National Security (Legislative Provisions) Bill
Special Procedures for Appeals against Proscription

Introduction

This paper sets out the Administration's response to items A4 to A8 and C11 of Appendix I to the background brief prepared by the Legislative Council Secretariat (paper no. CB(2)1378/02-03(03)), as well as to a number of questions raised at the meeting of the Bills Committee on 20 May 2003. It also addresses the concerns that the Chief Justice should not be responsible for the making of rules which might themselves be subject to legal challenge on appeal.

The Special Procedures

2. The proposed new section 8E of the Societies Ordinance (in clause 15 of the Bill), enables rules to be made in respect of appeals against a proscription. The section provides, in particular, that –

"(3) Rules made under this section may make provision –

(a) enabling proceedings to take place without the appellant being given full particulars of the reasons for the proscription in question;

(b) enabling the Court of First Instance to hold proceedings in the absence of any person, including the appellant and any legal representative appointed by him; and

(c) enabling the Court of First Instance to give the appellant a summary of any evidence taken in his absence.

(4) Where rules made under this section enable the Court of First Instance to hold proceedings in the absence of the appellant and any legal representative appointed by him, the rules shall make provision for –

(a) a power to appoint a legal practitioner to act in the interests of the appellant; and

(b) the function and responsibility of such legal practitioner."

3. There are no existing rules in Hong Kong making provision for such special procedures, but similar procedures exist in the UK and Canada. Moreover, it is emphasized that the proposed avenue of appeal to the courts will be additional to, and not a substitution for, the organization's rights at common law.

I. Justifications and Precedents

Increased rights of proscribed organizations

4. If the Bill followed the common law, a proscribed organization would have no right to appeal to the courts, and could only seek to challenge a proscription by way of judicial review. In such proceedings, the court would not conduct an overall review of the decision, but would merely determine whether it was lawful or unlawful. In so doing, it would be constrained by common law principles that restrict the extent to which it can enquire into issues and evidence relating to national security.

5. The proposed right of appeal will improve the position of proscribed organizations. It will require the court to conduct an overall review of the decision reached by the executive, in a manner which would not be available in the judicial review process. The court should have access to all or at least the essential documents of a sensitive, security nature in order to decide whether there is "insufficient evidence" –

(1) to prove that the organization falls within section 8A(2)(a), (b) or (c); or

(2) to justify a reasonable belief that the proscription is necessary in the interests of national security, and is proportionate for such purpose.

6. The court will test the sufficiency of evidence in a way that would not be available by way of judicial review. In the latter proceedings, it is not for the court to alter an administrative body's evaluation of issues of fact. It will only have to satisfy itself, for example, that inferences were reasonably drawn or that conclusions rationally relate to evidence available to the decision-maker.

7. Assuming that the procedural rules to be made in Hong Kong are modelled on UK precedents, the appeal court would be empowered to –

(1) receive evidence that would not normally be admissible in court;

(2) require a witness to give evidence on oath; and

(3) require any person in Hong Kong to attend at any proceedings before it and to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the appeal.

In addition, both the appellant and the Secretary for Security would be entitled to adduce evidence.

8. Through the appeal process, aspects of "national security" will become justiciable and the court will be required to decide on those aspects. This is in sharp contrast to the common law rule under which "national security" is largely non-justiciable. The court is unlikely to be satisfied by evidence (e.g. by affidavit) merely that national security had been considered and accepted as the basis by the Secretary for Security for her decision. It is likely to demand the sight of sensitive security documents to assess the sufficiency of the evidence.

Justifications for special procedures

9. Without special court procedures, the proposed appeal mechanism might not achieve its purpose. It might be impossible in some cases to satisfy the appeal court that the proscription of a local organization is necessary in the interests of national security without disclosing to the organization and its legal representatives evidence of a highly sensitive and confidential nature. That disclosure might in itself endanger national security.

10. For example, a local organization might be proscribed by the Secretary for Security on the grounds that it received substantial funding from a violent secessionist organization that had been banned in the Mainland on the grounds of national security. In coming to his decision, the Secretary may have relied on –

(1) evidence concerning the funding of the local organization's activities

obtained by an undercover agent; and

(2) evidence concerning the activities and organization of the banned Mainland organization obtained by Mainland security officials.

