



Security Service Act 1989

CHAPTER 5

ARRANGEMENT OF SECTIONS

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Security Service Act 1989

1989 CHAPTER 5

An Act to place the Security Service on a statutory basis; to enable certain actions to be taken on the authority of warrants issued by the Secretary of State, with provision for the issue of such warrants to be kept under review by a Commissioner; to establish a procedure for the investigation by a Tribunal or, in some cases, by the Commissioner of complaints about the Service; and for connected purposes. [27th April 1989]

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:—

1.—(1) There shall continue to be a Security Service (in this Act referred to as “the Service”) under the authority of the Secretary of State. The Security Service.

(2) The function of the Service shall be the protection of national security and, in particular, its protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.

(3) It shall also be the function of the Service to safeguard the economic well-being of the United Kingdom against threats posed by the actions or intentions of persons outside the British Islands.

2.—(1) The operations of the Service shall continue to be under the control of a Director-General appointed by the Secretary of State. The Director-General.

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

- (a) that there are arrangements for securing that no information is obtained by the Service except so far as necessary for the proper discharge of its functions or disclosed by it except so far as necessary for that purpose or for the purpose of preventing or detecting serious crime; and

(b) that the Service does not take any action to further the interests of any political party.

(3) The arrangements mentioned in subsection (2)(a) above shall be such as to ensure that information in the possession of the Service is not disclosed for use in determining whether a person should be employed, or continue to be employed, by any person, or in any office or capacity, except in accordance with provisions in that behalf approved by the Secretary of State.

(4) The Director-General shall make an annual report on the work of the 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.

Warrants.

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

(2) The Secretary of State may on an application made by the Service issue a warrant under this section authorising the taking of such action as is specified in the warrant in respect of any property so specified if the Secretary of State—

(a) thinks it necessary for the action to be taken in order to obtain information which—

(i) is likely to be of substantial value in assisting the Service to discharge any of its functions; and

(ii) cannot reasonably be obtained by other means; and

(b) is satisfied that satisfactory arrangements are in force under section 2(2)(a) above with respect to the disclosure of information obtained by virtue of this section and that the information obtained under the warrant will be subject to those arrangements.

(3) A warrant shall not be issued 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 its issue and a statement of that fact is endorsed on it, under the hand of an official of his department of or above Grade 3.

(4) A warrant shall, unless renewed under subsection (5) 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;

(b) in any other case, at the end of the period ending with the second working day following that day.

(5) 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.

(6) The Secretary of State shall cancel a warrant if he is satisfied that the action authorised by it is no longer necessary.

(7) In this section “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. 1971 c. 80.

4.—(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. The Security Service Commissioner. 1876 c. 59.

(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 section 3 above.

(4) It shall be the duty of every member of the Service and of 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 Service, 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.

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

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

(3) 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.

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

6. Any expenses incurred by the Secretary of State under this Act shall be defrayed out of money provided by Parliament. Expenses.

Short title,
commencement
and extent.

7.—(1) This Act may be cited as the Security Service Act 1989.

(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 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 may be so specified, to the Isle of Man, any of the Channel Islands or any colony.

SCHEDULES

SCHEDULE 1

Section 5(1).

INVESTIGATION OF COMPLAINTS

Preliminary

1. Any person may complain to the Tribunal if he is aggrieved by anything which he believes the Service 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 investigate it in accordance with this Schedule.

Investigations and determinations

2.—(1) The Tribunal shall investigate whether the complainant has been the subject of inquiries by the Service.

(2) If the Tribunal find that the Service has made inquiries about the complainant but that those inquiries had ceased at the time when the complaint was made, they shall determine whether, at the time when the inquiries were instituted, the Service had reasonable grounds for deciding to institute inquiries about the complainant in the discharge of its functions.

(3) If the Tribunal find that inquiries by the Service about the complainant were continuing at the time when the complaint was made, they shall determine whether, at that time, the Service had reasonable grounds for deciding to continue inquiries about the complainant in the discharge of its functions.

(4) Where it appears to the Tribunal that the inquiries had been or were being made about the complainant on the ground of his membership of a category of persons regarded by the Service as requiring investigation in the discharge of its functions, the Tribunal shall regard the Service as having reasonable grounds for deciding to institute or continue inquiries about the complainant if the Tribunal consider that the Service had reasonable grounds for believing him to be a member of that category.

3. If and so far as the complainant alleges that the Service has disclosed information for use in determining whether he should be employed, or continue to be employed, by any person or in any office or capacity specified by him, the Tribunal shall investigate whether the Service has disclosed information for that purpose and, if the Tribunal find that it has done so, they shall determine whether the Service had reasonable grounds for believing the information to be true.

4.—(1) If and so far as the complainant alleges that anything has been done by the Service in relation to any property of his, the Tribunal shall refer the complaint to the Commissioner who shall investigate whether a warrant has been issued under section 3 of this Act in respect of that property and if he finds that such a warrant has been issued 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.

(2) The Commissioner shall inform the Tribunal of his conclusion on any complaint so far as referred to him under this paragraph.

Report of conclusions

5.—(1) Where the Tribunal determine under paragraph 2 or 3 above that the Service did not have reasonable grounds for the decision or belief in question, they shall—

- (a) give notice to the complainant that they have made a determination in his favour under that paragraph; and
- (b) make a report of their findings to the Secretary of State and to the Commissioner.

SCH. 1 (2) The Tribunal shall also give notice to the complainant of any determination in his favour by the Commissioner under paragraph 4 above.

(3) Where in the case of any complaint no such determination as is mentioned in sub-paragraph (1) or (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.

Remedies

6.—(1) Where the Tribunal give a complainant notice of such a determination as is mentioned in paragraph 5(1) above the Tribunal may—

- (a) if the determination is under paragraph 2 above, order inquiries by the Service about the complainant to be ended and any records relating to such inquiries to be destroyed;
- (b) if the determination is under that paragraph or paragraph 3 above, 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 5(2) above the Tribunal may—

- (a) quash any warrant in respect of any property of the complainant which the Commissioner has found to have been improperly issued or renewed and which he considers should be quashed;
- (b) if the Commissioner considers that a sum should be paid to the complainant by way of compensation, direct the Secretary of State to pay to the complainant such sum as the Commissioner may specify.

References to the Commissioner

7.—(1) If in a case investigated by the Tribunal under paragraph 2 above they consider that the Service may not be justified in regarding all members of a particular category as requiring investigation they shall refer that matter to the Commissioner.

(2) 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 Service has in any other respect acted unreasonably in relation to the complainant or his property,

they shall refer that matter to the Commissioner.

(3) The Commissioner may report any matter referred to him under this paragraph to the Secretary of State who 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 paragraph 6 above.

Supplementary

8.—(1) The persons who may complain to the Tribunal under this Schedule include any organisation and any association or combination of persons.

(2) References in this Schedule to a complainant's property include references to any place where the complainant resides or works.

9.—(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 inquiries about a person were instituted before that date and no decision had been taken before that date to discontinue them, paragraph 2 above shall have effect as if they had been instituted on that date.

SCH. 1

SCHEDULE 2

Section 5(2).

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 barrister, advocate or solicitor of not less than ten years' standing.

(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.

4.—(1) It shall be the duty of every member of the Service 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 5(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.

SCH. 2

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 the Security Service Act 1989”.

1975 c. 25.

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

