



# Investigatory Powers Act 2016

## 2016 CHAPTER 25

### PART 8

#### OVERSIGHT ARRANGEMENTS

#### CHAPTER 2

##### OTHER ARRANGEMENTS

##### *Investigatory Powers Tribunal*

#### **242 Right of appeal from Tribunal**

(1) After section 67 of the Regulation of Investigatory Powers Act 2000 insert—

##### **“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.

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- (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
  - (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.”
- (2) In section 67 of that Act (no appeal from the Investigatory Powers Tribunal except as provided by order of the Secretary of State)—
  - (a) in subsection (8) for “Except to such extent as the Secretary of State may by order otherwise provide,” substitute “ Except as provided by virtue of section 67A, ”, and
  - (b) omit subsections (9) to (12).
- (3) After section 68(4) of that Act (requirement to give notice of determinations to complainant) insert—
  - “(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,

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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.”

(4) In section 69(2) of that Act (Tribunal rules)—

- (a) in paragraph (i), after “section 68(4)” insert “ or notice under section 68(4C)”, and
- (b) after paragraph (i), insert “;
  - (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,
- (k) make provision about the making and determination of applications to the Tribunal for permission to appeal”.

(5) In section 78 of that Act (orders, regulations and rules)—

- (a) in subsection (4), after “applies” insert “ (other than regulations under section 67A(5))”, and
- (b) after subsection (4) insert—

“(4A) A statutory instrument containing regulations under section 67A(5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

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#### Commencement Information

**II** [S. 242](#) in force at 31.12.2018 by [S.I. 2018/1379](#), [reg. 2](#) (with [reg. 3](#))

## 243 Functions of Tribunal in relation to this Act etc.

(1) In section 65 of the Regulation of Investigatory Powers Act 2000 (the Investigatory Powers Tribunal)—

- (a) in subsection (2)(c) (jurisdiction of the Investigatory Powers Tribunal where possible detriment due to evidential bar) for “section 17” substitute “section 56 of the Investigatory Powers Act 2016”,

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- (b) in subsection (5) (conduct in relation to which the Tribunal has jurisdiction) after paragraph (b) insert—
  - “(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) in subsection (5) for paragraph (c) substitute—
  - “(c) 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

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- (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);”,
  - (d) in subsection (6) (limitation for certain purposes of what is conduct falling within subsection (5))—
    - (i) after “on behalf of” insert “ an immigration officer or ”, and
    - (ii) after paragraph (d) insert—
      - “(dza) the Competition and Markets Authority;”,
  - (e) after subsection (6) insert—
    - “(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.”,
  - (f) in subsection (7) after “if” insert “ it is conduct of a public authority and ”,
  - (g) in subsection (7ZA) (role for Tribunal where judicial authority involved) for “under section 23A or 32A” substitute “ by a Judicial Commissioner or under section 32A of this Act or section 75 of the Investigatory Powers Act 2016 ”,
  - (h) after subsection (7ZA) insert—
    - “(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).”,
  - (i) in subsection (8) (matters that may be challenged before the Tribunal) for paragraphs (a) and (b) substitute—
    - “(a) a warrant under Part 2, 5, 6 or 7 of the Investigatory Powers Act 2016;
    - (b) 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;”, and
  - (j) after subsection (9) insert—
    - “(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.”
- (2) In section 67(7) of the Act of 2000 (powers of the Tribunal)—
  - (a) after paragraph (a) insert—
    - “(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;”,
  - (b) in paragraph (aa) for “section 23A or 32A” substitute “ section 75 of the Investigatory Powers Act 2016 or section 32A of this Act ”, and

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- (c) in paragraph (b)(i) after “authorisation” insert “ or by a notice under Part 3 of the Investigatory Powers Act 2016 ”.
- (3) In section 68(5)(b) of the Act of 2000 (report of certain findings to the Prime Minister) after “permission” insert “ , 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, ”.
- (4) In section 68(6)(b) of the Act of 2000 (disclosures etc. to the Tribunal to enable the exercise of functions conferred by or under that Act) after “this Act” insert “ or the Investigatory Powers Act 2016 ”.
- (5) In section 68(7) of the Act of 2000 (persons subject to duty to co-operate with the Tribunal)—
  - (a) in paragraph (e)—
    - (i) for “section 11” substitute “ section 41, 126, 149, 168 or 190 of the Investigatory Powers Act 2016 ”, and
    - (ii) for “an interception warrant” substitute “ a warrant ”,
  - (b) in paragraph (f) for “section 12” substitute “ section 252 or 253 of that Act ”,
  - (c) for paragraphs (g) and (h) substitute—
    - “(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;”
  - (d) in paragraph (k), for the words from “an authorisation” to the end substitute “—
    - (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;”
  - (e) in paragraph (l) after “authorisation” insert “ or warrant ”, and
  - (f) in paragraph (n) after “(h)” insert “ , (ha) ”.
- (6) In section 68(8) of the Act of 2000 (meaning of “relevant Commissioner”) for the words from “Interception” to the end substitute “ Investigatory Powers Commissioner or any other Judicial Commissioner or the Investigatory Powers Commissioner for Northern Ireland ”.

