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## SCHEDULES

### SCHEDULE 2

Sections 16, 20 and 31

#### INQUIRIES, INVESTIGATIONS AND ASSESSMENTS

##### *Introduction*

- 1 This Schedule applies to—
- (a) inquiries under section 16,
  - (b) investigations under section 20, and
  - (c) assessments under section 31.

##### *Terms of reference*

- 2 Before conducting an inquiry the Commission shall—
- (a) publish the terms of reference of the inquiry in a manner that the Commission thinks is likely to bring the inquiry to the attention of persons whom it concerns or who are likely to be interested in it, and
  - (b) in particular, give notice of the terms of reference to any persons specified in them.
- 3 Before conducting an investigation the Commission shall—
- (a) prepare terms of reference specifying the person to be investigated and the nature of the unlawful act which the Commission suspects,
  - (b) give the person to be investigated notice of the proposed terms of reference,
  - (c) give the person to be investigated an opportunity to make representations about the proposed terms of reference,
  - (d) consider any representations made, and
  - (e) publish the terms of reference once settled.
- 4 Before conducting an assessment of a person's compliance with a duty the Commission shall—
- (a) prepare terms of reference,
  - (b) give the person notice of the proposed terms of reference,
  - (c) give the person an opportunity to make representations about the proposed terms of reference,
  - (d) consider any representations made, and
  - (e) publish the terms of reference once settled.
- 5 Paragraphs 2 to 4 shall apply in relation to revised terms of reference as they apply in relation to original terms of reference.

##### *Representations*

- 6 (1) The Commission shall make arrangements for giving persons an opportunity to make representations in relation to inquiries, investigations and assessments.

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- (2) In particular, in the course of an investigation, inquiry or assessment the Commission must give any person specified in the terms of reference an opportunity to make representations.
- 7 Arrangements under paragraph 6 may (but need not) include arrangements for oral representations.
- 8 (1) The Commission shall consider representations made in relation to an inquiry, investigation or assessment.
- (2) But the Commission may, where they think it appropriate, refuse to consider representations—
- (a) made neither by nor on behalf of a person specified in the terms of reference, or
  - (b) made on behalf of a person specified in the terms of reference by a person who is not <sup>F1</sup>a relevant lawyer<sup>F1</sup>.
- <sup>F2</sup>(2A) “Relevant lawyer” means—
- (a) an advocate or solicitor in Scotland, or
  - (b) a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).]
- <sup>F2</sup>(3) If the Commission refuse to consider representations in reliance on sub-paragraph (2) they shall give the person who makes them written notice of the Commission's decision and the reasons for it.

#### Textual Amendments

- F1** Words in Sch. 2 para. 8(2)(b) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), ss. 208, 211, Sch. 21 para. 152(a) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2 (with art. 9)
- F2** Sch. 2 para. 8(2A) inserted (1.1.2010) by Legal Services Act 2007 (c. 29), ss. 208, 211, Sch. 21 para. 152(b) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2 (with art. 9)

#### *Evidence*

- 9 In the course of an inquiry, investigation or assessment the Commission may give a notice under this paragraph to any person.
- 10 (1) A notice given to a person under paragraph 9 may require him—
- (a) to provide information in his possession,
  - (b) to produce documents in his possession, or
  - (c) to give oral evidence.
- (2) A notice under paragraph 9 may include provision about—
- (a) the form of information, documents or evidence;
  - (b) timing.
- (3) A notice under paragraph 9—
- (a) may not require a person to provide information that he is prohibited from disclosing by virtue of an enactment,

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- (b) may not require a person to do anything that he could not be compelled to do in proceedings before the High Court or the Court of Session, and
  - (c) may not require a person to attend at a place unless the Commission undertakes to pay the expenses of his journey.
- 11 The recipient of a notice under paragraph 9 may apply to a county court (in England and Wales) or to the sheriff (in Scotland) to have the notice cancelled on the grounds that the requirement imposed by the notice is—
  - (a) unnecessary having regard to the purpose of the inquiry, investigation or assessment to which the notice relates, or
  - (b) otherwise unreasonable.
- 12 (1) Sub-paragraph (2) applies where the Commission thinks that a person—
  - (a) has failed without reasonable excuse to comply with a notice under paragraph 9, or
  - (b) is likely to fail without reasonable excuse to comply with a notice under paragraph 9.

(2) The Commission may apply to a county court (in England and Wales) or to the sheriff (in Scotland) for an order requiring a person to take such steps as may be specified in the order to comply with the notice.
- 13 (1) A person commits an offence if without reasonable excuse he—
  - (a) fails to comply with a notice under paragraph 9 or an order under paragraph 12(2),
  - (b) falsifies anything provided or produced in accordance with a notice under paragraph 9 or an order under paragraph 12(2), or
  - (c) makes a false statement in giving oral evidence in accordance with a notice under paragraph 9.

(2) A person who is guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- 14 (1) Where a person is given a notice under paragraph 9 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), or
  - (e) to make a disclosure of information relating to an intelligence service which would prejudice the interests of national security.

(2) In sub-paragraph (1) “intelligence service” means—
  - (a) the Security Service,
  - (b) the Secret Intelligence Service, and
  - (c) the Government Communications Headquarters.

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- (3) Where in response to a notice under paragraph 9 a person gives a notice to the Commission under sub-paragraph (1) above—
- (a) paragraphs 12 and 13 shall not apply in relation to that part of the notice under paragraph 9 to which the notice under sub-paragraph (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 paragraph 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 paragraph by considering the opinion of the person who gave the notice under sub-paragraph (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.
- (4) Where the Commission receives information or documents from or relating to an intelligence service in response to a notice under paragraph 9, the Commission shall store and use the information or documents in accordance with any arrangements specified by the Secretary of State.
- (5) The recipient of a notice under paragraph 9 may apply to the High Court (in England and Wales) or the Court of Session (in Scotland) 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 sub-paragraph (1) above applies.

#### *Reports*

- 15        The Commission shall publish a report of its findings on an inquiry, investigation or assessment.

#### *Recommendations*

- 16        (1) The Commission may make recommendations—
- (a) as part of a report of an inquiry, investigation or assessment under paragraph 15, or
  - (b) in respect of a matter arising in the course of an inquiry, investigation or assessment.
- (2) A recommendation may be addressed to any class of person.

#### *Effect of report*

- 17        (1) A court or tribunal—
- (a) may have regard to a finding of the report of an inquiry, investigation or assessment, but
  - (b) shall not treat it as conclusive.

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- 18 A person to whom a recommendation in the report of an inquiry, investigation or assessment is addressed shall have regard to it.

*Courts and tribunals*

- 19 An inquiry, investigation or assessment may not question (whether expressly or by necessary implication) the findings of a court or tribunal.

*Intelligence services*

- 20 (1) An inquiry 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.
- (2) In this paragraph “intelligence service” has the same meaning as in paragraph 14.

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