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**STATUTORY INSTRUMENTS**

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**1985 No. 1568****DATA PROTECTION****The Data Protection Tribunal Rules 1985**

<i>Made</i> - - - - -	13th October 1985
<i>Laid before Parliament</i>	21st October 1985
<i>Coming into Operation</i>	11th November 1985

**ARRANGEMENT OF RULES**

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In exercise of the powers conferred on me by paragraph 4 of Schedule 3 to the

Data Protection Act 1984(a), after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971(b), I hereby make the following Rules:—

*Citation and commencement*

1. These Rules may be cited as the Data Protection Tribunal Rules 1985 and shall come into operation on 11th November 1985.

*Interpretation*

2. In these Rules, unless the context otherwise requires—

“the Act” means the Data Protection Act 1984;

“appellant” means a person who brings an appeal under section 13 of the Act;

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

“costs” includes fees, charges, disbursements, expenses and remuneration;

“disputed decision” means the matter in relation to which the appellant or intending appellant appeals or desires to appeal to the Tribunal;

“proper officer” in relation to a Rule means an officer or servant of the Tribunal appointed by the Chairman to perform the duties of a proper officer under that Rule.

*Method of appealing*

3.— (1) An appeal under the Act shall be brought by a notice of appeal served on the Tribunal.

(2) The notice of appeal shall state—

(a) the name and address of the appellant;

(b) the disputed decision and the date that the notice or notification relating to such decision was served on or given to the appellant;

(c) the grounds of appeal;

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

(e) where applicable, the special circumstances which the appellant considers justify the Tribunal's accepting jurisdiction under Rule 4(2) below; and

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

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(a) 1984 c.35.

(b) 1971 c.62.

*Time limit for appealing*

4.— (1) Subject to paragraph (2) below, a notice of appeal shall not be valid unless it is served on the Tribunal within 28 days of the date on which the notice or notification 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 28(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 Registrar*

5. A proper officer shall send—

- (a) an acknowledgement of the service of a notice of appeal to the appellant, and
- (b) a copy of the notice of appeal to the Registrar.

*Statement by Registrar*

6.— (1) Where the appeal is under section 13(1) of the Act, the Registrar shall send to the Tribunal a copy of the notification or notice relating to the disputed decision within such time after receiving the copy of the notice of appeal under Rule 5 above as the Tribunal may allow.

(2) Where the appeal is under section 13(2) or (3) of the Act, the Registrar shall, if required by the Tribunal, send to the Tribunal—

- (a) a copy of the notification or notice relating to the disputed decision, and
- (b) a statement of his reasons for making the disputed decision, within such time as the Tribunal may allow.

*Power to require particulars*

7. The Tribunal may at any time order either party to furnish any particulars which appear to be requisite for the determination of the appeal within such time as the Tribunal may allow, not being less than 28 days where the appeal is under section 13(1) of the Act.

*Power to order discovery etc.*

8.— (1) Subject to paragraph (2) below, the Tribunal may order a party to deliver to the Tribunal within such time as the Tribunal may allow any document or item of data material which the Tribunal may require and which it is in the power of the party to deliver.

(2) Paragraph (1) above does not apply in relation to any document or item

which the party 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.

(3) The Tribunal may supply any document or item of data material or communicate any information obtained under this Rule to any party, and it shall be a condition of such supply or communication that that party shall use the document or item only for the purposes of the appeal.

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

**9.**— (1) Subject to paragraph (7) 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, accompanied by the parties or their representatives and such number of the Tribunal’s officers or servants as it considers necessary, to enter those premises at a specified time and inspect, examine, operate or test any data equipment, or test any data material, which is on those premises.

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

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

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

(5) Subject to paragraph (3) above, the Tribunal may upon the application of any person mentioned in paragraph (2) 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.

(6) This Rule also applies where the occupier is a party to the appeal.

(7) Data 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 testing under this Rule.

