
STATUTORY INSTRUMENTS

2000 No. 189

DATA PROTECTION

The Data Protection Tribunal
(Enforcement Appeals) Rules 2000

<i>Made</i>	- - - -	<i>31st January 2000</i>
<i>Laid before Parliament</i>		<i>7th February 2000</i>
<i>Coming into force</i>	- -	<i>1st March 2000</i>

The Secretary of State, in exercise of the powers conferred on him by section 67(2) of, and paragraph 7 of Schedule 6 to, the Data Protection Act 1998(1), and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(2), hereby makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Data Protection Tribunal (Enforcement Appeals) Rules 2000 and shall come into force on 1st March 2000.

Application and interpretation

2.—(1) These Rules apply to appeals under section 48 of the Act, and the provisions of these Rules are to be construed accordingly.

(2) In these Rules, unless the context otherwise requires—

“the Act” means the Data Protection Act 1998;

“appeal” means an appeal under section 48 of the Act;

“appellant” means a person who brings or intends to bring an appeal under section 48 of the Act;

“chairman” means the chairman of the Tribunal, and includes a deputy chairman of the Tribunal presiding or sitting alone;

“costs”—

(a) except in Scotland, includes fees, charges, disbursements, expenses and remuneration;

(b) in Scotland means expenses, and includes fees, charges, disbursements and remuneration;

“disputed decision” means—

(a) in relation to an appeal under section 48 of the Act other than an appeal under section 48(3)(b), the decision of the Commissioner, and

(b) in relation to an appeal under section 48(3)(b) of the Act the effect of a decision of the Commissioner,

against which the appellant appeals or intends to appeal to the Tribunal;

“party” has the meaning given in paragraph (3) below; and

“proper officer” in relation to a rule means an officer or member of staff provided to the Tribunal under paragraph 14 of Schedule 5 to the Act and appointed by the chairman to perform the duties of a proper officer under that rule.

(3) In these Rules, “party” means the appellant or the Commissioner, and, except where the context otherwise requires, references in these Rules to a party (including references in rule 12 below) include a person appointed under rule 16 below to represent his interests.

(4) In relation to proceedings before the Tribunal in Scotland, for the words “on the trial of an action” in rules 11(4), 12(8) and 23(2) below there is substituted “in a proof”.

Method of appealing

3.—(1) An appeal must be brought by a written notice of appeal served on the Tribunal.

(2) The notice of appeal shall—

(a) identify the disputed decision and the date on which the notice relating to such decision was served on or given to the appellant; and

(b) state—

(i) the name and address of the appellant;

(ii) the grounds of the appeal;

(iii) whether the appellant considers that he is likely to wish a hearing to be held or not;

(iv) where applicable, the special circumstances which the appellant considers justify the Tribunal’s accepting jurisdiction under rule 4(2) below; and

(v) an address for service of notices and other documents on the appellant.

(3) Where an appeal is brought under section 48(1) of the Act in relation to an information notice, the notice of appeal shall also contain a statement of any representations the appellant wishes to make as to why it might be necessary in the interests of justice for the appeal to be heard and determined otherwise than by the chairman sitting alone as provided by rule 18(2) below.

(4) A notice of appeal may include a request for an early hearing of the appeal and the reasons for that request.

Time limit for appealing

4.—(1) Subject to paragraph (2) below, a notice of appeal must be served on the Tribunal within 28 days of the date on which the notice relating to the disputed decision was served on or given to the appellant.

(2) The Tribunal may accept a notice of appeal served after the expiry of the period permitted by paragraph (1) above if it is of the opinion that, by reason of special circumstances, it is just and right to do so.

(3) A notice of appeal shall if sent by post in accordance with rule 27(1) below be treated as having been served on the date on which it is received for dispatch by the Post Office.

Acknowledgement of notice of appeal and notification to the Commissioner

5.—(1) Upon receipt of a notice of appeal, the proper officer shall send—

- (a) an acknowledgement of the service of a notice of appeal to the appellant, and
- (b) subject to paragraph (3) below, a copy of the notice of appeal to the Commissioner.

(2) An acknowledgement of service under paragraph (1)(a) above shall be accompanied by a statement of the Tribunal's powers to award costs against the appellant under rule 25 below.

