



# Regulation of Investigatory Powers Act 2000

## 2000 CHAPTER 23

### PART IV

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

##### Modifications etc. (not altering text)

- C1** Pt. IV (ss. 26-48): power to apply (with modifications) conferred (1.10.2002) by [2002 c. 30, s. 19\(2\)\(b\)](#); [S.I. 2002/2306, art. 2\(b\)\(v\)](#)
- C2** Pt. 4 modified (1.4.2004) by [The Independent Police Complaints Commission \(Investigatory Powers\) Order 2004 \(S.I. 2004/815\), art. 3](#) (as amended (E.W.) (8.1.2018) by [The Independent Office for Police Conduct \(Transitional and Consequential\) Regulations 2017 \(S.I. 2017/1250\), regs. 1, 10\(6\)](#) (with reg. 37))

#### *Commissioners*

##### **57 Interception of Communications Commissioner.**

- (1) The Prime Minister shall appoint a Commissioner to be known as the Interception of Communications Commissioner.
- (2) Subject to subsection (4), the Interception of Communications Commissioner shall keep under review—
  - (a) the exercise and performance by the Secretary of State of the powers and duties conferred or imposed on him by or under sections 1 to 11;
  - [<sup>F1</sup>(aa) the exercise and performance by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) of the powers and duties conferred or imposed on them by or under sections 5, 9 and 10;]

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**Status:** Point in time view as at 25/01/2010. This version of this part contains provisions that are prospective.  
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- (b) the exercise and performance, by the persons on whom they are conferred or imposed, of the powers and duties conferred or imposed by or under Chapter II of Part I;
  - (c) the exercise and performance by the Secretary of State in relation to information obtained under Part I of the powers and duties conferred or imposed on him by or under Part III; and
  - (d) the adequacy of the arrangements by virtue of which—
    - (i) the duty which is imposed on the Secretary of State [<sup>F2</sup>or, the Scottish Ministers (by virtue of provision under section 63 of the Scotland Act 1998),]by section 15, and
    - (ii) so far as applicable to information obtained under Part I, the duties imposed by section 55,
 are sought to be discharged.
- (3) The Interception of Communications Commissioner shall give the Tribunal all such assistance (including his opinion as to any issue falling to be determined by the Tribunal) as the Tribunal may require—
- (a) in connection with the investigation of any matter by the Tribunal; or
  - (b) otherwise for the purposes of the Tribunal’s consideration or determination of any matter.
- (4) It shall not be the function of the Interception of Communications Commissioner to keep under review the exercise of any power of the Secretary of State to make, amend or revoke any subordinate legislation.
- (5) A person shall not be appointed under this section as the Interception of Communications Commissioner unless he holds or has held a high judicial office (within the meaning of [<sup>F3</sup>Part 3 of the Constitutional Reform Act 2005] or is or has been a member of the Judicial Committee of the Privy Council]).
- (6) The Interception of Communications Commissioner shall hold office in accordance with the terms of his appointment; and there shall be paid to him out of money provided by Parliament such allowances as the Treasury may determine.
- (7) The Secretary of State, after consultation with the Interception of Communications Commissioner, shall—
- (a) make such technical facilities available to the Commissioner, and
  - (b) subject to the approval of the Treasury as to numbers, provide the Commissioner with such staff,
- as are sufficient to secure that the Commissioner is able properly to carry out his functions.
- (8) On the coming into force of this section the Commissioner holding office as the Commissioner under section 8 of the <sup>M1</sup>Interception of Communications Act 1985 shall take and hold office as the Interception of Communications Commissioner as if appointed under this Act—
- (a) for the unexpired period of his term of office under that Act; and
  - (b) otherwise, on the terms of his appointment under that Act.

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#### Textual Amendments

- F1** S. 57(2)(aa) inserted (S.) (15.12.2000) by [S.I. 2000/3253](#), arts. 1(1), 4(1), **Sch. 3 Pt. II para. 9(a)** (with [art. 6](#))
- F2** Words in s. 57(2)(d)(i) inserted (S.) (15.12.2000) by [S.I. 2000/3253](#), arts. 1(1), 4(1), **Sch. 3 Pt. II para. 9(b)** (with [art. 6](#))
- F3** Words in s. 57(5) substituted (1.10.2009) by [Constitutional Reform Act 2005](#) (c. 4), ss. 145, 148, **Sch. 17 para. 30(2)**; [S.I. 2009/1604](#), **art. 2(e)**

#### Commencement Information

- II** S. 57 wholly in force at 1.10.2007; s. 57 not in force at Royal Assent see s. 83(2); s. 57 except s. 57(2)(b)(c)(d)(ii) in force at 2.10.2000 by [S.I. 2000/2543](#), **art. 3**; s. 57(2)(b) in force at 5.1.2004 by [S.I. 2003/3140](#), **art. 2(b)**; s. 57(2)(c)(d)(ii) in force at 1.10.2007 by [S.I. 2007/2196](#), **art. 2**

#### Marginal Citations

- M1** 1985 c. 56.

