

2000 No. 731

TELECOMMUNICATIONS

**The Data Protection Tribunal (National Security Appeals)
(Telecommunications) Rules 2000**

<i>Made - - - -</i>	<i>9th March 2000</i>
<i>Laid before Parliament</i>	<i>13th March 2000</i>
<i>Coming into force</i>	<i>5th April 2000</i>

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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^(a) as applied by regulation 32(8)(a) and (c) of the Telecommunications (Data Protection and Privacy) Regulations 1999^(b), hereby makes the following Rules:—

Citation and commencement

1. These Rules may be cited as the Data Protection Tribunal (National Security Appeals) (Telecommunications) Rules 2000 and shall come into force on 5th April 2000.

Application and interpretation

2.—(1) These Rules apply to appeals under regulation 32(4) and (6) of the Regulations, and the provisions of these Rules are to be construed accordingly.

(2) In these Rules—

“the Act” means the Data Protection Act 1998;

“appeal” means an appeal under regulation 32 of the Regulations;

“appellant” means a person who brings or intends to bring an appeal under regulation 32 of the Regulations;

“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 certification” means—

(a) in relation to an appeal under regulation 32(4) of the Regulations, the certificate against which the appeal is brought or intended to be brought, and

(b) in relation to an appeal under regulation 32(6) of the Regulations, the claim by the telecommunications provider, against which the appeal is brought or intended to be brought, that a certificate applies to the circumstance in question;

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

“president” means the person designated by the Lord Chancellor under paragraph 3 of Schedule 6 to the Act to preside when the Tribunal is constituted under that paragraph;

“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;

“the Regulations” means the Telecommunications (Data Protection and Privacy) Regulations 1999;

“relevant Minister” means the Minister of the Crown who is responsible for the signing of the certificate under regulation 32(2) of the Regulations to which the appeal relates, and except where the context otherwise requires, references in these Rules to the relevant Minister include a person appointed under rule 21 below to represent his interests;

“respondent telecommunications provider” in relation to an appeal under regulation 32(6) of the Regulations means the telecommunications provider making the claim which constitutes the disputed certification; and

“telecommunications provider” means a telecommunications service or network provider as defined in the Regulations.

(3) In these Rules, except where the context otherwise requires, “party” means the appellant or—

(a) in relation to an appeal under section 32(4) of the Regulations, the relevant Minister, and

(b) in relation to an appeal under section 32(6) of the Regulations, the respondent telecommunications provider,

(a) 1998 c. 29.

(b) S.I. 1999/2093, as amended by S.I. 2000/157.

and except where the context otherwise requires, references in these Rules to a party include a person appointed under rule 21 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 15(6) and 26(2) below there is substituted “in a proof”.

Constitution and general duty of the Tribunal

3.—(1) When exercising its functions under these Rules, the Tribunal shall secure that information is not disclosed contrary to the interests of national security.

(2) Paragraph 6(1) of Schedule 6 to the Act applies only to the exercise of the jurisdiction of the Tribunal in accordance with rule 11 below.

(3) For the purposes of paragraph (1) above, but without prejudice to the application of that paragraph, the disclosure of information is to be regarded as contrary to the interests of national security if it would indicate the existence or otherwise of any material.

Method of appealing

4.—(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 certification; and

(b) state—

(i) the name and address of the appellant;

(ii) the grounds of the appeal; and

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

(3) In the case of an appeal under regulation 32(6) of the Regulations, the notice of appeal shall also state—

(a) the date on which the respondent telecommunications provider made the claim constituting the disputed certification;

(b) an address for service of notices and other documents on the respondent telecommunications provider; and

(c) where applicable, the special circumstances which the appellant considers justify the Tribunal’s accepting jurisdiction under rule 5(3) below.

Time limit for appealing

5.—(1) In the case of an appeal under regulation 32(4) of the Regulations, a notice of appeal may be served on the Tribunal at any time during the currency of the disputed certification to which it relates.

(2) In the case of an appeal under regulation 32(6) of the Regulations, subject to paragraph (3) below, a notice of appeal must be served on the Tribunal within 28 days of the date on which the claim constituting the disputed certification was made.

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

(4) A notice of appeal shall if sent by post in accordance with rule 30(1) below be treated as having been served on the date on which it is received for dispatch by the Post Office.

Acknowledgment of notice of appeal and notification by the Tribunal

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

(a) an acknowledgment of the service of a notice of appeal to the appellant, and

(b) a copy of the notice of appeal to—

(i) the relevant Minister,

(ii) the Commissioner, and

(iii) in the case of an appeal under regulation 32(6) of the Regulations, the respondent telecommunications provider.

