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**INVESTIGATORY POWERS TRIBUNAL RULES 2012**

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**INVESTIGATORY POWERS TRIBUNAL RULES 2012**

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The Administrator makes these Rules under section 36 of the Regulation of Investigatory Powers Ordinance 2012(a):

**Citation**

1. These Rules may be cited as the Investigatory Powers Tribunal Rules 2012.

**Commencement**

2. These Rules come into force on 1 November 2012.

**Interpretation**

3. In these Rules—

“complainant” means—

- (a) a person who brings section 9 proceedings;
- (b) a person who makes a complaint;

“complaint” means a complaint made by virtue of section 32(3) of RIPO;

“Convention right” has the meaning given in section 2 of the Human Rights Ordinance 2004(b);

“property right” has the meaning given in section 2 of the Protection of Property Ordinance 2004(c);

“RIPO” means the Regulation of Investigatory Powers Ordinance 2012;

“section 9 proceedings” means proceedings under section 9(1)(a) of the Human Rights Ordinance 2004 in relation to which the Tribunal is the only appropriate court or tribunal by virtue of section 32(2) of RIPO.

**Exercise of Tribunal’s jurisdiction**

4. (1) The jurisdiction of the Tribunal may be exercised by any 2 or more members of the Tribunal designated for the purpose by the President of the Tribunal; and different members of the Tribunal may carry out functions in relation to different complaints at the same time.

(2) Despite paragraph (1), the following powers and duties may be exercised or performed by a single member of the Tribunal—

- (a) the power under rule 6(3) or 7(3) to invite the complainant to supply information or make representations;
- (b) the duty under rule 13 to notify the complainant of any of the determinations referred to in that rule;
- (c) the power under section 31(7) of RIPO to authorise a member of staff to obtain documents or information on the Tribunal’s behalf;
- (d) the duty, in considering a complaint, to investigate the matters described in section 34(3)(a) and (b) of RIPO;
- (e) the power under section 34(5) of RIPO to extend the time limit for a complaint;
- (f) the power under section 35(2) of RIPO to require the Commissioner to provide assistance;

- (g) the power under section 35(5) of RIPO to require the disclosure or provision of documents or information;
- (h) the power under section 9(4)(b) of the Human Rights Ordinance 2004 to extend the time limit for section 9 proceedings.

### **Disclosure of information**

5. (1) The Tribunal must carry out its 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 or the prevention or detection of crime.

(2) Without prejudice to paragraph (1), but subject to paragraphs (3) and (4), the Tribunal must not disclose to the complainant or to any other person—

- (a) the fact that the Tribunal has held, or proposes to hold, an oral hearing under rule 9;
- (b) the identity of any witness at an oral hearing or the fact that a witness was heard at an oral hearing;
- (c) any information or document disclosed or provided to the Tribunal in the course of an oral hearing;
- (d) any information or document otherwise disclosed or provided to the Tribunal by any person referred to in section 35(5) of RIPO, whether pursuant to a request made under that subsection or voluntarily;
- (e) any information or opinion provided to the Tribunal by the Commissioner pursuant to section 35(2) of RIPO;
- (f) the fact that any information, document or opinion was disclosed or provided in the circumstances referred to in sub-paragraphs (c) to (e).

(3) The Tribunal may disclose—

- (a) the fact that the Tribunal proposes to hold a public hearing in relation to preliminary issues of law concerning procedure;
- (b) the fact that the Tribunal proposes to hold an oral hearing under rule 9(2) to the complainant;
- (c) the fact that the Tribunal proposes to hold an oral hearing under rule 9(3) to the person or investigating authority required to attend the hearing;
- (d) anything referred to in paragraph (2)(a) with the consent of the person required to attend the hearing under rule 9(3);
- (e) anything referred to in paragraph (2)(b) with the consent of the witness;
- (f) anything referred to in paragraph (2)(c) or (d) with the consent of the person who disclosed or provided the information or document;
- (g) anything referred to in paragraph (2)(e) with the consent of the Commissioner and, to the extent that the information or opinion includes information provided to the Commissioner by another person, the consent of that other person;
- (h) anything referred to in paragraph (2)(f) with the consent of the person whose consent is required under this rule for the disclosure of the information, document or opinion.

(4) Except as provided in rule 13(5), the Tribunal may disclose anything referred to in paragraph (2) of this rule as part of the information provided to the complainant under rule 13(2).

(5) The Tribunal may not order a person to disclose any information or document that the Tribunal would itself be prohibited from disclosing under this rule if the information or document had been disclosed or provided to the Tribunal by that person.

(6) The Tribunal may not, without the consent of the complainant, disclose to a person other than the Commissioner any information or document disclosed or provided to the Tribunal by or on behalf of the complainant other than the statements referred to in rule 6(2)(a) and (b) or rule 7(2)(a) and (b).

### **Bringing section 9 proceedings**

6. (1) Section 9 proceedings are brought by filing an affidavit with the Tribunal.

(2) The affidavit must—

- (a) state the address and date of birth of the complainant;
- (b) state whether the proceedings are brought against the Sovereign Base Areas Police Service or the Sovereign Base Areas Customs and Immigration Service or both;
- (c) describe the nature of the claim (including details of the Convention right or property right that it is alleged has been infringed) and the nature of the complainant's interest;
- (d) specify the remedy that the complainant seeks; and
- (e) contain a summary of the information on which the claim is based.

(3) The Tribunal may at any time invite the complainant to supply further information or to make written representations on any matter.

### **Making complaints**

7. (1) A complaint is made by filing an affidavit with the Tribunal.

