Act;
 - (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 Police Act 1997.
- (9) Schedule 3 (which makes further provision in relation to the Tribunal) shall have effect.
- (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.

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—
- (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; 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) Except to such extent as the Secretary of State may by order otherwise provide, 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.
- (9) It shall be the duty of the Secretary of State to secure that there is at all times an order under subsection (8) in force allowing for an appeal to a court against any exercise by the Tribunal of their jurisdiction under section 65(2)(c) or (d).
- (10) The provision that may be contained in an order under subsection (8) may include—
- (a) provision for the establishment and membership of a tribunal or body to hear appeals;
 - (b) the appointment of persons to that tribunal or body and provision about the remuneration and allowances to be payable to such persons and the expenses of the tribunal;
 - (c) the conferring of jurisdiction to hear appeals on any existing court or tribunal; and
 - (d) any such provision in relation to an appeal under the order as corresponds to provision that may be made by rules under section 69 in relation to proceedings before the Tribunal, or to complaints or references made to the Tribunal.
- (11) The Secretary of State shall not make an order under subsection (8) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (12) The Secretary of State shall consult the Scottish Ministers before making any order under subsection (8); and any such order shall be laid before the Scottish Parliament.

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.
- (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 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.
- (7) Those persons are—
- (a) every person holding office under the Crown;
 - (b) every member of the National Criminal Intelligence Service;
 - (c) every member of the National Crime Squad;
 - (d) every person employed by or for the purposes of a police force;
 - (e) every person required for the purposes of section 11 to provide assistance with giving effect to an interception warrant;
 - (f) every person on whom an obligation to take any steps has been imposed under section 12;
 - (g) every person by or to whom an authorisation under section 22(3) has been granted;
 - (h) every person to whom a notice under section 22(4) 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 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 an authorisation under section 22 or Part II of this Act or under Part III of the Police Act 1997;

- (l) every person who holds or has held any office, rank or position with a public authority for whose benefit any such authorisation 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) or (m).
- (8) In this section “relevant Commissioner” means the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Investigatory Powers Commissioner for Northern Ireland or any Surveillance Commissioner or Assistant Surveillance Commissioner.

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—
- (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)) to the person who brought the proceedings or made the complaint or reference, or to the person representing his interests.
- (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;
 - (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.
- (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.

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 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 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 Police Act 1997 (investigation of complaints made to the Surveillance Commissioners).