## 58 Co-operation with and reports by s. 57 Commissioner.

- (1) It shall be the duty of—
- (a) every person holding office under the Crown,
  - <sup>[F4]</sup>(b) every member of the staff of the Serious Organised Crime Agency,
  - <sup>[F5]</sup>(ba) every member of the Scottish Crime and Drug Enforcement Agency,
  - (d) every person employed by or for the purposes of a police force,
  - (e) every person required for the purposes of section 11 to provide assistance with giving effect to an interception warrant,
  - (f) every person on whom an obligation to take any steps has been imposed under section 12,
  - (g) every person by or to whom an authorisation under section 22(3) <sup>[F6]</sup>, (3B) or (3F) has been granted,
  - (h) every person to whom a notice under section 22(4) has been given,
  - (i) every person to whom a notice under section 49 has been given in relation to any information obtained under Part I, and
  - (j) every person who is or has been employed for the purposes of any business of a person falling within paragraph (e), (f), (h) or (i),
- to disclose or provide to the Interception of Communications Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions under section 57.
- (2) If it at any time appears to the Interception of Communications Commissioner—
- (a) that there has been a contravention of the provisions of this Act in relation to any matter with which that Commissioner is concerned, and
  - (b) that the contravention has not been the subject of a report made to the Prime Minister by the Tribunal,
- he shall make a report to the Prime Minister with respect to that contravention.
- (3) If it at any time appears to the Interception of Communications Commissioner that any arrangements by reference to which the duties imposed by sections 15 and 55 have sought to be discharged have proved inadequate in relation to any matter with

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which the Commissioner is concerned, he shall make a report to the Prime Minister with respect to those arrangements.

- (4) As soon as practicable after the end of each calendar year, the Interception of Communications Commissioner shall make a report to the Prime Minister with respect to the carrying out of that Commissioner's functions.
- (5) The Interception of Communications Commissioner may also, at any time, make any such other report to the Prime Minister on any matter relating to the carrying out of the Commissioner's functions as the Commissioner thinks fit.
- [<sup>F7</sup>(5A) The Interception of Communications Commissioner may also, at any time, make any such other report to the First Minister on any matter relating to the carrying out of the Commissioner's functions so far as they relate to the exercise by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) of their powers under sections 5, 9(1)(b) and (3), 10(1)(a) and (2) and 15(1) of this Act, as the Commissioner thinks fit.]
- (6) The Prime Minister shall lay before each House of Parliament a copy of every annual report made by the Interception of Communications Commissioner under subsection (4), together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (7).
- [<sup>F8</sup>(6A) The Prime Minister shall send a copy of every annual report made by the Interception of Communications Commissioner under subsection (4) which he lays in terms of subsection (6), together with a copy of the statement referred to in subsection (6), to the First Minister who shall forthwith lay that copy report and statement before the Scottish Parliament.]
- (7) If it appears to the Prime Minister, after consultation with the Interception of Communications Commissioner [<sup>F9</sup>and if it appears relevant to do so, with the First Minister], that the publication of any matter in an annual report would be contrary to the public interest or prejudicial to—
- (a) national security,
  - (b) the prevention or detection of serious crime,
  - (c) the economic well-being of the United Kingdom, or
  - (d) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by that Commissioner,
- the Prime Minister may exclude that matter from the copy of the report as laid before each House of Parliament.

#### Textual Amendments

- F4** S. 58(1)(b) substituted (1.4.2006) for s. 58(1)(b)(c) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 150](#); S.I. 2006/378, [art. 4\(1\)](#), [Sch. para. 10](#) (subject to [art. 4\(2\)-\(7\)](#))
- F5** S. 58(1)(ba) inserted (1.4.2007) by [The Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(Consequential Provisions and Modifications\) Order 2007 \(S.I. 2007/1098\)](#), arts. 1(3), 6, [Sch. para. 4\(13\)](#)
- F6** Words in s. 58(1)(g) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), ss. 112, 116, [Sch. 7 para. 16](#); S.I. 2009/3096, [art. 3\(v\)](#)
- F7** S. 58(5A) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), [Sch. 3 Pt. II para. 10\(a\)](#) (with [art. 6](#))
- F8** S. 58(6A) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), [Sch. 3 Pt. II para. 10\(b\)](#) (with [art. 6](#))

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**F9** Words in s. 58(7) inserted (S.) (15.12.2000) by [S.I. 2000/3253](#), arts. 1(1), 4(1), **Sch. 3 Pt. II para. 10(c)** (with art. 6)

#### Commencement Information

**I2** S. 58 wholly in force at 1.10.2007; s. 58 not in force at Royal Assent see s. 83(2); s. 58 in force except s. 58(1)(g)(h)(i) and s. 58(1)(j) in respect of s. 58(1)(h)(i) at 2.10.2000 by [S.I. 2000/2543](#), art. 3; s. 58(1)(g)(h)(j) in force at 5.1.2004 by [S.I. 2003/3140](#), art. 2; s. 58(1)(i) in force at 1.10.2007 by [S.I. 2007/2196](#), art. 2(c)

