

REGULATION OF INVESTIGATORY POWERS ACT 2000

EXPLANATORY NOTES

OTHER AUTHORISATIONS

Part Iv: Scrutiny Etc of Investigatory Powers and of the Functions of the Intelligence Services

Commissioners

Section 57: Interception of Communications Commissioner

303. This Section provides for the appointment of an Interception of Communications Commissioner to replace the Commissioner appointed under the Interception of Communications Act 1985. This is currently Lord Justice Swinton Thomas.
304. *Subsection (2)* details the remit of the Interception Commissioner. This will involve reviewing:
- the Secretary of State's role in interception warrantry;
 - the operation of the regime for acquiring communications data;
 - any notices for requiring the decryption of data authorised by the Secretary of State which relate to intercepted material or communications data;
 - the adequacy of the arrangements made by the Secretary of State for the protection of intercepted material and by those persons listed in Section 55 for the protection of encryption keys for intercepted material and communications data.
305. *Subsection (7)* requires the Secretary of State to provide the Interception Commissioner with sufficient technical facilities and staff, after consultation with him. The provision itself places no limitation on the number of staff and (subject to Treasury approval as to numbers) allows flexibility over the numbers, grades and individuals.
306. *Subsection (8)* is a transitional provision allowing the existing Interception Commissioner to take office as the new Interception Commissioner on the coming into force of this section.

Section 58: Cooperation with and reports by s. 57 Commissioner

307. *Subsection (1)* requires that all those who may be involved in requesting, authorising, or carrying out, interception should cooperate with the Interception Commissioner as he reviews the operation of the regime.
308. *Subsection (3)* provides that the Interception Commissioner should report to the Prime Minister if he believes that arrangements made by the Secretary of State are inadequate for the protection of either intercepted material or decryption keys.

Section 59: Intelligence Services Commissioner

309. This Section provides for the appointment of an Intelligence Services Commissioner to replace the Commissioners appointed under the Security Service Act 1989 and the Intelligence Services Act 1994. Both posts are currently held by Lord Justice Simon Brown.
310. *Subsection (2)* details the remit of the Intelligence Services Commissioner.
311. *Subsection (7)* requires the Secretary of State to provide the Intelligence Services Commissioner with staff, after consultation with him. The provision itself places no limitation on the number of staff and (subject to Treasury approval as to numbers) allows flexibility over the numbers, grades and individuals.
312. *Subsection (9)* is a transitional provision allowing the existing Intelligence Service Act Commissioner to take office as the new Intelligence Services Commissioner on the coming into force of this section.

Section 61: Investigatory powers Commissioner for Northern Ireland

313. This section provides for the appointment of an Investigatory Powers Commissioner for Northern Ireland.
314. *Subsection (2)* details the remit of this Commissioner

Section 62: Additional functions of Chief Surveillance Commissioner

315. This Section allocates oversight of certain powers in this Act to the existing Chief Surveillance Commissioner established under the Police Act 1997.
316. It adds to the existing remit of the Chief Surveillance Commissioner the functions of reviewing the use of surveillance, agents, informants, undercover officers and decryption notices, and the arrangements for protecting decryption keys, so far as these are not required to be kept under review by any of the other Commissioners mentioned in this Act.

Section 63: Assistant Surveillance Commissioners

317. This section allows for the appointment of Assistant Surveillance Commissioners to help the Chief Surveillance Commissioner fulfil his duties. Assistant Surveillance Commissioners can be circuit judges or equivalent.

Section 64: Delegation of Commissioners' functions

318. This Section allows Commissioners to delegate statutory powers or duties to members of staff.

Section 65: The Tribunal

319. This Section establishes a Tribunal, sets out its jurisdiction and gives effect to Schedule 3, which provides for its constitution and functioning.
320. *Subsections (2) to (8)* set out the key elements of the Tribunal's jurisdiction. It is to be the appropriate forum for complaints or proceedings in relation to the following categories:
- any proceedings for actions incompatible with Convention rights which are proceedings against any of the intelligence services or people acting on their behalf; or which concern the use of investigatory powers under this Act, any entry on or interference with property, any interference with wireless telegraphy; where any of these take place in relation to conduct by any of the public authorities listed in subsection (6);

- any complaint by a person who believes that he has been subject to any use of investigatory powers under this Act, any entry on or interference with property, any interference with wireless telegraphy which he believes to have been carried out by or on behalf of any of the intelligence services or in the challengeable circumstances described in subsection (7);
 - any complaint by a person that he has suffered detriment as a result of any prohibition or restriction in Section 17 on his relying on any civil proceedings (Section 17 imposes various restrictions and prohibitions on the disclosure in court of intercepted material and related information); and
 - any other proceedings against any of the intelligence services or people acting on their behalf, or which concern the use of investigatory powers under this Act, any entry on or interference with property, any interference with wireless telegraphy where any of these take place in relation to conduct by any of the public authorities listed in subsection (6). This category only applies to proceedings allocated to the Tribunal by the Secretary of State. Section 66 makes further provision concerning such orders.
321. *Subsection (6)* limits the Tribunal's jurisdiction in respect of Human Rights Act cases and proceedings allocated to the Tribunal by the Secretary of State. The jurisdiction will only apply to conduct by or on behalf of the police, Customs or intelligence services.
322. *Subsection (7)* qualifies the first and second categories and some elements of the fourth categories of the Tribunal's jurisdiction.

