
STATUTORY INSTRUMENTS

1997 No. 798

DEFENCE

The Reserve Forces Appeal Tribunals Rules 1997

<i>Made</i>	- - - -	<i>13th March 1997</i>
<i>Laid before Parliament</i>		<i>13th March 1997</i>
<i>Coming into force</i>	- -	<i>3rd April 1997</i>

The Secretary of State, in exercise of the power conferred on him by section 93 of the Reserve Forces Act 1996⁽¹⁾ and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992⁽²⁾, hereby makes the following Rules:—

PART I
INTRODUCTION

Citation and commencement

1. These Rules may be cited as the Reserve Forces Appeal Tribunals Rules 1997 and shall come into force on 3rd April 1997.

Interpretation

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

“the Act” means the Reserve Forces Act 1996;

“appellant” means a person who makes an appeal to the Tribunal under section 81(4), 83(4) or 84(3) of the Act;

“the Authority” means the Secretary of State or any person or body duly authorised to make a determination under regulations made under Part VIII of the Act;

“Chairman” means the Chairman of the Tribunal;

“determination” means the disposal by the Tribunal of the appeal or of any substantive issue that arises therein;

(1) 1996 c. 14.
(2) 1992 c. 53.

“direction” means any order of the Tribunal not being a determination and includes a witness summons;

“disputed determination” means a determination of the Authority against which an appeal is brought under these Rules;

“hearing” means a sitting of the Tribunal for the purpose of determining the appeal;

“party” means the appellant or the Authority;

“register” means the register of appeals and determinations kept in accordance with these Rules;

“Secretary” means the person for the time being appointed by the Secretary of State as Secretary of Tribunals and includes any Assistant Secretary or other member of the staff of the Secretary authorised by the Secretary to perform a function or exercise a power of his under these Rules;

“Tribunal” means a Reserve Forces Appeal Tribunal and “the Tribunal” means the Tribunal to which an appeal is made or transferred or by whom a determination is to be reviewed.

PART II

MAKING AN APPEAL TO THE TRIBUNAL AND REPLY BY THE AUTHORITY

(A)

THE APPELLANT

Notice of appeal

3.—(1) An appeal to the Tribunal shall be made by written notice. The notice of appeal shall state—

- (a) the name, address and telephone number (if any) of the appellant;
- (b) that the notice is a notice of appeal;
- (c) the grounds of the appeal;
- (d) whether the appellant intends to be present or represented at the hearing;
- (e) the determination which the appellant seeks;
- (f) the name and address of the representative (if any) of the appellant, and whether the Secretary should send replies or notices concerning the appeal to the representative instead of the appellant;
- (g) the name and address of any witness whom the appellant wishes to give evidence to the Tribunal.

(2) The appellant or his representative shall attach to the notice of appeal a copy of the written notification of the disputed determination.

(3) The notice of appeal shall be further accompanied by—

- (a) copies of all documents or records supplied to the Authority in the course of making the application which resulted in the disputed determination;
- (b) copies of any other documents or records which the appellant wishes to be drawn to the attention of the Tribunal, and a statement of the reasons why they were not submitted to the Authority during the course of the application which resulted in the disputed determination.

(4) The appellant or his representative shall sign the notice of appeal.

(5) The appellant or his representative shall send or deliver the notice of appeal to the office of the Secretary so that it is received there not later than 5 days after the date on which written notification of the disputed determination was received by the appellant.

Application for extension of time

4. Notwithstanding rule 3(5) above, where the appellant or his representative considers it likely that, by reason of exceptional circumstances, the notice of appeal will be received at the office of the Secretary later than 5 days after the date on which written notification of the disputed determination was received by him, he may include with the notice of appeal a statement of the reasons on which he relies for justifying the delay, and the Tribunal shall treat any such statement as a request for extending the time limit under rule 30(2)(a) below.

Amendment of appeal and delivery of supplementary statement of grounds of appeal

5.—(1) The appellant or his representative may, at any time before he is notified of the hearing date, deliver a supplementary statement of grounds of appeal.

(2) The appellant may amend any notice of appeal or supplementary statement with the leave of the Tribunal at any time after he or his representative has been notified of the hearing date, either on an application in writing signed by him or his representative, or at a hearing at which he is present or represented. The Tribunal may grant such leave on such terms as it thinks fit, including under rule 28(1) below the payment of costs or, if the tribunal is sitting in Scotland, expenses.

