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STATUTORY INSTRUMENTS

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**2018 No. 1334**

**The Investigatory Powers Tribunal Rules 2018**

**PART 1**

*General provisions*

**Citation and commencement**

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

(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<sup>(1)</sup> (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<sup>(2)</sup>;
- (b) in the Investigatory Powers Act 2016 (Consequential Amendments and Saving Provisions) Regulations 2017<sup>(3)</sup>, 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);

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(1) 2016 c. 25.

(2) S.I. 2000/2665.

(3) S.I. 2017/845.

“relevant Commissioner” has the same meaning as in section 68 of the Act<sup>(4)</sup>;

“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<sup>(5)</sup> 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.

### **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<sup>(6)</sup> 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;

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(4) “Relevant commissioner” is defined in subsection (8). The definition was amended by section 243(6) of the Investigatory Powers Act 2016.

(5) 1998 c. 42.

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

- (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);
- (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)(7);
- (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—

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

- (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.
- (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.
- (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).