## 59 Intelligence Services Commissioner.

- (1) The Prime Minister shall appoint a Commissioner to be known as the Intelligence Services Commissioner.
- (2) Subject to subsection (4), the Intelligence Services Commissioner shall keep under review, so far as they are not required to be kept under review by the Interception of Communications Commissioner—
  - (a) the exercise by the Secretary of State of his powers under sections 5 to 7 of <sup>F10</sup>, or the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) of their powers under section 5 and 6(3) and (4) of <sup>M2</sup>the Intelligence Services Act 1994 (warrants for interference with wireless telegraphy, entry and interference with property etc.);
  - (b) the exercise and performance by the Secretary of State <sup>F11</sup> or the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998), in connection with or in relation to—
    - (i) the activities of the intelligence services, and
    - (ii) the activities in places other than Northern Ireland of the officials of the Ministry of Defence and of members of Her Majesty's forces, of the powers and duties conferred or imposed on him by Parts II and III of this Act <sup>F12</sup> or on them by Part II of this Act;
  - (c) the exercise and performance by members of the intelligence services of the powers and duties conferred or imposed on them by or under Parts II and III of this Act;
  - (d) the exercise and performance in places other than Northern Ireland, by officials of the Ministry of Defence and by members of Her Majesty's forces, of the powers and duties conferred or imposed on such officials or members of Her Majesty's forces by or under Parts II and III; and
  - (e) the adequacy of the arrangements by virtue of which the duty imposed by section 55 is sought to be discharged—
    - (i) in relation to the members of the intelligence services; and
    - (ii) in connection with any of their activities in places other than Northern Ireland, in relation to officials of the Ministry of Defence and members of Her Majesty's forces.

<sup>F13</sup>(2A) The Intelligence Services Commissioner shall also keep under review—

- (a) the acquisition, storage and use by the intelligence services of information recorded in the National Identity Register;
- (b) the provision of such information to members of the intelligence services in accordance with any provision made by or under the Identity Cards Act 2006;

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- (c) arrangements made by the Secretary of State or any of the intelligence services for the purposes of anything mentioned in paragraph (a) or (b).]
- (3) The Intelligence Services Commissioner shall give the Tribunal all such assistance (including his opinion as to any issue falling to be determined by the Tribunal) as the Tribunal may require—
- (a) in connection with the investigation of any matter by the Tribunal; or
- (b) otherwise for the purposes of the Tribunal’s consideration or determination of any matter.
- (4) It shall not be the function of the Intelligence Services Commissioner to keep under review the exercise of any power of the Secretary of State to make, amend or revoke any subordinate legislation.
- (5) A person shall not be appointed under this section as the Intelligence Services Commissioner unless he holds or has held a high judicial office (within the meaning of <sup>F14</sup>Part 3 of the Constitutional Reform Act 2005) or is or has been a member of the Judicial Committee of the Privy Council]).
- (6) The Intelligence Services Commissioner shall hold office in accordance with the terms of his appointment; and there shall be paid to him out of money provided by Parliament such allowances as the Treasury may determine.
- (7) The Secretary of State shall, after consultation with the Intelligence Services Commissioner and subject to the approval of the Treasury as to numbers, provide him with such staff as the Secretary of State considers necessary for the carrying out of the Commissioner’s functions.
- (8) Section 4 of the <sup>M3</sup>Security Service Act 1989 and section 8 of the <sup>M4</sup>Intelligence Services Act 1994 (Commissioners for the purposes of those Acts) shall cease to have effect.
- (9) On the coming into force of this section the Commissioner holding office as the Commissioner under section 8 of the <sup>M5</sup>Intelligence Services Act 1994 shall take and hold office as the Intelligence Services Commissioner as if appointed under this Act—
- (a) for the unexpired period of his term of office under that Act; and
- (b) otherwise, on the terms of his appointment under that Act.
- (10) Subsection (7) of section 41 shall apply for the purposes of this section as it applies for the purposes of that section.

#### Textual Amendments

- F10** Words in s. 59(2)(a) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 11(a)** (with art. 6)
- F11** Words in s. 59(2)(b) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 11(b)(i)** (with art. 6)
- F12** Words in s. 59(2)(b) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 11(b)(ii)** (with art. 6)
- F13** S. 59(2A) inserted (1.10.2009) by Identity Cards Act 2006 (c. 15), ss. 24(2), 44(3)(5); S.I. 2009/2303, art. 2(b); S.I. 2009/2303, art. 2(c)
- F14** Words in s. 59(5) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 145, 148, **Sch. 17 para. 30(2)**; S.I. 2009/1604, art. 2(e)

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#### Commencement Information

- I3** S. 59 partly in force; s. 59 not in force at royal Assent see s. 83(2); s.59(1)(2)(a)(3)-(10) in force at 2.10.2000 and the rest of s. 59(2) in force at 2.10.2000 for certain purposes by S.I. 2000/2543, art. 3; s. 59(2)(b) in force in so far as not already in force by S.I. 2007/2196, art. 2(d)

#### Marginal Citations

- M2** 1994 c. 13.  
**M3** 1989 c. 5.  
**M4** 1994 c. 13.  
**M5** 1994 c. 13.

