

SCHEDULES

SCHEDULE 1

Section 9.

INVESTIGATION OF COMPLAINTS

Preliminary

- 1 Any person may complain to the Tribunal if he is aggrieved by anything which he believes the Intelligence Service or GCHQ has done in relation to him or to any property of his; and, unless the Tribunal consider that the complaint is frivolous or vexatious, they shall deal with it in accordance with this Schedule.

References and investigations by the Tribunal

- 2 If and so far as the complaint alleges that anything has been done in relation to any property of the complainant, the Tribunal shall refer the complaint to the Commissioner.
- 3 Subject to paragraph 2 above and paragraph 4 below, the Tribunal shall investigate—
- (a) whether the Intelligence Service or, as the case may be, GCHQ has obtained or provided information or performed any other tasks in relation to the actions or intentions of the complainant; and
 - (b) if so, whether, applying the principles applied by a court on an application for judicial review, the Intelligence Service or GCHQ had reasonable grounds for doing what it did.
- 4 If, in the course of the investigation of a complaint by the Tribunal, the Tribunal consider that it is necessary to establish whether an authorisation was given under section 7 of this Act to the doing of any act, they shall refer so much of the complaint as relates to the doing of that act to the Commissioner.

Functions of the Commissioner in relation to complaints

- 5 (1) Where a reference is made to the Commissioner under paragraph 2 or paragraph 4 above, the Commissioner shall investigate, as the case may require,—
- (a) whether a warrant was issued under section 5 of this Act in relation to the property concerned; or
 - (b) whether an authorisation was given under section 7 of this Act to the doing of the act in question.
- (2) If the Commissioner finds that a warrant was issued or an authorisation was given, he shall, applying the principles applied by a court on an application for judicial review, determine whether the Secretary of State was acting properly in issuing or renewing the warrant or, as the case may be, in giving or renewing the authorisation.
- (3) The Commissioner shall inform the Tribunal of his conclusion on any reference made to him under paragraph 2 or paragraph 4 above.

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Report of conclusions

- 6 (1) Where the Tribunal determine under paragraph 3 above that the Intelligence Service or, as the case may be, GCHQ did not have reasonable grounds for doing what it did, they shall—
- (a) give notice to the complainant that they have made a determination in his favour; and
 - (b) make a report of their findings to the Secretary of State and to the Commissioner.
- (2) The Tribunal shall also give notice to the complainant of any determination in his favour by the Commissioner under paragraph 5 above.
- (3) Where in the case of any complaint no such determination as is mentioned in sub-paragraph (1) or sub-paragraph (2) above is made by the Tribunal or the Commissioner, the Tribunal shall give notice to the complainant that no determination in his favour has been made on his complaint.

Special references by Tribunal to Commissioner

- 7 (1) If in any case investigated by the Tribunal—
- (a) the Tribunal's conclusions on the matters which they are required to investigate are such that no determination is made by them in favour of the complainant; but
 - (b) it appears to the Tribunal from the allegations made by the complainant that it is appropriate for there to be an investigation into whether the Intelligence Service or GCHQ has in any other respect acted unreasonably in relation to the complainant or his property,
- they shall refer that matter to the Commissioner.
- (2) The Commissioner may report any matter referred to him under sub-paragraph (1) above to the Secretary of State.

Remedies

- 8 (1) Where the Tribunal give a complainant notice of such a determination as is mentioned in paragraph 6(1) above, the Tribunal may do either or both of the following, namely,
- (a) direct that the obtaining and provision of information in relation to the complainant or, as the case may be, the conduct of other activities in relation to him or to any property of his shall cease and that any records relating to such information so obtained or provided or such other activities shall be destroyed;
 - (b) direct the Secretary of State to pay to the complainant such sum by way of compensation as may be specified by the Tribunal.
- (2) Where the Tribunal give a complainant notice of such a determination as is mentioned in paragraph 6(2) above, the Tribunal may do either or both of the following, namely,
- (a) quash any warrant or authorisation which the Commissioner has found to have been improperly issued, renewed or given and which he considers should be quashed;

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- (b) direct the Secretary of State to pay to the complainant such sum by way of compensation as may be specified by the Commissioner.
- (3) Where the Secretary of State receives a report under paragraph 7(2) above, he may take such action in the light of the report as he thinks fit, including any action which the Tribunal have power to take or direct under the preceding provisions of this paragraph.

