



# Northern Ireland Act 1998

## 1998 CHAPTER 47

### PART VII

#### HUMAN RIGHTS AND EQUAL OPPORTUNITIES

##### *Human rights*

#### **68 The Northern Ireland Human Rights Commission.**

- (1) There shall be a body corporate to be known as the Northern Ireland Human Rights Commission.
- (2) The Commission shall consist of a Chief Commissioner and other Commissioners appointed by the Secretary of State.
- (3) In making appointments under this section, the Secretary of State shall as far as practicable secure that the Commissioners, as a group, are representative of the community in Northern Ireland.
- (4) Schedule 7 (which makes supplementary provision about the Commission) shall have effect.

#### **Commencement Information**

- II** S. 68 wholly in force at 1.3.1999; s. 68 not in force at Royal Assent see s. 101(3); s. 68 in force for certain purposes at 15.2.1999 and for all other purposes at 1.3.1999 by S.I. 1999/340, art. 2(1), **Sch. Pt. 1**

#### **69 The Commission's functions.**

- (1) The Commission shall keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights.

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- (2) The Commission shall, before the end of the period of two years beginning with the commencement of this section, make to the Secretary of State such recommendations as it thinks fit for improving—
  - (a) its effectiveness;
  - (b) the adequacy and effectiveness of the functions conferred on it by this Part; and
  - (c) the adequacy and effectiveness of the provisions of this Part relating to it.
- (3) The Commission shall advise the Secretary of State and the Executive Committee of the Assembly of legislative and other measures which ought to be taken to protect human rights—
  - (a) as soon as reasonably practicable after receipt of a general or specific request for advice; and
  - (b) on such other occasions as the Commission thinks appropriate.
- (4) The Commission shall advise the Assembly whether a Bill is compatible with human rights—
  - (a) as soon as reasonably practicable after receipt of a request for advice; and
  - (b) on such other occasions as the Commission thinks appropriate.
- (5) The Commission may—
  - (a) give assistance to individuals in accordance with section 70; and
  - (b) bring proceedings involving law or practice relating to the protection of human rights.
- (6) The Commission shall promote understanding and awareness of the importance of human rights in Northern Ireland; and for this purpose it may undertake, commission or provide financial or other assistance for—
  - (a) research; and
  - (b) educational activities.
- (7) The Secretary of State shall request the Commission to provide advice of the kind referred to in paragraph 4 of the Human Rights section of the Belfast Agreement.
- (8) For the purpose of exercising its functions under this section the Commission may conduct such investigations as it considers necessary or expedient.
- (9) The Commission may decide to publish its advice and the outcome of its research and investigations.
- (10) The Commission shall do all that it can to ensure the establishment of the committee referred to in paragraph 10 of that section of that Agreement.
- (11) In this section—
  - (a) a reference to the Assembly includes a reference to a committee of the Assembly;
  - (b) “human rights” includes the Convention rights.

#### Commencement Information

**I2** S. 69 wholly in force at 2.12.1999; s. 69 not in force at Royal Assent see s. 101(3); s. 69(1)-(3) in force for specified purposes and 69(6)-(11) in force at 1.3.1999 by S.I. 1999/340, art. 2(3), Sch. Pt. 3; s.

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69(5) in force at 1.6.1999 by S.I. 1999/340, art. 2(5), **Sch. Pt. 4**; s. 69(4) in force and s. 69(3) in force insofar as not already in force at 2.12.1999 by S.I. 1999/3209, art. 2, **Sch.**

VALID FROM 01/08/2007

### **[<sup>F1</sup>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.

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- (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.

#### Textual Amendments

**F1** Ss. 69A, 69B 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)

VALID FROM 01/08/2007

#### **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

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- (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—
- whether an intelligence service has acted (or is acting) in a way which is incompatible with a person's human rights, or
  - other matters concerning human rights in relation to an intelligence service.
- (6) In this section “intelligence service” means—
- the Security Service,
  - the Secret Intelligence Service, and
  - the Government Communications Headquarters.]

#### Textual Amendments

**F1** Ss. 69A, 69B 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)

VALID FROM 01/08/2007

#### **[<sup>F2</sup>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 prison specified in the Schedule to the Prisons and Young Offenders Centres Rules (Northern Ireland) 1995,
  - 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)),
  - a place designated under paragraph 1 of Schedule 8 to the Terrorism Act 2000 (c. 11) (detention),

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- (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).