(3) Paragraph (1)(b) above does not apply to a notice of appeal relating to an appeal under section 48(3) of the Act, but in such a case—

- (a) the proper officer shall send a copy of the notice of appeal to the Commissioner if the Tribunal is of the opinion that the interests of justice require the Commissioner to assist it by giving evidence or being heard on any matter relating to the appeal, and
- (b) where a copy is sent to the Commissioner under subparagraph (a) above, the jurisdiction referred to in paragraph 6(2) of Schedule 6 to the Act shall not be exercised ex parte.

Reply by Commissioner

6.—(1) The Commissioner shall take the steps specified in paragraph (2) below—

- (a) where he receives a copy of a notice of appeal under rule 5(1)(b) above, within 21 days of the date of that receipt, and
- (b) where he receives a copy of a notice of appeal under rule 5(3)(a) above, within such time, not exceeding 21 days from the date of that receipt, as the Tribunal may allow.

(2) The steps are that the Commissioner must—

- (a) send to the Tribunal a copy of the notice relating to the disputed decision, and
- (b) send to the Tribunal and the appellant a written reply acknowledging service upon him of the notice of appeal, and stating—
 - (i) whether or not he intends to oppose the appeal and, if so,
 - (ii) the grounds upon which he relies in opposing the appeal.

(3) Before the expiry of the period referred to in paragraph (1) above which is applicable to the case, the Commissioner may apply to the Tribunal for an extension of that period, showing cause why, by reason of special circumstances, it would be just and right to do so, and the Tribunal may grant such extension as it considers appropriate.

(4) Where the appellant's notice of appeal has stated that he is not likely to wish a hearing to be held, the Commissioner shall in his reply inform the Tribunal and the appellant whether he considers that a hearing is likely to be desirable.

(5) Where an appeal is brought under section 48(1) of the Act in relation to an information notice, the Commissioner may include in his reply a statement of representations as to why it might be necessary in the interests of justice for the appeal to be heard and determined otherwise than by the chairman sitting alone as provided by rule 18(2) below.

(6) A reply under this rule may include a request for an early hearing of the appeal and the reasons for that request.

Application for striking out

7.—(1) Subject to paragraph (3) below, where the Commissioner is of the opinion that an appeal does not lie to, or cannot be entertained by, the Tribunal, or that the notice of appeal discloses no reasonable grounds of appeal, he may include in his reply under rule 6(2) above a notice to that effect stating the grounds for such contention and applying for the appeal to be struck out.

(2) An application under this rule may be heard as a preliminary issue or at the beginning of the hearing of the substantive appeal.

(3) This rule does not apply in the case of an appeal under section 48(3) of the Act.

Amendment and supplementary grounds

8.—(1) With the leave of the Tribunal, the appellant may amend his notice of appeal or deliver supplementary grounds of appeal.

(2) Paragraphs (1) and (3) of rule 5 above apply to an amended notice of appeal and to supplementary grounds of appeal provided under paragraph (1) above as they do to a notice of appeal.

(3) Upon receipt of a copy of an amended notice of appeal or amended grounds of appeal under rule 5(1)(b) or (3)(a) above, the Commissioner may amend his reply to the notice of appeal, and must send the amended reply to the Tribunal and the appellant—

(a) where he receives a copy of a notice of appeal under rule 5(1)(b) above, within 21 days of the date of that receipt, and

(b) where he receives a copy of a notice of appeal under rule 5(3)(a) above, within such time, not exceeding 21 days from the date of that receipt, as the Tribunal may allow.

(4) Rule 6(3) above applies to the periods referred to in paragraph (3) above.

(5) Without prejudice to paragraph (3) above, the Commissioner may, with the leave of the Tribunal, amend his reply to the notice of appeal, and must send the amended reply to the Tribunal and the appellant.

Withdrawal of appeal

9.—(1) The appellant may at any time withdraw his appeal by sending to the Tribunal a notice of withdrawal signed by him or on his behalf, and the proper officer shall send a copy of that notice to the Commissioner.

(2) A notice of withdrawal shall if sent by post in accordance with rule 27(1) below have effect on the date on which it is received for dispatch by the Post Office.