Supplementary

- 9 The persons who may complain to the Tribunal under this Schedule include any organisation and any association or combination of persons.
- 10 (1) No complaint shall be entertained under this Schedule if and so far as it relates to anything done before the date on which this Schedule comes into force.
- (2) Where any activities in relation to any person or his property were instituted before that date and no decision had been taken before that date to discontinue them, paragraphs 2 and 3 above shall have effect as if they had been instituted on that date.
- 11 Any reference in this Schedule to a complainant's property includes—
 - (a) a reference to any wireless telegraphy transmission originated or received or intended to be received by him; and
 - (b) a reference to any place where the complainant resides or works.

SCHEDULE 2

Section 9.

THE TRIBUNAL

Constitution of the Tribunal

- 1 (1) The Tribunal shall consist of not less than three or more than five members each of whom shall be—
 - (a) a person who has a 10 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) an advocate or solicitor in Scotland of at least ten years' standing; or
 - (c) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 10 years' standing.
- (2) The members of the Tribunal shall be appointed by Her Majesty by Royal Warrant.
- (3) A member of the Tribunal shall vacate office at the end of the period of five years beginning with the day of his appointment but shall be eligible for re-appointment.
- (4) A member of the Tribunal may be relieved of office by Her Majesty at his own request.
- (5) A member of the Tribunal may be removed from office by Her Majesty on an Address presented to Her by both Houses of Parliament.

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President and Vice-President

- 2 (1) Her Majesty may by Royal Warrant appoint as President or Vice-President of the Tribunal a person who is, or by virtue of that Warrant will be, a member of the Tribunal.
- (2) If at any time the President of the Tribunal is temporarily unable to carry out the functions of the President under this Schedule, the Vice-President shall carry out those functions.
- (3) A person shall cease to be President or Vice-President of the Tribunal if he ceases to be a member of the Tribunal.

Procedure

- 3 The functions of the Tribunal in relation to any complaint shall be capable of being carried out, in any place in the United Kingdom, by any two or more members of the Tribunal designated for the purpose by their President; and different members of the Tribunal may carry out functions in relation to different complaints at the same time.
- 4 (1) It shall be the duty of every member of the Intelligence Service or, as the case may be, GCHQ to disclose or give to the Tribunal such documents or information as they may require for the purpose of enabling them to carry out their functions under this Act.
- (2) Subject to paragraph 6(2) below, the Tribunal shall carry out their functions under this Act in such a way as to secure that no document or information disclosed or given to the Tribunal by any person is disclosed without his consent to any complainant, to any person (other than the Commissioner) holding office under the Crown or to any other person; and accordingly the Tribunal shall not, except in reports under paragraph 6(1)(b) of Schedule 1 to this Act, give any reasons for a determination notified by them to a complainant.
- (3) Subject to sub-paragraph (2) above, the Tribunal may determine their own procedure.

Salaries and expenses

- 5 (1) The Secretary of State shall pay to the members of the Tribunal such remuneration and allowances as he may with the approval of the Treasury determine.
- (2) The Secretary of State shall defray such expenses of the Tribunal as he may with the approval of the Treasury determine.

Staff

- 6 (1) The Secretary of State may, after consultation with the Tribunal and with the approval of the Treasury as to numbers, provide the Tribunal with such staff as he thinks necessary for the proper discharge of their functions.
- (2) The Tribunal may authorise any member of their staff to obtain any documents or information on the Tribunal's behalf.

Parliamentary disqualification

- 7 (1) In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies whose members are disqualified) there shall be inserted at the appropriate place—

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“The Tribunal established under section 9 of the Intelligence Services Act 1994”.

- (2) The same amendment shall be made in Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

SCHEDULE 3

Section 10(4).

THE INTELLIGENCE AND SECURITY COMMITTEE

Tenure of office

- 1 (1) Subject to the provisions of this paragraph, a member of the Committee shall hold office for the duration of the Parliament in which he is appointed.
- (2) A member of the Committee shall vacate office—
- (a) if he ceases to be a member of the House of Commons;
 - (b) if he ceases to be a member of the House of Lords;
 - (c) if he becomes a Minister of the Crown; or
 - (d) if he is required to do so by the Prime Minister on the appointment, in accordance with section 10(3) of this Act, of another person as a member in his place.
- (3) A member of the Committee may resign at any time by notice to the Prime Minister.
- (4) Past service is no bar to appointment as a member of the Committee.

