



Justice and Security (Northern Ireland) Act 2007

2007 CHAPTER 6

Human Rights Commission

14 Legal proceedings

- (1) In section 71(1) of the Northern Ireland Act 1998 (c. 47) (Human Rights Commission: Convention rights proceedings: restrictions) for “section 6(2)(c), 24(1)(a) or 69(5)(b)” substitute “section 6(2)(c) or 24(1)(a)”.
- (2) After section 71(2) of that Act insert—
 - “(2A) Subsection (1) does not apply to the Commission.
 - (2B) In relation to the Commission’s instituting, or intervening in, human rights proceedings—
 - (a) the Commission need not be a victim or potential victim of the unlawful act to which the proceedings relate,
 - (b) section 7(3) and (4) of the Human Rights Act 1998 (c. 42) (breach of Convention rights: sufficient interest, &c.) shall not apply,
 - (c) the Commission may act only if there is or would be one or more victims of the unlawful act, and
 - (d) no award of damages may be made to the Commission (whether or not the exception in section 8(3) of that Act applies).
 - (2C) For the purposes of subsection (2B)—
 - (a) “human rights proceedings” means proceedings which rely (wholly or partly) on—
 - (i) section 7(1)(b) of the Human Rights Act 1998, or
 - (ii) section 69(5)(b) of this Act, and
 - (b) an expression used in subsection (2B) and in section 7 of the Human Rights Act 1998 has the same meaning in subsection (2B) as in section 7.”

15 Investigations: evidence

After section 69 of the Northern Ireland Act 1998 (Human Rights Commission functions) insert—

“69A Investigations: evidence

- (1) For the purpose of an investigation under section 69(8) the Commission may by notice in writing require a person—
 - (a) to provide information in his possession,
 - (b) to produce documents in his possession, or
 - (c) to give oral evidence.
- (2) A notice may include provision about—
 - (a) the form of information, documents or evidence;
 - (b) timing.
- (3) A notice—
 - (a) may not require a person to provide information that he is prohibited from disclosing by virtue of an enactment,
 - (b) may not require a person to do anything that he could not be compelled to do in proceedings before the High Court, and
 - (c) may not require a person to attend at a place unless the Commission undertakes to pay the expenses of his journey.
- (4) The Commission may issue a notice under subsection (1) only if it has—
 - (a) considered whether the matter to which the notice relates has already been sufficiently investigated by another person, and
 - (b) concluded that it has not.
- (5) The recipient of a notice may apply to a county court to have the notice cancelled on the grounds that the requirement imposed by the notice—
 - (a) is unnecessary having regard to the purpose of the investigation to which the notice relates,
 - (b) contravenes subsection (4) or section 69D, or
 - (c) is otherwise unreasonable.
- (6) Subsection (7) applies where the Commission thinks that a person—
 - (a) has failed without reasonable excuse to comply with a notice, or
 - (b) is likely to fail without reasonable excuse to comply with a notice.
- (7) The Commission may apply to a county court for an order requiring a person to take such steps as may be specified in the order to comply with the notice.
- (8) A person commits an offence if without reasonable excuse he—
 - (a) fails to comply with a notice,
 - (b) fails to comply with an order under subsection (7),
 - (c) falsifies anything provided or produced in accordance with a notice or order, or
 - (d) makes a false statement in giving oral evidence in accordance with a notice.

- (9) A person who is guilty of an offence under subsection (8) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) A notice under this section may not require the Public Prosecution Service for Northern Ireland to supply documents or evidence about a decision whether or not to institute or continue criminal proceedings.

69B Investigations: national security

- (1) Where a person is given a notice under section 69A(1) he shall disregard it, and notify the Commission that he is disregarding it, in so far as he thinks it would require him—
- (a) to disclose sensitive information within the meaning of paragraph 4 of Schedule 3 to the Intelligence Services Act 1994 (c. 13) (Intelligence and Security Committee),
 - (b) to disclose information which might lead to the identification of an employee or agent of an intelligence service (other than one whose identity is already known to the Commission),
 - (c) to disclose information which might provide details of processes used in recruiting, selecting or training employees or agents of an intelligence service,
 - (d) to disclose information which might provide details of, or cannot practicably be separated from, information falling within any of paragraphs (a) to (c),
 - (e) to make a disclosure of information relating to an intelligence service which would prejudice the interests of national security, or
 - (f) to make a disclosure of information relating to the Police Service of Northern Ireland which would prejudice the interests of national security.
- (2) Where in response to a notice under section 69A(1) a person gives a notice to the Commission under subsection (1) above—
- (a) section 69A(7) and (8) shall not apply in relation to that part of the notice under section 69A(1) to which the notice under subsection (1) above relates,
 - (b) the Commission may apply to the tribunal established by section 65 of the Regulation of Investigatory Powers Act 2000 (c. 23) for an order requiring the person to take such steps as may be specified in the order to comply with the notice,
 - (c) the following provisions of that Act shall apply in relation to proceedings under this subsection as they apply in relation to proceedings under that Act (with any necessary modifications)—
 - (i) section 67(7), (8) and (10) to (12) (determination),
 - (ii) section 68 (procedure), and
 - (iii) section 69 (rules), and
 - (d) the tribunal shall determine proceedings under this subsection by considering the opinion of the person who gave the notice under subsection (1) above in accordance with the principles that would be applied by a court on an application for judicial review of the giving of the notice.