11. If the existence and identity of the undercover agent, and the extent of the intelligence gathered on the Mainland organization were revealed to the local organization and its lawyers, this might seriously prejudice ongoing investigations into activities that endanger national security.

12. However, if that information were not revealed to the court, the court might not be satisfied that the proscription was justified. In such a case, it would be obliged to set aside the proscription. There should, therefore, be procedural safeguards to ensure that sensitive confidential information relevant to the question of national security will be disclosed only to the court, in order to enable it to carry out its statutory function.

13. Although the proscribed organization will not be given access to the confidential documents on appeal, it will be represented by a specially appointed legal practitioner. This is a definite advantage for the organization and an improvement over the common law position. Under the common law, it will not have such representation in respect of an administrative decision, nor will it be entitled to see those documents, since public interest immunity is likely to apply.

Overseas Precedents

14. A rule-making power similar to that in the proposed section 8E(3) and (4) is found in the UK's –

(1) Special Immigration Appeals Commission Act 1997;

(2) Terrorism Act 2000; and

(3) Regulation of Investigatory Powers Act 2000.

Relevant rules are contained in the Special Immigration Appeal Commission (Procedure) Rules 1998, the Proscribed Organizations Appeal Commission (Procedure) Rules 2001, and the Regulation of Investigatory Powers Tribunal Rules 2000.

15. Canada also has similar procedures in its –

(1) Immigration and Refugees Protection Act;

(2) Criminal Code; and

(3) Charities Registration (Security Information) Act.

16. As will be seen, the overseas precedents are **not** limited to immigration-related cases, but also apply to appeals relating to terrorist entities, and to certain proceedings in respect of the conduct of intelligence services.

17. The rationale for the special procedures adopted in the UK and Canada applies equally to appeals by organizations proscribed under the proposed section 8A of the Societies Ordinance. That rationale is set out in paragraphs 9 to 13 above.

II. The Common Law Position

Remedies in respect of administrative decisions

18. The proposed power of proscription would be vested in the Secretary for Security. The exercise of that power would therefore be an administrative decision. Although it is proposed to give a right of appeal to the courts, the judicial hearing of such an appeal would not change the fact that the decision being appealed against was an administrative one.

19. At common law, there is no right of appeal in respect of an administrative decision. The problems referred to in paragraphs 9 to 13 above could therefore be avoided under common law principles by not providing for any appeal.

20. Where an appeal channel is provided, the common law allows special procedures to be provided for the hearing of the appeal. For example, the rules of the UK Immigration Appeal Tribunal formerly provided that the appellant was not entitled to legal representation and was only to be given an outline of the grounds for deportation.

21. At common law, an individual can challenge an administrative decision by way of judicial review, regardless of whether an appeal channel is provided. The difference between an appeal and judicial review is as follows.

> "The system of judicial review is radically different from the system of appeals. When hearing an appeal the court is concerned with the merits of a decision : is it correct? When subjecting some administrative act or order to judicial review, the court is concerned with its legality : is it within the limits of the powers granted? On an appeal the question is "right or wrong?" On review the question is "lawful or unlawful?" "
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> [*Administrative Law*, by Wade and Forsyth, 8th ed, p.33]

22. There are also important procedural differences between appeals and applications for judicial review. In particular, there is no general right to discovery of documents in respect of the latter.

Rights of a litigant

23. In the present context, the following aspects of a litigant's position under the common law are relevant –

(1) the right to be heard in open court;

(2) the right to legal representation;

(3) the principles of natural justice/right to a fair hearing;

(4) the right to obtain disclosure of relevant documents held by the other party.

24. The general rule is that both civil and criminal cases must be heard in **open court** (*Scott v Scott* [1913] AC 417). However, the court has an inherent power to sit in private in exceptional circumstances.

25. In relation to proceedings before a court, there is a common law right of **legal representation**. However, in relation to proceedings before tribunals it is not clear whether there is such a right, nor is certain that this is covered by the principles of natural justice (Wade and Forsyth, op cit. p.913).

26. The principles of natural justice developed by the courts include the right to a **fair hearing** and the rule against bias. The requirements of natural justice depend on various factors, including the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, and the subject matter to be dealt with.

