

2005 No. 14

FREEDOM OF INFORMATION

DATA PROTECTION

The Information Tribunal (Enforcement Appeals) Rules 2005

<i>Made</i> - - - -	<i>7th January 2005</i>
<i>Laid before Parliament</i>	<i>10th January 2005</i>
<i>Coming into force</i> - -	<i>1st February 2005</i>

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

Citation and commencement

1. These Rules may be cited as the Information Tribunal (Enforcement Appeals) Rules 2005 and shall come into force on 1st February 2005.

Revocations

2. The Data Protection Tribunal (Enforcement Appeals) Rules 2000(d) and the Information Tribunal (Enforcement Appeals) (Amendment) Rules 2002(e) are revoked.

Application and interpretation

3.—(1) These Rules apply to appeals under section 48 of the 1998 Act, section 57 of the 2000 Act, and section 57 of the 2000 Act as applied, as modified, by regulation 18 of the 2004 Regulations and the provisions of these Rules are to be construed accordingly.

(2) In these Rules—

“the 1998 Act” means the Data Protection Act 1998;

“the 2000 Act” means the Freedom of Information Act 2000(f);

“the 2004 Regulations” means the Environmental Information Regulations 2004(g);

“appeal” means an appeal under—

(a) section 48 of the 1998 Act,

(b) section 57 of the 2000 Act, or

(c) section 57 of the 2000 Act as applied, as modified, by regulation 18 of the 2004 Regulations,

as the case may be;

“appellant” means—

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- (a) The functions of the Secretary of State under section 67(2) of, and paragraph 7 of Schedule 6 to, the Data Protection Act 1998 were transferred to the Lord Chancellor by the Transfer of Functions (Miscellaneous) Order 2001 (S.I. 2001/3500), which Order amended section 67(2) and Schedule 6 accordingly. The functions of the Lord Chancellor under section 67(2) and paragraph 7 of Schedule 6 as amended were transferred back to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), which Order amended section 67(2) and Schedule 6 accordingly.
 - (b) 1998 c. 29. Paragraph 7 of Schedule 6 was amended by paragraph 4 of Schedule 4 to the Freedom of Information Act 2000 (2000 c. 36.)
 - (c) 1992 c. 53.
 - (d) S.I. 2000/189, as amended by S.I. 2002/2722. The Data Protection Tribunal was renamed the Information Tribunal by section 18(4) of, and paragraph 1(2) of Schedule 1 to, the Freedom of Information Act 2000 (c. 36), which provision came into force on 14th May 2001 (S.I. 2001/1637). By paragraph 1(2) of Schedule 2 to that Act, any reference in any enactment, instrument or document to the Data Protection Tribunal is to be construed, in relation to any time after the commencement of section 18(2), as a reference to the Information Tribunal.
 - (e) S.I. 2002/2722.
 - (f) 2000 c. 36.
 - (g) S.I. 2004/xxxx.

- (a) a person who brings or intends to bring an appeal under section 48 of the 1998 Act, or
- (b) a complainant who, or a public authority which brings, or intends to bring, an appeal under section 57(1) of the 2000 Act or section 57(1) of the 2000 Act as applied, as modified, by regulation 18 of the 2004 Regulations, or
- (c) a public authority which brings or intends to bring an appeal under section 57(2) of the 2000 Act or section 57(2) of the 2000 Act as applied, as modified, by regulation 18 of the 2004 Regulations,

as the case may be;

“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 1998 Act other than an appeal under section 48(3)(b) of that Act, the decision of the Commissioner,
- (b) in relation to an appeal under section 48(3)(b) of the 1998 Act, the effect of a decision of the Commissioner, and
- (c) in relation to an appeal under section 57 of the 2000 Act or section 57 as applied, as modified, by regulation 18 of the 2004 Regulations, the decision of the Commissioner, against which the appellant appeals or intends to appeal to the Tribunal, as the case may be;

“hearing” means a sitting of the Tribunal for the purposes of enabling the Tribunal to take a decision on an appeal, or on any matter raised in relation to an appeal, at which the parties are entitled to attend and be heard;

“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 1998 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, or a person joined to an appeal in accordance with rule 7 below and, except where the context otherwise requires, references in these Rules to a party (including a reference in rule 15 below) include a person appointed under rule 19(1) 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 14(5), 15(8) and 27(2) below there is substituted “in a proof”.