### 60 Co-operation with and reports by s. 59 Commissioner.

- (1) It shall be the duty of—
- (a) every member of an intelligence service,
  - (b) every official of the department of the Secretary of State [<sup>F15</sup>and every member of staff of the Scottish Administration (by virtue of provision under section 63 of the Scotland Act 1998)], and
  - (c) every member of Her Majesty's forces,
- to disclose or provide to the Intelligence Services Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions under section 59.
- (2) As soon as practicable after the end of each calendar year, the Intelligence Services Commissioner shall make a report to the Prime Minister with respect to the carrying out of that Commissioner's functions.
- (3) The Intelligence Services Commissioner may also, at any time, make any such other report to the Prime Minister on any matter relating to the carrying out of the Commissioner's functions as the Commissioner thinks fit.
- [<sup>F16</sup>(3A) The Intelligence Services Commissioner may also, at any time, make any such other report to the First Minister on any matter relating to the carrying out of the Commissioner's functions so far as they relate to the exercise by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) of their powers under sections 5 and 6(3) and (4) of the Intelligence Services Act 1994 <sup>M6</sup> or under Parts I and II of this Act, as the Commissioner thinks fit.]
- (4) The Prime Minister shall lay before each House of Parliament a copy of every annual report made by the Intelligence Services Commissioner under subsection (2), together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (5).
- [<sup>F17</sup>(4A) The Prime Minister shall send a copy of every annual report made by the Intelligence Services Commissioner under subsection (2) which he lays in terms of subsection (4), together with a copy of the statement referred to in subsection (4), to the First Minister who shall forthwith lay that copy report and statement before the Scottish Parliament.]
- (5) If it appears to the Prime Minister, after consultation with the Intelligence Services Commissioner [<sup>F18</sup>and, if it appears relevant to do so, with the First Minister], that the publication of any matter in an annual report would be contrary to the public interest or prejudicial to—
- (a) national security,



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- (b) the prevention or detection of serious crime,
  - (c) the economic well-being of the United Kingdom, or
  - (d) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by that Commissioner,
- the Prime Minister may exclude that matter from the copy of the report as laid before each House of Parliament.
- (6) Subsection (7) of section 41 shall apply for the purposes of this section as it applies for the purposes of that section.

#### Textual Amendments

- F15** Words in s. 60(1)(b) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 12(a)** (with art. 6)
- F16** S. 60(3A) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 12(b)** (with art. 6)
- F17** S. 60(4A) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 12(c)** (with art. 6)
- F18** Words in s. 60(5) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 12(d)** (with art. 6)

#### Marginal Citations

- M6** 1994 c.13.

## 61 Investigatory Powers Commissioner for Northern Ireland.

- (1) The Prime Minister, after consultation with the First Minister and deputy First Minister in Northern Ireland, shall appoint a Commissioner to be known as the Investigatory Powers Commissioner for Northern Ireland.
- (2) The Investigatory Powers Commissioner for Northern Ireland shall keep under review the exercise and performance in Northern Ireland, by the persons on whom they are conferred or imposed, of any powers or duties under Part II which are conferred or imposed by virtue of an order under section 30 made by the Office of the First Minister and deputy First Minister in Northern Ireland.
- (3) The Investigatory Powers Commissioner for Northern Ireland shall give the Tribunal all such assistance (including his opinion as to any issue falling to be determined by the Tribunal) as the Tribunal may require—
  - (a) in connection with the investigation of any matter by the Tribunal; or
  - (b) otherwise for the purposes of the Tribunal’s consideration or determination of any matter.
- (4) It shall be the duty of—
  - (a) every person by whom, or on whose application, there has been given or granted any authorisation the function of giving or granting which is subject to review by the Investigatory Powers Commissioner for Northern Ireland,
  - (b) every person who has engaged in conduct with the authority of such an authorisation,
  - (c) every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (a), and