27. The right to a fair hearing includes a "fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view". (Lord Loreburn in *Board of Education v Rice* [1911] AC 179). However, what is essential is substantial fairness to the person affected.

> "... this may sometimes be adequately achieved by telling him the substance of the case he has to meet, without disclosing the precise evidence or the sources of information. The extent of the disclosure required by natural justice may have to be weighed against the prejudice to the scheme of the Act which disclosure may involve." (Wade and Forsyth, op cit, p.509)

28. With regard to the **disclosure** of documents, the general position may be summarised as follows.

(1) In civil proceedings, a litigant is entitled to be informed by the other party of all documents relating to matters in question in the action that are or have been in the possession, custody or power of that other party, and to inspect those documents.

(2) In criminal proceedings, a prosecutor is required to disclose to the defence all material in his possession of which he becomes aware that constitutes evidence relevant to the guilt or innocence of the accused.

(3) In an application for judicial review of a decision by a public authority, the applicant has no general right to discovery of documents held by the public authority. The latter will merely file an affidavit stating why the application is opposed, and may give reasons and refer to relevant evidence.

Protection of the public interest

29. Where an issue concerning national security is before the courts, the principles explained above are modified in various ways in order to safeguard the public interest.

(1) The court can hear the appeal, or parts of it, in camera (i.e. with members of the public being excluded) if the court considers that it is necessary to do so to protect national security.

(2) In civil cases, the rules of natural justice are liable to be modified.

(3) Public interest immunity may justify the non-disclosure of certain evidence.

30. So far as the **rules of natural justice** are concerned, the English Court of Appeal decided in *R v Home Secretary, ex parte Hosenball* [1977] 3 All ER 452, that –

> "The public interest in the security of the realm was so great that the sources and nature of the highly confidential information supplied to the Secretary of State for the purpose of reaching a decision to make a deportation order in the interests of national security ought not to be disclosed. Accordingly, the requirement of the public interest that such information should be kept confidential might outweigh the public interest in the administration of justice."

As a result, the Home Secretary's refusal to give further particulars of why he considered it would be in the interests of national security to deport Mr Hosenball did not breach the rules of natural justice.

31. The authors of De Smith, Woolf and Jowell's *Principles of Judicial Review* summarise the position as follows (at pages 365-6).

> "Where a threat to national security, in particular, is given as the reason for denying or restricting an individual's entitlement to procedural fairness, the Domestic Courts have, as yet, been unwilling under the common law to intervene by examining the strength of that justification – still less by insisting upon procedural fairness in the face of such a justification."

32. **Public interest immunity** is a doctrine developed by the courts to deal with a situation in which there are two conflicting public interests : that justice should be done, and that evidence should not be disclosed where it would be injurious to the public interest to do so. As Wade and Forsyth explain (op cit, p. 825) –

> "To hear the evidence in camera is no solution, since to reveal it to the parties and their advisers may be as dangerous as to reveal it to the public generally."

33. An example of a situation in which the disclosure of information would have endangered national security is found in an English case decided in

1942 (*Duncan v Cammell, Laird & Co Ltd* [1942] AL 624). A submarine sank during trials and dependants of those who died brought proceedings against the contractors who built it. The House of Lords held that the contractors were not required to disclose certain papers, including the contract for the hull and machinery, and salvage reports. After the war it was revealed that the submarine had a new type of torpedo tube which in 1942 was still secret.

34. The application of public interest immunity requires the court to conduct a balancing exercise to decide whether the need for secrecy overrides the interests of a litigant to obtain or produce relevant evidence.

Problems under the common law

35. The common law position outlined above may not always produce a satisfactory result, either for the individual or for the public authority. So far as the individual is concerned, the absence of any right of appeal and the limitations of a remedy by way of judicial review may mean that he cannot effectively challenge a decision based on grounds of national security. In judicial review proceedings, a litigant –

(1) is not entitled to know the full details of the reason for the decision;

(2) is not entitled to disclosure of documents held by the decision-maker; and

(3) may be precluded by public interest immunity from seeing relevant information.

36. So far as public authorities are concerned, they may face two problems. In civil proceedings where the other party seeks disclosure of sensitive information, if public interest immunity is not granted, the authority may have a stark dilemma : either disclose the evidence or drop the case.

