

Status:  Partially In Force  Amendment(s) Pending

## Regulation of Investigatory Powers Act 2000 c. 23

### Part IV SCRUTINY ETC. OF INVESTIGATORY POWERS AND OF THE FUNCTIONS OF THE INTELLIGENCE SERVICES

#### The Tribunal

This version partially in force from: **August 30, 2018**

(version 14 of 14)

#### 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) [...]<sup>1</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—

(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 ]<sup>2</sup>[...] <sup>3</sup>

[...] <sup>4</sup>

(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>5</sup>

(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;

[

(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);

] <sup>6</sup>

[

(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;

] <sup>7</sup>

[

(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;

] <sup>9</sup>

[

(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);

] <sup>10</sup>

(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);

] <sup>9</sup>

(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;

] <sup>11</sup>

(iii) revoke a notice under Part 4, or section 252 or 253, of that Act;

[

(iv) revoke a direction under section 225 of that Act;

] <sup>12</sup>

] <sup>8</sup>

[

(czm) any conduct in connection with any conduct falling within paragraph (c), (czb), (czd) or (czi);

] <sup>13</sup>

[

(ca) the carrying out of surveillance by a foreign police or customs officer (within the meaning of section 76A);

] <sup>14</sup>

(d) [other ] <sup>15</sup>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;

[

(ca) the Police Investigations and Review Commissioner;

] <sup>16</sup>

[

(d) the National Crime Agency;

] <sup>17</sup>

[...] <sup>18</sup>

[

(f) the Commissioners for Her Majesty's Revenue and Customs;

] <sup>19</sup>

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 [ it is conduct of a public authority and] <sup>20</sup> –

(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 [, subject to subsection (7ZA),] <sup>21</sup> 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.

[

(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 [by a Judicial Commissioner or under section 32A of this Act or section 75 of the Investigatory Powers Act 2016] <sup>23</sup>.

] <sup>22</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>24</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.

] <sup>25</sup>

(8) The following fall within this subsection—

[

(a) a warrant under Part 2, 5, 6 or 7 of the Investigatory Powers Act 2016;

] <sup>26</sup>

[

(bb) a direction under section 225 of that Act;

] <sup>27</sup>

[

(bc) a notice under section 252 or 253 of that Act;

] <sup>28</sup>

(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.

[

(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.

] <sup>29</sup>

(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.

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## Notes

<sup>1</sup>. Words repealed by Identity Documents Act 2010 c. 40 Sch.1 para.14(2) (January 21, 2011)