(2) An acknowledgment 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 28 below.

Relevant Minister's notice in reply

7.—(1) No later than 42 days after receipt of a copy of a notice of appeal under rule 6(1)(b) above, the relevant Minister shall send to the Tribunal—

- (a) a copy of the certificate to which the appeal relates, and
- (b) a written notice in accordance with paragraph (2) below.

(2) The notice shall state—

- (a) with regard to an appeal under regulation 32(4) of the Regulations, whether or not he intends to oppose the appeal and, if so—
 - (i) a summary of the circumstances relating to the issue of the certificate, and the reasons for the issue of the certificate;
 - (ii) the grounds upon which he relies in opposing the appeal; and
 - (iii) a statement of the evidence upon which he relies in support of those grounds; and
- (b) with regard to an appeal under regulation 32(6) of the Regulations, whether or not he wishes to make representations in relation to the appeal and, if so—
 - (i) the extent to which he intends to support or oppose the appeal;
 - (ii) the grounds upon which he relies in supporting or opposing the appeal; and
 - (iii) a statement of the evidence upon which he relies in support of those grounds.

(3) Except where the Tribunal proposes to determine the appeal in accordance with rule 11 below, and subject to rule 12 below, the proper officer shall send a copy of the notice to—

- (a) the appellant,
- (b) the Commissioner, and
- (c) in the case of an appeal under regulation 32(6) of the Regulations, the respondent telecommunications provider.

Reply by respondent telecommunications provider

8.—(1) A respondent telecommunications provider shall, within 42 days of the date on which he receives a copy of a notice of appeal under rule 6(1)(b) above, send to the Tribunal a written reply acknowledging service upon him of the notice of appeal, and stating—

- (a) whether or not he intends to oppose the appeal and, if so,
- (b) the grounds upon which he relies in opposing the appeal.

(2) Before the expiry of the period of 42 days referred to in paragraph (1) above, the respondent telecommunications provider 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.

(3) Except where the Tribunal proposes to determine the appeal in accordance with rule 11 below, the proper officer shall send a copy of the reply to—

- (a) the relevant Minister; and
- (b) subject to paragraph (4) and rule 12 below, the appellant and the Commissioner.

(4) No copy may be sent under paragraph (3)(b) above before the period of 42 days referred to in rule 12(2)(b) below has expired, otherwise than in accordance with rule 12, unless the relevant Minister has indicated that he does not object.

Amendment and supplementary grounds

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

(2) Rule 6(1) above and rule 11(1)(a) below 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 6(1) above, the relevant Minister may amend his notice in reply and, in the case of an appeal under regulation 32(6) of the Regulations, the respondent telecommunications provider, may amend his reply to the notice of appeal.

(4) An amended notice or reply under paragraph (3) above must be sent to the Tribunal within 28 days of the date on which the copy referred to in that paragraph is received.

(5) Without prejudice to paragraph (3) above, and with the leave of the Tribunal—

(a) the relevant Minister may amend a notice in reply, and

(b) the respondent telecommunications provider may amend a reply to the notice of appeal.

(6) Rule 7(3) above and rules 11(1)(b) and 12(1)(a) below apply to an amended notice in reply by the relevant Minister provided under paragraph (3) or (5) above as they do to a notice in reply.

(7) Rule 8(3) and (4) above and rules 11(1)(c) and 12(1)(b) below apply to an amended reply by the respondent telecommunications provider provided under paragraph (3) or (5) above as they do to a reply.

Application for striking out

10.—(1) Where the relevant Minister or, in the case of an appeal under regulation 32(6) of the Regulations, the respondent telecommunications provider 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 notice under rule 7 or, as the case may be, his reply under rule 8 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.

Summary disposal of appeals

11.—(1) Where, having considered—

(a) the notice of appeal,

(b) the relevant Minister's notice under rule 7 above, and

(c) in the case of an appeal under regulation 32(6) of the Regulations, the respondent telecommunication provider's reply,

the Tribunal is of the opinion that the appeal is of such a nature that it can properly be determined by dismissing it forthwith, it may, subject to the provisions of this rule, so determine the appeal.

(2) Where the Tribunal proposes to determine an appeal under paragraph (1) above, it must first notify the appellant and the relevant Minister of the proposal.

(3) A notification to the appellant under paragraph (2) above must contain particulars of the appellant's entitlements set out in paragraph (4) below.