(5) Appeals brought before 1st January 2005 shall be determined in accordance with the Data Protection Tribunal (Enforcement Appeals) Rules 2000 and the Information Tribunal (Enforcement Appeals) (Amendment) Rules 2002.

Method of appealing – notice of appeal

- 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 decision and the date on which the notice relating to the disputed 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 or not the appellant considers that he is likely to wish a hearing to be held;

- (iv) the name and address of the public authority from whom the disputed decision was received;
 - (v) where applicable, the special circumstances which the appellant considers justify the Tribunal's accepting jurisdiction under rule 5(2) below; and
 - (vi) an address for service of notices and other documents on the appellant.
- (c) be signed by or on behalf of the appellant.

(3) Where an appeal is brought under section 48(1) of the 1998 Act, section 57(2) of the 2000 Act or section 57(2) as applied, as modified, by regulation 18 of the 2004 Regulations 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 21(2) below.

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

Time limit for appealing

5.—(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 31(2) 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

6.—(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, or to his representative if one has been appointed; and
- (b) subject to paragraph (3) below, a copy of the notice of appeal to the Commissioner and to any other party to the proceedings.

(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 an appellant under rule 29 below.

(3) Paragraph (1)(b) above does not apply to a notice of appeal under section 48(3) of the 1998 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 1998 Act shall not be exercised *ex parte*.

Joinder of other persons to appeals

7.—(1) This rule applies to an appeal under section 57 of the 2000 Act and section 57 of the 2000 Act as applied, as modified, by regulation 18(1) of the 2004 Regulations.

(2) If the Tribunal considers, whether on the application of a party or otherwise, that it is desirable that any person be made a party to an appeal, the Tribunal may order that person to be joined as a party.

(3) Any person who receives a copy of a notice of appeal or reply naming him as a person having an interest in the proceedings, or who otherwise claims an interest in the proceedings, may give notice (“a joinder notice”) to the Tribunal that he wishes to be joined to the appeal.

(4) Where the Tribunal decides to make a person a party to an appeal, it shall—

- (a) issue that person with an order to that effect (“an order of joinder”), and
- (b) send a copy of that order, together with a copy of the joinder notice given in accordance with paragraphs (3) and (6) of this rule, to all other parties to the appeal.

(5) The Tribunal may give directions with regard to the joining of persons to appeals.

(6) A joinder notice must be in writing and must include—

- (a) the full name and address of the person seeking to be joined to the appeal;
- (b) a statement of the person’s interest and whether or not he opposes the appeal, together with any reasons on which he relies in support of his interest; and
- (c) the name and address of any representative the person appoints, and whether the Tribunal should send correspondence and notices concerning the appeal to the representative instead.

(7) A person who wishes to be joined as a party to an appeal must also deliver to the Tribunal at least 3 copies of the joinder notice and any accompanying documents to enable the Tribunal to send a copy to each of the other parties.

(8) A joinder notice given under this rule shall, if the person giving it is made a party to the appeal, be treated as that person’s reply to the notice of appeal.

Reply by Commissioner

8.—(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 6(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 6(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 applies 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 1998 Act, section 57(2) of the 2000 Act or section 57(2) of the 2000 Act as applied, as modified, by regulation 18 of the 2004 Regulations 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 21(2) below.

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

Application for striking out

9.—(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 8(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 substantive appeal.

(3) This rule does not apply in the case of an appeal under section 48(3) of the 1998 Act.

Summary disposal of appeals

10.—(1) Where, having considered—

- (a) the notice of appeal, and
- (b) any reply to the notice of appeal,

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 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.

(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 20 below.

