



Intelligence Services Act 1994

CHAPTER 13

ARRANGEMENT OF SECTIONS

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Intelligence Services Act 1994

1994 CHAPTER 13

An Act to make provision about the Secret Intelligence Service and the Government Communications Headquarters, including provision for the issue of warrants and authorisations enabling certain actions to be taken and for the issue of such warrants and authorisations to be kept under review; to make further provision about warrants issued on applications by the Security Service; to establish a procedure for the investigation of complaints about the Secret Intelligence Service and the Government Communications Headquarters; to make provision for the establishment of an Intelligence and Security Committee to scrutinise all three of those bodies; and for connected purposes. [26th May 1994]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

The Secret Intelligence Service

1.—(1) There shall continue to be a Secret Intelligence Service (in this Act referred to as “the Intelligence Service”) under the authority of the Secretary of State; and, subject to subsection (2) below, its functions shall be—

The Secret
Intelligence
Service.

- (a) to obtain and provide information relating to the actions or intentions of persons outside the British Islands; and
 - (b) to perform other tasks relating to the actions or intentions of such persons.
- (2) The functions of the Intelligence Service shall be exercisable only—
- (a) in the interests of national security, with particular reference to the defence and foreign policies of Her Majesty's Government in the United Kingdom; or

- (b) in the interests of the economic well-being of the United Kingdom; or
- (c) in support of the prevention or detection of serious crime.

The Chief of the Intelligence Service.

2.—(1) The operations of the Intelligence Service shall continue to be under the control of a Chief of that Service appointed by the Secretary of State.

(2) The Chief of the Intelligence Service shall be responsible for the efficiency of that Service and it shall be his duty to ensure—

- (a) that there are arrangements for securing that no information is obtained by the Intelligence Service except so far as necessary for the proper discharge of its functions and that no information is disclosed by it except so far as necessary—
 - (i) for that purpose;
 - (ii) in the interests of national security;
 - (iii) for the purpose of the prevention or detection of serious crime; or
 - (iv) for the purpose of any criminal proceedings; and
- (b) that the Intelligence Service does not take any action to further the interests of any United Kingdom political party.

(3) Without prejudice to the generality of subsection (2)(a) above, the disclosure of information shall be regarded as necessary for the proper discharge of the functions of the Intelligence Service if it consists of—

- (a) the disclosure of records subject to and in accordance with the Public Records Act 1958; or
- (b) the disclosure, subject to and in accordance with arrangements approved by the Secretary of State, of information to the Comptroller and Auditor General for the purposes of his functions.

1958 c. 51.

(4) The Chief of the Intelligence Service shall make an annual report on the work of the Intelligence Service to the Prime Minister and the Secretary of State and may at any time report to either of them on any matter relating to its work.

GCHQ

The Government Communications Headquarters.

3.—(1) There shall continue to be a Government Communications Headquarters under the authority of the Secretary of State; and, subject to subsection (2) below, its functions shall be—

- (a) to monitor or interfere with electromagnetic, acoustic and other emissions and any equipment producing such emissions and to obtain and provide information derived from or related to such emissions or equipment and from encrypted material; and
- (b) to provide advice and assistance about—
 - (i) languages, including terminology used for technical matters, and

(ii) cryptography and other matters relating to the protection of information and other material,

to the armed forces of the Crown, to Her Majesty's Government in the United Kingdom or to a Northern Ireland Department or to any other organisation which is determined for the purposes of this section in such manner as may be specified by the Prime Minister.

(2) The functions referred to in subsection (1)(a) above shall be exercisable only—

- (a) in the interests of national security, with particular reference to the defence and foreign policies of Her Majesty's Government in the United Kingdom; or
- (b) in the interests of the economic well-being of the United Kingdom in relation to the actions or intentions of persons outside the British Islands; or
- (c) in support of the prevention or detection of serious crime.

(3) In this Act the expression "GCHQ" refers to the Government Communications Headquarters and to any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

4.—(1) The operations of GCHQ shall continue to be under the control of a Director appointed by the Secretary of State.

The Director of GCHQ.