(3) The appellant or his representative shall send a copy of every amendment and supplementary statement to the Secretary.

Withdrawal of appeal

6. The appellant may withdraw his appeal—

- (a) at any time before notice of the hearing date is delivered to him, by sending to the office of the Secretary a notice stating that he withdraws his appeal signed by him or his representative; or
- (b) with the leave of the Tribunal at any time after notice of the hearing date has been delivered to him, on an application to the Tribunal in writing signed by him or his representative or at a hearing at which he is present or represented. The Tribunal may grant such leave on such terms as it thinks fit, including under rule 28(1) below the payment of costs or, if the Tribunal is sitting in Scotland, expenses.

(B)

THE SECRETARY

Acknowledgement and registration of appeal and request to select Tribunal

7. Upon receiving a notice of appeal the Secretary shall immediately—

- (a) send to the appellant or his representative an acknowledgement, which shall include a notification that advice in relation to the proceedings may be obtained from the Secretary;
- (b) enter particulars of it in the register, and inform the parties in writing of the name and case number of the appeal entered in the register (which shall thereafter constitute the title of the proceedings) and of the address to which notices and other communications to the Tribunal shall be sent;

- (c) request the Lord Chancellor or, as the case may be, the Lord President of the Court of Session or the Lord Chief Justice of Northern Ireland to select a chairman and two other members from the appropriate panels to hear the appeal.

(C)

THE AUTHORITY

Action by the Authority on receipt of a notice of appeal

8.—(1) The Authority shall on receiving a copy of the notice of appeal prepare a written reply acknowledging the notice of appeal and stating—

- (a) whether or not the Authority intends to oppose the appeal and the grounds on which it relies in opposing the appeal;
- (b) the name and address of the representative (if any) of the Authority and whether such address is the address of the Authority for the purposes of the appeal;
- (c) whether the Authority wishes to attend or be represented at the hearing;
- (d) the name and address of any witness whom the Authority wishes to give evidence to the Tribunal.

(2) The Authority shall include with its reply—

- (a) a statement summarising the facts relating to the disputed determination and, if they are not part of that determination, the reasons for that determination;
- (b) a copy of every document considered by the Authority in making the disputed determination except those which the Secretary has notified the Authority as having already been submitted by the applicant.

(3) The reply shall be signed by an officer of the Authority and shall be sent or delivered to the office of the Secretary so that it is received there not later than 5 days after the date on which the copy of the notice of appeal was received by the Authority from the Secretary.

(4) The Authority may include in its reply, or in a separate notice to the Tribunal, a request for further particulars of the appeal.

Application for extension of time for delivery of reply

9. Notwithstanding rule 8(3) above, where the Authority considers it likely that, by reason of exceptional circumstances, its reply will be received at the office of the Secretary later than 5 days after the date on which it received a copy of the notice of appeal it may include with its reply a statement of the reasons on which it relies for justifying the delay, and the Tribunal shall treat any such statement as a request for extending the time limit under rule 30(2)(a) below.

Amendment of reply or supplementary statement by the Authority

10.—(1) The Authority may at any time before it is notified of the hearing date amend its reply or deliver a supplementary statement by way of reply.

(2) The Authority may amend any reply or supplementary statement with the leave of the Tribunal at any time after it has been notified of the hearing date, or at a hearing at which it is present or represented. The Tribunal may grant such leave on such terms as it thinks fit, including under rule 28(1) below the payment of costs or, if the Tribunal is sitting in Scotland, expenses.

(3) The Authority shall send a copy of every amendment and supplementary statement to the Secretary.

Failure to reply or absence of opposition

11. The Tribunal may, if it thinks fit, determine the appeal under rule 21 below if—
- (a) no reply is received by the Secretary within the time appointed by rule 8 above or any extension of time allowed by the Tribunal; or
 - (b) the Authority states in writing that it does not resist the appeal, or withdraws its opposition to the appeal.