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

Amendment and supplementary grounds

11.—(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 6 above apply to an amended notice of appeal and 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 of supplementary grounds of appeal under rule 6(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, the appellant and any other person that has been joined as a party to the appeal—

- (a) Where he receives a copy of an amended notice of appeal under rule 6(1)(b) above, within 21 days of the date of that receipt, and

(b) Where he receives a copy of an amended notice of appeal under rule 6(3)(a) above, within such time, not exceeding 21 days from the date of that receipt, as the Tribunal may allow.

(4) Rule 8(3) above applies to the periods referred to in paragraph (3) above.

(5) Upon receipt of a copy of an amended notice of appeal or of supplementary grounds of appeal under rule 6(1)(b) above, a person who has been joined as a party to the appeal in accordance with rule 7 above may amend his reply to the notice of appeal, and must send the amended reply to the Tribunal, the appellant and any other party to the appeal within 21 days of the date of that receipt.

(6) 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, the appellant and any other party to the appeal.

Withdrawal of appeal

12.—(1) The appellant may at any time before the determination of the appeal withdraw his appeal by sending to the Tribunal a notice of withdrawal, and the proper officer shall send a copy of that notice to the Commissioner.

(2) A notice of withdrawal given under this rule shall be in writing and shall be signed by the appellant or on his behalf.

(3) A notice of withdrawal shall, if sent by post in accordance with rule 31(2) below, have effect on the date on which it is received for dispatch by the Post Office.

(4) 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

13.—(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

14.—(1) Subject to paragraphs (5) and (6) 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 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) make provision as to applications for the joinder of other persons to appeals, including giving directions as to the delivery of notices and other documents in such cases;

- (d) require any party to send to the Tribunal and to any other party—
 - (i) statements of facts and statements of the evidence which will be adduced, including such statements provided in 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;
- (e) limit the length of oral submissions and the time allowed for examination and cross-examination of witnesses; and
- (f) limit the number of expert witnesses to be heard on either side.

(3) If, following the determination of any matter at a pre-hearing review, the Tribunal 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 may give such direction as it thinks fit to dispose of the appeal.

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

(5) 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.

(6) 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.

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

(8) 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.

(9) If a party does not comply with any direction given under these Rules, the Tribunal may—

- (a) dismiss the whole or part of the appeal or application; or
- (b) strike out the whole or part of—
 - (i) a Minister’s or a respondent data controller’s reply, or
 - (ii) a public authority’s or the Commissioner’s notice in reply, and

where appropriate, direct that a Minister, respondent data controller, public authority or the Commissioner shall not contest the appeal.

(10) But the Tribunal must not dismiss an appeal, strike out a reply or notice in reply or give a direction unless it has sent a notice to the party who has not complied giving that party the opportunity to comply within such period as the Tribunal may specify in the notice or to show cause why the Tribunal should not dismiss, strike out or so direct.

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

15.—(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 or the storage or recording of other information, and to inspect, examine or test any

documents or other material on those premises connected with the processing of personal data or the storage or recording of other information.

(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 1998 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.

Determination of appeal without a hearing

16.—(1) Subject to these Rules, the Tribunal may determine an appeal without a hearing.

(2) Where a party makes a request for a hearing, the Tribunal shall grant the request unless it is satisfied that the appeal can properly be determined without a hearing.

(3) Where the Tribunal decides to refuse a request for a hearing, it shall send written notice to the party making the request either before or at the same time as it makes its decision.

(4) A notice sent under paragraph (3) above shall specify the Tribunal's reasons for refusing the request.

(5) The Tribunal may of its own motion and at any stage of an appeal, direct a hearing.

Time and place of hearings

17.—(1) Subject to rules 14(3) and 16 above, where the Tribunal has directed that a hearing shall take place, the Tribunal shall appoint a time and place for the hearing as soon as practicable and with due regard to the convenience of the parties and any request made under rule 4(4) or 8(6) above.

(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 1998 Act other than a case to which rule 6(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 1998 Act.

(5) A notice to a party under this rule shall inform him of the effect of rule 20 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 time and 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 18 below to attend as a witness at that hearing, of the revised arrangements.

Summoning of witnesses

18.—(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 27(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

19.—(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 1998 Act other than a case to which rule 6(3)(a) above applies.