(2) The Director shall be responsible for the efficiency of GCHQ and it shall be his duty to ensure—

- (a) that there are arrangements for securing that no information is obtained by GCHQ except so far as necessary for the proper discharge of its functions and that no information is disclosed by it except so far as necessary for that purpose or for the purpose of any criminal proceedings; and
- (b) that GCHQ does not take any action to further the interests of any United Kingdom political party.

(3) Without prejudice to the generality of subsection (2)(a) above, the disclosure of information shall be regarded as necessary for the proper discharge of the functions of GCHQ if it consists of—

- (a) the disclosure of records subject to and in accordance with the Public Records Act 1958; or
- (b) the disclosure, subject to and in accordance with arrangements approved by the Secretary of State, of information to the Comptroller and Auditor General for the purposes of his functions.

1958 c. 51.

(4) The Director shall make an annual report on the work of GCHQ to the Prime Minister and the Secretary of State and may at any time report to either of them on any matter relating to its work.

Authorisation of certain actions

5.—(1) No entry on or interference with property or with wireless telegraphy shall be unlawful if it is authorised by a warrant issued by the Secretary of State under this section.

Warrants: general.

(2) The Secretary of State may, on an application made by the Security Service, the Intelligence Service or GCHQ, issue a warrant under this section authorising the taking, subject to subsection (3) below, of such action as is specified in the warrant in respect of any property so specified or in respect of wireless telegraphy so specified if the Secretary of State—

- (a) thinks it necessary for the action to be taken on the ground that it is likely to be of substantial value in assisting, as the case may be,—
 - (i) the Security Service in carrying out any of its functions under the 1989 Act; or
 - (ii) the Intelligence Service in carrying out any of its functions under section 1 above; or
 - (iii) GCHQ in carrying out any function which falls within section 3(1)(a) above; and
- (b) is satisfied that what the action seeks to achieve cannot reasonably be achieved by other means; and
- (c) is satisfied that satisfactory arrangements are in force under section 2(2)(a) of the 1989 Act (duties of the Director-General of the Security Service), section 2(2)(a) above or section 4(2)(a) above with respect to the disclosure of information obtained by virtue of this section and that any information obtained under the warrant will be subject to those arrangements.

(3) A warrant authorising the taking of action in support of the prevention or detection of serious crime may not relate to property in the British Islands.

(4) Subject to subsection (5) below, the Security Service may make an application under subsection (2) above for a warrant to be issued authorising that Service (or a person acting on its behalf) to take such action as is specified in the warrant on behalf of the Intelligence Service or GCHQ and, where such a warrant is issued, the functions of the Security Service shall include the carrying out of the action so specified, whether or not it would otherwise be within its functions.

(5) The Security Service may not make an application for a warrant by virtue of subsection (4) above except where the action proposed to be authorised by the warrant—

- (a) is action in respect of which the Intelligence Service or, as the case may be, GCHQ could make such an application; and
- (b) is to be taken otherwise than in support of the prevention or detection of serious crime.

Warrants:
procedure and
duration, etc.

6.—(1) A warrant shall not be issued except—

- (a) under the hand of the Secretary of State; or
- (b) in an urgent case where the Secretary of State has expressly authorised its issue and a statement of that fact is endorsed on it, under the hand of a senior official of his department.

(2) A warrant shall, unless renewed under subsection (3) below, cease to have effect—

- (a) if the warrant was under the hand of the Secretary of State, at the end of the period of six months beginning with the day on which it was issued; and

- (b) in any other case, at the end of the period ending with the second working day following that day.
- (3) If at any time before the day on which a warrant would cease to have effect the Secretary of State considers it necessary for the warrant to continue to have effect for the purpose for which it was issued, he may by an instrument under his hand renew it for a period of six months beginning with that day.
- (4) The Secretary of State shall cancel a warrant if he is satisfied that the action authorised by it is no longer necessary.
- (5) In the preceding provisions of this section “warrant” means a warrant under section 5 above.
- (6) As regards the Security Service, this section and section 5 above have effect in place of section 3 (property warrants) of the 1989 Act, and accordingly—
 - (a) a warrant issued under that section of the 1989 Act and current when this section and section 5 above come into force shall be treated as a warrant under section 5 above, but without any change in the date on which the warrant was in fact issued or last renewed; and
 - (b) section 3 of the 1989 Act shall cease to have effect.