37. In the criminal sphere, common law principles may cause well-founded prosecutions to be dropped. According to the British Security Service, it is impossible to prosecute some of those the Service believes to be foreign terrorists because to attempt to do so would itself imperil national security (see *A, X and Y v Home Secretary* [2002] EWCA Civ 1502 at page 27). Lord Denning made a similar comment in the *Hosenball* case : “arrests have not been made, nor proceedings instituted, for fear that it may give away information

which must be kept secret."

38. Legislation can overcome some of these problems, by modifying the way in which common law principles operate. However, in jurisdictions (such as Hong Kong) where fundamental human rights are guaranteed, any such legislative solution must comply with those guarantees.

39. It may be impossible to overcome the problem in respect of criminal cases since –

(1) it is unlikely that public interest immunity will be granted for documents needed for defence against a criminal charge; and

(2) the rights conferred on those charged with criminal offences under Article 14 of the ICCPR are such that it is unlikely that special procedures to overcome the dilemma would be permitted.

The Bill does not propose any special procedures for the trial of criminal offences based on Article 23. The proposed special procedures relate only to appeals against proscription.

40. In relation to such appeals, it is considered that the proposed legislative scheme will overcome the common law problems in a way that complies with human rights guarantees.

III. The Lawfulness of the Proposed Rule-making Power

41. The most relevant guarantees of human rights in this context are as follows.

Article 14.1 of the ICCPR (protected by Article 39 of the Basic Law)

> "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special

circumstances where publicity would prejudice the interests of justice; . . .”

Article 35 of the Basic Law

“Hong Kong residents shall have the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies.

Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel.”

42. It is likely that both the above provisions would be engaged by a proscription of an organization under the proposed section 8A of the Societies Ordinance. The Administration considers that the rule-making power set out in the proposed section 8E(3) and (4) of the Societies Ordinance, and rules similar to those made in the UK would comply with the above guarantees. In coming to this opinion, it has been guided by case law relating to the Canadian and UK models. This is described in the Annex.

A fair hearing

43. According to European jurisprudence, the right to a fair hearing requires that a party to proceedings that are decisive of his civil rights and obligations or criminal charge enjoys procedural fairness in those proceedings. He should for example have a reasonable opportunity of presenting his case to the court under conditions which do not place him at a substantial disadvantage vis-à-vis his opponent. In civil cases a party is entitled to be present at the hearing or appeal in certain kinds of cases in which fairness requires the presence and the participation of the person directly affected by the decision. The right to be tried in one’s presence, and to defend oneself in person or through legal assistance through one’s own choosing under Article 14 of the ICCPR is restricted to the determination of a criminal charge.

44. It is considered that any restrictions imposed by the special procedures on an appellant’s ability to –

(1) obtain full disclosure of information relating to the proscription and

the reasons for it;

(2) be legally represented; or

(3) be present throughout the appeal hearing,

would be the minimum needed for the purpose of protecting the security of the PRC, and would not deprive the appellant of a fair hearing. As noted in paragraph 26 above, what is essential is **substantial** fairness to the person affected, and this can sometimes be adequately achieved without disclosing the precise evidence or sources of information.

45. In particular –

(1) the Court would decide whether the Secretary for Security may refuse to disclose to the appellant or its legal representative any particular information, reasons or evidence and, before so deciding, a special advocate could make representations on behalf of the appellant;

(2) if and to the extent that it would be possible to do so without disclosing information contrary to the interests of the security of the PRC, the Secretary for Security would be required to provide a statement of the undisclosed material in a form which could be shown to the appellant;

(3) the Court could only hear the proceedings or any party of them in the absence of the appellant and his legal representative if that was necessary in order to ensure that information was not disclosed contrary to the interests of the security of the PRC;

(4) a special advocate could represent the interests of the appellant by –

(a) making submissions to the Court in any proceedings from which the appellant and his legal representative were excluded;

(b) cross-examining witnesses at any such proceedings; and

(c) making written submissions to the Court.

Public hearing

46. Article 14.1 of the ICCPR expressly provides that "The press and the public may be excluded from all or part of a trial for reasons of . . . national security in a democratic society . . ."

