

## SCHEDULE 10

(introduced by section 71)

### COMMISSIONER'S INVESTIGATION OF FAILURE TO COMPLY WITH STANDARDS ETC

#### PART 1

#### GENERAL

##### *Introduction*

1 This Schedule applies to investigations under section 71.

##### **Commencement Information**

**II** Sch. 10 para. 1 in force at 7.7.2015 by S.I. 2015/1413, art. 3(h)

##### *Terms of reference*

- 2 (1) Before conducting an investigation, the Commissioner must prepare the terms of reference of the investigation.
- (2) The terms of reference must specify—
- (a) the person who is being investigated (“D”),
  - (b) the suspected failure to comply with a relevant requirement.
- (3) Before settling the terms of reference, the Commissioner must—
- (a) give notice of the proposed terms to—
    - (i) D, and
    - (ii) any other interested person,
  - (b) give each person who is given notice of the proposed terms an opportunity to make representations about the proposed terms, and
  - (c) consider any representations made.
- (4) After settling the terms of reference (having complied with sub-paragraph (3)), the Commissioner must—
- (a) publish the terms of reference of the investigation in a manner that the Commissioner thinks is likely to bring the investigation to the attention of persons whom it concerns or who are likely to be interested in it, and
  - (b) give notice of the terms of reference to—
    - (i) D, and
    - (ii) any other interested person.
- (5) This paragraph applies to any change in the terms of reference as the paragraph would apply if the change in the terms were the preparation of those terms.

##### **Commencement Information**

**I2** Sch. 10 para. 2 in force at 7.7.2015 by S.I. 2015/1413, art. 3(h)

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*Changes to legislation: There are currently no known outstanding effects for the Welsh Language (Wales) Measure 2011, SCHEDULE 10. (See end of Document for details)*

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### *Representations*

- 3 (1) The Commissioner must make arrangements for giving persons an opportunity to make representations in relation to investigations.
- (2) The arrangements must give the following persons an opportunity to make representations in the course of an investigation—
- (a) D, and
  - (b) any other interested person.
- (3) Arrangements under this paragraph may, amongst other things, include arrangements for oral representations.

#### **Commencement Information**

**I3** Sch. 10 para. 3 in force at 7.7.2015 by S.I. 2015/1413, art. 3(h)

- 4 (1) The Commissioner must consider representations made in relation to an investigation by—
- (a) D, or
  - (b) a legal adviser who is acting on behalf of D.
- (2) The Commissioner must consider representations made in relation to an investigation by any other person, unless the Commissioner thinks it is appropriate to refuse to do so.
- (3) If the Commissioner refuses to consider representations made in relation to an investigation, he or she must give the person who made the representations written notice of—
- (a) the decision to refuse to consider the representations, and
  - (b) the reasons for the decision.
- (4) In this paragraph “legal adviser” means—
- (a) a person who, for the purposes of the Legal Services Act 2007, is an authorised person, or a European lawyer who is an exempt person by virtue of paragraph 7 of Schedule 3 to that Act, in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act), or
  - (b) an advocate or solicitor in Scotland.

#### **Commencement Information**

**I4** Sch. 10 para. 4 in force at 7.7.2015 by S.I. 2015/1413, art. 3(h)

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## PART 2

### INFORMATION, DOCUMENTS AND ORAL EVIDENCE

#### *Evidence notices*

- 5 (1) In the course of an investigation, the Commissioner may give a person (A) an evidence notice.
- (2) In this Measure, “evidence notice” means a notice that requires A to do one or more of the following—
- (a) to provide information in A's possession;
  - (b) to produce documents in A's possession;
  - (c) to give oral evidence.
- (3) A notice under this paragraph may include provision about—
- (a) the form of information, documents or evidence;
  - (b) the timing of anything to be done in accordance with the notice.
- (4) A notice under this paragraph may not require A to do anything that A could not be compelled to do in proceedings before the High Court.
- (5) A notice under this paragraph must inform A of—
- (a) the consequences if A does not comply with the notice; and
  - (b) the right of appeal under paragraph 9.

