



# 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 <sup>M1</sup>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) <sup>F1</sup>. . . , 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—

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- (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); [<sup>F2</sup> or]
  - <sup>F3</sup>(ca) .....
  - <sup>F3</sup>(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.
- <sup>F4</sup>(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;
  - (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;
  - [<sup>F5</sup>(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) [<sup>F6</sup>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);

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- (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);]
  - [<sup>F7</sup>(ca) the carrying out of surveillance by a foreign police or customs officer (within the meaning of section 76A);]
  - (d) [<sup>F8</sup>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.
- (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;
- [<sup>F9</sup>(ca) the Police Investigations and Review Commissioner;]
- [<sup>F10</sup>(d) the National Crime Agency;]
- <sup>F11</sup>(da) .....
- [<sup>F12</sup>(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.
- (7) For the purposes of this section conduct takes place in challengeable circumstances if [<sup>F13</sup>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 [<sup>F14</sup>, 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.

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- [<sup>F15</sup>(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 under section 23A or 32A.]
- [<sup>F16</sup>(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).]
- [<sup>F17</sup>(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) [<sup>F18</sup>a warrant under Part 2, 5, 6 or 7 of the Investigatory Powers Act 2016;]
  - (b) [<sup>F18</sup>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;]
  - (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 <sup>M3</sup>Police Act 1997.
- (9) Schedule 3 (which makes further provision in relation to the Tribunal) shall have effect.
- [<sup>F19</sup>(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;

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- (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

- F1** 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\(2\)](#)
- F2** 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\(3\)\(a\)](#)
- F3** 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\(3\)\(b\)](#)
- F4** S. 65(4A) omitted (21.1.2011) by virtue of [Identity Documents Act 2010 \(c. 40\)](#), ss. 12, 14(2), [Sch. para. 14\(4\)](#)
- F5** 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\(e\)\(i\)](#)
- F6** 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\(b\)](#)
- F7** 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\(1\)\(2\)](#)
- F8** 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\(1\)\(2\)](#)
- F9** 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\(21\)\(a\)](#)
- F10** 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\(v\)](#)
- F11** 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\(21\)\(b\)](#)
- F12** 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\(b\)](#)
- F13** 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\(e\)\(iii\)](#)
- F14** 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\(d\)](#)
- F15** 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\(d\)](#)
- F16** 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\(b\)](#)
- F17** 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\(1\)\(2\)](#)
- F18** 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\(i\)](#)

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- F19** 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)**

- C1** 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**
- C2** 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**
- C3** 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)**
- C4** 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)**

#### **Commencement Information**

- II** 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](#).

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