PART III

PREPARATION FOR A HEARING

Service of documents by Secretary

12.—(1) Subject to paragraph (2), the Secretary shall immediately send or deliver a copy of the notice of appeal and any reply, together with any amendments or statements, written representations or other documents or records received from one party, to the other party to the appeal:

Provided that if any such material is sent or delivered to the Secretary after the time prescribed by these Rules the Secretary shall—

- (a) send or deliver a copy of the material to the other party;
- (b) inform that other party that such action by the Secretary shall not prejudice the Tribunal's determination on whether to extend the relevant time limit.

(2) If any material referred to in paragraph (1) contains any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence, or involves considerations of personal or national security and—

- (a) it appears to the Secretary that the material contains such matter; or
- (b) a party seeks to restrict its disclosure and informs the Secretary of that fact and of his reasons for seeking such a restriction,

the Secretary shall serve the copies as provided in this rule only in accordance with the directions of the Tribunal.

Directions in preparation for a hearing

13.—(1) The Tribunal may at any time, on the application of a party or on its own initiative, give such directions (including the issue of a witness summons or, where the Tribunal is sitting in Scotland, a citation) as are provided in this Part to enable the parties to prepare for the hearing or to assist the Tribunal to determine the issues:

Provided that in exercising the powers conferred by this rule, the Tribunal shall take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence or concerns personal or national security.

- (2) Directions containing a requirement under this Part shall, as appropriate—
 - (a) include an explanation of the possible consequences for the appeal, as provided by rule 17 below, of a party's failure to comply with the requirement within the time allowed by the Tribunal;
 - (b) contain a reference to the provisions of section 93(3) (non compulsion to give evidence or produce documents) and section 94 (offences in connection with appeals) of the Act;

- (c) in the case of a witness summons or citation, except where the application for the summons or citation was made in the presence of the person to whom the summons or citation is addressed, draw to that person's attention his right to apply to the Tribunal under rule 18 below to vary or set aside the summons or citation.

(3) The Secretary shall immediately send a copy of all directions to the parties and any other person to whom they apply, except that a copy need not be sent to any person who was present or represented when the direction was made.

Particulars and supplementary statements

14. The Tribunal may give directions requiring a party to provide such particulars or supplementary statements as may be reasonably required for the determination of the appeal.

Disclosure of documents and other material

15. The Tribunal may give directions requiring a party to deliver to the Secretary any document or other material which the Tribunal may require and which it is in the power of that party to deliver. The Tribunal shall make such provision as it thinks necessary to supply copies of any material obtained under this rule to the other party, and it shall be a condition of such supply that the party shall use such material only for the purposes of the appeal.

Summoning of witnesses

16.—(1) Subject to paragraphs (2), (3) and (4) below, the Tribunal may by summons or, where the Tribunal is sitting in Scotland, citation require any person in the United Kingdom—

- (a) to attend as a witness at a hearing at such time and place as may be specified in the summons or citation and, subject to the proviso to rule 13(1) above, at the hearing to answer any questions; or
- (b) to produce any documents or other material in his custody or under his control which relate to any matter in question in the appeal, whether at the hearing or at an earlier time.

(2) No person shall be required to attend in obedience to such a summons or citation unless he has been given at least 5 days' notice of the hearing date or, if less than 5 days, he has informed the Secretary that he accepts as sufficient such notice as he has been given.

(3) No person shall be required in obedience to such a summons or citation to attend and give evidence or to produce any document unless the necessary expenses of such attendance or production are paid or tendered to him.

(4) The Tribunal shall make such provision as it thinks necessary to supply copies of any document obtained under this rule to the parties, and it shall be a condition of such supply that a party shall use such a document only for the purposes of the appeal.

(5) Any expenses to which a person is entitled under paragraph (3) above shall be paid by the Secretary of State.

Failure to comply with certain directions

17. If any directions given to a party under this Part are not complied with by that party, the Tribunal may, before or at the hearing, dismiss the whole or part of the appeal or, as the case may be, strike out the whole or part of the reply and, where appropriate, direct that the Authority shall be debarred from contesting the appeal altogether:

Provided that a Tribunal shall not so dismiss or strike out or give such a direction unless it has sent notice to the party who has not complied with the direction giving him an opportunity to show cause why it should not do so.

