Draft Rules laid before Parliament under sections 69(8) and 78(4A) of the Regulation of Investigatory Powers Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

INVESTIGATORY POWERS

The Investigatory Powers Tribunal Rules 2018

Made - - - - ***

Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State, in exercise of the powers conferred by sections 67A(5), 69(1), (2)(a) to (d), (f) and (g) and (i) to (k), (3), (4)(a) and (d) and (5)(a) and 78(5)(b) of the Regulation of Investigatory Powers Act 2000(**a**), makes the following Rules.

In accordance with section 69(6) of that Act, the Secretary of State has had 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.

In accordance with sections 69(8) and 78(4A)(**b**) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

In accordance with section 69(12) of that Act the Secretary of State has consulted the Scottish Ministers.

PART 1

General provisions

Citation and commencement

1.—(1) These Rules may be cited as the Investigatory Powers Tribunal Rules 2018.

(**a**) 2000 c. 23; section 67A is inserted by section 242(1) of the Investigatory Powers Act 2016 (c. 25) and section 69(2) is amended by section 242(4) of that Act. Section 78(5) was amended by paragraph 16(c) of Schedule 9 of the Protection of Freedoms Act 2012 (c. 9).

(**b**) section 78(4A) is inserted by section 242(5) of the Investigatory Powers Act 2016.

(2) Subject to paragraph (3), these Rules come into force on the twenty-first day after the day on which they are made.

(3) The following provisions come into force on the later of the twenty first day after the day on which they are made or the day on which section 242 of the Investigatory Powers Act 2016(**a**) (right of appeal from the Tribunal) comes into force for all purposes—

(a) the definition of "appellate court" in rule 3;

(b) rule 4(c) (application of these Rules to applicants for leave to appeal),

(c) rule 12(3) and (4), and

(d) rules 16 to 18 (applications for leave to appeal from the Tribunal).

Revocation

2. The following provisions are revoked—

(a) the Investigatory Powers Tribunal Rules 2000(**b**);

(b) in the Investigatory Powers Act 2016 (Consequential Amendments and Saving Provisions) Regulations 2017(**c**), regulation 4 (amendment of the Investigatory Powers Tribunal Rules 2000).

Interpretation

3. In these Rules—

"the Act" means the Regulation of Investigatory Powers Act 2000;

"appellate court" means one of the courts mentioned in section 67A(3) of the Act;

"complainant" means a person who brings section 7 proceedings or, as the case may be, makes a complaint;

"complaint" means a complaint for which the Tribunal is the appropriate forum by virtue of section 65(4) of the Act;

"Counsel to the Tribunal" means Counsel appointed in accordance with rule 12(1);

"relevant Commissioner" has the same meaning as in section 68 of the Act(**d**);

"respondent" means, in the case of section 7 proceedings, the respondent or, in the case of a complaint, the person whose conduct is complained against;

"section 7 proceedings" means proceedings under section 7(1)(a) of the Human Rights Act 1998(**e**) in relation to which the Tribunal is the only appropriate tribunal by virtue of section 65(2)(a) of the Act.

Application of Rules

4. These Rules apply to all—

(a) section 7 proceedings and complaints before the Tribunal, including those which were issued or made before the date on which the provisions coming into force in accordance with rule 1(2) come into force, and

(b) applications for leave to appeal.

(**a**) 2016 c. 25.
(**b**) S.I. 2000/2665.
(**c**) S.I. 2017/845.
(**d**) "Relevant commissioner" is defined in subsection (8). The definition was amended by section 243(6) of the Investigatory Powers Act 2016.
(**e**) 1998 c. 42.

Exercise of Tribunal's jurisdiction

5.—(1) Subject to rule 6, the jurisdiction of the Tribunal may 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.

(2) Different members of the Tribunal may carry out functions in relation to different proceedings or complaints at the same time.

Functions exercisable by single member

6. The following powers and duties may be exercised or performed by a single member of the Tribunal—

(a) the power under rule 8(4) or rule 9(4) to invite or direct the complainant to supply information or make representations;

(b) the power under section 68(2) of the Act to require a relevant Commissioner to provide assistance;

(c) the power under section 68(6) of the Act(**a**) to require the disclosure or provision of documents or information;

(d) the power under paragraph 5(2) of Schedule 3 to the Act to authorise an officer to obtain documents or information on the Tribunal's behalf;

(e) the power under section 7(5)(b) of the Human Rights Act 1998 to determine a longer period before the end of which section 7 proceedings may be brought;