(2) The affidavit must—

- (a) state the address and date of birth of the complainant;
- (b) state the person or investigating authority whose conduct, to the best of the complainant's knowledge or belief, is the subject of the complaint;
- (c) describe, to the best of the complainant's knowledge or belief, that conduct; and
- (d) contain a summary of the information on which the complaint is based.

(3) The Tribunal may at any time invite the complainant to supply further information or to make written representations on any matter.

### **Tribunal's proceedings**

8. (1) The Tribunal's proceedings, including any oral hearings held under rule 9, must be conducted in private.

(2) Subject to rule 5(1), paragraph (1) does not apply to proceedings that relate solely to preliminary issues of law or the Tribunal's procedure.

### **Oral hearings**

9. (1) The Tribunal is not under a duty to hold an oral hearing but may do so in accordance with this rule (and not otherwise).

(2) The Tribunal may hold, at any stage of its consideration, an oral hearing or hearings at which the complainant may make representations, give evidence and call witnesses.

(3) The Tribunal may hold a separate oral hearing or hearings at which a person or investigating authority referred to in paragraph (4) may be required to attend and at which the person or investigating authority may make representations, give evidence and call witnesses.

(4) The persons or investigating authorities are—

- (a) the person whose conduct is the subject of the complaint;
- (b) the investigating authority against which the section 9 proceedings are brought;
- (c) any other person referred to in section 35(5) of RIPO.

(5) Where the Tribunal holds an oral hearing, no witness may be called without the permission of the Tribunal unless the complainant, investigating authority or other person who wishes to call the witness has informed the Tribunal of the name of the witness within a period specified by the Tribunal for the purposes of this rule.

### **Representation**

10. (1) Except as provided in paragraph (2), a person entitled to make representations at an oral hearing may appear in person or may be represented by any person appointed for that purpose.

(2) The permission of the Tribunal is required except where the representative is—

- (a) an advocate<sup>(d)</sup>;
- (b) a barrister in England and Wales or a solicitor of the Senior Courts in England and Wales;

- (c) an advocate or solicitor in Scotland;
- (d) a barrister or solicitor in Northern Ireland.

### **Evidence**

**11.** (1) The Tribunal may receive evidence in any form and may receive evidence that would not be admissible in a court.

- (2) The Tribunal may require a witness to give evidence on oath.
- (3) No person may be compelled to give evidence at an oral hearing.

### **Remedies**

**12.** (1) Before exercising the power under section 34(7) of RIPO, the Tribunal must invite representations in accordance with this rule.

(2) Where the Tribunal proposes 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 the Tribunal proposes to make any other order (including an interim order) affecting the investigating authority against whom any section 9 proceedings are brought or the person whose conduct is the subject of any complaint, the Tribunal must give the investigating authority or person an opportunity to make representations as to the proposed order.

### **Notification to complainants**

**13.** (1) The Tribunal must provide information to the complainant in accordance with this rule. (Section 35(4) of RIPO also requires the Tribunal to provide certain information to the complainant.)

(2) Where the Tribunal makes a determination in favour of the complainant, the Tribunal must provide the complainant with a summary of that determination including any findings of fact.

(3) Where the Tribunal makes a determination referred to in paragraph (4), the Tribunal must notify the complainant of that fact.

(4) The determinations are—

- (a) that the bringing of the section 9 proceedings or the making of the complaint is frivolous or vexatious;
- (b) that the section 9 proceedings have been brought, or the complaint made, out of time and that the time limit should not be extended;
- (c) that the complainant does not have the right to bring the section 9 proceedings or make the complaint.

(5) No information may be provided under this rule whose disclosure would be restricted under rule 5(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.

(6) The duty to provide information in this rule is subject to the general duty imposed on the Tribunal by rule 5(1).

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Dated this 31st day of October 2012.

By the Administrator's Command,

J. S. Wright,

Chief Officer,

Sovereign Base Areas.

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(SBA/AG/2/CR/581/1)

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### **Notes**

- (a) Ordinance 26/12.
- (b) Ordinance 9/04, amended by Ordinance 19/05.
- (c) Ordinance 35/04, amended by Ordinance 19/06.
- (d) "Advocate" is defined in Schedule 1 to the Interpretation Ordinance 2012.

## **EXPLANATORY NOTE**

### **(This note does not form part of the Rules)**

1. This explanatory note relates to the Investigatory Powers Tribunal Rules 2012 (the “Rules”). It has been prepared by the Office of the Attorney-General and Legal Adviser in order to assist the reader of the Rules and should be read in conjunction with the Rules.
2. The Rules are for the Investigatory Powers Tribunal, established by section 31 of the Regulation of Investigatory Powers Ordinance 2012 (“RIPO”).
3. The jurisdiction of the Tribunal may be exercised by any 2 or more members of the Tribunal (rule 4). However, a single member may exercise the functions set out in rule 4(2).
4. The Tribunal is under a general duty to carry out its 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 or the prevention and detection of crime (rule 5(1)). This general duty overrides the duty to provide information to complainants in accordance with rule 13.
5. Rules 6 and 7 provide for the bringing of proceedings under section 9(1)(a) of the Human Rights Ordinance 2004 (see section 32(2) of RIPO) and for complaints under section 32(3) of RIPO.
6. The Tribunal’s proceedings (other than those relating solely to preliminary issues of law or the Tribunal’s procedure) must be conducted in private (rule 8). The Tribunal is not under a duty to hold an oral hearing, but if it does so, must do so in accordance with rule 9.
7. Section 35(1) of RIPO provides that, subject to the Rules, the Tribunal may determine its own procedure.