Varying or setting aside of directions

18. A person to whom a direction (including any summons or, where the Tribunal is sitting in Scotland, a citation) is issued under this Part may apply to the Tribunal to vary it or set it aside, but the Tribunal shall not so do without first notifying the person, if any, who applied for the direction and considering any representations made by him.

Notice of place and time of hearing, and adjournments

19.—(1) The Secretary shall, with due regard to the urgency of the appeal and the convenience of the parties, fix the time and place of the hearing and, not less than 5 days before the date so fixed (or such shorter time as the parties agree), send to each party a notice of the hearing at such time and place.

(2) The Secretary shall include in or with the notice of hearing—

- (a) information and guidance as to attendance at the hearing of the parties and witnesses, the bringing of documents, and the right of representation by another person;
- (b) an explanation of the right of the parties to ask for and to receive reasons in writing for any determination;
- (c) an explanation of the possible consequences of non-attendance and of the right of a party who does not attend and is not represented to make representations in writing.

(3) If a party does not intend to attend or be represented at the hearing, he may send to the Secretary additional written representations in support of his case.

(4) The Tribunal may alter the time and place of any hearing and the Secretary shall give the parties not less than 5 days' (or such shorter time as the parties agree) notice of any such alteration: Provided that any altered hearing date shall not (unless the parties agree) be before the date notified under paragraph (1).

(5) The Tribunal may from time to time, on the application of a party or on its own initiative, adjourn the hearing and, if the time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

Public notice of hearings

20. The Secretary shall keep at his office a list of all appeals for which a hearing is to be held and of the time and place fixed for the hearing, and the list shall be open to the inspection of any person without charge at all reasonable hours.

PART IV

DETERMINATION OF APPEALS

Power to determine an appeal in the absence of the parties

21.—(1) The Tribunal may—

- (a) if neither party has expressed an intention to be present or represented at the hearing; or
- (b) if every party who expressed that intention notifies the Secretary that he no longer intends to be present or represented; or
- (c) in the circumstances described in rule 11(a) or (b) above,

determine an appeal, or any particular issue, in the absence of the parties.

(2) Where a date is fixed for the Tribunal to determine an appeal under this rule the Secretary shall give not less than 5 days' notice in writing (or such shorter period as the parties may consent to in writing) of that date, but no such notice shall be required of any adjourned hearing.

(3) Before determining the appeal under this rule the Tribunal shall consider the notice of appeal, reply and any other document or record sent to it by any party or witness. It may, if it thinks fit, direct a party or witness to provide in writing further information about any matter relating to the appeal.

(4) The provisions of rule 25(5) below shall apply in respect of the determination of an appeal or any particular issue under this rule.

Hearings to be in public: exceptions

22.—(1) All hearings by the Tribunal shall be in public except where—

- (a) a direction under paragraph (4) has been made; or
- (b) the Tribunal is satisfied that, by reason of the disclosure of matters which relate to intimate personal or financial circumstances, are commercially sensitive, consist of information communicated or obtained in confidence or concern personal or national security, it is just and reasonable for the hearing or any part thereof to be in private.

(2) Except where a direction under paragraph (4) has been made, the following persons shall be entitled to attend the hearing, whether or not it is in private—

- (a) any members of the panel of chairmen or members appointed under section 90 or 91 of the Act, notwithstanding that they do not constitute the Tribunal for the purpose of the hearing;
- (b) a member of the Council on Tribunals or of the Scottish Committee of that Council.

(3) Except where a direction under paragraph (4) has been made, the Tribunal, with the consent of the parties, may permit any other person to attend a hearing which is held in private.

(4) The Secretary of State may on grounds of national security direct the Tribunal to hold part or all of the hearing in private.

(5) A direction under paragraph (4) shall not prevent an officer appointed in accordance with section 92(2) of the Act from attending the hearing if the Tribunal so requires.

(6) Without prejudice to any other powers it may have, the Tribunal may exclude from the hearing, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Tribunal, to disrupt the hearing.

Failure of parties to attend hearing

23.—(1) If a party who expressed an intention to attend or be represented at a hearing fails to attend or be represented at that hearing the Tribunal may—

- (a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the appeal in the party's absence; or
- (b) adjourn the hearing,

and may make such order under rule 28(1) below as to costs or expenses as it thinks fit.

