

EXPLANATORY MEMORANDUM TO THE

INFORMATION TRIBUNAL (ENFORCEMENT APPEALS) (AMENDMENT) RULES 2005

2005 No. 450

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 process for making, hearing and deciding appeals against notices issued by the Information Commissioner. The present instrument makes minor changes to these procedural rules to clarify how the Tribunal should operate.

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

3.1 The instrument breaches the 21-day rule.

3.2 It has not been laid before now because the need for changes to be made to the existing Rules became apparent only in late January, and the nature and extent of the changes could not be finalised before the end of February. The new Rules have been prepared as expeditiously as possible, taking into account the need to consult the Council on Tribunals and the Information Commissioner's Office.

3.3 The changes need to come into force quickly because the Information Tribunal may start receiving its first cases within the next 21 days. A change to the procedural rules shortly after the first appeals were received risks causing unfairness to appellants. It could also cause difficulties to the staff administering the Tribunal. The effect of the changes, although limited, is significant, particularly in relation to the alteration in the burden of proof and the provisions allowing the Chairman alone to decide whether there should be an oral hearing.

3.4 The amendments made by this instrument are, however, textually minor and straightforward in effect.

3.5 To assist the Committee with its scrutiny of the instrument, it was sent in draft to the Clerk to the Committee in advance of it being laid to allow more time for consideration.

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 amend the Information Tribunal (Enforcement Appeals) Rules 2005.

5. Extent

5.1 The Rules 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) (Amendment) Rules 2005 make minor changes to the Information Tribunal (Enforcement Appeals) Rules 2005. They correct minor drafting errors in Rules 4 and 14 – in Rule 4 the information to be provided by an appellant is clarified, and in Rule 14 an incorrect reference to Ministers’ and data controllers’ replies is deleted. Rule 25 is amended so that the Chairman may act for the Tribunal in judging whether an appeal can be determined without a hearing (under Rule 16). Rule 26 (burden of proof) is amended so that the burden of proof is silent with regards to cases about disputed decision notices.

7.2 Prior to making the amendments to the Rules, the Government consulted the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992 in December 2004. The Government has also discussed the proposed changes with the Information Commissioner’s Office.

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

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