Procedure

- 2 (1) Subject to the following provisions of this Schedule, the Committee may determine their own procedure.
- (2) If on any matter there is an equality of voting among the members of the Committee, the Chairman shall have a second or casting vote.
- (3) The Chairman may appoint one of the members of the Committee to act, in his absence, as chairman at any meeting of the Committee, but sub-paragraph (2) above shall not apply to a chairman appointed under this sub-paragraph.
- (4) The quorum of the Committee shall be three.

Access to information

- 3 (1) If the Director-General of the Security Service, the Chief of the Intelligence Service or the Director of GCHQ is asked by the Committee to disclose any information, then, as to the whole or any part of the information which is sought, he shall either—
- (a) arrange for it to be made available to the Committee subject to and in accordance with arrangements approved by the Secretary of State; or
 - (b) inform the Committee that it cannot be disclosed either—
 - (i) because it is sensitive information (as defined in paragraph 4 below) which, in his opinion, should not be made available under paragraph (a) above; or

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- (ii) because the Secretary of State has determined that it should not be disclosed.
- (2) The fact that any particular information is sensitive information shall not prevent its disclosure under sub-paragraph (1)(a) above if the Director-General, the Chief or the Director (as the case may require) considers it safe to disclose it.
- (3) Information which has not been disclosed to the Committee on the ground specified in sub-paragraph (1)(b)(i) above shall be disclosed to them if the Secretary of State considers it desirable in the public interest.
- (4) The Secretary of State shall not make a determination under sub-paragraph (1)(b)(ii) above with respect to any information on the grounds of national security alone and, subject to that, he shall not make such a determination unless the information appears to him to be of such a nature that, if he were requested to produce it before a Departmental Select Committee of the House of Commons, he would think it proper not to do so.
- (5) The disclosure of information to the Committee in accordance with the preceding provisions of this paragraph shall be regarded for the purposes of the 1989 Act or, as the case may be, this Act as necessary for the proper discharge of the functions of the Security Service, the Intelligence Service or, as the case may require, GCHQ.

Sensitive information

- 4 The following information is sensitive information for the purposes of paragraph 3 above—
 - (a) information which might lead to the identification of, or provide details of, sources of information, other assistance or operational methods available to the Security Service, the Intelligence Service or GCHQ;
 - (b) information about particular operations which have been, are being or are proposed to be undertaken in pursuance of any of the functions of those bodies; and
 - (c) information provided by, or by an agency of, the Government of a territory outside the United Kingdom where that Government does not consent to the disclosure of the information.

SCHEDULE 4

Section 11(2).

CONSEQUENTIAL AMENDMENTS

The Security Service Act 1989

- 1 (1) In section 2 of the Security Service Act 1989 (duties of the Director-General of the Security Service) in subsection (2) after the words “serious crime” there shall be inserted “or for the purpose of any criminal proceedings”.
- (2) After subsection (3) of that section there shall be inserted the following subsection—
 - “(3A) Without prejudice to the generality of subsection (2)(a) above, the disclosure of information shall be regarded as necessary for the proper discharge of the functions of the Security Service if it consists of—

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- (a) the disclosure of records subject to and in accordance with the Public Records Act 1958; or
 - (b) the disclosure, subject to and in accordance with arrangements approved by the Secretary of State, of information to the Comptroller and Auditor General for the purposes of his functions.”
- 2 In section 4(3) of that Act (Security Service Commissioner to review exercise of powers by Secretary of State), for the words “powers under section 3 above” there shall be substituted “powers, so far as they relate to applications made by the Service, under sections 5 and 6 of the Intelligence Services Act 1994.”
- 3 In paragraph 4(1) of Schedule 1 to that Act (Security Service Commissioner to investigate whether the Secretary of State acted properly in issuing or renewing warrant), after the words “section 3 of this Act” there shall be inserted “or section 5 of the Intelligence Services Act 1994”.

The Official Secrets Act 1989

- 4 In section 4 of the Official Secrets Act 1989 (disclosure of information which results in commission of an offence etc.) in subsection (3)(b) after the words “under section 3 of the Security Service Act 1989” there shall be inserted “or under section 5 of the Intelligence Services Act 1994 or by an authorisation given under section 7 of that Act”.

The Official Secrets Act 1989 (Prescription) Order 1990

- 5 At the end of Schedule 3 to the Official Secrets Act 1989 (Prescription) Order 1990 (bodies giving official authorisations etc.) there shall be added the following entry—

“The Tribunal established under section 9 of the Intelligence Services Act 1994.	Section 7(5)”.
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