*Hearings*

**10.**— (1) As soon as practicable after notice of appeal has been given the Tribunal shall appoint a time and place for a hearing:

Provided that the Tribunal may determine an appeal without a hearing where—

- (a) neither party wishes a hearing to be held; or
- (b) the appeal is under section 13(2) or (3) of the Act; or
- (c) 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.

(2) Before appointing the place for the hearing the Tribunal shall have regard, so far as practicable, to the convenience of the appellant in travelling to it.

*Notice of time and place of hearing*

11. A proper officer shall send to each party a notice informing him—

- (a) 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; and
- (b) of the effect of Rule 14 below.

*Hearings in public or in private*

12.— (1) The hearing of an appeal shall be in public unless, having regard to the desirability of safeguarding the privacy of data subjects, the Tribunal directs that the hearing or any part of the hearing shall take place in private.

(2) The following persons may attend the hearing of an appeal notwithstanding that it is in private—

- (a) the Chairman or any deputy chairman or member of the Tribunal in his capacity as such;
- (b) any member of the Council of Tribunals or the Scottish Committee of the Council of Tribunals in his capacity as such; and
- (c) any other person with the leave of the Tribunal and the consent of the parties present.

*Representation at a hearing*

13. At the hearing of an appeal a party 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*

14. 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 in the party's absence and may make such order as to costs as it thinks fit.

*Summoning of witnesses*

15.— (1) 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 18(2) 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:

Provided that no person shall be required to attend in obedience to such a summons unless he has been given at least 7 days' notice of the hearing or, if

less than 7 days, has informed the Tribunal that he accepts such notice as he has been given.

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

(3) 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.

#### *Expert evidence*

16.— (1) Not more than one expert witness on either side shall be heard unless otherwise allowed by the Tribunal.

(2) The Tribunal may, where it considers it desirable to do so, request any person to assist it at a hearing by attending to give expert evidence on payment to him of such fee as the Tribunal considers reasonable.

#### *Conduct of proceedings at hearing*

17. Subject to Rule 14 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 their written statements previously furnished under these Rules, to give evidence and to call witnesses, and any party may 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;

but, save as aforesaid, the Tribunal shall conduct the proceedings in such manner as it considers appropriate in the circumstances for ascertaining the matters in dispute and determining the appeal and shall so far as appears to it appropriate seek to avoid formality in its proceedings.

#### *Evidence*

18.— (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 that part of the United Kingdom where the hearing takes place.

(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 a proper officer shall have power to administer oaths or take affirmations.

*Onus on Registrar*

19. In any proceedings before the Tribunal it shall be for the Registrar to satisfy the Tribunal that the disputed decision should be upheld.

*Decision by Tribunal*

20.— (1) At the conclusion of a hearing the decision of the Tribunal may be announced by the Chairman, but in any event, whether there has been a hearing or not, the decision shall be recorded in a document signed by the Chairman and dated when so signed and which shall contain all findings of fact by the Tribunal and the reasons for the decision.

(2) A proper officer shall send a copy of the document recording the decision to each party.

(3) Except where a decision has been announced at the conclusion of a hearing, it shall be treated as having been made on the date on which the copy is sent to the appellant.

*Expedited hearing*

21.— (1) Where an appeal under section 13(2) or (3) of the Act is duly made in accordance with Rules 3 and 4 above and the Tribunal has decided under Rule 10 above to determine the appeal without a hearing, the Tribunal shall appoint a time and place for the Chairman sitting alone to hear the appeal as soon as reasonably practicable and shall notify the parties of the time and place appointed.

(2) The provisions of these Rules relating to hearings shall apply to a hearing under paragraph (1) above, save for Rules 10 and 11 and the proviso to Rule 15(1).

*Combined hearings*

22. Where in the case of two or more appeals 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 should be heard together:

Provided that the Tribunal shall not make an order under this Rule without giving all parties an opportunity to show cause why such an order should not be made.