- (3) Where the Commission receives information or documents from or relating to an intelligence service in response to a notice under section 69A(1), the Commission shall store and use the information or documents in accordance with any arrangements specified by the Secretary of State.
- (4) The recipient of a notice under section 69A(1) may apply to the High Court to have the notice cancelled on the grounds that the requirement imposed by the notice is undesirable for reasons of national security, other than for the reason that it would require a disclosure of a kind to which subsection (1) above applies.
- (5) An investigation under section 69(8) may not consider—
 - (a) whether an intelligence service has acted (or is acting) in a way which is incompatible with a person’s human rights, or
 - (b) other matters concerning human rights in relation to an intelligence service.
- (6) In this section “intelligence service” means—
 - (a) the Security Service,
 - (b) the Secret Intelligence Service, and
 - (c) the Government Communications Headquarters.”

16 Investigations: access to prisons, &c.

- (1) After section 69B of the Northern Ireland Act 1998 (c. 47) (inserted by section 15 above) insert—

“69C Investigations: places of detention

- (1) For the purpose of an investigation under section 69(8) a person authorised in writing by the Commission may enter a specified place of detention in Northern Ireland on one or more occasions during a specified period.
- (2) In subsection (1) “specified” means specified in the terms of reference of the investigation.
- (3) In subsection (1) “place of detention” means—
 - (a) a prison specified in the Schedule to the Prisons and Young Offenders Centres Rules (Northern Ireland) 1995,
 - (b) a place used for the purpose of detaining arrested persons in a police station designated under Article 36 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),
 - (c) a place designated under paragraph 1 of Schedule 8 to the Terrorism Act 2000 (c. 11) (detention),
 - (d) in a building where a court sits, a place used for the purpose of detaining arrested persons,
 - (e) a juvenile justice centre provided under Article 51 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)),
 - (f) the secure accommodation in Bangor provided and used in accordance with Article 44 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)),

- (g) a removal centre or short-term holding facility within the meaning of section 147 of the Immigration and Asylum Act 1999 (c. 33), and
 - (h) any accommodation (including accommodation in a hospital) provided for the purpose of detention under the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)).
- (4) The Commission may specify a place of detention in the terms of reference of an investigation only if it has—
 - (a) considered whether the matter in respect of which the place is specified has already been sufficiently investigated by another person, and
 - (b) concluded that it has not.
- (5) The power under subsection (1) may not be exercised—
 - (a) during the period of 15 days beginning with that on which copies of the terms of reference of the investigation are provided in accordance with section 69D(1)(b), or
 - (b) while an application under subsection (6), made during that period, has not yet been determined.
- (6) A county court may, on the application of a person who appears to the court to be responsible for a place of detention specified in terms of reference—
 - (a) order that the power under subsection (1) may not be used to enter the place of detention;
 - (b) impose restrictions on the exercise of the power in relation to the place of detention;
 - (c) require the Commission to amend the terms of reference.
- (7) An order may be made under subsection (6) only if the court thinks that—
 - (a) access to the place of detention is unnecessary having regard to the purpose of the investigation,
 - (b) it would be unreasonable to allow the Commission access to the place of detention, or
 - (c) the Commission has failed to comply with subsection (4) or section 69D.
- (8) In considering whether to make an order under subsection (6), and in considering the terms of an order under subsection (6)(b), the court shall have regard, in particular, to the likely impact of the use of the power under subsection (1) on the operation of the place of detention.
- (9) If a person obstructs the Commission in the exercise of the power under subsection (1) the Commission may apply to a county court for an order requiring the person not to obstruct the Commission.
- (10) A person commits an offence if without reasonable excuse he fails to comply with an order under subsection (9).
- (11) A person who is guilty of an offence under subsection (10) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (12) The Secretary of State may by order amend subsection (3).”

- (2) In section 96(2) of the Northern Ireland Act 1998 (c. 47) (orders) after “55,” insert “69C(12),”.

17 Investigations: terms of reference

- (1) After section 69C of the Northern Ireland Act 1998 (inserted by section 16 above) insert—

“69D Investigations: terms of reference

- (1) A power under section 69A(1) or 69C(1) may be used in relation to an investigation only if the Commission has—
- (a) prepared terms of reference for the investigation in advance, and
 - (b) sent a copy of the terms of reference to—
 - (i) any person identified in them,
 - (ii) a person responsible for any place of detention specified in them, and
 - (iii) any other person whom the Commission thinks may be affected by the investigation.
- (2) Terms of reference must specify a period within which the investigation must be concluded.
- (3) Subsection (2) does not prevent the Commission from commencing (in accordance with this Part) a new investigation of matters arising out of, or incompletely considered in, an earlier investigation.”

18 Investigations: duty to report

- (1) After section 69(8) of the Northern Ireland Act 1998 (c. 47) (Commission: investigations) insert—

“(8A) The Commission shall publish a report of its findings on an investigation.”

- (2) In section 69(9) omit “and investigations”.

19 Recommendations

Section 69(2) of the Northern Ireland Act 1998 (Commission to make recommendations about its functions) shall have effect in relation to the Commission’s functions as amended by each of sections 14 to 18 of this Act as if the reference to the commencement of section 69 included a reference to the commencement of each of those sections.

20 Timing

- (1) The Commission may exercise a power conferred by section 15 or 16 only for the purpose of investigating matters arising, and situations that exist, on or after 1st August 2007.
- (2) The Commission may not exercise a power conferred by section 15 to require a person—

- (a) to provide information recorded before that date,
 - (b) to provide information relating to a time before that date,
 - (c) to produce a document created before that date,
 - (d) to produce a document relating to a time before that date, or
 - (e) to give oral evidence relating to a time before that date.
- (3) Where a document relates partly to a time before 1st August 2007 and partly to a time on or after that date, subsection (2)(d) applies to the document only in so far as it relates to a time before that date.
- (4) For the purposes of sections 69A(5) and 69C(7) of the Northern Ireland Act 1998 (as inserted by sections 15 and 16 above), a county court may make an order if it thinks that the Commission has failed to comply, or is not complying, with subsection (1) or (2) above.