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- (d) every person who holds or has held any office, rank or position with any public authority for whose benefit (within the meaning of Part II) activities which are or may be subject to any such review have been or may be carried out, to disclose or provide to that Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions.
- (5) As soon as practicable after the end of each calendar year, the Investigatory Powers Commissioner for Northern Ireland shall make a report to the First Minister and deputy First Minister in Northern Ireland with respect to the carrying out of that Commissioner's functions.
- (6) The First Minister and deputy First Minister in Northern Ireland shall lay before the Northern Ireland Assembly a copy of every annual report made by the Investigatory Powers Commissioner for Northern Ireland under subsection (5), together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (7).
- (7) If it appears to the First Minister and deputy First Minister in Northern Ireland, after consultation with the Investigatory Powers Commissioner for Northern Ireland, that the publication of any matter in an annual report would be contrary to the public interest or prejudicial to—
- (a) the prevention or detection of serious crime, or
  - (b) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by that Commissioner,
- they may exclude that matter from the copy of the report as laid before the Northern Ireland Assembly.
- (8) A person shall not be appointed under this section as the Investigatory Powers Commissioner for Northern Ireland unless he holds or has held office in Northern Ireland—
- (a) in any capacity in which he is or was the holder of a high judicial office (within the meaning of [F19Part 3 of the Constitutional Reform Act 2005]); or
  - (b) as a county court judge.
- (9) The Investigatory Powers Commissioner for Northern Ireland shall hold office in accordance with the terms of his appointment; and there shall be paid to him out of the Consolidated Fund of Northern Ireland such allowances as the Department of Finance and Personnel may determine.
- (10) The First Minister and deputy First Minister in Northern Ireland shall, after consultation with the Investigatory Powers Commissioner for Northern Ireland, provide him with such staff as they consider necessary for the carrying out of his functions.

#### Textual Amendments

**F19** Words in s. 61(8)(a) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 145, 148, Sch. 17 para. 30\(3\); S.I. 2009/1604, art. 2\(e\)](#)

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## 62 Additional functions of Chief Surveillance Commissioner.

- (1) The Chief Surveillance Commissioner shall (in addition to his functions under the <sup>M7</sup>Police Act 1997) keep under review, so far as they are not required to be kept under review by the Interception of Communications Commissioner, the Intelligence Services Commissioner or the Investigatory Powers Commissioner for Northern Ireland—
- (a) the exercise and performance, by the persons on whom they are conferred or imposed, of the powers and duties conferred or imposed by or under Part II;
  - (b) the exercise and performance, by any person other than a judicial authority, of the powers and duties conferred or imposed, otherwise than with the permission of such an authority, by or under Part III; and
  - (c) the adequacy of the arrangements by virtue of which the duties imposed by section 55 are sought to be discharged in relation to persons whose conduct is subject to review under paragraph (b).
- (2) It shall not by virtue of this section be the function of the Chief Surveillance Commissioner to keep under review the exercise of any power of the Secretary of State to make, amend or revoke any subordinate legislation.
- (3) 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.

### Commencement Information

**I4** S. 62 wholly in force at 1.10.2007; s. 62 not in force at Royal Assent see s. 82(2); s. 62(1)(a)(2)(3) in force at 25.9.2000 by S.I. 2000/2543, art. 2; s. 62(1)(b)(c) in force at 1.10.2007 by S.I. 2007/2196, art. 2(e)

### Marginal Citations

**M7** 1997 c. 50.

## 63 Assistant Surveillance Commissioners.

- (1) The Prime Minister may, after consultation with the Chief Surveillance Commissioner as to numbers, appoint as Assistant Surveillance Commissioners such number of persons as the Prime Minister considers necessary (in addition to the ordinary Surveillance Commissioners) for the purpose of providing the Chief Surveillance Commissioner with assistance under this section.
- (2) A person shall not be appointed as an Assistant Surveillance Commissioner unless he holds or has held office as—
- (a) a judge of the Crown Court or a Circuit judge;
  - (b) a sheriff in Scotland; or
  - (c) a county court judge in Northern Ireland.
- (3) The Chief Surveillance Commissioner may—

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**Status:** Point in time view as at 25/01/2010. This version of this part contains provisions that are prospective.  
**Changes to legislation:** Regulation of Investigatory Powers Act 2000, Part IV is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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- (a) require any ordinary Surveillance Commissioner or any Assistant Surveillance Commissioner to provide him with assistance in carrying out his functions under section 62(1); or
  - (b) require any Assistant Surveillance Commissioner to provide him with assistance in carrying out his equivalent functions under any Act of the Scottish Parliament in relation to any provisions of such an Act that are equivalent to those of Part II of this Act.
- (4) The assistance that may be provided under this section includes—
- (a) the conduct on behalf of the Chief Surveillance Commissioner of the review of any matter; and
  - (b) the making of a report to the Chief Surveillance Commissioner about the matter reviewed.
- (5) Subsections (3) to (8) of section 91 of the <sup>M8</sup>Police Act 1997 (Commissioners) apply in relation to a person appointed under this section as they apply in relation to a person appointed under that section.

**Marginal Citations**

**M8** 1997 c. 50.

**64 Delegation of Commissioners' functions.**

- (1) Anything authorised or required by or under any enactment or any provision of an Act of the Scottish Parliament to be done by a relevant Commissioner may be done by any member of the staff of that Commissioner who is authorised for the purpose (whether generally or specifically) by that Commissioner.
- (2) In this section “relevant Commissioner” means the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Investigatory Powers Commissioner for Northern Ireland or any Surveillance Commissioner or Assistant Surveillance Commissioner.