2. Word inserted by Identity Documents Act 2010 c. 40 Sch.1 para.14(3)(a) (January 21, 2011)
3. S.65(3)(ca) and (cb) substituted for word by Identity Cards Act 2006 c. 15 s.24(4) (October 1, 2009)
4. Repealed by Identity Documents Act 2010 c. 40 Sch.1 para.14(3)(b) (January 21, 2011)
5. Repealed by Identity Documents Act 2010 c. 40 Sch.1 para.14(4) (January 21, 2011)
6. Added by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(b) (June 27, 2018: insertion has effect subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)
7. Added by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(c) (August 22, 2018: insertion has effect on August 22, 2018 as SI 2018/873 art.3(g)(i)(bb) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10; not yet in force otherwise)
8. S.65(5)(czb), (czc), (czi), (czj) and (czl)(iii) substituted for s.65(5)(c) by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(c) (March 12, 2018: substitution has effect as SI 2018/341 reg.2(c)(i)(aa) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10 and SI 2018/341 reg.7(3) and (4))
9. Added by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(c) (June 27, 2018: insertion has effect subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)
10. Added by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(c) (August 22, 2018: insertion has effect as SI 2018/873 art.3(g)(i)(cc) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)
11. Added by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(c) (June 27, 2018: insertion has effect on June 27, 2018 as SI 2018/652 art.11(e)(ii)(bb) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10; August 22, 2018 for purposes specified in SI 2018/873 art.3(g)(i)(dd); not yet in force otherwise)
12. Added by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(c) (August 22, 2018: insertion has effect as SI 2018/873 art.3(g)(i)(ee) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)
13. Added by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(c) (March 12, 2018: substitution has effect on March 12, 2018 as SI 2018/341 reg.2(c)(i)(bb) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10 and SI 2018/341 reg.7(3) and (4); August 22, 2018 as SI 2018/873 reg.3(g)(i)(ff) otherwise)
14. Added by Crime (International Co-operation) Act 2003 c. 32 Sch.5 para.79(a)(i) (April 26, 2004)
15. Word inserted by Crime (International Co-operation) Act 2003 c. 32 Sch.5 para.79(a)(ii) (April 26, 2004)
16. Added by Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013/602 Sch.2(1) para.33(21)(a) (April 1, 2013: insertion has effect subject to transitional provisions specified in SI 2013/602 Sch.3 para.3)
17. Substituted by Crime and Courts Act 2013 c. 22 Sch.8(2) para.96 (October 7, 2013: substitution has effect as SI 2013/1682 subject to savings and transitional provisions specified in 2013 c.22 s.15 and Sch.8)
18. Repealed by Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013/602 Sch.2(1) para.33(21)(b) (April 1, 2013: repeal has effect subject to transitional provisions specified in SI 2013/602 Sch.3 para.3)
19. Substituted by Serious Crime Act 2007 c. 27 Sch.12 para.24 (February 15, 2008)
20. Added by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(f) (June 27, 2018: insertion has effect subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)
21. Words inserted by Protection of Freedoms Act 2012 c. 9 Sch.9(3) para.12(2) (November 1, 2012)
22. Added by Protection of Freedoms Act 2012 c. 9 Sch.9(3) para.12(3) (November 1, 2012)
23. Words substituted by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(g) (August 30, 2018: substitution has effect subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10 and SI 2018/940 reg.2(2))

- [24](#) . Added by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(h) (March 12, 2018: substitution has effect on March 12, 2018 for the purpose specified in SI 2018/341 reg.2(c)(ii) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10 and SI 2018/341 reg.7(3) and (4); June 27, 2018 for purposes specified in SI 2018/652 reg.11(e)(iv); August 22, 2018 for purposes specified in SI 2018/873 reg.3(g)(ii); not yet in force otherwise)
- [25](#) . Added by Crime (International Co-operation) Act 2003 c. 32 Sch.5 para.79(b) (April 26, 2004)
- [26](#) . Substituted by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(i) (June 27, 2018: substitution has effect on June 27, 2018 for purposes specified in SI 2018/652 reg.11(e) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10; August 22, 2018 otherwise)
- [27](#) . Substituted by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(i) (August 22, 2018: substitution has effect as SI 2018/873 art.3(g)(iii)(bb) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)
- [28](#) . S.65(8)(bc) substituted for s.65(8)(a) and (b) by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(i) (March 12, 2018: substitution has effect on March 12, 2018 as SI 2018/341 reg.2(c)(iii) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10 and SI 2018/341 reg.7(3) and (4); August 22, 2018 otherwise)
- [29](#) . Added by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(1)(j) (June 27, 2018: insertion has effect subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)

## Modifications

Pt IV s. 65(5)(bb)	Modified until the repeal of a2000c23 Part 1 Chapter 2 by a2016c25 Sch.10 para.54 Act is fully in force by Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018/341, reg. 7(2)(a)(i)
Pt IV s. 65(6)(ca)	Deemed to be inserted for the purposes of the carrying out of the functions of the Independent Police Complaints Commission by Independent Police Complaints Commission (Investigatory Powers) Order 2004/815, art. 3(10)
Pt IV s. 65(8)(za)	Modified until the repeal of a200c23 Part 1 Chapter 2 by a2016c25 Sch.10 para.54 Act is fully in force by Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018/341, reg. 7(1)
Pt IV s. 65(8)(aa)	Modified until the repeal of a2000c23 Part 1 Chapter 2 by a2016c25 Sch.10 para.54 Act is fully in force by Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018/341, reg. 7(2)(a)(ii)