Section 66: Orders allocating proceedings to the Tribunal

323. This Section makes further provision concerning the orders (by affirmative resolution, see Section 78) that the Secretary of State may make to provide for the Tribunal to exercise jurisdiction over certain types of case. It ensures that:
- the Tribunal is given the power to remit proceedings to the court or tribunal which would have had jurisdiction but for the order;
 - proceedings before the Tribunal are properly heard and considered;
 - information is not disclosed where this might be damaging or prejudicial as described in subsection (2)(b).

Section 67: Exercise of the Tribunal's jurisdiction

324. This Section makes further provision concerning the exercise of the Tribunal's jurisdiction under Section 65. It describes how the Tribunal is to hear, consider and investigate complaints and proceedings, confers on the Tribunal the power to award compensation, quash or cancel any warrant or authorisation and require the destruction of records of information.
325. *Subsection (7)* confers powers on the Tribunal. An order to quash or cancel any warrant or authorisation would overturn the decision of the person who authorised such an instrument, and any continued conduct under the terms of the quashed authorisation or examination of information obtained under its authority would not be lawful.

Section 68: Tribunal procedure

326. This Section provides for the Tribunal to determine their own procedure (subject to any rules made by the Secretary of State under Section 69), and requires it to inform certain persons of proceedings, complaints and their determinations, and empowers it to require the cooperation of certain persons in exercising their powers and duties.

327. *Subsection (2)* empowers the Tribunal to require any Commissioner listed in subsection (8) to advise it on any matters falling within his knowledge which are relevant to the Tribunal's functions.

Section 69: Tribunal rules

328. This Section describes those rules which the Secretary of State may make subject to the affirmative resolution procedure to regulate the Tribunal's exercise of its powers, and any matters related to them.
329. *Subsections (2) to (5)* describe rules the Secretary of State may make, without limiting his power to make rules only to those matters listed.
330. *Subsection (6)* requires the Secretary of State, in making any rules, to ensure:
- that proceedings before the Tribunal are properly heard and considered; and
 - that information is not disclosed where this might be damaging or prejudicial as described in subsection (2)(b).
331. *Subsection (7)* enables any rules to incorporate, for example, Civil Procedure Rules which have already been made. This avoids the need to create such rules from scratch for the Tribunal where they already exist elsewhere.
332. *Subsections (9) to (11)* provide that where rules governing the conduct of the Tribunal are made for the first time, they be made under a special 40 day procedure. This will ensure that the Tribunal is operational as soon as the substantive provisions in the Act are brought into force. For all subsequent rules, the affirmative resolution procedure will apply.

Section 70: Abolition of jurisdiction in relation to complaints

333. This Section repeals those provisions listed in subsection (2), which provide for the jurisdiction of Tribunals established by other Acts of Parliament to investigate complaints concerning conduct which is in future to be investigated by the Tribunal established in this Act. Those Tribunals may, however, finish their investigation of those cases which they begin to consider before the Act comes into force.

Section 71: Issue and revision of Codes of Practice

334. This Section deals with the issuing of Codes of Practice to explain in greater detail the practical arrangements relating to the use of the provisions of this Act.
335. *Subsections (1) and (2)* require the Secretary of State to issue one or more Codes of Practice covering the powers and duties in this Act and those relating to interference with property or wireless telegraphy in either the Intelligence Services Act 1994 or Part III of the Police Act 1997.
336. *Subsections (3), (4) and (5)* require the Secretary of State to consult on any Codes of Practice, lay the drafts before Parliament and bring them into force through an Order (by affirmative resolution, see Section 78).

Section 72: Effect of Codes of Practice

337. *Subsection (1)* requires any person to take account of any applicable Code of Practice issued under Section 71 while exercising or performing any power or duty under this Act.
338. *Subsection (2)* explains that a failure to comply with a Code of Practice issued under Section 71 will not of itself constitute a criminal offence or civil tort.
339. *Subsection (3)* allows the evidential use of a Code of Practice in court.

*These notes refer to the Regulation of Investigatory Powers
Act 2000 (c.23) which received Royal Assent on 28 July 2000*

340. Subsection (4) requires that, where relevant, the statutory bodies described in this subsection must take into account the provisions of a Code of Practice.