

**EXPLANATORY MEMORANDUM TO THE
INFORMATION TRIBUNAL (NATIONAL SECURITY APPEALS) RULES
2005**

2005 No.13

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by the Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1. This instrument makes procedural rules for appeals before the National Security Appeals Panel of the Information Tribunal. Such appeals may be brought under section 28 of the Data Protection Act 1998, or section 60 of the Freedom of Information Act 2000.

- 2.2. The Information Tribunal was previously known as the Data Protection Tribunal until it was renamed under the Freedom of Information Act 2000.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1. None.

4. **Legislative Background**

- 4.1. This instrument is made under section 67(2) of, and paragraph 7(2) to the Data Protection Act 1998.

- 4.2. The National Security Appeals Panel (a sub-panel of the Information Tribunal) presently hears appeals under section 28 the Data Protection Act 1998.

- 4.2.1. 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.

- 4.2.2. 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.

- 4.3. The Freedom of Information Act 2000 expands the Tribunal's remit to include hearing of appeals under section 60 of the 2000 Act.
 - 4.3.1. 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 Act is or was required for the purpose of safeguarding national security, or because 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) of the 2000 Act.
- 4.4. The Environmental Information Regulations 2004 place a duty on public authorities to make available environmental information on request. Regulation 18 of the 2004 Regulations applies the appeals provisions found in section 60 of the 2000 Act to appeals against certificates issued under Regulation 15 of the 2004 Regulations.

5. Extent

- 5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1. Baroness Ashton has made the following statement regarding Human Rights: "In my view, the provisions of the Information Tribunal (National Security Appeals) Rules 2005 are compatible with the Convention rights."

7. Policy Background

- 7.1. The present procedural rules apply only to appeals under the Data Protection Act 1998. It is therefore necessary to provide new procedural rules to take account of the expanded remit of the Tribunal to hear appeals under the Freedom of Information Act, which is conferred on the Tribunal from 1 January 2005.
- 7.2. The new procedures apply to all appeals before the National Security Appeals Panel, and the old rules are revoked.
- 7.3. The appeals process remains broadly similar, as the routes of appeal under both Acts are largely the same. Some minor changes have been made:
 - Provision is made for the electronic service of documents.
 - The Tribunal is given a power to dismiss or strike out an appeal for non-compliance with a direction, subject to parties being given sufficient time for compliance, or cause being shown why the Tribunal should not dismiss or strike out the appeal.
- 7.4. Very little public interest is anticipated in the policy, although the Rules themselves will be of interest to those wishing to bring appeals to the Panel.

7.5. The Council on Tribunals have been consulted on these Rules, although such consultation is not required under the Tribunals and Inquiries Act 1992. The Council had no comments to make. The Government also consulted the President and members of the National Security Appeals Panel, as well as consulting across Whitehall, before making the Rules.

8. Impact

8.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2. No impact on the public sector is anticipated.

9. Contact

Charlotte Mercer, Information Rights Division, Department for Constitutional Affairs can answer any queries relating to this instrument.

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