(4) An appellant notified in accordance with paragraph (2) above is entitled, within such time as the Tribunal may reasonably allow—

(a) to make written representations, and

(b) to request the Tribunal to hear oral representations

against the proposal to determine the appeal under paragraph (1) above.

(5) Where an appellant requests a hearing under paragraph (4)(b) above, the Tribunal shall, as soon as practicable and with due regard to the convenience of the appellant, appoint a time and place for a hearing accordingly.

(6) The proper officer shall send to the appellant a notice informing him of—

- (a) the time and place of any hearing under paragraph (5) above, which, unless the appellant otherwise agrees, shall not be earlier than 14 days after the date on which the notice is sent, and
- (b) the effect of rule 22 below.

(7) The Tribunal must as soon as practicable notify the appellant and the relevant Minister if, having given a notification under paragraph (2) above, it ceases to propose to determine the appeal under paragraph (1) above.

Relevant Minister's objection to disclosure

12.—(1) Where the relevant Minister objects, on grounds of the need to secure that information is not disclosed contrary to the interests of national security, to the disclosure of—

- (a) his notice in reply to the appellant, the Commissioner or, in the case of an appeal under regulation 32(6) of the Regulations, the respondent telecommunications provider; or
- (b) the reply of a respondent telecommunications provider to the appellant or the Commissioner,

he may send a notice of objection to the Tribunal.

(2) A notice of objection under paragraph (1) above must be sent—

- (a) where paragraph (1)(a) above applies, with the notice in reply; and
- (b) where paragraph (1)(b) above applies, within 42 days of the date on which he receives the copy mentioned in rule 8(3) above.

(3) A notice of objection under paragraph (1) above shall—

- (a) state the reasons for the objection; and
- (b) where paragraph (1)(a) above applies, if and to the extent it is possible to do so without disclosing information contrary to the interests of national security, be accompanied by a version of the relevant Minister's notice in a form which can be shown to the appellant, the Commissioner or, as the case may be, the respondent telecommunications provider.

(4) Where the relevant Minister sends a notice of objection under paragraph (1) above, the Tribunal must not disclose the material in question otherwise than in accordance with rule 17 below.

Withdrawal of appeal

13.—(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—

- (a) the relevant Minister,
- (b) the Commissioner, and
- (c) in the case of an appeal under regulation 32(6) of the Regulations, the respondent telecommunications provider.

(2) A notice of withdrawal shall if sent by post in accordance with rule 30(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 same appellant in relation to the same disputed certification except with the leave of the Tribunal.

Consolidation of appeals

14.—(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 and the relevant Minister an opportunity to show cause why such an order should not be made.

Directions

15.—(1) This rule is subject to rule 16 below.

(2) In this rule, references to a “party” include the relevant Minister notwithstanding that he may not be a party to an appeal under regulation 32(6) of the Regulations.

(3) Subject to paragraphs (6) and (7) 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.

(4) 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 parties—

(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 he 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.

(5) 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.

(6) 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.

(7) 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.

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

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

Applications by relevant Minister

16.—(1) This rule applies in any case where the Tribunal proposes to—

- (a) give or vary any direction under rule 15 above or rule 18(2) below,
- (b) issue a summons under rule 20 below, or
- (c) certify or publish a determination under rule 27 below.

(2) Before the Tribunal proceeds as proposed in any case to which this rule applies, it must first notify the relevant Minister of the proposal.

(3) If the relevant Minister considers that proceeding as proposed by the Tribunal would cause information to be disclosed contrary to the interests of national security, he may make an application to the Tribunal requesting it to reconsider the proposal or reconsider it to any extent.

(4) An application by the relevant Minister under paragraph (3) above must be made within 14 days of receipt of notification under paragraph (2), and the Tribunal must not proceed as proposed in any case to which this rule applies before that period has expired, otherwise than in accordance with rule 17 below, unless the relevant Minister has indicated that he does not object.

(5) Where the relevant Minister makes an application under this rule, the Tribunal must not proceed as proposed otherwise than in accordance with rule 17 below.

Determinations on relevant Minister's objections and applications

17.—(1) Except where rule 11 above applies, the Tribunal shall determine whether to uphold any objection of the relevant Minister under rule 12 above, and any application under rule 16 above, in accordance with this rule.

(2) Subject to paragraph (3) below, proceedings under this rule shall take place in the absence of the parties.

(3) The relevant Minister (or a person authorised to act on his behalf), may attend any proceedings under this rule, whether or not he is a party to the appeal in question.

(4) An objection under rule 12 above must be considered under this rule as a preliminary issue, and an application under rule 16 above may be considered as a preliminary issue or at the hearing of the substantive appeal.

