
EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules regulate the exercise of the rights of appeal conferred by section 28 of the Data Protection Act 1998 (“the 1998 Act”), section 60 of the Freedom of Information Act 2000 (“the 2000 Act”) and the rights of appeal conferred by section 60 of the 2000 Act, as applied by regulation 18(1), as modified by regulation 18(7) of the Environmental Information Regulations 2004 (S.I.2004/3391) (“the 2004 Regulations”) in relation to appeals against certificates issued under regulation 15 of those Regulations certifying that disclosure of information under regulation 12 would adversely affect national security and would not be in the public interest.

Section 28(2) of the 1998 Act provides for a Minister to certify that exemption from certain provisions of that Act is or at any time was required for the purpose of safeguarding national security. Section 28(4) allows any person directly affected by the issue of such a certificate to appeal against it to the Tribunal. Section 28(6) provides that where, in any proceedings under or by virtue of the 1998 Act, a data controller claims that a certificate issued under section 28(2) applies to any personal data, any other party to the proceedings may appeal to the Tribunal on the grounds that the certificate does not apply to that personal data.

Section 60 of the 2000 Act creates a right of appeal against Ministerial certificates issued under section 23(2) or 24(3) of that Act.. Certificates issued under these sections certify that exemption from the provisions of the Acts is or was required for the purpose of safeguarding national security, or that exemption from the provisions of the Freedom of Information Act 2000 is required as the information to which the certificate relates was directly or indirectly supplied by, or relates to, any of the bodies specified in section 23(3).

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.

The Rules also make provision for the practice and procedure of the Information Tribunal in such cases.

Rule 2 revokes the Data Protection Tribunal (National Security Appeals) Rules 2000 (S.I. 2000/206).

Rule 4 places a general duty on the Tribunal 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 12.

Rule 5 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 6 makes provision as to the time limits for appealing. Rule 7 provides for acknowledgement of the notice of appeal, and for service of copies. Rule 8 provides for a notice in reply by the Minister who signed the certificate, and rule 9 for a reply by a data controller in section 28(6) cases who is claiming the application of a certificate. Rule 10 allows the parties to amend their pleadings, in some cases with leave only. Rule 11 allows the Minister or the data controller to apply for an appeal to be struck out in limited circumstances.

Rule 12 allows the Tribunal to dismiss an appeal on the basis of consideration of the notice of appeal, the Minister’s notice, and any reply by the data controller, where it considers it proper to do so, but must first allow the appellant to make representations, written and oral, against a proposal to deal with the appeal under this procedure.

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

Rule 13 permits the Minister to object, on the grounds that disclosure of the information would be contrary to the interests of national security, to the disclosure of his notice in reply, or any data controller's reply, to a party (or the Information 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 18 applies to the objection.

Rules 14 and 15 make provision in respect of the withdrawal of an appeal and the consolidation of appeals. Rule 16 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. 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.

Rule 17 provides for the Minister to be able to apply, on the grounds that to do so would be contrary to the interests of national security, for the Tribunal to reconsider proposals to exercise certain of its powers (including giving directions, issuing a witness summons or publishing a determination).

Rule 18 sets out the procedure for determining whether to uphold a relevant Minister's objection under rule 13 and any application under rule 17.

Rule 19 provides that the Tribunal may determine appeals without a hearing.

Provision is made as to the time and place of a hearing (rule 20), summoning of a witness to attend a hearing (rule 21), representation at a hearing (rule 22) and default of appearance at a hearing (rule 23).

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 24). The Rules include provision as to the conduct of proceedings at a hearing (rule 25), powers of the president to act for the Tribunal (rule 26), evidence (rule 27), the determination of appeals (rule 28) and costs (rule 29).

Notices and other documents may be served by post and by electronic means (rule 31).

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