(3) Where an appeal is withdrawn under this rule a fresh appeal may not be brought by the appellant in relation to the same disputed decision except with the leave of the Tribunal.

Consolidation of appeals

10.—(1) Subject to paragraph (2) below, where in the case of two or more appeals to which these Rules apply it appears to the Tribunal—

(a) that some common question of law or fact arises in both or all of them, or

(b) that for some other reason it is desirable to proceed with the appeals under this rule,

the Tribunal may order that the appeals be consolidated or heard together.

(2) The Tribunal shall not make an order under this rule without giving the parties an opportunity to show cause why such an order should not be made.

Directions

11.—(1) Subject to paragraphs (4) and (5) below, the Tribunal may at any time of its own motion or on the application of any party give such directions as it thinks proper to enable the parties to prepare for the hearing of the appeal or to assist the Tribunal to determine the issues.

(2) Such directions may in particular—

(a) provide for a particular matter to be dealt with as a preliminary issue and for a pre-hearing review to be held;

(b) provide for—

(i) the exchange between the parties of lists of documents held by them which are relevant to the appeal,

(ii) the inspection by the parties of the documents so listed,

(iii) the exchange between the parties of statements of evidence, and

(iv) the provision by the parties to the Tribunal of statements or lists of agreed matters;

(c) require any party to send to the Tribunal and to the other party—

(i) statements of facts and statements of the evidence which will be adduced, including such statements provided in a modified or edited form;

(ii) a skeleton argument which summarises the submissions which will be made and cites the authorities which will be relied upon, identifying any particular passages to be relied upon;

(iii) a chronology of events;

(iv) any other particulars or supplementary statements which may reasonably be required for the determination of the appeal;

(v) any document or other material which the Tribunal may require and which it is in the power of that party to deliver;

(vi) an estimate of the time which will be needed for any hearing; and

(vii) a list of the witnesses the party intends to call to give evidence at any hearing;

(d) limit the length of oral submissions and the time allowed for the examination and cross-examination of witnesses; and

(e) limit the number of expert witnesses to be heard on either side.

(3) The Tribunal may, subject to any specific provisions of these Rules, specify time limits for steps to be taken in the proceedings and may extend any time limit.

(4) Nothing in this rule may require the production of any document or other material which the party could not be compelled to produce on the trial of an action in a court of law in that part of the United Kingdom where the appeal is to be determined.

(5) It shall be a condition of the supply of any information or material provided under this rule that any recipient of that information or material may use it only for the purposes of the appeal.

(6) The power to give directions may be exercised in the absence of the parties.

(7) Notice of any directions given under this rule shall be served on the parties, and the Tribunal may, on the application of any party, set aside or vary such directions.

Power to require entry of premises for testing of equipment or material

12.—(1) Subject to paragraph (8) below, the Tribunal may, for the purpose of determining an appeal, make an order requiring the occupier of any premises (“the occupier”) to permit the Tribunal to enter those premises at a specified time and inspect, examine, operate or test any equipment on

those premises used or intended to be used in connection with the processing of personal data, and to inspect, examine or test any documents or other material on those premises connected with the processing of personal data.

(2) An order under paragraph (1) above shall also require the occupier to permit the Tribunal to be accompanied by—

- (a) the parties, and
- (b) such number of the officers or members of staff provided to the Tribunal under paragraph 14 of Schedule 5 to the Act as it considers necessary.

(3) The Tribunal shall serve a copy of the order on the occupier and the parties.

(4) The time specified in the order shall not be earlier than 7 days after the date of service of the copy.

(5) The Tribunal may upon the application of the occupier set the order aside.

(6) Subject to paragraph (4) above, the Tribunal may upon the application of any person mentioned in paragraph (3) above alter the time specified in the order without being obliged to serve further copies under that paragraph, but shall notify the other persons so mentioned of the revised time.

(7) This rule also applies where the occupier is a party to the appeal.

(8) Documents or other material which the appellant could not be compelled to produce on the trial of an action in that part of the United Kingdom where the appeal is to be determined shall be immune from inspection, examination or testing under this rule.