7.—(1) If, apart from this section, a person would be liable in the United Kingdom for any act done outside the British Islands, he shall not be so liable if the act is one which is authorised to be done by virtue of an authorisation given by the Secretary of State under this section.

Authorisation of
acts outside the
British Islands.

- (2) In subsection (1) above “liable in the United Kingdom” means liable under the criminal or civil law of any part of the United Kingdom.
- (3) The Secretary of State shall not give an authorisation under this section unless he is satisfied—
 - (a) that any acts which may be done in reliance on the authorisation or, as the case may be, the operation in the course of which the acts may be done will be necessary for the proper discharge of a function of the Intelligence Service; and
 - (b) that there are satisfactory arrangements in force to secure—
 - (i) that nothing will be done in reliance on the authorisation beyond what is necessary for the proper discharge of a function of the Intelligence Service; and
 - (ii) that, in so far as any acts may be done in reliance on the authorisation, their nature and likely consequences will be reasonable, having regard to the purposes for which they are carried out; and
 - (c) that there are satisfactory arrangements in force under section 2(2)(a) above with respect to the disclosure of information obtained by virtue of this section and that any information obtained by virtue of anything done in reliance on the authorisation will be subject to those arrangements.

(4) Without prejudice to the generality of the power of the Secretary of State to give an authorisation under this section, such an authorisation—

- (a) may relate to a particular act or acts, to acts of a description specified in the authorisation or to acts undertaken in the course of an operation so specified;
- (b) may be limited to a particular person or persons of a description so specified; and
- (c) may be subject to conditions so specified.

(5) An authorisation shall not be given under this section except—

- (a) under the hand of the Secretary of State; or
- (b) in an urgent case where the Secretary of State has expressly authorised it to be given and a statement of that fact is endorsed on it, under the hand of a senior official of his department.

(6) An authorisation shall, unless renewed under subsection (7) below, cease to have effect—

- (a) if the authorisation was given under the hand of the Secretary of State, at the end of the period of six months beginning with the day on which it was given;
- (b) in any other case, at the end of the period ending with the second working day following the day on which it was given.

(7) If at any time before the day on which an authorisation would cease to have effect the Secretary of State considers it necessary for the authorisation to continue to have effect for the purpose for which it was given, he may by an instrument under his hand renew it for a period of six months beginning with that day.

(8) The Secretary of State shall cancel an authorisation if he is satisfied that any act authorised by it is no longer necessary.

The Commissioner, the Tribunal and the investigation of complaints

The
Commissioner.
1876 c. 59.

8.—(1) The Prime Minister shall appoint as a Commissioner for the purposes of this Act a person who holds or has held high judicial office within the meaning of the Appellate Jurisdiction Act 1876.

(2) The Commissioner shall hold office in accordance with the terms of his appointment and there shall be paid to him by the Secretary of State such allowances as the Treasury may determine.

(3) In addition to his functions under the subsequent provisions of this Act, the Commissioner shall keep under review the exercise by the Secretary of State of his powers under sections 5 to 7 above, except in so far as the powers under sections 5 and 6 above relate to the Security Service.

(4) It shall be the duty of—

- (a) every member of the Intelligence Service,
- (b) every member of GCHQ, and
- (c) every official of the department of the Secretary of State,

to disclose or give to the Commissioner such documents or information as he may require for the purpose of enabling him to discharge his functions.

(5) The Commissioner shall make an annual report on the discharge of his functions to the Prime Minister and may at any time report to him on any matter relating to his discharge of those functions.

(6) The Prime Minister shall lay before each House of Parliament a copy of each annual report made by the Commissioner under subsection (5) above together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (7) below.

(7) If it appears to the Prime Minister, after consultation with the Commissioner, that the publication of any matter in a report would be prejudicial to the continued discharge of the functions of the Intelligence Service or, as the case may be, GCHQ, the Prime Minister may exclude that matter from the copy of the report as laid before each House of Parliament.

(8) The Secretary of State may, after consultation with the Commissioner and with the approval of the Treasury as to numbers, provide the Commissioner with such staff as the Secretary of State thinks necessary for the discharge of his functions.