(f) the power under section 67(5) of the Act to decide to consider or determine a complaint made more than one year after the taking place of the conduct to which it relates;

(g) the duty under rule 15 to notify the complainant and respondent of any of the determinations described in that rule;

(h) the duty, in considering a complaint, to investigate the matters described in paragraphs (a) and (b) of section 67(3) of the Act;

(i) the power to grant or refuse an application, from either party to a complaint or proceedings, for a stay or an extension of or lifting of a stay in that matter;

(j) the power to grant or refuse an application, from either party to a complaint or section 7 proceedings, for an extension of time for compliance with any order or direction of the Tribunal;

(k) the power to strike out or refuse to strike out a complaint or section 7 proceedings for wilful or persistent failure to comply with an order or direction of the Tribunal;

(l) the power to strike out, refuse to strike out, stay, or refuse to stay a complaint or proceedings filed otherwise than in accordance with rule 8 or 9.

Disclosure of information

7.—(1) The Tribunal must carry out their functions in such a way as 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.

(2) Without prejudice to this general duty, but subject to paragraphs (3) to (6), the Tribunal may not disclose to the complainant or to any other person other than Counsel to the Tribunal—

(a) any information or document disclosed or provided to the Tribunal in the course of a hearing under rule 10(1)(c);

(**a**) Section 68(6) was amended by section 243(4) of the Investigatory Powers Act 2016.

(b) any information or document otherwise disclosed or provided to the Tribunal by any person pursuant to section 68(6) of the Act, or provided voluntarily by a person specified in section 68(7)(**a**);

(c) any information, document or opinion provided to the Tribunal by a relevant Commissioner pursuant to section 68(2) of the Act;

(d) the fact that any information, document, or opinion has been disclosed or provided in the circumstances mentioned in sub-paragraphs (a) to (c);

(e) the identity of any witness at a hearing under rule 10(1)(c) or the fact that any witness was called.

(3) The Tribunal may disclose anything described in paragraph (2) with the consent of—

(a) in the case of sub-paragraphs (a) and (b), the person who disclosed or provided the information or document;

(b) in the case of sub-paragraph (c), a relevant Commissioner and, to the extent that the information, document or opinion includes information provided to a relevant Commissioner by another person, that other person;

(c) in the case of sub-paragraph (d), the person whose consent is required under this rule for disclosure of the information, document or opinion in question;

(d) in the case of sub-paragraph (e), the witness.

(4) Paragraphs (5) and (6) apply where—

(a) the Tribunal is prohibited by paragraph (2) from disclosing to the complainant something falling within sub-paragraph (a), (b), (d) or (e) of that paragraph, and

(b) the respondent refuses to consent to such disclosure, or a gist or summary thereof.

(5) The Tribunal may direct the respondent to make representations to the Tribunal which provide their reasons for withholding any document or information from the complainant.

(6) The Tribunal may, after considering any such representations, direct the respondent—

(a) to disclose to the complainant documents or information supplied to the Tribunal by the respondent, or

(b) to provide to the complainant a gist or summary of such documents or information.

(7) Where the Tribunal has directed the respondent under paragraph (6)—

(a) the respondent is not required to disclose to the complainant documents or information or (as the case may be) provide to the complainant a gist or summary, but

(b) if the respondent does not do so the Tribunal may—

(i) if they consider that anything required to be disclosed or provided might adversely affect the respondent's case or support a complainant's case, direct that the respondent is not to rely on such points in the respondent's case, or that the respondent must make such concessions or take such other steps, as the Tribunal may specify, and

(ii) in any other case, direct that the respondent must not rely in the proceedings on anything required to be disclosed or provided.

(8) The Tribunal may also disclose anything described in paragraph (2) as part of the information provided to the complainant and respondent under rule 15(2), subject to the restrictions contained in rule 15(6) and (7).

(9) The Tribunal may, subject to the general duty imposed on the Tribunal in paragraph (1), disclose the fact that the Tribunal has held, or proposes to hold, a hearing under rule 10(1)(c) (in whole or in part) in private or in the absence of the complainant.

(**a**) Section 68(7) was amended by section 243(5) of the Investigatory Powers Act 2016.

(10) The Tribunal may not order any person to disclose any information or document which the Tribunal would be prohibited from disclosing by virtue of this rule, had the information or document been disclosed or provided to the Tribunal by that person.

