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STATUTORY INSTRUMENTS

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**2020 No. 1245**

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

**Transitional and saving provisions**

**21.**—(1) The 2018 Regulations as they were in force immediately before 31st December 2020 (“the pre-amendment Regulations”) continue to apply in respect of a request under regulation 19(1) or (2) of the 2018 Regulations where—

- (a) the request was made before that date; and
- (b) the reviewer has not before that date made any decision in relation to the request under regulation 19(9) of the 2018 Regulations.

(2) Where the pre-amendment Regulations continue to apply in accordance with paragraph (1) of this regulation and the reviewer upholds a designation decision or penalty decision in relation to an OES under regulation 19(9) of those Regulations—

- (a) the relevant competent authority must—
  - (i) notify the OES that the OES may appeal to the First-tier Tribunal against the designation decision or penalty decision; and
  - (ii) explain to the OES the permitted grounds and procedure (including time limit) for bringing such an appeal; and
- (b) the OES may appeal to the First-tier Tribunal against the designation decision or penalty decision on one or more of the following grounds—
  - (i) that the decision was based on a material error as to the facts;
  - (ii) 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 have been substantially prejudiced by the non-compliance;
  - (iii) that the decision was wrong in law;
  - (iv) that there was some other material irrationality, including unreasonableness or lack of proportionality, which has substantially prejudiced the OES.

(3) Where the pre-amendment Regulations continue to apply in accordance with paragraph (1) of this regulation and the reviewer upholds a penalty decision in relation to a RDSP under regulation 19(9) of those Regulations—

- (a) the Information Commissioner must—
  - (i) notify the RDSP that the RDSP may appeal to the First-tier Tribunal against the penalty decision; and
  - (ii) explain to the RDSP the permitted grounds and procedure (including time limit) for bringing such an appeal; and
- (b) the RDSP may appeal to the First-tier Tribunal against the penalty decision on one or more of the following grounds—
  - (i) that the decision was based on a material error as to the facts;

- (ii) that any of the procedural requirements under these Regulations in relation to the decision have not been complied with and the interests of the RDSP have been substantially prejudiced by the non-compliance;
  - (iii) that the decision was wrong in law;
  - (iv) that there was some other material irrationality, including unreasonableness or lack of proportionality, which has substantially prejudiced the RDSP.
- (4) For the purposes of rule 22(1)(b) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009(1)—
- (a) in the case of an appeal under paragraph (2)(b) of this regulation, the notice of the decision to which the proceedings relate is the notice referred to in paragraph (2)(a)(i) of this regulation;
  - (b) in the case of an appeal under paragraph (3)(b) of this regulation, the notice of the decision to which the proceedings relate is the notice referred to in paragraph (3)(a)(i) of this regulation.
- (5) The Tribunal must determine the appeal after considering the grounds of appeal referred to in paragraph (2)(b) or (3)(b), as the case may be, and by applying the same principles as would be applied by a court in an application for judicial review.
- (6) The Tribunal may, until the appeal is withdrawn, or, where it is not withdrawn, until it has determined the appeal in accordance with paragraph (5), suspend the effect of—
- (a) a designation decision to which the appeal relates;
  - (b) a penalty decision to which the appeal relates.
- (7) The Tribunal may—
- (a) confirm one or, as the case may be, both of the decisions to which the appeal relates; or
  - (b) quash the whole or part of one or, as the case may be, both of the decisions to which the appeal relates.
- (8) Where the Tribunal quashes the whole or part of a decision to which the appeal relates, it must remit the matter back to the relevant competent authority 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.
- (9) The relevant competent authority or, as the case may be, the Information Commissioner, must have regard to a direction under paragraph (8).
- (10) 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 (8), this decision is to be considered final.
- (11) Words and expressions used but not defined in this regulation that are also used in the pre-amendment Regulations have the same meanings as in the pre-amendment Regulations.