
STATUTORY INSTRUMENTS

2020 No. 1245

The Network and Information Systems (Amendment and Transitional Provision etc.) Regulations 2020

Insertion of new regulations 19A, 19B and A20

16. Before regulation 20 insert—

“Appeal by an OES or RDSP to the First-tier Tribunal

19A.—(1) An OES may appeal to the First-tier Tribunal against one or more of the following decisions of the designated competent authority for the OES on one or more of the grounds specified in paragraph (3)—

- (a) a decision under regulation 8(3) to designate that person as an OES;
- (b) a decision under regulation 9(1) or (2) to revoke the designation of that OES;
- (c) a decision under regulation 17(1) to serve an enforcement notice on that OES;
- (d) a decision under regulation 18(3A) to serve a penalty notice on that OES.

(2) A RDSP may appeal to the First-Tier Tribunal against one or both of the following decisions of the Information Commissioner on one or more of the grounds specified in paragraph (3)—

- (a) a decision under regulation 17(2) to serve an enforcement notice on that RDSP;
- (b) a decision under regulation 18(3B) to serve a penalty notice on that RDSP.

(3) The grounds of appeal referred to in paragraphs (1) and (2) are—

- (a) that the decision was based on a material error as to the facts;
- (b) that any of the procedural requirements under these Regulations in relation to the decision have not been complied with and the interests of the OES or RDSP have been substantially prejudiced by the non-compliance;
- (c) that the decision was wrong in law;
- (d) that there was some other material irrationality, including unreasonableness or lack of proportionality, which has substantially prejudiced the interests of the OES or RDSP.

Decision of the First-tier Tribunal

19B.—(1) The First-tier Tribunal must determine the appeal after considering the grounds of appeal referred to in regulation 19A(3) and by applying the same principles as would be applied by a court on an application for judicial review.

(2) The Tribunal may, until it has determined the appeal in accordance with paragraph (1) and unless the appeal is withdrawn, suspend the effect of the whole or part of any of the following decisions to which the appeal relates—

- (a) a decision under regulation 8(3) to designate a person as an OES;

- (b) a decision under regulation 9(1) or (2) to revoke the designation of a person as an OES;
 - (c) a decision under regulation 17(1) to serve an enforcement notice;
 - (d) a decision under regulation 17(2) to serve an enforcement notice;
 - (e) a decision under regulation 18(3A) to serve a penalty notice; or
 - (f) a decision under regulation 18(3B) to serve a penalty notice.
- (3) The Tribunal may—
- (a) confirm any decision to which the appeal relates; or
 - (b) quash the whole or part of any decision to which the appeal relates.
- (4) Where the Tribunal quashes the whole or part of a decision to which the appeal relates, it must remit the matter back to the designated competent authority for the OES or, as the case may be, the Information Commissioner, with a direction to that authority or the Commissioner to reconsider the matter and make a new decision having regard to the ruling of the Tribunal.
- (5) The relevant competent authority or, as the case may be, the Information Commissioner, must have regard to a direction under paragraph (4).
- (6) Where the relevant competent authority or, as the case may be, the Information Commissioner, makes a new decision in accordance with a direction under paragraph (4), that decision is to be considered final.

Enforcement by civil proceedings

- A20.**—(1) This regulation applies where—
- (a) a designated competent authority for an OES has reasonable grounds to believe that the OES has failed to comply with the requirements of an enforcement notice as required by regulation 17(3A); or
 - (b) the Information Commissioner has reasonable grounds to believe that a RDSP has failed to comply with the requirements of an enforcement notice as required by regulation 17(3A).
- (2) This regulation applies irrespective of whether the OES or RDSP has appealed to the First-tier Tribunal under regulation 19A.
- (3) But where an OES or RDSP has appealed to the First-tier Tribunal under regulation 19A and the Tribunal has granted a suspension of the effect of the whole or part of the relevant decision under regulation 19B(2), the relevant competent authority or the Information Commissioner, as the case may be, may not bring or continue proceedings under this regulation in respect of that decision or that part of that decision for as long as the suspension has effect.
- (4) Where paragraph (1)(a) applies, the relevant competent authority may commence civil proceedings against the OES—
- (a) for an injunction to enforce the duty in regulation 17(3A);
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988(1); or
 - (c) for any other appropriate remedy or relief.
- (5) Where paragraph (1)(b) applies, the Information Commissioner may commence civil proceedings against the RDSP—

- (a) for an injunction to enforce the duty in regulation 17(3A);
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
 - (c) for any other appropriate remedy or relief.
- (6) No civil proceedings may be commenced under this regulation before the end of a period of 28 days beginning with the day on which the last relevant enforcement notice was served on the OES or, as the case may be, RDSP.
- (7) In this regulation, a reference to civil proceedings is a reference to proceedings, other than proceedings in respect of an offence, before a civil court in the United Kingdom.”.