Power to determine without a hearing

13.—(1) Where either—

- (a) the parties so agree in writing, or
- (b) it appears to the Tribunal that the issues raised on the appeal have been determined on a previous appeal brought by the appellant on the basis of facts which did not materially differ from those to which the appeal relates and the Tribunal has given the parties an opportunity of making representations to the effect that the appeal ought not to be determined without a hearing,

the Tribunal may determine an appeal, or any particular issue, without a hearing.

(2) Before determining any matter under this rule, the Tribunal may if it thinks fit direct any party to provide in writing further information about any matter relevant to the appeal within such time as the Tribunal may allow.

Time and place of hearings

14.—(1) Except where rule 13 above applies, as soon as practicable after notice of appeal has been given, and with due regard to the convenience of the parties and any request made under rule 3(4) or 6(6) above, the Tribunal shall appoint a time and place for a hearing of the appeal.

(2) The proper officer shall send to each party a notice informing him of the time and place of any hearing.

(3) The reference to a “party” in paragraph (2) above does not include the Commissioner in the case of an appeal under section 48(3) of the Act other than a case to which rule 5(3)(a) above applies.

(4) The time notified under paragraph (1) above shall not be earlier than 14 days after the date on which the notice is sent unless—

- (a) the parties agree otherwise, or

- (b) the appellant agrees otherwise, and the hearing relates to an appeal under section 48(3) of the Act.
- (5) A notice to a party under this rule shall inform him of the effect of rule 17 below.
- (6) The Tribunal may—
 - (a) postpone the time appointed for any hearing;
 - (b) adjourn a hearing to such time as the Tribunal may determine; or
 - (c) alter the place appointed for any hearing;

and, if it exercises any of the above powers, it shall notify each party previously notified of that hearing under this rule, and any person summoned under rule 15 below to attend as a witness at that hearing, of the revised arrangements.

Summoning of witnesses

15.—(1) Subject to paragraph (2) below, the Tribunal may by summons require any person in the United Kingdom to attend as a witness at a hearing of an appeal at such time and place as may be specified in the summons and, subject to rule 23(2) and (3) below, at the hearing 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.

(2) No person shall be required to attend in obedience to a summons under paragraph (1) above unless he has been given at least 7 days' notice of the hearing or, if less than 7 days, he has informed the Tribunal that he accepts such notice as he has been given.

(3) The Tribunal may upon the application of a person summoned under this rule set the summons aside.

(4) A person who has attended a hearing as a witness in obedience to a summons shall be entitled to such sum as the Tribunal considers reasonable in respect of his attendance at, and his travelling to and from, the hearing; and where the summons was issued at the request of a party such sum shall be paid or tendered to him by that party.

(5) In relation to proceedings before the Tribunal in Scotland, in this rule “summons” means citation and the provisions of this rule are to be construed accordingly.

Representation at a hearing

16.—(1) At any hearing by the Tribunal a party may conduct his case himself or may appear and be represented by any person whom he may appoint for the purpose.

(2) In this rule, references to a “party” do not include the Commissioner in the case of an appeal under section 48(3) of the Act other than a case to which rule 5(3)(a) above applies.

Default of appearance at hearing

17. If, without furnishing the Tribunal with sufficient reason for his absence, a party fails to appear at a hearing, having been duly notified of the hearing, the Tribunal may, if that party is the appellant, dismiss the appeal or, in any case, hear and determine the appeal, or any particular issue, in the party's absence and may make such order as to costs as it thinks fit.

Hearings and determinations in the case of appeals against an information notice

18.—(1) This rule applies to any appeal under section 48(1) of the Act in respect of an information notice.

(2) Subject to paragraph (3) below, any hearing of or relating to an appeal to which this rule applies shall be by the chairman sitting alone, and any appeal or issue relating to an appeal to which this rule applies shall be determined by the chairman sitting alone.

(3) Paragraph (2) above does not apply where it appears to the chairman that a hearing or determination by the Tribunal constituted in accordance with paragraph 4 of Schedule 6 to the Act is necessary in the interests of justice, taking into account any representations made under rule 3(3) or 6(5) above.

Hearings in public or in private

19.—(1) All hearings by the Tribunal (including preliminary hearings) shall be in public unless, having regard to the desirability of safeguarding—

- (a) the privacy of data subjects or
- (b) commercially sensitive information,

the Tribunal directs that the hearing or any part of the hearing shall take place in private.