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**Subject:** Administration of justice **Other related subjects:** Constitutional law; Criminal procedure; Police

**Keywords:** Covert surveillance; Intelligence services; Interception of communications; Investigatory Powers Tribunal; Jurisdiction

Status: N Not Yet In Force

## **Regulation of Investigatory Powers Act 2000 c. 23**

### **Part IV SCRUTINY ETC. OF INVESTIGATORY POWERS AND OF THE FUNCTIONS OF THE INTELLIGENCE SERVICES**

#### **The Tribunal**

This version in force from: **date to be appointed**

(version 1 of 1)

#### **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.

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**Subject:** Administration of justice **Other related subjects:** Civil procedure

**Keywords:** Investigatory Powers Tribunal; Jurisdiction; Ministers' powers and duties; Orders; Remittal

Status:  Partially In Force  Amendment(s) Pending

## **Regulation of Investigatory Powers Act 2000 c. 23**

### **Part IV SCRUTINY ETC. OF INVESTIGATORY POWERS AND OF THE FUNCTIONS OF THE INTELLIGENCE SERVICES**

#### **The Tribunal**

This version partially in force from: **August 22, 2018**

(version 4 of 5)

#### **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; [...] <sup>1</sup>

[

(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;

] <sup>2</sup>

[

(azb) an order quashing or revoking a direction under section 225 of that Act;

] <sup>3</sup>

[

(aa) an order quashing an order under section 23A or 32A by the relevant judicial authority (within the meaning of that section); and

] <sup>1</sup>

(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.

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## Notes

1. Added by Protection of Freedoms Act 2012 c. 9 Sch.9(3) para.13 (November 1, 2012)
2. Added by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(2)(a) (March 12, 2018: insertion has effect on March 12, 2018 for purposes specified in SI 2018/341 reg.2(iv) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10; not yet in force otherwise)
3. Added by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(2)(a) (August 22, 2018: insertion has effect as SI 2018/873 art.3(h) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)

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**Subject:** Administration of justice **Other related subjects:** Constitutional law; Criminal procedure; Police

**Keywords:** Covert surveillance; Intelligence services; Interception of communications; Investigatory Powers Tribunal; Jurisdiction

Status: **N** Not Yet In Force

## **Regulation of Investigatory Powers Act 2000 c. 23**

### **Part IV SCRUTINY ETC. OF INVESTIGATORY POWERS AND OF THE FUNCTIONS OF THE INTELLIGENCE SERVICES**

#### **The Tribunal**

This version in force from: **date to be appointed**

(version 1 of 1)

[

#### **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.

(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.

] <sup>1</sup>

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## Notes

- <sup>1</sup>. Added by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.242(1) (date to be appointed: insertion has effect subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)

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**Subject:** Constitutional law **Other related subjects:** Criminal evidence; Criminal procedure; Police; Telecommunications

Status:  Law In Force  Amendment(s) Pending

## **Regulation of Investigatory Powers Act 2000 c. 23**

### **Part IV SCRUTINY ETC. OF INVESTIGATORY POWERS AND OF THE FUNCTIONS OF THE INTELLIGENCE SERVICES**

#### **The Tribunal**

This version in force from: **August 22, 2018 to present**

(version 10 of 10)

#### **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 [, 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,]<sup>1</sup> 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 [ or the Investigatory Powers Act 2016]<sup>2</sup> .