9.—(1) There shall be a Tribunal for the purpose of investigating complaints about the Intelligence Service or GCHQ in the manner specified in Schedule 1 to this Act. Investigation of complaints.

(2) The Commissioner shall have the functions conferred on him by Schedule 1 to this Act and give the Tribunal all such assistance in discharging their functions under that Schedule as they may require.

(3) Schedule 2 to this Act shall have effect with respect to the constitution, procedure and other matters relating to the Tribunal.

(4) The decisions of the Tribunal and the Commissioner under Schedule 1 to this Act (including decisions as to their jurisdictions) shall not be subject to appeal or liable to be questioned in any court.

The Intelligence and Security Committee

10.—(1) There shall be a Committee, to be known as the Intelligence and Security Committee and in this section referred to as “the Committee”, to examine the expenditure, administration and policy of— The Intelligence and Security Committee.

- (a) the Security Service;
- (b) the Intelligence Service; and
- (c) GCHQ.

(2) The Committee shall consist of nine members—

- (a) who shall be drawn both from the members of the House of Commons and from the members of the House of Lords; and
- (b) none of whom shall be a Minister of the Crown.

(3) The members of the Committee shall be appointed by the Prime Minister after consultation with the Leader of the Opposition, within the meaning of the Ministerial and other Salaries Act 1975; and one of those members shall be so appointed as Chairman of the Committee. 1975 c. 27.

(4) Schedule 3 to this Act shall have effect with respect to the tenure of office of members of, the procedure of and other matters relating to, the Committee; and in that Schedule “the Committee” has the same meaning as in this section.

(5) The Committee shall make an annual report on the discharge of their functions to the Prime Minister and may at any time report to him on any matter relating to the discharge of those functions.

(6) The Prime Minister shall lay before each House of Parliament a copy of each annual report made by the Committee under subsection (5) above together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (7) below.

(7) If it appears to the Prime Minister, after consultation with the Committee, that the publication of any matter in a report would be prejudicial to the continued discharge of the functions of either of the Services or, as the case may be, GCHQ, the Prime Minister may exclude that matter from the copy of the report as laid before each House of Parliament.

Supplementary

Interpretation and consequential amendments.
1989 c. 5.

11.—(1) In this Act—

- (a) “the 1989 Act” means the Security Service Act 1989;
- (b) “the Commissioner” means the Commissioner appointed under section 8 above;
- (c) “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
- (d) “senior official” in relation to a department is a reference to an officer of or above Grade 3 or, as the case may require, Diplomatic Service Senior Grade;
- (e) “wireless telegraphy” has the same meaning as in the Wireless Telegraphy Act 1949 and, in relation to wireless telegraphy, “interfere” has the same meaning as in that Act;
- (f) “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

1975 c. 26.

1949 c. 54.

1971 c. 80.

1989 c. 6.
S.I. 1990/200.

(2) In consequence of the preceding provisions of this Act, the 1989 Act, the Official Secrets Act 1989 and the Official Secrets Act 1989 (Prescription) Order 1990 shall have effect subject to the amendments in Schedule 4 to this Act.

Short title, commencement and extent.

12.—(1) This Act may be cited as the Intelligence Services Act 1994.

(2) This Act shall come into force on such day as the Secretary of State may by an order made by statutory instrument appoint, and different days may be so appointed for different provisions or different purposes.

(3) This Act extends to Northern Ireland.

(4) Her Majesty may by Order in Council direct that any of the provisions of this Act specified in the Order shall extend, with such exceptions, adaptations and modifications as appear to Her to be necessary or expedient, to the Isle of Man, any of the Channel Islands or any colony.

SCHEDULES

SCHEDULE 1

Section 9.

INVESTIGATION OF COMPLAINTS

Preliminary

1. Any person may complain to the Tribunal if he is aggrieved by anything which he believes the Intelligence Service or GCHQ has done in relation to him or to any property of his; and, unless the Tribunal consider that the complaint is frivolous or vexatious, they shall deal with it in accordance with this Schedule.

References and investigations by the Tribunal

2. If and so far as the complaint alleges that anything has been done in relation to any property of the complainant, the Tribunal shall refer the complaint to the Commissioner.