(2) Without prejudice to paragraph (3) below, the following persons, in addition to the parties, may attend a hearing notwithstanding that it is in private—

- (a) the chairman or any deputy chairman or member of the Tribunal in his capacity as such, notwithstanding that they do not constitute the Tribunal for the purpose of the hearing; and
- (b) any other person with the leave of the Tribunal and the consent of the parties present.

(3) Whether or not a hearing is held in public, a member of the Council on Tribunals or the Scottish Committee of the Council on Tribunals in his capacity as such may attend the hearing, and may remain present during the deliberations of the Tribunal but must not take part in the deliberations.

Conduct of proceedings at hearing

20.—(1) Subject to rule 17 above, the Tribunal shall at the hearing of an appeal give to each party an opportunity—

- (a) to address the Tribunal and to amplify orally written statements previously furnished under these Rules, to give evidence and to call witnesses, and to put questions to any person giving evidence before the Tribunal, and
- (b) to make representations on the evidence (if any) and on the subject matter of the appeal generally but, where evidence is taken, such opportunity shall not be given before the completion of the taking of evidence.

(2) Subject to paragraph (3) below, in this rule, references to a “party” do not include the Commissioner in the case of an appeal under section 48(3) of the Act.

(3) In a case to which rule 5(3)(a) above applies, the Tribunal shall give the Commissioner the opportunity referred to in paragraph (1) above to the extent that it is of the opinion that the interests of justice require the Commissioner to assist it by giving evidence or being heard on any matter relating to the appeal.

(4) Except as provided by these Rules, the Tribunal shall conduct the proceedings in such manner as it considers appropriate in the circumstances for discharging its functions and shall so far as appears to it appropriate seek to avoid formality in its proceedings.

Preliminary and incidental matters

21. As regards matters preliminary or incidental to an appeal the chairman may act for the Tribunal under rules 4(2), 6(1) and (3), 8 to 12, 14(1) and (6)(a) and (c) and 15.

Burden of proof

22. In any proceedings before the Tribunal relating to an appeal to which these Rules apply, other than an appeal under section 48(3) of the Act, it shall be for the Commissioner to satisfy the Tribunal that the disputed decision should be upheld.

Evidence

23.—(1) The Tribunal may receive in evidence any document or information notwithstanding that such document or information would be inadmissible in a court of law.

(2) No person shall be compelled to give any evidence or produce any document which he could not be compelled to give or produce on the trial of an action in a court of law in that part of the United Kingdom where the appeal is to be determined.

(3) The Tribunal may require oral evidence of a witness (including a party) to be given on oath or affirmation and for that purpose the chairman or the proper officer shall have power to administer oaths or take affirmations.

Determination of appeal

24.—(1) As soon as practicable after the Tribunal has determined an appeal, the chairman shall certify in writing that determination and sign and date the certificate.

(2) The certificate shall include—

- (a) any material finding of fact, and
- (b) the reasons for the decision.

(3) The proper officer shall send a copy of the certificate to the parties.

(4) The Tribunal shall make arrangements for the publication of its determination but in doing so shall have regard to the desirability of safeguarding the privacy of data subjects and commercially sensitive information, and for that purpose may make any necessary amendments to the text of the certificate.

Costs

25.—(1) In any appeal before the Tribunal, including one withdrawn under rule 9 above, the Tribunal may make an order awarding costs—

- (a) against the appellant and in favour of the Commissioner where it considers that the appeal was manifestly unreasonable;
- (b) against the Commissioner and in favour of the appellant where it considers that the disputed decision was manifestly unreasonable;
- (c) where it considers that a party has been responsible for frivolous, vexatious, improper or unreasonable action, or for any failure to comply with a direction or any delay which with diligence could have been avoided, against that party and in favour of the other.

(2) The Tribunal shall not make an order under paragraph (1) above awarding costs against a party without first giving that party an opportunity of making representations against the making of the order.

(3) An order under paragraph (1) above may be to the party or parties in question to pay to the other party or parties either a specified sum in respect of the costs incurred by that other party or parties in connection with the proceedings or the whole or part of such costs as taxed (if not otherwise agreed).