47. It is not unusual to provide for proceedings in private where issues of national security are involved. For example, the Official Secrets Ordinance (s.24, Cap 521) and the United Nations (Anti-terrorism Measures) Ordinance (s.21, Cap 575) provide that the courts may exclude the public in the interests of the safety of the PRC or Hong Kong, and the security, defence or external relations of the HKSAR, respectively.

48. In so far as the rules to be made under the current Bill would permit the Court to hear an appeal in private, the Court could ensure that it would only do so in circumstances that are permitted by Article 14.1. There would be no requirement, as in the UK Investigatory Powers Tribunal Rules 2000, that all proceedings should be held in private.

A competent, independent and impartial tribunal

49. There is no doubt that the Court of First Instance would be "a competent, independent and impartial tribunal established by law" as required by Article 14.1 of the ICCPR. Judicial control of the proscription, where the Secretary for Security can be expected to adduce quite detailed reasons relating to the proscription of the particular organization in closed sessions before the Court, is considered to provide a form of control proportionate to the demands of the situation.

Choice of lawyers

50. Article 35 of the Basic Law guarantees the right to "choice of lawyers . . . for representation in the courts, and to judicial remedies". The proposed right of appeal to the Court is clearly a judicial remedy.

51. With regard to the choice of lawyers, a proscribed organization would continue to be entitled to choose its own legal representative, albeit that

the chosen representative might be excluded from part of the hearing. However, it is not considered that Article 35 confers a right of such an absolute nature that no material information could be withheld from a legal representative. Such a right would be inconsistent with public interest immunity.

52. In addition, if the appellant organization and its legal representative were excluded from the hearing, its interests would be adequately protected by the special advocate, who would have a statutory duty to represent its interests.

53. European jurisprudence on the right of the accused in a criminal case to defend himself in person "or through legal assistance of his own choosing" indicates that the state may place reasonable restrictions on the right of the accused to counsel of his choice.

IV. Authority to Make Rules Relating to Appeals against Proscriptions

54. We note concerns have been raised by the Bar Association and individual commentators that the Chief Justice should not be asked to make rules of this nature, especially when the rules might be subject to legal challenges on appeal against proscription.

55. We agree with the Bar Association that the Chief Justice's constitutional position is different from that of the UK Lord Chancellor, who has made similar rules under UK Special Immigration Appeals Commission Act 1997, and on which the present proposals are based. It is therefore considered appropriate to vest the relevant rule-making power in a different authority.

56. The Administration is considering how to address the concerns. An alternative approach to the present proposals under the new section 8E of the Societies Ordinance would be to empower, for example, the Chief Executive in Council, instead of the Chief Justice, to make regulations governing the conduct of special appeal procedures.

57. Under this alternative approach, the Chief Justice would continue to be vested with rule-making power to deal with procedural matters relating to

appeals against proscription. However, he would not be making rules for matters under the new section 8E(3) (proceedings to take place in the absence of the appellant) and 8E(4) (appointment and duty of the special advocate). These latter matters would be provided for by regulations to be made by the executive arm of the Government. These regulations would be subject to vetting by the Legislative Council in the normal way

58. The Judiciary has been consulted. Its views have been taken into account. It has no objections to the proposed alternative arrangements.

59. Matters to be dealt with under the new section 8E(1)(d) of the Societies Ordinance (admissibility of evidence) and 8E(2) could be provided for in the Bill.

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Annex

Special Appeal Procedures : Canadian and UK case law

Canadian model

1. The Canadian model was originally found in its Immigration Act 1976. In dealing with entry and immigration to Canada, the Act provided for the exclusion of persons who may engage in espionage or terrorism or who otherwise may constitute a danger to security. There was an appeal procedure provided where a person other than a citizen or permanent resident was "certified" as an excluded person based on security reports. This allowed for an examination by a senior judge in camera of the security intelligence reports, with special procedures for evidence obtained in confidence from foreign governments. Another provision allowed for a review of a removal order based on such a certificate in certain circumstances. Provision was made for a hearing in camera in the absence of the applicant (i.e. an ex parte application), his right to a hearing being based on a summary of the evidence in camera.