3. Subject to paragraph 2 above and paragraph 4 below, the Tribunal shall investigate—

- (a) whether the Intelligence Service or, as the case may be, GCHQ has obtained or provided information or performed any other tasks in relation to the actions or intentions of the complainant; and
- (b) if so, whether, applying the principles applied by a court on an application for judicial review, the Intelligence Service or GCHQ had reasonable grounds for doing what it did.

4. If, in the course of the investigation of a complaint by the Tribunal, the Tribunal consider that it is necessary to establish whether an authorisation was given under section 7 of this Act to the doing of any act, they shall refer so much of the complaint as relates to the doing of that act to the Commissioner.

Functions of the Commissioner in relation to complaints

5.—(1) Where a reference is made to the Commissioner under paragraph 2 or paragraph 4 above, the Commissioner shall investigate, as the case may require,—

- (a) whether a warrant was issued under section 5 of this Act in relation to the property concerned; or
- (b) whether an authorisation was given under section 7 of this Act to the doing of the act in question.

(2) If the Commissioner finds that a warrant was issued or an authorisation was given, he shall, applying the principles applied by a court on an application for judicial review, determine whether the Secretary of State was acting properly in issuing or renewing the warrant or, as the case may be, in giving or renewing the authorisation.

(3) The Commissioner shall inform the Tribunal of his conclusion on any reference made to him under paragraph 2 or paragraph 4 above.

Report of conclusions

6.—(1) Where the Tribunal determine under paragraph 3 above that the Intelligence Service or, as the case may be, GCHQ did not have reasonable grounds for doing what it did, they shall—

- (a) give notice to the complainant that they have made a determination in his favour; and

SCH. 1

(b) make a report of their findings to the Secretary of State and to the Commissioner.

(2) The Tribunal shall also give notice to the complainant of any determination in his favour by the Commissioner under paragraph 5 above.

(3) Where in the case of any complaint no such determination as is mentioned in sub-paragraph (1) or sub-paragraph (2) above is made by the Tribunal or the Commissioner, the Tribunal shall give notice to the complainant that no determination in his favour has been made on his complaint.

Special references by Tribunal to Commissioner

7.—(1) If in any case investigated by the Tribunal—

(a) the Tribunal's conclusions on the matters which they are required to investigate are such that no determination is made by them in favour of the complainant; but

(b) it appears to the Tribunal from the allegations made by the complainant that it is appropriate for there to be an investigation into whether the Intelligence Service or GCHQ has in any other respect acted unreasonably in relation to the complainant or his property,

they shall refer that matter to the Commissioner.

(2) The Commissioner may report any matter referred to him under sub-paragraph (1) above to the Secretary of State.

Remedies

8.—(1) Where the Tribunal give a complainant notice of such a determination as is mentioned in paragraph 6(1) above, the Tribunal may do either or both of the following, namely,—

(a) direct that the obtaining and provision of information in relation to the complainant or, as the case may be, the conduct of other activities in relation to him or to any property of his shall cease and that any records relating to such information so obtained or provided or such other activities shall be destroyed;

(b) direct the Secretary of State to pay to the complainant such sum by way of compensation as may be specified by the Tribunal.

(2) Where the Tribunal give a complainant notice of such a determination as is mentioned in paragraph 6(2) above, the Tribunal may do either or both of the following, namely,—

(a) quash any warrant or authorisation which the Commissioner has found to have been improperly issued, renewed or given and which he considers should be quashed;

(b) direct the Secretary of State to pay to the complainant such sum by way of compensation as may be specified by the Commissioner.

(3) Where the Secretary of State receives a report under paragraph 7(2) above, he may take such action in the light of the report as he thinks fit, including any action which the Tribunal have power to take or direct under the preceding provisions of this paragraph.

Supplementary

9. The persons who may complain to the Tribunal under this Schedule include any organisation and any association or combination of persons.

10.—(1) No complaint shall be entertained under this Schedule if and so far as it relates to anything done before the date on which this Schedule comes into force.

(2) Where any activities in relation to any person or his property were instituted before that date and no decision had been taken before that date to discontinue them, paragraphs 2 and 3 above shall have effect as if they had been instituted on that date.

11. Any reference in this Schedule to a complainant's property includes—
- (a) a reference to any wireless telegraphy transmission originated or received or intended to be received by him; and
 - (b) a reference to any place where the complainant resides or works.

