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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules, which have been prepared after consultation with the Council on Tribunals, revoke the Data Protection Tribunal (Enforcement Appeals) Rules 2000, as amended by the Information Tribunal (Enforcement Appeals) (Amendment) Rules 2002 (“the 2000 Rules”). By section 18(2) of the Freedom of Information Act 2000, the Data Protection Tribunal is now known as the Information Tribunal.

These Rules regulate the exercise of the rights of appeal conferred by section 48 of the Data Protection Act 1998 (“the 1998 Act”), section 57 of the Freedom of Information Act 2000 (“the 2000 Act”), and section 57 as applied, as modified, by regulation 18 of the Environmental Information Regulations 2004 (“the 2004 Regulations”).

These Rules also govern the practice and procedure of the Tribunal in such cases.

Section 48 of the 1998 Act gives the following rights of appeal: i) to any person on whom an enforcement notice, an information notice or a special information notice has been served the right to appeal to the Tribunal against the notice (subsection (1)); ii) to any person on whom an enforcement notice has been served, against the refusal of an application to cancel or vary the notice (subsection (2)); iii) in respect of an enforcement notice, an information notice or a special information notice, against the inclusion of a statement by the Commissioner in that notice that the notice should be complied with urgently (subsection (3)); and iv) to a data controller in respect of whom a determination under section 45 has been made (subsection (4)).

Section 57(1) of the 2000 Act allows a complainant or a public authority to appeal against a decision notice served under section 50 by the Commissioner on him, and section 57(2) gives a public authority a right of appeal against an information notice or an enforcement notice served on it under section 51 or 52 of the 2000 Act respectively.

The 2004 Regulations place a duty on public authorities to make available environmental information on request. Regulation 18 of the 2004 Regulations applies the enforcement and appeals provisions of the 2000 Act for the purposes of the 2004 Regulations. The enforcement provisions are those contained in Part IV of the 2000 Act (including Schedule 3). The appeals provisions are those contained in Part V of the 2000 Act.

Rule 2 revokes the 2000 Rules.

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, 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. Rule 5 makes provision as to time limits for appealing. Rule 6 provides for acknowledgement of the notice of appeal, and for the service of copies. Rule 7 provides the means by which other persons may be made parties to an appeal, for the service of joinder notices and the issue by the Tribunal of orders of joinder. Rule 8 provides for a reply by the Commissioner.

Rule 9 allows the Commissioner to apply for an appeal to be struck out in limited circumstances.

Rule 10 makes provision for the summary disposal of appeals. Rule 11 allows the parties to amend their pleadings, in some cases with leave only, and rule 12 makes provision as to the withdrawal of an appeal. Provision is made as to the consolidation of appeals (rule 13).

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Rule 14 provides for the giving of directions by the Tribunal, of its own motion or on the application of any party; this power may be exercised in the absence of the parties, and any party may apply to set aside or vary directions. Where the Tribunal determines a matter at a pre-hearing review pursuant to any directions given, and it is of the opinion that its decision as to that matter substantially disposes of the whole appeal, the Tribunal may treat the pre-hearing review as the hearing of the appeal and give such direction as it thinks fit as to the disposal of the appeal.

Provision is made by rule 15 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, or the storage or recording of information.

The Tribunal may as a general rule determine appeals without a hearing, but it may do so with a hearing (rule 16). Provision is made as to the appointment of a time and place for a hearing (rule 17), summoning of witnesses to attend a hearing (rule 18), representation at a hearing (rule 19) and default of appearance at a hearing (rule 20). Rule 21 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 22). Rule 23 allows the Tribunal, on the ex parte application of a public authority which is a party to an appeal, to exclude another party or parties from any hearings where it is in the substantial public interest so to do. The Rules include provision as to the conduct of proceedings at a hearing (rule 24), powers of the chairman to act for the Tribunal (rule 25), the determination of appeals (rule 28) and costs (rule 29). 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 26).

Rule 31 makes provision for the service of notices and other documents.

These Rules contribute to the implementation of Council Directive [2003/4/EC](#) on public access to environmental information.