(5) Where, in the case of an objection under rule 12 above, the Tribunal is minded to overrule the relevant Minister's objection, or to require him to provide a version of his notice in a form other than that in which he provided it under rule 12(3)(b) above, the Tribunal must invite the relevant Minister to make oral representations.

(6) Where the Tribunal under paragraph (5) above overrules an objection by the relevant Minister under rule 12 above, or requires him to provide a version of his notice in a form other than that in which he provided it under rule 12(3)(b) above, the Tribunal shall not disclose, and the relevant Minister shall not be required to disclose, any material which was the subject of the unsuccessful objection if the relevant Minister chooses not to rely upon it in opposing the appeal.

(7) Where, in the case of an objection under rule 12 above, the Tribunal upholds the relevant Minister's objection and either—

- (a) approves the version of his notice provided under rule 12(3)(b); or
- (b) requires him to provide a version of his notice in a form other than that in which he provided it under rule 12(3)(b),

rule 7(3) above applies to that version of the notice.

Power to determine without a hearing

18.—(1) Without prejudice to rule 11 above, 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, subject to rule 16 above, 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

19.—(1) Except where rule 11 or 18 above applies, as soon as practicable after notice of appeal has been given, and with due regard to the convenience of the parties, the Tribunal shall appoint a time and place for a hearing of the appeal.

(2) Except in relation to a hearing under rule 11(5) above, the proper officer shall send to each party, the Commissioner and the relevant Minister a notice informing him of the time and place of any hearing, which, unless the parties otherwise agree, shall not be earlier than 14 days after the date on which the notice is sent.

(3) A notice to a party under this rule shall inform him of the effect of rule 22 below.

(4) 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 person previously notified of that hearing under this rule or rule 11(6) above, and any person summoned under rule 20 below to attend as a witness at that hearing, of the revised arrangements.

Summoning of witnesses

20.—(1) This rule is subject to rule 16 above.

(2) Subject to paragraph (3) 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 26(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.

(3) No person shall be required to attend in obedience to a summons under paragraph (2) 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.

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

(5) 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.

(6) 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

21.—(1) At any hearing by the Tribunal, other than a hearing under rule 11 above—

- (a) a party may, subject to rules 17(2) above and 23(3) below, conduct his case himself or may appear and be represented by any person whom he may appoint for the purpose, and
- (b) the relevant Minister may appear and be represented by any person whom he may appoint for the purpose.

(2) At any hearing by the Tribunal under rule 11(5) above, the appellant may conduct his case himself or may appear and be represented by any person whom he may appoint for the purpose.

Default of appearance at hearing

22. 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 to be in private

23.—(1) All hearings by the Tribunal (including preliminary hearings) shall be in private unless the Tribunal, with the consent of the parties and the relevant Minister, directs that the hearing or any part of the hearing shall take place in public.

(2) Where the Tribunal sits in private it may, with the consent of the parties and the relevant Minister, admit to a hearing such persons on such terms and conditions as it considers appropriate.

(3) Where the Tribunal considers it necessary for any party other than the relevant Minister to be excluded from proceedings or any part of them in order to secure that information is not disclosed contrary to the interests of national security, it must—

- (a) direct accordingly,
- (b) inform the person excluded of its reasons, to the extent that it is possible to do so without disclosing information contrary to the interests of national security, and record those reasons in writing, and
- (c) inform the relevant Minister.

(4) The relevant Minister, or a person authorised to act on his behalf, may attend any hearing, other than a hearing under rule 11 above, notwithstanding that it is in private.

Conduct of proceedings at hearing

24.—(1) Subject to rules 22 and 23(3) above, the Tribunal shall at the hearing of an appeal give to each party and the relevant Minister 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) 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

25. As regards matters preliminary or incidental to an appeal the president may act for the Tribunal under rules 5(3), 8(2), 9, 13 to 15, 19(1) and (4)(a) and (c) and 20.

Evidence

26.—(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 president or the proper officer shall have power to administer oaths or take affirmations.

Determination of appeal

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

(2) If and to the extent that it is possible to do so without disclosing information contrary to the interests of national security, and subject to rule 16 above, 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—

- (a) the parties,
- (b) the relevant Minister, and
- (c) the Commissioner.

(4) Subject to rule 16 above, the Tribunal shall make arrangements for the publication of its determination but in doing so shall have regard to—

- (a) the desirability of safeguarding the privacy of data subjects and commercially sensitive information, and
- (b) the need to secure that information is not disclosed contrary to the interests of national security,

and for those purposes may make any necessary amendments to the text of the certificate.