2. Special procedures similar to those described above are now also provided for in Canada in respect of –

   (1) applications to a judge by entities listed as being involved in terrorism that they no longer be so listed (provisions in the Criminal Code added by the Anti-Terrorism Act of 2001);

   (2) Federal Court hearings involving a ministerial certificate stating that a registered charity, or an applicant for registration as a charity, is providing resources to a listed terrorist entity (Charities Registration (Security Information) Act); and

   (3) Hearings under the Privacy Act where the government institution claims a national security exemption from disclosing information concerning the applicant.

   The Immigration Act 1976 has been superseded by the Immigration and Refugees Protection Act 2002, which contains special procedures for the review of security certificates, whether against permanent or non-permanent residents.

3. There have been a number of challenges to the above special procedures under the Canadian Charter of Human Rights. In summary, the courts

have held as follows.

(1) The special procedures followed by the Review Committee under the Immigration Act did not violate the principles of fundamental justice guaranteed by section 7 of the Canadian Charter. The Supreme Court recognized that the scope of those principles was not fixed, but varied according to the context. It was necessary to balance the individual's interest in a fair procedure with the State's interest in effectively conducting national security and criminal intelligence investigation and in protecting police sources.

(2) In the context of the national security exemption under the Privacy Act, the ex parte and in camera hearing authorized by the Privacy Act was consistent with the principles of natural justice. However, the requirement that the whole hearing should be conducted in camera was an unjustified violation of the Charter.

The original UK model

4. The rules of the UK Immigration Appeal Tribunal formerly provided that the appellant was not entitled to legal representation and was only to be given an outline of the grounds for deportation. That mechanism was challenged as being inconsistent with the European Convention on Human Rights.

5. In *Chahal v UK* (1996) the European Court of Human Rights held that the UK Government was in breach of Article 5(4) of that Convention. This was because a person detained pending deportation on national security or political grounds could not take proceedings by which the lawfulness of his detention could be decided by a court. At the time, a person detained on such grounds could only make representations to an advisory panel, whose decision was not binding on the Home Secretary.

6. In deciding that such procedures did not comply with the Convention, the European Court of Human Rights nevertheless recognized that the use of confidential material may be unavoidable where national security is at stake and that special procedures may be required to protect that confidentiality. It was impressed by the effective form of judicial control that had been developed by Canada for cases of this type.

The current UK model

7. The UK response to the decision in *Chahal* was the Special Immigration Appeals Commission Act. This legislation establishes the commission, sets out its jurisdiction over appeals against a decision of the Secretary of State in relation to a number of "public interest provisions", and provides for rule-making powers (section 5) in relation to procedures. It can consider both facts and law as both are encompassed in the exercise of a discretion by the Secretary of State. These powers allow rules to provide that proceedings may take place not only in camera but also in the absence of the appellant or his legal representative and for the appellant not to be given full particulars of reasons for a decision. This allows the court to have full access to sensitive material without risk to national security. A separate counsel can be appointed to represent the appellant's interests where he is excluded from the hearing (section 6). Rules have been made under those powers.

8. The House of Lords recently considered the above procedural aspects with approval in *Secretary of State for the Home Department v Rehman* [2001], 3WLR, at 877. And a member of the English Court of Appeal has commented that "the special advocate procedure is a better way of dealing with this than any procedure devised in this country in the past" (see *A, X and Y v Secretary of State for the Home Department* [2002] EWCA Civ 1502, paragraph 89).

9. Special procedures similar to those described above are also found in UK provisions relating to the Proscribed Organisations Appeal Commission (e.g. the Terrorism Act 2000 and the Proscribed Organisations Appeal Commission (Procedure) Rules 2001).

10. The Regulation of Investigatory Power Act 2000 also contains rule-making powers similar to those in the current Bill. The tribunal set up under that Act deals with complaints about allegedly unlawful surveillance by specified government agencies. The provisions in the Regulation of Investigatory Powers Tribunal Rules 2000 differ from the other Rules mentioned above, in that they require the tribunal to hold **all** its hearings in secret. However, in a decision made in January 2003, the tribunal quashed that aspect of the rules and decided that it can hear some parts of some cases in public, allow complainants and their lawyers to be present at some hearings, and give reasons for its decisions.