(3) If the appellant does not intend to attend or be represented at a hearing, he must inform the Tribunal of his intention, and in such a case may send to the Tribunal additional written representations in support of his appeal.

Default of appearance at hearing

20. 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

21.—(1) This rule applies to any appeal under section 48(1) of the 1998 Act, section 57(2) of the 2000 Act or section 57(2) as applied, as modified, by regulation 18 of the 2004 Regulations 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 1998 Act is necessary in the interests of justice, taking into account any representations made under rule 4(3) or 8(5) above.

Hearings in public or in private

22.—(1) All hearings by the Tribunal (including preliminary hearings) shall be in public unless, having heard representations on the matter from the parties and having regard to the desirability of safeguarding—

- (a) the privacy of data subjects; or
- (b) commercially sensitive information; or
- (c) any matter in respect of which an exemption contained in Part II of the 2000 Act is claimed,

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

(2) Without prejudice to paragraph (3) and rule 23 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.

Power to exclude parties from hearings

23.—(1) Where an application is made to the Tribunal by a Minister of the Crown for a party or parties to the appeal to be excluded from the proceedings or any part of them, the Tribunal shall grant such application and exclude that party or parties, if and only if it is satisfied that it is necessary for reasons of substantial public interest to do so.

(2) An application under paragraph (1) above shall be made to the Tribunal *ex parte*.

(3) Where the Tribunal considers it necessary, for reasons of substantial public interest, for any party to be excluded from the proceedings, it must—

- (a) direct accordingly,
- (b) inform the party or parties excluded of its reasons, to the extent that it is possible to do so without disclosing information contrary to the public interest, and
- (c) inform the relevant Minister.

Conduct of proceedings at hearing

24.—(1) Subject to rules 20 and 23 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 1998 Act.

(3) In a case to which rule 6(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

25. As regards matters preliminary or incidental to an appeal the chairman may act for the Tribunal under rules 5(2), 8(1) and (3), 10 to 15, 17(1) and (6)(a) and (c), 18 and 24(1) and (3).

Burden of proof

26. 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 1998 Act, it shall be for the Commissioner to satisfy the Tribunal that the disputed decision should be upheld.

Evidence

27.—(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 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

28.—(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) If and to the extent that it is possible to do so without disclosing information which is or would be exempt by virtue of any provision in Part II of the 2000 Act, 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—

- (a) the privacy of data subjects,
- (b) commercially sensitive information, and
- (c) any information which is or would be exempt by virtue of any provision in Part II of the 2000 Act,

and for that purpose may make any necessary amendments to the text of the certificate.

Costs

29.—(1) In any appeal before the Tribunal, including one withdrawn under rule 12 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 any 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 reference 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

30.—(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 a 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.

31.—(1) Any document or other notice required or authorised by these Rules to be served on or sent to any person or authority may be—

- (a) sent by post in a registered letter or by the recorded delivery service, or delivered by hand in accordance with paragraph (2) below, or
- (b) by means of electronic communication in accordance with paragraph (3) below.

(2) A document or other notice required or authorised by these Rules to be served on or sent to any person or authority that is sent by post in a registered letter or by the recorded delivery service, or is delivered by hand, must be sent or delivered—

- (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 or any other party, to him or his representative at the address for service under these Rules; and
- (d) in the case of an occupier within the provisions of rule 14 above, to him at the premises in question.

(3) A document or other notice required or authorised by these Rules to be served on or sent to any person or authority that is sent by means of an electronic communication, must be sent—

- (a) in the case of the Tribunal, by such means and to such address as the proper officer of the Tribunal may specify;
- (b) in the case of the Commissioner, by such means and to such address as may be specified by the Commissioner for such purposes;

(c) in the case of an appellant, a respondent data controller or any other party, by such means and to such address as he may specify for such purposes.

(4) Without prejudice to paragraph (3) above, no person shall be required to accept service of documents sent by electronic means unless they have indicated that they are prepared to accept such service.

(5) A party may at any time by notice to the Tribunal change his address for service under these Rules.

Signed

Date 7th January 2005

Cathy Ashton
Parliamentary Under Secretary of State
Department for Constitutional Affairs

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).

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.

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