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(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).]

#### Textual Amendments

**F2** S. 69C inserted (1.8.2007) by [Justice and Security \(Northern Ireland\) Act 2007 \(c. 6\)](#), [ss. 16\(1\)](#), 53 (with s. 20); [S.I. 2007/2045](#), [art. 2\(2\)\(3\)\(j\)](#) (with art. 3)

VALID FROM 01/08/2007

#### [<sup>F3</sup>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.]

#### Textual Amendments

**F3** S. 69D inserted (1.8.2007) by [Justice and Security \(Northern Ireland\) Act 2007 \(c. 6\)](#), [ss. 17\(1\)](#), 53; [S.I. 2007/2045](#), [art. 2\(2\)\(3\)\(j\)](#) (with art. 3)

VALID FROM 01/06/1999

#### 70 Assistance by Commission.

(1) This section applies to—

- (a) proceedings involving law or practice relating to the protection of human rights which a person in Northern Ireland has commenced, or wishes to commence; or
- (b) proceedings in the course of which such a person relies, or wishes to rely, on such law or practice.

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- (2) Where the person applies to the Northern Ireland Human Rights Commission for assistance in relation to proceedings to which this section applies, the Commission may grant the application on any of the following grounds—
- (a) that the case raises a question of principle;
  - (b) that it would be unreasonable to expect the person to deal with the case without assistance because of its complexity, or because of the person's position in relation to another person involved, or for some other reason;
  - (c) that there are other special circumstances which make it appropriate for the Commission to provide assistance.
- (3) Where the Commission grants an application under subsection (2) it may—
- (a) provide, or arrange for the provision of, legal advice;
  - (b) arrange for the provision of legal representation;
  - (c) provide any other assistance which it thinks appropriate.
- (4) Arrangements made by the Commission for the provision of assistance to a person may include provision for recovery of expenses from the person in certain circumstances.

VALID FROM 01/06/1999

## **71 Restrictions on application of rights.**

- (1) Nothing in section 6(2)(c), 24(1)(a) or 69(5)(b) shall enable a person—
- (a) to bring any proceedings in a court or tribunal on the ground that any legislation or act is incompatible with the Convention rights; or
  - (b) to rely on any of the Convention rights in any such proceedings,
- unless he would be a victim for the purposes of article 34 of the Convention if proceedings in respect of the legislation or act were brought in the European Court of Human Rights.
- (2) Subsection (1) does not apply to the Attorney General, the Attorney General for Northern Ireland, the Advocate General for Scotland or the Lord Advocate.
- (3) Section 6(2)(c)—
- (a) does not apply to a provision of an Act of the Assembly if the passing of the Act is, by virtue of subsection (2) of section 6 of the <sup>M1</sup>Human Rights Act 1998, not unlawful under subsection (1) of that section; and
  - (b) does not enable a court or tribunal to award in respect of the passing of an Act of the Assembly any damages which it could not award on finding the passing of the Act unlawful under that subsection.
- (4) Section 24(1)(a)—
- (a) does not apply to an act which, by virtue of subsection (2) of section 6 of the Human Rights Act 1998, is not unlawful under subsection (1) of that section; and
  - (b) does not enable a court or tribunal to award in respect of an act any damages which it could not award on finding the act unlawful under that subsection.



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(5) In this section “the Convention” has the same meaning as in the Human Rights Act 1998.

**Commencement Information**

**I3** S. 71 fully in force; s. 71 not in force at Royal Assent see s. 101(3); s. 71(1) in force for specified purposes at 1.6.1999 by S.I. 1999/340, art. 2(5), **Sch. Pt. 4**; s. 71(2)(5) in force at 1.6.1999 by S.I. 1999/340, art. 2(5), **Sch. Pt. 4**; s. 71(3)(4) in force and s. 71(1) in force insofar as not already in force at 2.12.1999 by S.I. 1999/3209, art. 2, **Sch.**

**Marginal Citations**

**M1** 1998 c.42.

**72 Standing Advisory Commission on Human Rights: dissolution.**

- (1) The Standing Advisory Commission on Human Rights is hereby dissolved.
- (2) The Secretary of State may by order make such supplemental, incidental or consequential provision as appears to him to be appropriate as a result of subsection (1).
- (3) In particular, an order may include provision—
  - (a) amending an enactment;
  - (b) for the transfer of rights and liabilities;
  - (c) for payments into the Consolidated Fund or to a specified person.

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