(11) Subject to paragraph (12), the Tribunal may not, without the consent of the complainant, disclose to any person other than Counsel to the Tribunal—

(a) any information or document disclosed or provided to the Tribunal by or on behalf of the complainant or the fact that any such information or document has been disclosed or provided;

(b) the identity of any witness called by or on behalf of the claimant or the fact that such a witness was called; or

(12) The Tribunal may disclose the information provided by the complainant described in rule 8(2)(a) and (b) or, as the case may be, rule 9(2)(a) and (b).

PART 2

Proceedings and complaints

Bringing section 7 proceedings

8.—(1) Section 7 proceedings are to be brought by a complainant sending to the Tribunal a form and other information in accordance with this rule.

(2) The form must be signed by the complainant and must—

(a) state the name, address and date of birth of the complainant;

(b) state each respondent against which the proceedings are brought;

(c) describe the nature of the claim (including details of the Convention right which it is alleged has been infringed) and of the complainant's interest, and

(d) specify the remedy which the complainant seeks.

(3) The complainant must also supply, either in or with the form, a summary of the information on which the claim is based.

(4) At any time, the Tribunal may invite or direct the complainant to supply further information or to make written representations on any matter.

(5) For the purposes of paragraph (2), Convention right has the same meaning as in the Human Rights Act 1998(**a**).

Making a complaint

9.—(1) A complaint is to be made by a complainant sending to the Tribunal a form in accordance with this rule.

(2) The form must be signed by the complainant and must—

(a) state the name, address and date of birth of the complainant;

(b) state the person who, to the best of the complainant's knowledge or belief, is the respondent; and

(c) describe, to the best of the complainant's knowledge or belief, the conduct to which the complaint relates.

(3) The complainant must also supply, either in or with the form, a summary of the information on which the complaint is based.

(**a**) "Convention rights" is defined in section 1(1) of the Human Rights Act 1998 (c. 42).

(4) At any time, the Tribunal may invite or direct the complainant to supply further information or to make written representations on any matter.

Forms of hearing and consideration

10.——(1) The Tribunal is under no duty to hold a hearing, but they may do so by holding, at any stage of their consideration—

(a) a hearing at which the complainant and the respondent may make representations, give evidence and call witnesses;

(b) a hearing in the absence of the respondent at which the complainant may make representations, give evidence and call witnesses, or

(c) a hearing in the absence of the complainant at which the respondent may make representations, give evidence and call witnesses.

(2) A hearing held under paragraph (1) may be held wholly or partly in private.

(3) The Tribunal may direct the complainant or respondent to make representations on the reasons for requesting the Tribunal to hold a hearing (in whole or in part) in the absence of the respondent or (as the case may be) the complainant.

(4) In exercising their discretion to hold a hearing under paragraph (1) the Tribunal must endeavour, so far as is consistent with the general duty imposed on the Tribunal by rule 7(1), to conduct proceedings, including any hearing, in public and in the presence of the complainant.

(5) The Tribunal may require the respondent or any other person specified in section 68(7) of the Act to—

(a) attend a hearing held under paragraph (1)(c), and

(b) give evidence at such a hearing.

Representation

11.—(1) Subject to paragraph (2), a person entitled to make representations at a hearing may appear in person or may be represented by any person appointed for that purpose.

(2) The leave of the Tribunal is required except where a person is represented by—

(a) a member of the Bar of England and Wales or of Northern Ireland;

(b) a solicitor of the Senior Courts of England and Wales,;

(c) a solicitor of the Court of Judicature of Northern Ireland;

(d) a member of the Faculty of Advocates, or

(e) a solicitor within the meaning of the Solicitors (Scotland) Act 1980(**a**).

Counsel to the Tribunal

12.—(1) The Tribunal may appoint Counsel to assist the Tribunal in their consideration of any complaint or section 7 proceedings where—

(a) the complainant is not legally represented;

(b) the respondent objects to the disclosure of documents or information to the complainant;

(c) the Tribunal intends to a hold a hearing (in whole or in part) in the absence of a complainant; or

(d) in any other circumstance in which the Tribunal considers it appropriate to do so.

(2) The Tribunal may request Counsel to the Tribunal to—

(**a**) 1980 c. 46. "Solicitor" is defined in section 65(1) of that Act.

(a) identify documents or information, parts of documents or a gist or summary of such documents or information, that ought to be disclosed to the complainant;

(b) make submissions to the Tribunal in support of such disclosure of documents or information as is in the interests of the complainant and the public interest of open justice;

(c) cross-examine any witness called by the respondent at any hearing held in the absence of the complainant;

(d) ensure that all the relevant arguments on the facts and the law are put before the Tribunal, or

(e) perform any other function that would assist the Tribunal.

