

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

**2005 No.14**

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Description**

2.1 The Information Tribunal (Enforcement Appeals) Rules 2005 set out the rights of appeal conferred by the Data Protection Act 1998 and Freedom of Information Act 2000. The Rules allow that any person served with an enforcement notice, information notice or special information notice by the Information Commissioner has the right to appeal against the notice to the Tribunal.

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

3.1 None

**4. Legislative background**

4.1 The Rules allow for appeals to be made to the Tribunal in the situations described in paragraphs 4.2-4.4 below.

4.2 Section 48 of the Data Protection Act allows that appeals can be made to the Information Tribunal as follows:

- Any person on whom an enforcement notice, an information notice or a special information notice has been served can appeal to the Information Tribunal against the notice (subsection (1)).
- Any person on whom an enforcement notice has been served can appeal against the refusal of an application to cancel or vary the notice (subsection (2)).
- Whether or not a person appeals against an enforcement notice, information notice or special information notice, he or she can appeal against a statement by the Information Commissioner within the notice that the notice must be complied with urgently (subsection (3)).
- A data controller may appeal against any determination made under section 45 of the Act, which has been made against him.

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

4.4 The Environmental Information Regulations 2004 place a duty on public authorities to make available environmental information on request. Regulation 18 modified section 57 of the Freedom of Information Act 2000 so that the same enforcement and appeals provisions apply to the Environmental Information Regulations.

4.5 These Rules revoke the Data Protection (Enforcement Appeals) Rules 2000, as amended by the Information Tribunal (Enforcement Appeals) (Amendment) Rules 2002. Section 18(2) of the Freedom of Information Act renames the Data Protection Tribunal as the Information Tribunal.

## **5. Extent**

5.1 The Regulations apply to the whole 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 (Enforcement Appeals) Rules 2005 are compatible with the Convention rights.”

## **7. Policy background**

7.1 The Information Tribunal (Enforcement Appeals) Rules 2005 (“the 2005 Rules”) are closely based on the previous Data Protection (Enforcement Appeals) Rules 2000 (“the 2000 Rules”), which applied to appeals made under the Data Protection Act only. The 2005 Rules have been updated to take account of the provisions in the Freedom of Information Act 2000 and Environmental Information Regulations 2004. They describe how appeals should be made, and the procedures that will be followed during the appeals process. The Rules have been modified slightly to allow for smoother operation of the Tribunal, for example, through allowing notices or documents to be served or sent through electronic means as well as by the post. The key differences between the 2000 Rules and the 2005 Rules are described below.

### 7.1.1 Joinder of other persons to appeals

The 2005 Rules provide that in appeals relating to the Freedom of Information Act or Environmental Information Regulations, other persons can be joined to appeals, either by order of the Tribunal, or at the person’s request. If the Tribunal decides to make a person a party to an appeal, it must send the person a written ‘order of joinder’, and send a copy of the order of joinder to all other parties to the appeal. Any person with an interest in the proceedings may also send a written ‘joinder notice’ to the Tribunal that he wishes to be joined to the appeal.

### 7.1.2 Summary disposal of appeals

The 2005 Rules make new provision for the summary disposal of appeals where the Tribunal considers that the appeal is of such a nature that it can properly be determined by dismissing it forthwith. In such cases, it must first notify the appellant, and explain how the appellant can make representations against the decision to dispose of the appeal. Similarly, if the Tribunal decides at a pre-hearing review that its determination at the pre-hearing substantially disposes of the whole appeal, it 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.

### 7.1.3 Directions

As in the 2000 Rules, the Tribunal will be able to 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. The 2005 Rules provide that if a party does not comply with any direction given under these Rules, the Tribunal may:

- dismiss the whole or part of the appeal or application; or
- strike out the whole or part of a Minister's or respondent data controller's reply, and where appropriate direct that a Minister or respondent data controller shall not contest the appeal.

However it cannot dismiss, strike out or give a direction unless it has sent a notice to the party that has not complied, giving the opportunity to comply within a specified period.

#### 7.1.4 Determination of appeal without a hearing

The 2005 Rules modify the 2000 Rules to provide that appeals may be determined without a hearing. Parties may request a hearing, and the Tribunal shall grant the request unless it is satisfied that the appeal can properly be determined without a hearing.

#### 7.1.5 Power to exclude parties from hearings

The 2005 Rules include a power to exclude parties from hearings upon request from a Minister of the Crown, but only in cases where the Tribunal is satisfied that it is necessary for reasons of substantial public interest to do so.

7.2 Prior to making these Rules, the Government consulted with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992. It also consulted with Tribunal judiciary and lay members, as well as consulting across Whitehall, before making these Rules.

7.3 Very little public interest is anticipated in the Rules governing the Tribunal, although the Tribunal itself will be of interest to those wishing to make appeals.

## **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**

Fiona Mongredien or Charlotte Mercer in Information Rights Division, Department for Constitutional Affairs can answer any queries relating to the instrument. Tel 020 7210 8071 / 8033, email [fiona.mongredien@dca.gsi.gov.uk](mailto:fiona.mongredien@dca.gsi.gov.uk) or [charlotte.mercer@dca.gsi.gov.uk](mailto:charlotte.mercer@dca.gsi.gov.uk)