*The Tribunal*

**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 <sup>M9</sup>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>F20</sup>or (4A)], are complaints for which the Tribunal is the appropriate forum;

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- (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, proposed conduct, by or on behalf of any of those services;
  - (c) they are proceedings brought by virtue of section 55(4);
  - [<sup>F21</sup>(ca) they are proceedings relating to the provision to a member of any of the intelligence services of information recorded in an individual's entry in the National Identity Register;
  - (cb) they are proceedings relating to the acquisition, storage or use of such information by any of the intelligence services; or]
  - (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>F22</sup>(4A) The Tribunal is also the appropriate forum for a complaint if it is a complaint by an individual about what he believes to be—
- (a) the provision to a member of any of the intelligence services of information recorded in that individual's entry in the National Identity Register; or
  - (b) the acquisition, storage or use of such information by any of the intelligence services.]
- (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;
  - (c) conduct to which Chapter II of Part I applies;
  - [<sup>F23</sup>(ca) the carrying out of surveillance by a foreign police or customs officer (within the meaning of section 76A);]
  - (d) [<sup>F24</sup>other] 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.

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(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;

[<sup>F25</sup>(d) the Serious Organised Crime Agency; or]

[<sup>F26</sup>(da) the Scottish Crime and Drug Enforcement Agency;]

[<sup>F27</sup>(f) the Commissioners for Her Majesty's Revenue and Customs;]

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—

- (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 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.

[<sup>F28</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.]

(8) The following fall within this subsection—

- (a) an interception warrant or a warrant under the <sup>M10</sup>Interception of Communications Act 1985;
- (b) an authorisation or notice under Chapter II of Part I of this Act;
- (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 <sup>M11</sup>Police Act 1997.

(9) Schedule 3 (which makes further provision in relation to the Tribunal) shall have effect.

(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

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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.

#### Textual Amendments

- F20** Words in s. 65(2)(b) inserted (1.10.2009) by Identity Cards Act 2006 (c. 15), **ss. 24(3)**, 44(3)(5); S.I. 2009/2303, **art. 2(c)**
- F21** S. 65(3)(ca)(cb) substituted (1.10.2009) for word by Identity Cards Act 2006 (c. 15), **ss. 24(4)**, 44(3)(5); S.I. 2009/2303, **art. 2(c)**
- F22** S. 65(4A) inserted (1.10.2009) by Identity Cards Act 2006 (c. 15), **ss. 24(5)**, 44(3)(5); S.I. 2009/2303, **art. 2(c)**
- F23** S. 65(5)(ca) inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 90, 94, **Sch. 5 para. 79(a)(i)**; S.I. 2004/786, **art. 3(1)(2)**
- F24** Word in s. 65(5)(d) inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 90, 94, **Sch. 5 para. 79(a)(ii)**; S.I. 2004/786, **art. 3(1)(2)**
- F25** S. 65(6)(d) substituted (1.4.2006) for s. 65(6)(d)(e) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 151**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))
- F26** S. 65(6)(da) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(14)**
- F27** S. 65(6)(f) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 24**; S.I. 2008/219, **art. 2(b)**
- F28** S. 65(7A) inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 90, 94, **Sch. 5 para. 79(b)**; S.I. 2004/786, **art. 3(1)(2)**

#### Modifications etc. (not altering text)

- C3** S. 65 extended (S.) (29.9.2000) by 2000 asp 11, **ss. 23(1)(2)**, 32(2) (with s. 30); S.I. 2000/341, **art. 2**

#### Commencement Information

- I5** S. 65 partly in force; s. 65 not in force at Royal Assent see s. 83(2); s. 65(1)(2)(a)(b)(3)(a)(b)(d)(4)(5)(a)(b)(d)(f)(6)(7)(8)(a)(c)(f)(9)(11) in force at 2.10.2000 by S.I. 2000/2543, **art. 3** (subject to transitional provisions in **art. 6**); s. 65(5)(c)(8)(b) in force at 5.1.2004 by S.I. 2003/3140, **art. 2**; s. 65(3)(c)(5)(e)(8)(d)(e)(10) in force at 1.10.2007 by S.I. 2007/2196, **art. 2(f)**

#### Marginal Citations

- M9** 1998 c.42  
**M10** 1985 c. 56.  
**M11** 1997 c. 50.

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PROSPECTIVE

**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.

**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



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- (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; and
  - (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.

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- (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.