(4) Any costs required by an order under this rule to be taxed may be taxed in the county court according to such of the scales prescribed by the county court rules for proceedings in the county court as shall be directed by the order.

(5) In relation to proceedings before the Tribunal in Scotland, for the purposes of the application of paragraph (4) above, for the reference to the county court and the county court rules there shall be substituted references to the sheriff court and the sheriff court rules and for the reference to proceedings there shall be substituted a reference to civil proceedings.

Irregularities

26.—(1) Any irregularity resulting from failure to comply with any provision of these Rules or of any direction of the Tribunal before the Tribunal has reached its decision shall not of itself render the proceedings void, but the Tribunal may, and shall if it considers that any person may have been prejudiced by that irregularity, give such directions or take such steps as it thinks fit before reaching its decision to cure or waive the irregularity, whether by amendment of any document, the giving of notice or otherwise.

(2) Clerical mistakes in any document recording or certifying a direction, decision or determination of the Tribunal or chairman, or errors arising in such a document from an accidental slip or omission, may at any time be corrected by the chairman, by certificate signed by him.

Notices etc.

27.—(1) Any notice or other document required or authorised by these Rules to be served on or sent to any person or authority may be sent by post in a registered letter or by the recorded delivery service—

- (a) in the case of the Tribunal, to the proper officer of the Tribunal;
- (b) in the case of the Commissioner, to him at his office;
- (c) in the case of an appellant, to him at his address for service under these Rules; and
- (d) in the case of an occupier within the provisions of rule 12 above, to him at the premises in question.

(2) An appellant may at any time by notice to the Tribunal change his address for service under these Rules.

Home Office
31st January 2000

Mike O'Brien
Parliamentary Under-Secretary of State

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules, which have been prepared after consultation with the Council on Tribunals regulate the exercise of the rights of appeal against decisions of the Data Protection Commissioner conferred by section 48 of the Data Protection Act 1998 and the practice and procedure of the Data Protection Tribunal in such cases.

Rule 3 requires an appeal to be made by notice of appeal served on the Tribunal, stating the grounds of appeal and other specified particulars, with provision for including a request with reasons for an early hearing. An appeal against an information notice may also include representations against a hearing by the chairman or deputy sitting alone. The notice must, under rule 4, be served within 28 days of the date on which the Commissioner's decision was served on the appellant, but in special circumstances appeals may be accepted out of time. Rule 5 provides for acknowledgment of the notice of appeal, and for service of a copy on the Commissioner except in the case of certain appeals to be heard *ex parte*. Rule 6 provides for a reply by the Commissioner.

Rule 7 allows the Commissioner to apply for an appeal to be struck out in limited circumstances. Rule 8 provides for the parties to amend their pleadings, in some cases with leave only, and rule 9 makes provision in respect of the withdrawal of an appeal. Provision is made as to the consolidation of appeals (rule 10).

Rule 11 provides for the giving of directions by the Tribunal, of its own motion or on the application of a party; this power may be exercised in the absence of the parties, and any party may apply to set aside or vary directions. Provision is made by rule 12 for the ordering of persons in occupation of premises to permit entry for the testing of equipment or material connected with the processing of personal data.

The Tribunal must as a general rule proceed by way of a hearing but in certain circumstances it may determine an appeal without a hearing (rule 13). Provision is made as to the appointment of time and place of a hearing (rule 14), summoning of witnesses to attend a hearing (rule 15), representation at a hearing (rule 16) and default of appearance at a hearing (rule 17). Rule 18 makes provision for the constitution of the Tribunal for hearing certain appeals against an information notice.

Hearings by the Tribunal must generally be in public, but special provision is made for private hearings in limited circumstances (rule 19). The Rules include provision as to the conduct of proceedings at a hearing (rule 20), powers of the chairman to act for the Tribunal (rule 21), evidence (rule 23), the determination of appeals (rule 24) and costs (rule 25). In all proceedings other than those relating to the inclusion of a statement of urgency in a Commissioner's notice, the onus is placed on the Commissioner of satisfying the Tribunal that his decision should be upheld (rule 22).

These Rules contribute to the implementation of Directive [95/46/EC](#) on the protection of individuals with regard to the processing of personal data and on the free movement of such data.