



Investigatory Powers Act 2016

2016 CHAPTER 25

PART 8

OVERSIGHT ARRANGEMENTS

CHAPTER 2

OTHER ARRANGEMENTS

Codes of practice

241 Codes of practice

Schedule 7 (codes of practice) has effect.

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”).

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- (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.
- (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—

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- (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,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,or to the person representing their interests;
 - (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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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”,
 - (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);

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- (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);”
 - (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;”
 - (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;

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- (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
 - (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”.

Information Commissioner

244 Oversight by Information Commissioner in relation to Part 4

The Information Commissioner must audit compliance with requirements or restrictions imposed by virtue of Part 4 in relation to the integrity, security or destruction of data retained by virtue of that Part.

Advisory bodies

245 Technical Advisory Board

- (1) There is to continue to be a Technical Advisory Board consisting of such number of persons appointed by the Secretary of State as the Secretary of State may by regulations provide.
- (2) The regulations providing for the membership of the Technical Advisory Board must also make provision which is calculated to ensure—
 - (a) that the membership of the Board includes persons likely effectively to represent the interests of persons on whom obligations may be imposed by virtue of retention notices under Part 4, national security notices under section 252 or technical capability notices under section 253,
 - (b) that the membership of the Board includes persons likely effectively to represent the interests of persons entitled to apply for warrants under Part 2, 5, 6 or 7 or authorisations under Part 3,
 - (c) that such other persons (if any) as the Secretary of State considers appropriate may be appointed to be members of the Board, and
 - (d) that the Board is so constituted as to produce a balance between the representation of the interests mentioned in paragraph (a) and the representation of those mentioned in paragraph (b).
- (3) Regulations under this section may also make provision about quorum and the filling of vacancies.

246 Technology Advisory Panel

- (1) The Investigatory Powers Commissioner must ensure that there is a Technology Advisory Panel to provide advice to the Investigatory Powers Commissioner, the Secretary of State and the Scottish Ministers about—
 - (a) the impact of changing technology on the exercise of investigatory powers whose exercise is subject to review by the Commissioner, and
 - (b) the availability and development of techniques to use such powers while minimising interference with privacy.
- (2) The Technology Advisory Panel must provide advice to the Investigatory Powers Commissioner about such matters falling within subsection (1)(a) or (b) as the Commissioner may direct.
- (3) Subject to this, the Panel may provide advice to the Investigatory Powers Commissioner about such matters falling within subsection (1)(a) or (b) as it considers appropriate (whether or not requested to do so).

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- (4) The Panel may provide advice to the Secretary of State or the Scottish Ministers about such matters falling within subsection (1)(a) or (b) as it considers appropriate (whether or not requested to do so) but such advice to the Scottish Ministers may only relate to matters for which the Scottish Ministers are responsible.
- (5) The Panel must, as soon as reasonably practicable after the end of each calendar year, make a report to the Investigatory Powers Commissioner about the carrying out of the functions of the Panel.
- (6) The Panel must, at the same time, send a copy of the report to the Secretary of State and (so far as relating to matters for which the Scottish Ministers are responsible) the Scottish Ministers.

247 Members of the Panel

- (1) The Investigatory Powers Commissioner must appoint such number of persons as members of the Technology Advisory Panel as the Commissioner considers necessary for the carrying out of the functions of the Panel.
- (2) Subject as follows, each member of the Panel holds and vacates office in accordance with the member's terms and conditions of appointment.
- (3) A member of the Panel must not act in a way which the member considers to be contrary to the public interest or prejudicial to—
 - (a) national security,
 - (b) the prevention or detection of serious crime, or
 - (c) the economic well-being of the United Kingdom.
- (4) A member of the Panel must, in particular, ensure that the member does not—
 - (a) jeopardise the success of an intelligence or security operation or a law enforcement operation,
 - (b) compromise the safety or security of those involved, or
 - (c) unduly impede the operational effectiveness of an intelligence service, a police force, a government department or Her Majesty's forces.
- (5) Section 235(2) and (7) (information powers) apply to a member of the Panel as they apply to a Judicial Commissioner.