(2) Before deciding to dispose of any appeal in the absence of a party, the Tribunal shall consider any representations in writing submitted by that party and, for the purpose of this rule, the notice of appeal and any reply, any amendments to either of them, any documents submitted with them and any supplementary statements shall be treated as representations in writing.

(3) Where an appellant has failed to attend a hearing of which he was duly notified, and the Tribunal has disposed of the appeal, no fresh appeal may be made by the appellant to a Tribunal against the same disputed determination without the prior leave of the Tribunal:

Provided that nothing in this paragraph shall preclude the appellant from making an application for a review of the Tribunal's determination under rule 27 below.

Representation at hearing

24. At the hearing, a party may conduct his case himself (with assistance from any person if he wishes) or may appear and be represented by any person whether or not legally qualified:

Provided that if in any particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person to assist or represent a party at the hearing.

Procedure at hearing

25.—(1) Subject to this rule, the Tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it shall so far as appears to it appropriate seek to avoid formality in its proceedings.

(2) At the beginning of the hearing the Chairman shall explain the order of proceeding which the Tribunal proposes to adopt.

(3) The parties shall be heard in such order as the Tribunal shall determine. They shall be entitled to give evidence, to call witnesses, to question any witness and to address the Tribunal both on the evidence and generally on the subject matter of the appeal.

(4) Evidence before the Tribunal may be given orally or, if the Tribunal so orders, by affidavit or statement, but the Tribunal may at any stage of the proceedings require the personal attendance of any maker of an affidavit or statement.

(5) The Tribunal may admit evidence of any fact which appears to it to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law, and shall admit any evidence which is admissible at law and is relevant.

(6) At any hearing the Tribunal may, if it is satisfied that it is just and reasonable to do so, permit a party to put forward any evidence not presented or known to the Authority before or at the time it made the disputed determination.

(7) The Tribunal may require any party or witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Determination of Tribunal

26.—(1) A determination of a Tribunal may be made by a majority and the determination shall record whether it was unanimous or taken by a majority.

(2) The Tribunal may make its determination at the end of the hearing or may reserve it. If the determination is made at the end of a hearing it may be announced.

(3) Every determination shall be recorded immediately in a document which—

(a) save in the case of a determination by consent, shall also contain a statement of the reasons for its determination; and

(b) shall be signed and dated by the Chairman.

(4) Subject to paragraph (5), particulars of every document referred to in this rule shall, as soon as may be, be entered in the register and the Secretary shall send or deliver a copy of such documents and the entry to each party.

(5) Where any such document refers to any evidence that has been heard in private, copies of the complete document shall be sent or delivered to the parties together with a copy of the entry, but the entry in the register shall not include or refer to such evidence.

(6) Except where a determination is announced at the end of a hearing, it shall be treated as having been made on the date on which a copy of the document recording it is sent or delivered to the parties.

Review of Tribunal's determination

- 27.—(1) If, on the application of a party or on its own initiative, the Tribunal is satisfied that—
- (a) a determination was wrongly made as a result of an error on the part of the Secretary; or
 - (b) a party, who was entitled to be heard at a hearing and expressed an intention to attend or be represented but failed to appear or be represented, had good and sufficient reason for failing to appear; or
 - (c) new evidence has become available since the conclusion of the hearing to which the determination relates, the existence of which could not have been reasonably known of or foreseen; or
 - (d) the interests of justice require,

the Tribunal may review and, by certificate under the Chairman's hand, set aside or vary the relevant determination.

(2) An application for the purposes of paragraph (1) may be made immediately following the determination at the hearing. If an application is not made at the hearing, it shall be made by delivering it in writing, stating in full the grounds of application, to the Secretary not later than 5 days after the date on which the determination was received by that party. When the Tribunal proposes to review its determination on its own initiative, it shall give written notice of that proposal to the parties within 5 days of so proposing.

(3) The parties shall, if they so request, have an opportunity to be heard on any application or proposal for review under this rule. The review shall be determined by the Tribunal which determined the case or, where this is not practicable, by another Tribunal selected under section 92 of the Act. If as a result of a review the determination is set aside or varied, the Tribunal shall by certificate under the Chairman's hand substitute such determination as it thinks fit or order the same or a differently constituted Tribunal to redetermine the appeal.