SCHEDULE 2

Section 9.

THE TRIBUNAL

Constitution of the Tribunal

1.—(1) The Tribunal shall consist of not less than three or more than five members each of whom shall be—

- (a) a person who has a 10 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
- (b) an advocate or solicitor in Scotland of at least ten years' standing; or
- (c) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 10 years' standing.

1990 c. 41.

(2) The members of the Tribunal shall be appointed by Her Majesty by Royal Warrant.

(3) A member of the Tribunal shall vacate office at the end of the period of five years beginning with the day of his appointment but shall be eligible for re-appointment.

(4) A member of the Tribunal may be relieved of office by Her Majesty at his own request.

(5) A member of the Tribunal may be removed from office by Her Majesty on an Address presented to Her by both Houses of Parliament.

President and Vice-President

2.—(1) Her Majesty may by Royal Warrant appoint as President or Vice-President of the Tribunal a person who is, or by virtue of that Warrant will be, a member of the Tribunal.

(2) If at any time the President of the Tribunal is temporarily unable to carry out the functions of the President under this Schedule, the Vice-President shall carry out those functions.

(3) A person shall cease to be President or Vice-President of the Tribunal if he ceases to be a member of the Tribunal.

Procedure

3. The functions of the Tribunal in relation to any complaint shall be capable of being carried out, in any place in the United Kingdom, by any two or more members of the Tribunal designated for the purpose by their President; and different members of the Tribunal may carry out functions in relation to different complaints at the same time.

SCH. 2

4.—(1) It shall be the duty of every member of the Intelligence Service or, as the case may be, GCHQ to disclose or give to the Tribunal such documents or information as they may require for the purpose of enabling them to carry out their functions under this Act.

(2) Subject to paragraph 6(2) below, the Tribunal shall carry out their functions under this Act in such a way as to secure that no document or information disclosed or given to the Tribunal by any person is disclosed without his consent to any complainant, to any person (other than the Commissioner) holding office under the Crown or to any other person; and accordingly the Tribunal shall not, except in reports under paragraph 6(1)(b) of Schedule 1 to this Act, give any reasons for a determination notified by them to a complainant.

(3) Subject to sub-paragraph (2) above, the Tribunal may determine their own procedure.

Salaries and expenses

5.—(1) The Secretary of State shall pay to the members of the Tribunal such remuneration and allowances as he may with the approval of the Treasury determine.

(2) The Secretary of State shall defray such expenses of the Tribunal as he may with the approval of the Treasury determine.

Staff

6.—(1) The Secretary of State may, after consultation with the Tribunal and with the approval of the Treasury as to numbers, provide the Tribunal with such staff as he thinks necessary for the proper discharge of their functions.

(2) The Tribunal may authorise any member of their staff to obtain any documents or information on the Tribunal's behalf.

Parliamentary disqualification

1975 c. 24.

7.—(1) In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies whose members are disqualified) there shall be inserted at the appropriate place—

“The Tribunal established under section 9 of the Intelligence Services Act 1994”.

1975 c. 25.

(2) The same amendment shall be made in Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

Section 10(4).

SCHEDULE 3

THE INTELLIGENCE AND SECURITY COMMITTEE

Tenure of office

1.—(1) Subject to the provisions of this paragraph, a member of the Committee shall hold office for the duration of the Parliament in which he is appointed.

(2) A member of the Committee shall vacate office—

- (a) if he ceases to be a member of the House of Commons;
- (b) if he ceases to be a member of the House of Lords;
- (c) if he becomes a Minister of the Crown; or

(d) if he is required to do so by the Prime Minister on the appointment, in accordance with section 10(3) of this Act, of another person as a member in his place.

(3) A member of the Committee may resign at any time by notice to the Prime Minister.

(4) Past service is no bar to appointment as a member of the Committee.

Procedure

2.—(1) Subject to the following provisions of this Schedule, the Committee may determine their own procedure.

(2) If on any matter there is an equality of voting among the members of the Committee, the Chairman shall have a second or casting vote.

(3) The Chairman may appoint one of the members of the Committee to act, in his absence, as chairman at any meeting of the Committee, but sub-paragraph (2) above shall not apply to a chairman appointed under this sub-paragraph.