#### Commencement Information

- I2** S. 243(1)(a) in force at 22.7.2020 by [S.I. 2020/766](#), [reg. 2\(b\)](#)
- I3** S. 243(1)(b) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 11\(e\)\(i\)](#)
- I4** S. 243(1)(c) in force at 12.3.2018 for specified purposes by [S.I. 2018/341](#), [reg. 2\(c\)\(i\)](#)
- I5** S. 243(1)(c) in force at 27.6.2018 for specified purposes by [S.I. 2018/652](#), [reg. 11\(e\)\(ii\)](#)
- I6** S. 243(1)(c) in force at 22.8.2018 for specified purposes by [S.I. 2018/873](#), [reg. 3\(g\)\(i\)](#)
- I7** S. 243(1)(c) in force at 5.2.2019 for specified purposes by [S.I. 2019/174](#), [reg. 2\(g\)](#)
- I8** S. 243(1)(c) in force at 22.7.2020 in so far as not already in force by [S.I. 2020/766](#), [reg. 2\(b\)](#)
- I9** S. 243(1)(d)(e) in force at 5.12.2018 by [S.I. 2018/1246](#), [reg. 3\(h\)](#)

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- I10** S. 243(1)(f) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 11\(e\)\(iii\)](#)
- I11** S. 243(1)(g) in force at 30.8.2018 by [S.I. 2018/940](#), [reg. 2\(1\)\(c\)](#) (with regs. 2(2), 7)
- I12** S. 243(1)(h) in force at 12.3.2018 for specified purposes by [S.I. 2018/341](#), [reg. 2\(c\)\(ii\)](#)
- I13** S. 243(1)(h) in force at 27.6.2018 for specified purposes by [S.I. 2018/652](#), [reg. 11\(e\)\(iv\)](#)
- I14** S. 243(1)(h) in force at 22.8.2018 for specified purposes by [S.I. 2018/873](#), [reg. 3\(g\)\(ii\)](#)
- I15** S. 243(1)(h) in force at 5.2.2019 for specified purposes by [S.I. 2019/174](#), [reg. 2\(h\)](#)
- I16** S. 243(1)(h) in force at 22.7.2020 in so far as not already in force by [S.I. 2020/766](#), [reg. 2\(b\)](#)
- I17** S. 243(1)(i) in force at 12.3.2018 for specified purposes by [S.I. 2018/341](#), [reg. 2\(c\)\(iii\)](#)
- I18** S. 243(1)(i) in force at 27.6.2018 for specified purposes by [S.I. 2018/652](#), [reg. 11\(e\)\(v\)](#)
- I19** S. 243(1)(i) in force at 22.8.2018 for specified purposes by [S.I. 2018/873](#), [reg. 3\(g\)\(iii\)](#)
- I20** S. 243(1)(i) in force at 1.11.2018 for specified purposes by [S.I. 2018/873](#), [reg. 4\(d\)](#)
- I21** S. 243(1)(i) in force at 5.2.2019 in so far as not already in force by [S.I. 2019/174](#), [reg. 2\(i\)](#)
- I22** S. 243(1)(j) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 11\(e\)\(vi\)](#)
- I23** S. 243(2)(a) in force at 12.3.2018 for specified purposes by [S.I. 2018/341](#), [reg. 2\(c\)\(iv\)](#)
- I24** S. 243(2)(a) in force at 22.8.2018 for specified purposes by [S.I. 2018/873](#), [reg. 3\(h\)](#)
- I25** S. 243(2)(a) in force at 5.2.2019 in so far as not already in force by [S.I. 2019/174](#), [reg. 2\(j\)\(i\)](#)
- I26** S. 243(2)(b) in force at 5.2.2019 for specified purposes by [S.I. 2019/174](#), [reg. 2\(j\)\(ii\)](#)
- I27** S. 243(2)(c) in force at 5.2.2019 by [S.I. 2019/174](#), [reg. 2\(j\)\(iii\)](#)
- I28** S. 243(3) in force at 12.3.2018 by [S.I. 2018/341](#), [reg. 2\(c\)\(v\)](#)
- I29** S. 243(4) in force at 12.3.2018 by [S.I. 2018/341](#), [reg. 2\(c\)\(vi\)](#)
- I30** S. 243(5)(a)(f) in force at 27.6.2018 by [S.I. 2018/652](#), [reg. 11\(e\)\(vii\)](#)
- I31** S. 243(5)(b)(c) in force at 12.3.2018 by [S.I. 2018/341](#), [reg. 2\(c\)\(vii\)](#)
- I32** S. 243(5)(d)(e) in force at 22.8.2018 by [S.I. 2018/873](#), [reg. 3\(i\)](#)
- I33** S. 243(6) in force at 12.3.2018 by [S.I. 2018/341](#), [reg. 2\(c\)\(viii\)](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 3 para. 8A and cross-heading inserted by [2023 c. 32 Sch. 18 para. 10\(2\)](#)
- Sch. 3 para. 20(2)(ha)(hb) inserted by [2023 c. 32 Sch. 18 para. 10\(3\)\(a\)](#)