(3) Where Counsel to the Tribunal has been appointed, Counsel must seek to identify any arguable error of law in relation to any decision or determination made by the Tribunal consequent upon a hearing held (in whole or in part) in the absence of the complainant.

(4) Where Counsel to the Tribunal identifies an arguable error of law in accordance with paragraph (3)—

(a) Counsel must notify the Tribunal, and

(b) when so notified the Tribunal must, subject to rule 7(1), disclose to the complainant the arguable error of law.

Evidence

13.—(1) The Tribunal may receive evidence in any form, and may receive evidence that would not be admissible in a court of law.

(2) The Tribunal may require a witness to give evidence on oath.

(3) No complainant shall be compelled to give evidence at a hearing under rule 10(1).

Remedies

14.—(1) Before exercising their power under section 67(7) of the Act(**a**), the Tribunal must invite representations in accordance with this rule.

(2) Where they propose to make an award of compensation, the Tribunal must give the complainant and the person who would be required to pay the compensation an opportunity to make representations as to the amount of the award.

(3) Where they propose to make any other order (including an interim order) affecting the respondent, the Tribunal must give the complainant and the respondent an opportunity to make representations as to the proposed order.

Notification to the complainant and respondent

15.—(1) In addition to notice given under section 68(4), (4A)(**b**) or (4C)(**c**) of the Act, the Tribunal must provide information to the complainant and respondent in accordance with this rule.

(2) Where they make a determination in favour of the complainant, the Tribunal must provide the complainant and respondent with the determination including any findings of fact.

(3) Where they make a determination which is not a determination in favour of the complainant, the Tribunal must, if they consider it necessary in the interests of justice to do so, provide the complainant and respondent with a summary of the determination.

(**a**) Section 67(7) is amended by paragraph 13 of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9) and section 243(2) of the Investigatory Powers Act 2016.
(**b**) Subsection (4A) was inserted by section 242(3) of the Investigatory Powers Act 2016.
(**c**) Subsection (4C) was inserted by section 242(3) of the Investigatory Powers Act 2016.

(4) Where they give notice of a final decision of a preliminary issue in accordance with section 68(4C) of the Act, the Tribunal must provide both the complainant and respondent with a copy of that decision.

(5) Where the Tribunal makes a determination—

(a) that the bringing of the section 7 proceedings or the making of the complaint is frivolous or vexatious;

(b) that section 7 proceedings have not been brought in accordance with section 7(5) of the Human Rights Act 1998;

(c) that a complaint shall not be considered or determined in consequence of section 67(5) of the Act;

(d) that the complainant does not have the right to bring the section 7 proceedings or make the complaint;

the Tribunal must notify the complainant of that fact and any reasoning they consider appropriate.

(6) The duty to provide information under this rule is in all cases subject to the general duty imposed on the Tribunal by rule 7(1).

(7) No information may be provided under this rule whose disclosure would be restricted under rule 7(2) unless the person whose consent would be needed for disclosure under that rule has been given the opportunity to make representations to the Tribunal.

PART 3

Applications for leave to appeal from the Tribunal

Application for leave to appeal

16.—(1) An applicant for leave to appeal must file an application in accordance with this rule with the Tribunal, in writing, not later than 21 days after the date on which the Tribunal gave notice under section 68(4), (4A) or (4C) of the Act or (if later) provided to the person making the application a summary of their determination or decision in accordance with rule 15.

(2) The Tribunal may accept an application filed after the expiry of the relevant period in paragraph (1) if they are satisfied that, by reason of special circumstances, it would be unjust not to do so.

(3) The application must—

(a) identify the decision or determination of the Tribunal to which it relates;

(b) in the case of an application for leave to appeal appeal against a decision of the Tribunal, confirm that the decision does not relate to a procedural matter;

(c) state the grounds of appeal, identifying the alleged error or errors of law in the decision or determination and identifying the important point of principle or practice or compelling reason for granting leave, and

(d) be signed by the applicant or his representative, and dated.

(4) An application need not comply with the requirement in paragraph (3)(c) where—

(a) Counsel to the Tribunal has notified the Tribunal of an arguable error of law, and

(b) the Tribunal has not disclosed to the complainant the arguable error of law.

(5) The applicant must serve a copy of the application on every other complainant or respondent to the section 7 proceedings or complaint to which the appeal relates.

Tribunal's consideration of application for leave to appeal

17.—(1) On receipt of an application for leave to appeal, the Tribunal may decide without a hearing whether or not to grant leave, unless they consider that special circumstances make a hearing necessary or desirable.