#### Modifications etc. (not altering text)

- C4** S. 67(7) applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(i) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), ss. 15, 53 (with s. 20); S.I. 2007/2045, art. 2(2)(3)(j) (with art. 3))
- C5** S. 67(8) applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(i) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), ss. 15, 53 (with s. 20); S.I. 2007/2045, art. 2(2)(3)(j) (with art. 3))
- C6** S. 67(10) applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(i) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), ss. 15, 53 (with s. 20); S.I. 2007/2045, art. 2(2)(3)(j) (with art. 3))
- C7** S. 67(11) applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(i) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), ss. 15, 53 (with s. 20); S.I. 2007/2045, art. 2(2)(3)(j) (with art. 3))
- C8** S. 67(12) applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(i) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), ss. 15, 53 (with s. 20); S.I. 2007/2045, art. 2(2)(3)(j) (with art. 3))

#### Commencement Information

- I6** S. 67 partly in force; s. 67 not in force at Royal Assent see s. 83(1); s. 67(2)-(8)(10)-(12) in force at 2.10.2000 and s. 67(1) in force 2.10.2000 for certain purposes by S.I.2543, art. 3

## 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—
- in connection with the investigation of any matter, or
  - 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—
- is aware that the matter is the subject of proceedings, a complaint or a reference brought before or made to the Tribunal; and
  - 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—

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- (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 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.
- (7) Those persons are—
- (a) every person holding office under the Crown;
  - [<sup>F29</sup>(b) every member of the staff of the Serious Organised Crime Agency;]
  - [<sup>F30</sup>(ba) every member of the Scottish Crime and Drug Enforcement Agency;]
  - (d) every person employed by or for the purposes of a police force;
  - (e) every person required for the purposes of section 11 to provide assistance with giving effect to an interception warrant;
  - (f) every person on whom an obligation to take any steps has been imposed under section 12;
  - (g) every person by or to whom an authorisation under section 22(3) [<sup>F31</sup>, (3B) or (3F)] has been granted;
  - (h) every person to whom a notice under section 22(4) has been given;
  - (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 <sup>M12</sup>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 an authorisation under section 22 or Part II of this Act or under Part III of the <sup>M13</sup>Police Act 1997;
  - (l) every person who holds or has held any office, rank or position with a public authority for whose benefit any such authorisation 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) or (m).
- (8) In this section “relevant Commissioner” means the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Investigatory Powers Commissioner for Northern Ireland or any Surveillance Commissioner or Assistant Surveillance Commissioner.

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### Textual Amendments

- F29** S. 68(7)(b) substituted (1.4.2006) for s. 68(7)(b)(c) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 59, 178, Sch. 4 para. 152](#); [S.I. 2006/378, art. 4\(1\)](#), Sch. para. 10 (subject to art. 4(2)-(7))
- F30** S. 68(7)(ba) inserted (1.4.2007) by [The Police, Public Order and Criminal Justice \(Scotland\) Act 2006 \(Consequential Provisions and Modifications\) Order 2007 \(S.I. 2007/1098\), arts. 1\(3\), 6, Sch. para. 4\(15\)](#)
- F31** Words in s. 68(7)(g) inserted (25.1.2010) by [Policing and Crime Act 2009 \(c. 26\), ss. 112, 116, Sch. 7 para. 17](#); [S.I. 2009/3096, art. 3\(v\)](#)

### Modifications etc. (not altering text)

- C9** S. 68 applied (with modifications) by [1998 c. 47, s. 69B\(2\)\(c\)\(ii\)](#) (as inserted (1.8.2007) by [Justice and Security \(Northern Ireland\) Act 2007 \(c. 6\), ss. 15, 53](#) (with s. 20); [S.I. 2007/2045, art. 2\(2\)\(3\)\(j\)](#) (with art. 3))

### Commencement Information

- I7** S. 68 wholly in force at 1.10.2007; s. 68 not in force at Royal Assent see s. 83(2); s. 68 in force except s. 68(7)(g)(h)(m) and s. 68(7)(n) in respect of s. 68(7)(m) at 2.10.2000 by [S.I. 2000/2543, art. 3](#); s. 68(7)(g)(h) in force at 5.1.2004 by [S.I. 2003/3140, art. 2](#); s. 68(7)(m) in force and (n) in force for certain purposes at 1.10.2007 by [S.I. 2007/2196, art. 2\(g\)](#)

### Marginal Citations

- M12** [1997 c. 50.](#)
- M13** [1997 c. 50.](#)

## 69 Tribunal rules.

- (1) The Secretary of State may make rules regulating—
- the exercise by the Tribunal of the jurisdiction conferred on them by or under section 65; and
  - 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—
- 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;
  - enable different members of the Tribunal to carry out functions in relation to different complaints at the same time;
  - 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;
  - 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—
    - the bringing of the proceedings, or
    - the making of the complaint or reference,is frivolous or vexatious;
  - make provision about the determination of any question as to whether a person by whom—

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- (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

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- 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.

**Modifications etc. (not altering text)**

**C10** S. 69 applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(iii) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), ss. 15, 53 (with s. 20); S.I. 2007/2045, art. 2(2)(3)(j) (with art. 3))

**70 Abolition of jurisdiction in relation to complaints.**

- (1) The provisions set out in subsection (2) (which provide for the investigation etc. of certain complaints) shall not apply in relation to any complaint made after the coming into force of this section.
- (2) Those provisions are—

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- (a) section 5 of, and Schedules 1 and 2 to, the <sup>M14</sup>Security Service Act 1989 (investigation of complaints about the Security Service made to the Tribunal established under that Act);
- (b) section 9 of, and Schedules 1 and 2 to, the <sup>M15</sup>Intelligence Services Act 1994 (investigation of complaints about the Secret Intelligence Service or GCHQ made to the Tribunal established under that Act); and
- (c) section 102 of, and Schedule 7 to, the <sup>M16</sup>Police Act 1997 (investigation of complaints made to the Surveillance Commissioners).