(4) The certificate of the Chairman as to the setting aside or variation of the Tribunal's determination under this rule shall be sent to the Secretary and the Secretary shall immediately make such correction as may be necessary in the register and shall send a copy of the entry so corrected to the parties.

Orders for costs

28.—(1) The Tribunal shall not normally make an order awarding costs, but may, subject to paragraph (2), make such an order—

- (a) against a party (including a party who has withdrawn his appeal or reply) if it is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
- (b) against the Authority, where it considers that the determination against which the appeal is brought was wholly unreasonable; or
- (c) as respects any costs incurred as a result of a postponement or adjournment of a hearing at the request of a party; or
- (d) in the circumstances described in rule 5(2), 6(b), 10(2) or 23(1) above.

(2) No order shall be made under paragraph (1) against a party without first giving that party an opportunity of making representations against the making of the order.

(3) An order under paragraph (1) may require the party against whom it is made to pay 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).

(4) 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 in the order. Such costs shall, if a county court so orders, be recoverable by execution issued from a county court.

(5) In the application of this rule to a Tribunal sitting in Scotland the word “costs” shall be deemed to mean “expenses”, and any expenses to be taxed may be taxed according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed in the order and thereafter the Tribunal shall issue an order for payment of the amount as taxed.

(6) In the application of this rule to a Tribunal sitting in Northern Ireland any costs which may be determined by the Tribunal under paragraph (1) above shall be determined by reference to the scales prescribed by rules of court for proceedings in the county court in Northern Ireland and any costs required to be taxed where the costs are not otherwise agreed shall be taxed in the same manner as costs in equity suits or proceedings in the county court in Northern Ireland.

PART V

ADDITIONAL POWERS OF, AND COMPOSITION OF, THE TRIBUNAL

Power to transfer cases

29.—(1) The Tribunal may transfer any proceedings before it to another Tribunal if it considers that by reason of the location of the parties or witnesses, the subject matter of the appeal, the availability of the Tribunal or some other sufficient reason the proceedings may be more conveniently determined by that other Tribunal.

(2) Any Tribunal to which proceedings are transferred under this rule shall have jurisdiction to hear and determine the same as if the proceedings were properly commenced in it in accordance with these Rules.

(3) For the purposes of rule 28 above, an appeal which is transferred from a Tribunal sitting in one part of the United Kingdom to a Tribunal sitting in another part of the United Kingdom shall be treated as if all the proceedings had taken place in the Tribunal which finally determined the appeal.

Miscellaneous powers of Tribunal

30.—(1) Subject to the provisions of the Act and these Rules, a Tribunal may regulate its own procedure.

(2) A Tribunal may, if it thinks fit—

- (a) extend the time appointed by or under these Rules for bringing an appeal or doing any act, notwithstanding that the time appointed may have expired;
- (b) if the appellant at any time gives notice of the withdrawal of his appeal, dismiss the proceedings;
- (c) if the parties agree in writing on the terms of a determination to be made by the Tribunal, decide accordingly (and in making any such determination, it shall not be necessary for the Tribunal to give reasons);
- (d) subject to the proviso below, at any stage of the proceedings order to be struck out or amended any notice of appeal, reply, supplementary statement or written representation on the grounds that it is scandalous, frivolous or vexatious;

(e) subject to the proviso below, order to be struck out any appeal for want of prosecution:

Provided that before making any order under sub-paragraph (d) or (e), the Tribunal shall send notice to the party against whom it is proposed that any such order should be made giving him an opportunity to show cause why such an order should not be made.

Irregularities

31.—(1) Any irregularity resulting from failure to comply with any provision of these Rules or of any direction or order of the Tribunal before the Tribunal has reached its determination shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Tribunal, the Tribunal may, and shall if it considers that any person may have been prejudiced by the irregularity, give such directions to cure or waive the irregularity as it thinks just before reaching its determination.

(3) Clerical mistakes in any document recording a direction, order or determination of the Chairman or Tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the Chairman by certificate under his hand.

Power of Chairman to exercise powers of Tribunal

32.—(1) Any act required or authorised by these Rules to be performed by the Tribunal other than a determination or the making of an order disposing of the appeal following a review under rule 27 above may be done by the Chairman or any member of the panel of chairmen:

Provided that where an order is made by a chairman under rule 30, paragraph (2)(d) or (2)(e), it shall not have effect unless it is confirmed by the Tribunal or in writing by its other members who shall not be required to meet for this purpose.