(2) The Tribunal must as soon as practicable provide a record of their decision to the complainant and respondent.

(3) If the Tribunal refuses leave to appeal they must as soon as practicable provide to the parties with the record of the Tribunal's decision—

(a) a statement of their reasons for such refusal; and

(b) notification of the right to make an application to the relevant appellate court for leave to appeal.

(4) The Tribunal may give leave to appeal on limited grounds, but must comply with paragraph (3) in relation to any grounds on which they have refused leave.

Relevant appellate court

18.—(1) In making decisions under section 67A(2) of the Act as to the identity of the relevant appellate court(**a**), the Tribunal must apply the criteria set out in paragraphs (2) and (3).

(2) Subject to paragraph (3), the relevant appellate court is the appellate court in the jurisdiction with the closest and most substantial connection to the section 7 proceedings or complaint.

(3) The Tribunal may specify a different appellate court if the Tribunal considers it appropriate due to—

(a) the public interest, and in particular any risk that the identity of a particular appellate court could be prejudicial to the interests of national security;

(b) any other compelling factors the Tribunal considers relevant.

Name
Minister of State
Home Office

Date

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules set out procedures and practices to be adopted by the Investigatory Powers Tribunal, established under Part 4 of the Regulation of Investigatory Powers Act 2000 (c. 23) ("the Act"). Section 68 of the Act provides that, subject to anything in these Rules, the Tribunal are entitled to determine their own procedure.

The Tribunal has an extensive jurisdiction, set out in section 65 of the Act. These Rules only regulate the exercise of the jurisdiction conferred by paragraphs (a) and (b) of subsection (2) of section 65 of the Act. The Rules therefore regulate:

proceedings brought under section 7(1)(a) of the Human Rights Act 1998 for which the Tribunal is the appropriate tribunal: this category of case is explained in subsections (3) and (5) to (8) of section 65 of the Act;

complaints for which the Tribunal is the appropriate forum: this function is explained in subsections (4), (5), (7) and (8) of section 65.

(**a**) "Relevant appellate court" is defined in section 67A(2) of the Act.

Rule 6 lists certain functions that may be exercised by a single member of the Tribunal. Otherwise (as provided for by rule 5) the functions of the Tribunal may be carried out by any two or more members of the Tribunal.

Rule 7(1) imposes a general duty on the Tribunal to carry out all of their functions in such a way that information is not disclosed to the extent, or in a manner, that is contrary to the public interest or prejudicial to other listed matters. While that general duty continues to apply, rule 8 then provides for more specific restrictions on the disclosure, by the Tribunal, of information or documents provided to the Tribunal. However, the effect of section 237 of the Investigatory Powers Act 2016 (c. 25) is that a disclosure to a Judicial Commissioner for the purposes of any function of the Commissioner does not breach the restrictions in this Rule.

Part 2 sets out rules regarding proceedings and complaints. Rules 8 and 9 provide for how proceedings and complaints, respectively, are to be brought, including the information that must be provided. Rule 10 concerns the discretion the Tribunal has to hold hearings, including hearings in the absence of the complainant or the respondent. Rule 11 deals with who may make representations to the Tribunal. Rule 12 gives the Tribunal the power to appoint Counsel to assist the Tribunal in their consideration of any complaint or proceedings and sets out the functions that Counsel to the Tribunal may be requested to carry out. Rule 13 provides that the Tribunal may receive evidence in any form, including evidence that would not be admissible in a court. Rule 14 requires the Tribunal to invite representations before awarding compensation or making an order.

Rule 15 concerns notification to the complainant and respondent. Section 68(4), (4A) and (4C) of the Act provides for notice to be given in certain circumstances. Section 68(4), (4B) and (4D) provide that notice must be confined to a statement that the Tribunal has made a determination in the claimant's favour or not made a determination in the claimant's favour, or a statement as to what the Tribunal's decision is. But those restrictions on what the Tribunal can disclose are subject to rules made under section 69(4) of the Act and rule 15 provides that in certain circumstances the IPT must provide additional information.

Part 3 makes provision for the making and determination of applications to the Tribunal for leave to appeal. Rule 16 imposes requirements on an applicant for leave to appeal and rule 17 deals with the process for the Tribunal's consideration of the application. Before making a decision or determination that could be subject to an appeal, section 67A of the Act requires the Tribunal to specify the court which would have jurisdiction to hear an appeal. Rule 18 sets out criteria the Tribunal must apply when specifying the court.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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