(5) For the purposes of this rule (but without prejudice to it generally), the disclosure of information is to be regarded as contrary to the interests of national security if it would indicate the existence or otherwise of any material.

Costs

28.—(1) In any appeal before the Tribunal, including one withdrawn under rule 13 above, the Tribunal may make an order awarding costs—

(a) in the case of an appeal under regulation 32(4) of the Regulations—

- (i) against the appellant and in favour of the relevant Minister where it considers that the appeal was manifestly unreasonable;
- (ii) against the relevant Minister and in favour of the appellant where it allows the appeal and quashes the disputed certification, or does so to any extent;

(b) in the case of an appeal under regulation 32(6) of the Regulations—

- (i) against the appellant and in favour of any other party where it dismisses the appeal or dismisses it to any extent;
- (ii) in favour of the appellant and against any other party where it allows the appeal or allows it to any extent; and

(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

29.—(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 president, or errors arising in such a document from an accidental slip or omission, may at any time be corrected by the president by certificate signed by him.

Notices etc.

30.—(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 an appellant or a respondent telecommunications provider, to him at his address for service under these Rules;
- (c) in the case of the relevant Minister or the Commissioner, to him at his office.

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

9th March 2000

Patricia Hewitt,
Minister for Small Business and E-Commerce,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules regulate the exercise of the rights of appeal conferred by regulation 32 of the Telecommunications (Data Protection and Privacy) Regulations 1999 (S.I. 1999/2093) (relating to Ministerial certification that exemption from provisions of the Regulations is or was required for the purpose of safeguarding national security), and the practice and procedure of the Data Protection Tribunal in such cases.

Rule 3 places a general duty on the Tribunal in such cases to secure that information is not disclosed contrary to the interests of national security, and limits the ex parte jurisdiction of the tribunal to matters concerning the summary disposal of appeals under rule 11.

Rule 4 requires an appeal to be made by notice of appeal served on the Tribunal, stating the grounds of appeal and other specified particulars, and rule 5 makes provision as to the time limits for appealing. Rule 6 provides for acknowledgment of the notice of appeal, and for service of copies. Rule 7 provides for a notice in reply by the Minister who signed the certificate, and rule 8 for a reply by the telecommunications service or network provider in regulation 32(6) cases who is claiming the application of a certificate. Rule 9 provides for the parties to amend their pleadings, in some cases with leave only. Rule 10 allows the Minister or the telecommunications service or network provider to apply for an appeal to be struck out in limited circumstances.

Rule 11 enables the Tribunal to dismiss an appeal on the basis of consideration of the notice of appeal, the Minister's notice, and any reply by a telecommunications service or network provider, where it considers it proper to do so, but it must first allow the appellant to make representations, written and oral, against a proposal to deal with the appeal under this procedure.

Rule 12 permits the Minister to object, on national security grounds, to the disclosure of his notice in reply, or any telecommunications service or network provider's reply, to a party (or the Data Protection Commissioner). Where he does so, he must give reasons and if possible supply a version of the notice which can be disclosed, and the procedure set out in rule 17 applies to the objection.

Rules 13 and 14 make provision in respect of the withdrawal of an appeal and the consolidation of appeals. Rule 15 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.

Rule 16 provides for the Minister to be able to apply, on national security grounds, for the Tribunal to reconsider proposals to exercise certain of its powers (including giving directions, issuing a witness summons or publishing a determination). The procedure in rule 17 applies to such an application.

Rule 17 provides for the Tribunal to adjudicate on objections and applications of the Minister made on national security grounds.

Other than in cases to which rule 11 applies, the Tribunal must as a general rule proceed by way of a hearing but in certain additional circumstances it may determine an appeal without a hearing (rule 18). Provision is made as to the appointment of time and place of a hearing (rule 19), summoning of witnesses to attend a hearing (rule 20), representation at a hearing (rule 21) and default of appearance at a hearing (rule 22).

Hearings by the Tribunal must generally be in private, but provision is made for public hearings, and the admission of other persons, in limited circumstances (rule 23). The Rules include provision as to the conduct of proceedings at a hearing (rule 24), powers of the president to act for the Tribunal (rule 25), evidence (rule 26), the determination of appeals (rule 27) and costs (rule 28).

These Rules contribute to the implementation of Directive 97/66/EC of the European Parliament and of the Council concerning the processing of personal data and privacy in the telecommunications sector (O.J. No. L24, 30.1.98, p.1).

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(Telecommunications) Rules 2000

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