#### **Commencement Information**

**I5** Sch. 10 para. 5 in force at 7.7.2015 by S.I. 2015/1413, art. 3(h)

- 6 (1) This paragraph applies if, in the course of an investigation, a person (B)—
- (a) provides information,
  - (b) produces documents, or
  - (c) gives oral evidence.
- (2) The Commissioner may, if he or she thinks fit, pay to B—
- (a) sums in respect of expenses properly incurred by B, and
  - (b) allowances by way of compensation for loss of B's time.
- (3) Any payment to B is to be made—
- (a) in accordance with such scales as may be determined by the Commissioner, and
  - (b) subject to such conditions as may be determined by the Commissioner.

#### **Commencement Information**

**I6** Sch. 10 para. 6 in force at 7.7.2015 by S.I. 2015/1413, art. 3(h)

#### *Confidentiality etc*

- 7 A notice under paragraph 5—

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- (a) may not require a person to provide information that the person is prohibited from disclosing by virtue of an enactment, and
- (b) may not require a person to do anything that the person could not be compelled to do in proceedings before the High Court.

**Commencement Information**

**I7** Sch. 10 para. 7 in force at 7.7.2015 by S.I. 2015/1413, art. 3(h)

- 8 (1) A must disregard a notice given under paragraph 5, and must notify the Commissioner that A is disregarding it, in so far as A thinks it would require A—
- (a) to disclose sensitive information within the meaning of paragraph 4 of Schedule 3 to the Intelligence Services Act 1994 (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 Commissioner),
  - (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), or
  - (e) to make a disclosure of information relating to an intelligence service which would prejudice the interests of national security.
- (2) In sub-paragraph (1) “intelligence service” means—
- (a) the Security Service,
  - (b) the Secret Intelligence Service, and
  - (c) the Government Communications Headquarters.
- (3) If A notifies the Commissioner under sub-paragraph (1) above—
- (a) paragraphs 9 and 10 do not apply in relation to that part of the notice under paragraph 5 to which the notice under sub-paragraph (1) above relates,
  - (b) the Commissioner may apply to the tribunal established by section 65 of the Regulation of Investigatory Powers Act 2000 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 are to apply in relation to proceedings under this paragraph 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 established by section 65 of that Act must determine proceedings under this paragraph by considering the opinion of A in accordance with the principles that would be applied by a court on an application for judicial review of the giving of the notice.
- (4) Where the Commissioner receives information or documents from or relating to an intelligence service in response to a notice under paragraph 5, the Commissioner

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must store and use the information or documents in accordance with any arrangements specified by the Secretary of State.

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**Commencement Information**

**I8** Sch. 10 para. 8 in force at 7.7.2015 by S.I. 2015/1413, art. 3(h)

*Appeals*

- 9 A may apply to the Tribunal to have the notice under paragraph 5 cancelled on the grounds that a requirement imposed by the notice is—
- (a) unnecessary having regard to the purpose of the investigation, or
  - (b) otherwise unreasonable or disproportionate.

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**Commencement Information**

**I9** Sch. 10 para. 9 in force at 7.7.2015 by S.I. 2015/1413, art. 3(h)

- 10 A may apply to the Tribunal to have the notice under paragraph 5 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 paragraph 8(1) applies.

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**Commencement Information**

**I10** Sch. 10 para. 10 in force at 7.7.2015 by S.I. 2015/1413, art. 3(h)

*Enforcement*

- 11 (1) This paragraph applies where the Commissioner thinks that A—
- (a) has failed without reasonable excuse to comply with a notice under paragraph 5, or
  - (b) is likely to fail without reasonable excuse to comply with a notice under paragraph 5.
- (2) The Commissioner may apply to a county court for an order requiring A to take such steps as may be specified in the order to comply with the notice.

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**Commencement Information**

**I11** Sch. 10 para. 11 in force at 7.7.2015 by S.I. 2015/1413, art. 3(h)

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### PART 3

#### POWER OF ENTRY AND INSPECTION

##### *Power of entry and inspection*

- 12 (1) The Commissioner, or any person authorised by the Commissioner, may enter and inspect premises if the Commissioner or the authorised person thinks that the entry and inspection is necessary for the purposes of an investigation.
- (2) But that is subject to sub-paragraphs (3) and (4).
- (3) This paragraph does not authorise entry to—
- (a) a dwelling, or
  - (b) premises that are not under the control of the person being investigated.
- (4) This paragraph does not authorise entry to premises at a particular time if entry at that time is unreasonable.

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#### **Commencement Information**

**I12** Sch. 10 para. 12 in force at 7.7.2015 by S.I. 2015/1413, art. 3(h)

**Changes to legislation:**

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