

REGULATION OF INVESTIGATORY POWERS ACT 2000

EXPLANATORY NOTES

OTHER AUTHORISATIONS

Part V: Miscellaneous and Supplemental

Schedule 3: The Tribunal

377. This Schedule provides for the constitution of the Tribunal established under Section 65.

Paragraph 1: Membership of the Tribunal

378. This paragraph determines the membership of the Tribunal.
379. *Sub-paragraph (1)* ensures that members of the Tribunal may be drawn from the legal profession in all parts of the United Kingdom.

“High Judicial Office” is defined in Section 25 of the Appellate Jurisdiction Act 1876 as follows:

“‘High Judicial Office’ means any of the following offices; that is to say

The office of Lord Chancellor of Great Britain... or of Judge of one of Her Majesty’s superior courts of Great Britain and Ireland:

‘Superior courts of Great Britain and Ireland’ means and includes

As to England, Her Majesty’s High Court of Justice and Her Majesty’s Court of Appeal; and

As to Northern Ireland, Her Majesty’s High Court of Justice in Northern Ireland and Her Majesty’s Court of Appeal in Northern Ireland; and

As to Scotland, the Court of Session.”

The Appellate Jurisdiction Act of 1887 amended the term ‘High Judicial Office’ in Section 5 to include the office of a Lord of Appeal in Ordinary and the office of a member of the Judicial Committee of the Privy Council.

The requirement of ten years’ standing means that only those eligible for appointment to the judiciary can serve.

The Courts and Legal Services Act 1990 states that a person has a “general qualification” if he has a right of audience in relation to any class of proceedings in any part of the Supreme Court, or all proceedings in county courts or magistrates’ courts.

380. Sub-paragraph (3) limits the term of office to five years. A member whose term of office expires is eligible for reappointment. Were he to serve a second time he would have to be re-appointed by further Letters Patent. There is no retirement age.

381. Sub-paragraph (4) provides the means whereby a member may resign.

Paragraph 2: President and Vice-President

382. This paragraph establishes the positions of President and Vice-President who will be members of the Tribunal.

Paragraph 3: Members of the Tribunal with special responsibilities

383. This paragraph requires the President of the Tribunal:

- to give one or more members of the Tribunal special responsibility for matters involving the intelligence services; and
- to ensure that in the consideration or hearing of any complaints or proceedings considered by the Tribunal which relate to an allegation against any of the intelligence services or their members or to conduct by or on behalf of any of those services or their members, the Tribunal on that occasion includes one or more of the members with such special responsibility.

Paragraph 4: Salaries and expenses

384. This paragraph deals with the payments of the members of the Tribunal and of its expenses.

Paragraph 5: Officers

385. *Sub-paragraph (1)* provides for the appointment of officers of the Tribunal by the Secretary of State, after consultation with the Tribunal. The Secretary of State may not therefore proceed unilaterally to make appointments. The provision itself places no limitation on the number of officers and (subject to Treasury approval as numbers) allows flexibility over the numbers, grades and individuals.

386. *Sub-paragraph (2)* enables an officer who is so authorised by the Tribunal to obtain documents or information on the Tribunal's behalf.

Paragraph 6: Parliamentary disqualification

387. The parts of the Schedules referred to in this paragraph list the bodies whose members are disqualified from membership of the House of Commons and the Northern Ireland Assembly respectively. They include Tribunals and public Boards, Commissions and Councils. Members of this Tribunal (as people paid for adjudicating in a quasi-judicial capacity on the decisions of Ministers, and able to overturn those decisions) clearly fall within the category of those who are normally disqualified.