#### Marginal Citations

**M14** 1989 c. 5.

**M15** 1994 c. 13.

**M16** 1997 c. 50.

### *Codes of practice*

#### **71 Issue and revision of codes of practice.**

- (1) The Secretary of State shall issue one or more codes of practice relating to the exercise and performance of the powers and duties mentioned in subsection (2).
- (2) Those powers and duties are those (excluding any power to make subordinate legislation) that are conferred or imposed otherwise than on the Surveillance Commissioners by or under—
  - (a) Parts I to III of this Act;
  - (b) section 5 of the <sup>M17</sup>Intelligence Services Act 1994 (warrants for interference with property or wireless telegraphy for the purposes of the intelligence services); and
  - (c) Part III of the <sup>M18</sup>Police Act 1997 (authorisation by the police or [<sup>F32</sup>Her Majesty's Revenue and Customs] of interference with property or wireless telegraphy).
- (3) Before issuing a code of practice under subsection (1), the Secretary of State shall—
  - (a) prepare and publish a draft of that code; and
  - (b) consider any representations made to him about the draft;
 and the Secretary of State may incorporate in the code finally issued any modifications made by him to the draft after its publication.
- (4) The Secretary of State shall lay before both Houses of Parliament every draft code of practice prepared and published by him under this section.
- (5) A code of practice issued by the Secretary of State under this section shall not be brought into force except in accordance with an order made by the Secretary of State.
- (6) An order under subsection (5) may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the bringing into force of the code brought into force by that order.
- (7) The Secretary of State may from time to time—
  - (a) revise the whole or any part of a code issued under this section; and



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- (b) issue the revised code.
- (8) Subsections (3) to (6) shall apply (with appropriate modifications) in relation to the issue of any revised code under this section as they apply in relation to the first issue of such a code.
- (9) The Secretary of State shall not make an order containing provision for any of the purposes of this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

#### Textual Amendments

**F32** Words in s. 71(2)(c) substituted (15.2.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 88, 94, [Sch. 12 para. 25](#); [S.I. 2008/219](#), [art. 2\(b\)](#)

#### Commencement Information

**I8** S. 71 not in force at Royal Assent see s. 83(2); s. 71 in force for certain purposes at 25.9.2000 and 2.10.2000 by [S.I. 2000/2543](#), [arts. 2, 3](#); s. 71 in force for certain other purposes at 13.8.2001 by [S.I. 2001/2727](#), [art. 2](#); s. 71 in force for further certain purposes at 1.10.2007 by [S.I. 2007/2196](#), [art. 2\(h\)](#)

#### Marginal Citations

**M17** [1994 c. 13](#).  
**M18** [1997 c. 50](#).

## 72 Effect of codes of practice.

- (1) A person exercising or performing any power or duty in relation to which provision may be made by a code of practice under section 71 shall, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice for the time being in force under that section.
- (2) A failure on the part of any person to comply with any provision of a code of practice for the time being in force under section 71 shall not of itself render him liable to any criminal or civil proceedings.
- (3) A code of practice in force at any time under section 71 shall be admissible in evidence in any criminal or civil proceedings.
- (4) If any provision of a code of practice issued or revised under section 71 appears to—
- the court or tribunal conducting any civil or criminal proceedings,
  - the Tribunal,
  - a relevant Commissioner carrying out any of his functions under this Act,
  - a Surveillance Commissioner carrying out his functions under this Act or the <sup>M19</sup>Police Act 1997, or
  - any Assistant Surveillance Commissioner carrying out any functions of his under section 63 of this Act,
- to be relevant to any question arising in the proceedings, or in connection with the exercise of that jurisdiction or the carrying out of those functions, in relation to a time when it was in force, that provision of the code shall be taken into account in determining that question.

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- (5) In this section “relevant Commissioner” means the Interception of Communications Commissioner, the Intelligence Services Commissioner or the Investigatory Powers Commissioner for Northern Ireland.

**Commencement Information**

- I9** S. 72 not in force at Royal Assent see s. 83(2); s. 72 in force for certain purposes at 25.9.2000 and s. 72 in force at 2.10.2000 for certain other purposes by [S.I. 2000/2543](#), [arts. 2, 3](#); s. 72 in force for certain other purposes at 13.8.2001 by [S.I. 2001/2727](#), [art. 2](#); s. 72 in force for further certain purposes at 1.10.2007 by [S.I. 2007/2196](#), [art. 2\(h\)](#)

**Marginal Citations**

- M19** 1997 c. 50.

**Status:**

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**Changes to legislation:**

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