
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Investigatory Powers Tribunal Rules 2018

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⁽¹⁾.

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.

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

(1) “Convention rights” is defined in section 1(1) of the Human Rights Act 1998 (c. 42).

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(2).

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 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) 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;

(2) 1980 c. 46. “Solicitor” is defined in section 65(1) of that Act.

- (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⁽³⁾, 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)⁽⁴⁾ or (4C)⁽⁵⁾ 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.

(3) 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.

(4) Subsection (4A) was inserted by section 242(3) of the Investigatory Powers Act 2016.

(5) 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.