*Miscellaneous powers of Tribunal*

23. The Tribunal may—

- (a) postpone the time appointed for the hearing of an appeal;
- (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 and any witnesses concerned of the revised arrangements.

#### *Costs*

**24.**— (1) In any appeal before the Tribunal, including one withdrawn under Rule 25 below, the Tribunal may make an order awarding costs—

- (a) against the appellant and in favour of the Registrar where it considers that the appeal was manifestly unreasonable;
- (b) against the Registrar 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 delay which with diligence could have been avoided, against that party and in favour of the other;

but the Tribunal shall not make an order awarding costs against a party without first giving that party an opportunity of making representations against the making of the order.

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

(3) 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.

(4) In the application of paragraph (3) above to Scotland, 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.

#### *Withdrawal of appeal*

**25.**— (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 a proper officer shall send a copy thereof to the Registrar.

(2) A notice of withdrawal shall if sent by post in accordance with Rule 28(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 in relation to the same disputed decision except with the leave of the Tribunal.

#### *Preliminary and incidental matters*

**26.** As regards matters preliminary or incidental to an appeal the Chairman may act for the Tribunal under Rules 4(2), 6, 7, 8(1), 9, 10, 15, 16, 23(a) and (c) and 25(3) above.



*Irregularities*

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

(2) Clerical mistakes in the document referred to in Rule 20(1), or errors arising in such document from an accidental slip or omission, may at any time be corrected by the Chairman by certificate under his hand.

*Notices etc.*

28.— (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 a document directed to the Tribunal, to the proper officer of the Tribunal;
- (b) in the case of a document directed to the Registrar, to him at his office;
- (c) in the case of a document directed to an appellant, to him at his address for service under these Rules;
- (d) in the case of a notice directed to an occupier under Rule 9 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.

*Review of Tribunal's decision*

29.— (1) The Tribunal shall have power to review and to revoke or vary by certificate under the Chairman's hand its decision on the grounds that—

- (a) new evidence has become available since the making of the decision, provided that its existence could not have been reasonably known of or foreseen; or
- (b) the interests of justice require such a review.

(2) An application for the purposes of paragraph (1) above shall be made to the Chairman at any time within 14 days from when the decision was made and must be in writing stating the grounds in full.

(3) The application may be refused by the Chairman if in his opinion it has no reasonable prospect of success.

(4) If such an application is not refused under paragraph (3) above, it shall be determined by the Tribunal constituted as far as practicable as for the appeal, and if the application is granted the Tribunal shall proceed to a review of the decision and, having reviewed it, may confirm, vary or revoke that decision, and if the Tribunal revokes the decision it shall proceed to determine the appeal again.

*Reports of decisions*

30. The Tribunal may make arrangements for the publication of its decisions but in doing so shall have regard to the desirability of safeguarding the privacy of data subjects, and for that purpose may make any necessary amendments to the text of a decision to conceal the identity of a data subject.

*Douglas Hurd,*

One of Her Majesty's Principal Secretaries of State.

Home Office.  
13th October 1985.

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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, regulate the exercise of the rights of appeal against decisions of the Data Protection Registrar conferred by section 13 of the Data Protection Act 1984 and the practice and procedure of the Data Protection Tribunal.

An appeal is to be made by notice of appeal served on the Tribunal (Rule 3) within 28 days of the date on which the Registrar's decision was served on the appellant but in special circumstances appeals may be accepted out of time (Rule 4).

Provision is made as to the ordering of discovery (Rule 8) and the ordering of persons in occupation of premises to permit entry for the testing of data equipment or material (Rule 9). 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 10). The Rules include provision as to the summoning of witnesses to attend a hearing (Rule 15), the attendance of experts (Rule 16), the conduct of proceedings at a hearing (Rule 17), evidence (Rule 18) and costs (Rule 24). In all proceedings the onus is placed on the Registrar of satisfying the Tribunal that his decision should be upheld (Rule 19).



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