(4) The quorum of the Committee shall be three.

Access to information

3.—(1) If the Director-General of the Security Service, the Chief of the Intelligence Service or the Director of GCHQ is asked by the Committee to disclose any information, then, as to the whole or any part of the information which is sought, he shall either—

(a) arrange for it to be made available to the Committee subject to and in accordance with arrangements approved by the Secretary of State; or

(b) inform the Committee that it cannot be disclosed either—

(i) because it is sensitive information (as defined in paragraph 4 below) which, in his opinion, should not be made available under paragraph (a) above; or

(ii) because the Secretary of State has determined that it should not be disclosed.

(2) The fact that any particular information is sensitive information shall not prevent its disclosure under sub-paragraph (1)(a) above if the Director-General, the Chief or the Director (as the case may require) considers it safe to disclose it.

(3) Information which has not been disclosed to the Committee on the ground specified in sub-paragraph (1)(b)(i) above shall be disclosed to them if the Secretary of State considers it desirable in the public interest.

(4) The Secretary of State shall not make a determination under sub-paragraph (1)(b)(ii) above with respect to any information on the grounds of national security alone and, subject to that, he shall not make such a determination unless the information appears to him to be of such a nature that, he were requested to produce it before a Departmental Select Committee of the House of Commons, he would think it proper not to do so.

(5) The disclosure of information to the Committee in accordance with the preceding provisions of this paragraph shall be regarded for the purposes of the 1989 Act or, as the case may be, this Act as necessary for the proper discharge of the functions of the Security Service, the Intelligence Service or, as the case may require, GCHQ.

SCH. 3

Sensitive information

4. The following information is sensitive information for the purposes of paragraph 3 above—

- (a) information which might lead to the identification of, or provide details of, sources of information, other assistance or operational methods available to the Security Service, the Intelligence Service or GCHQ;
- (b) information about particular operations which have been, are being or are proposed to be undertaken in pursuance of any of the functions of those bodies; and
- (c) information provided by, or by an agency of, the Government of a territory outside the United Kingdom where that Government does not consent to the disclosure of the information.

Section 11(2).

SCHEDULE 4

CONSEQUENTIAL AMENDMENTS

The Security Service Act 1989

1989 c. 5.

1.—(1) In section 2 of the Security Service Act 1989 (duties of the Director-General of the Security Service) in subsection (2) after the words “serious crime” there shall be inserted “or for the purpose of any criminal proceedings”.

(2) After subsection (3) of that section there shall be inserted the following subsection—

“(3A) Without prejudice to the generality of subsection (2)(a) above, the disclosure of information shall be regarded as necessary for the proper discharge of the functions of the Security Service if it consists of—

- (a) the disclosure of records subject to and in accordance with the Public Records Act 1958; or
- (b) the disclosure, subject to and in accordance with arrangements approved by the Secretary of State, of information to the Comptroller and Auditor General for the purposes of his functions.”

2. In section 4(3) of that Act (Security Service Commissioner to review exercise of powers by Secretary of State), for the words “powers under section 3 above” there shall be substituted “powers, so far as they relate to applications made by the Service, under sections 5 and 6 of the Intelligence Services Act 1994.”

3. In paragraph 4(1) of Schedule 1 to that Act (Security Service Commissioner to investigate whether the Secretary of State acted properly in issuing or renewing warrant), after the words “section 3 of this Act” there shall be inserted “or section 5 of the Intelligence Services Act 1994”.

The Official Secrets Act 1989

1989 c. 6.

4. In section 4 of the Official Secrets Act 1989 (disclosure of information which results in commission of an offence etc.) in subsection (3)(b) after the words “under section 3 of the Security Service Act 1989” there shall be inserted “or under section 5 of the Intelligence Services Act 1994 or by an authorisation given under section 7 of that Act”.

The Official Secrets Act 1989 (Prescription) Order 1990

5. At the end of Schedule 3 to the Official Secrets Act 1989 (Prescription) Order 1990 (bodies giving official authorisations etc.) there shall be added the following entry—

“The Tribunal established under section 9 of the Intelligence Services Act 1994. Section 7(5)”.

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