(7) Those persons are—

(a) every person holding office under the Crown;

[...] <sup>3</sup>

[...] <sup>4</sup>

(d) every person employed by or for the purposes of a police force;

[

(da) the Police Investigations and Review Commissioner and every member of the Commissioner's staff;

] <sup>5</sup>

(e) every person required for the purposes of [section 41, 126, 149, 168 or 190 of the Investigatory Powers Act 2016]<sup>6</sup> to provide assistance with giving effect to [a warrant]<sup>7</sup> ;

(f) every person on whom an obligation to take any steps has been imposed under [section 252 or 253 of that Act]<sup>8</sup> ;

[

(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;

] <sup>9</sup>

(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 [—] <sup>10</sup>

[

(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;

] <sup>10</sup>

(l) every person who holds or has held any office, rank or position with a public authority for whose benefit any such authorisation [ or warrant] <sup>11</sup> 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) [, (ha)] <sup>12</sup> or (m).

(8) In this section “*relevant Commissioner*” means the [Investigatory Powers Commissioner or any other Judicial Commissioner or the Investigatory Powers Commissioner for Northern Ireland] <sup>13</sup>.

## Notes

1. Words inserted by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(3) (March 12, 2018: insertion has effect as SI 2018/341 reg.2(c)(v) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)
2. Words inserted by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(4) (March 12, 2018: insertion has effect as SI 2018/341 reg.2(c)(vi) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)
3. Repealed by Crime and Courts Act 2013 c. 22 Sch.8(2) para.97 (October 7, 2013: repeal has effect as SI 2013/1682 subject to savings and transitional provisions specified in 2013 c.22 s.15 and Sch.8)
4. Repealed by Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013/602 Sch.2(1) para.33(22)(a) (April 1, 2013: repeal has effect subject to transitional provisions specified in SI 2013/602 Sch.3 para.3)
5. Added by Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013/602 Sch.2(1) para.33(22)(b) (April 1, 2013: insertion has effect subject to transitional provisions specified in SI 2013/602 Sch.3 para.3)
6. Words substituted by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(5)(a)(i) (June 27, 2018: substitution has effect subject to savings

specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10 and SI 2018/940 reg.8(2) and (3))

7. Words substituted by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(5)(a)(ii) (June 27, 2018: substitution has effect subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10 and SI 2018/940 reg.8(2) and (3))
8. Words substituted by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(5)(b) (March 12, 2018: substitution has effect on March 12, 2018 as SI 2018/341 reg.2(c)(vii) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)
9. S.68(7)(g)-(ha) substituted for s.68(7)(g) and (h) by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(5)(c) (March 12, 2018: substitution has effect on March 12, 2018 as SI 2018/341 reg.2(c)(vii) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)
10. S.68(7)(k)(i) and (ii) substituted for words by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(5)(d) (August 22, 2018: substitution has effect as SI 2018/873 art.3(i)(i) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10 and transitional provisions specified in SI 2018/873 reg.10)
11. Words inserted by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(5)(e) (August 22, 2018: insertion has effect as SI 2018/873 art.3(i)(ii) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)
12. Word inserted by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(5)(f) (June 27, 2018: insertion has effect subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)
13. Words substituted by Investigatory Powers Act 2016 c. 25 Pt 8 c.2 s.243(6) (March 12, 2018: substitution has effect as SI 2018/341 reg.2(c)(viii) subject to savings specified in 2016 c.25 s.270 and Sch.9 paras 7 and 10)

## Modifications

Pt IV s. 68(7)(da)	Deemed to be inserted for the purposes of the carrying out of the functions of the Independent Police Complaints Commission by Independent Police Complaints Commission (Investigatory Powers) Order 2004/815, art. 3(11)
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**Subject:** Administration of justice **Other related subjects:** Civil evidence

**Keywords:** Disclosure; Investigatory Powers Tribunal; Jurisdiction; Procedure

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## **Regulation of Investigatory Powers Act 2000 c. 23**

### **Part IV SCRUTINY ETC. OF INVESTIGATORY POWERS AND OF THE FUNCTIONS OF THE INTELLIGENCE SERVICES**

#### **The Tribunal**

This version in force from: **October 2, 2000** to **present**

(version 1 of 2)

#### **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.

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