(2) In the event of the death or incapacity of the Chairman following the determination of the Tribunal in any matter, the functions of the Chairman for the completion of the proceedings, including any review of the determination, may be exercised by any member of the panel of chairmen.

PART VI

MISCELLANEOUS

The register and publication of determinations

33.—(1) The register shall be kept at the office of the Secretary and shall be open to the inspection of any person without charge at all reasonable hours.

(2) The register may be kept by means of a computer.

(3) The Tribunal may make arrangements for the publication of its determinations as it considers appropriate, but in doing so shall have regard to the need to preserve the confidentiality of any evidence heard in private or to which rule 12(2) above applies, and for that purpose may make any necessary amendments to the text of a determination.

Proof of documents and certification of determinations

34.—(1) Any document purporting to be a document duly executed or issued by the Secretary on behalf of the Tribunal shall, unless the contrary is proved, be deemed to be a document so executed or issued as the case may be.

(2) A document purporting to be certified by the Secretary to be a true copy of any entry of a determination in the register shall, unless the contrary is proved, be sufficient evidence of the entry and of matters contained therein.

Method of sending, delivering or serving documents, etc.

35.—(1) Any document required or authorised by these Rules to be sent or delivered to any person shall be duly sent or delivered to that person if it is—

- (a) sent to him at his proper address by post;
- (b) sent to him at that address by means capable of producing a document containing a text of the communication, in which event the document shall be regarded as sent when it is received in a legible form;
- (c) delivered to him or left at his proper address.

(2) If any document is sent by first class recorded delivery or registered post, it shall be treated as if it had been delivered on the day after it was received for despatch by the Post Office.

(3) The proper address of any person to whom any such document is to be sent or delivered shall be—

- (a) in the case of the Secretary, the address included in or with the written notification of the disputed determination, or failing that—
The Secretary of the Reserve Forces Appeal Tribunals
c/o Mailroom
Ministry of Defence
Whitehall
London
SW1A 2HB;
- (b) in the case of any other person, any address that he has notified to the Secretary (whether in pursuance of rule 3(1)(a) or (f) above, or rule 8(1)(b) above or otherwise) as his address for the purposes of the appeal; or
- (c) in the case of a witness who has not notified an address as mentioned in sub-paragraph (b), any address provided by the appellant or the Authority in accordance with rule 3(1)(g) above or rule 8(1)(d) above; or
- (d) in the case of a secretary or clerk of any incorporated company or body for whom an address has not been provided as mentioned in sub-paragraph (b) or (c), that of the registered or principal office of the company or body; or
- (e) in any other case, the last-known address of the person in question.

Substituted service

36. If any person to whom any document is required to be sent or delivered under these Rules cannot be found or has died and has no known personal representative, or is out of the United Kingdom, or if for any other reason the document cannot readily be so sent or delivered, the Chairman may dispense with that requirement or may make an order for substituted service on such other person or in such other form (whether by advertisement in a newspaper or otherwise) as the Chairman may think fit.

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

Time

37. Where the time prescribed by these Rules for doing any act expires on a Saturday, Sunday or public holiday, the act shall be in time if done on the next following day which is not a Saturday, Sunday or public holiday.

17th March 1997

Nicholas Soames
Minister of State, Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules establish and regulate Reserve Forces Appeal Tribunals. The Tribunals are subject to the supervision of the Council on Tribunals and these Rules are based on their Model Rules. The Tribunals are newly established under Part IX of the Reserve Forces Act 1996 to hear appeals against determinations of applications by reservists or their employers under Part VIII of the 1996 Act. Under Part VIII a person liable to call-out or recall for permanent service, or his employer, may apply for payment if he has suffered, or will suffer, loss of income as a result of that person's absence on permanent service. Reservists or their employers may also apply for exemption or deferral of liability for call-out or recall.

A compliance cost assessment of the effect that this instrument would have on the costs of business is available from the Directorate of Reserve Forces & Cadets Secretariat, Room 6/27, Metropole Building, London WC2N 5BL.