



Statutory Document No. 27/03

THE ISLE OF MAN DATA PROTECTION TRIBUNAL RULES 2003

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Statutory Document No. 27/03

THE DATA PROTECTION ACT 2002

THE ISLE OF MAN DATA PROTECTION TRIBUNAL RULES 2003

Approved by Tynwald
Coming into operation

20th February 2003
1st April 2003

In exercise of the powers conferred on the Council of Ministers by paragraph 5 of Schedule 6 to the Data Protection Act 2002¹, and of all other enabling powers, the following Rules are hereby made:—

PART 1

GENERAL

1. Citation and commencement

These Rules may be cited as the Isle of Man Data Protection Tribunal Rules 2003 and, subject to section 61(1), shall come into operation on the 1st April 2003.

2. Interpretation

(1) In these Rules —

"the Act" means the Data Protection Act 2002;

"appeal" means an appeal under section 24 or 44 (or, in Part 3 or 4, an appeal to which that Part relates);

"appellant" means a person who brings or intends to bring an appeal;

"chairman" means the chairman of the Tribunal, and includes a deputy chairman of the Tribunal presiding or sitting alone;

"costs" includes fees, charges, disbursements, expenses and remuneration;

"disputed certification" means —

(a) in relation to an appeal under section 24(4), the certificate against which the appeal is brought or intended to be brought, and

¹ 2002 c.2

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- (b) in relation to an appeal under section 24(7), the claim by the data controller, against which the appeal is brought or intended to be brought, that a certificate applies to any personal data;

"disputed decision" means —

- (a) in relation to an appeal under section 44 other than an appeal under section 44(3)(b), the decision of the Supervisor, and
- (b) in relation to an appeal under section 44(3)(b), the effect of a decision of the Supervisor,

against which the appellant appeals or intends to appeal to the Tribunal;

"party" has the meaning given in paragraph (3);

"reference" means a reference under section 20;

"respondent" means —

- (a) in relation to an appeal under section 24(7), the data controller making the claim which constitutes the disputed certification;
- (b) in relation to a reference, the data controller by whom the notification referred to the Tribunal was made;

"the secretary" means the member of staff provided under paragraph 7 of Schedule 5 to act as secretary to the Tribunal;

"the Supervisor" means the Isle of Man Data Protection Supervisor;

"the Tribunal" means the Isle of Man Data Protection Tribunal.

- (2) A reference in these Rules to a numbered section or Schedule (without more) is to that section of or Schedule to the Act.

3. Directions

(1) Subject to paragraphs (4), (5) and (8), the Tribunal may at any time of its own motion or on the application of any party give such directions as it thinks proper to enable the parties to prepare for the hearing of an appeal or reference or to assist the Tribunal to determine the issues.

- (2) Such directions may in particular —
 - (a) provide for a particular matter to be dealt with as a preliminary issue and for a pre-hearing review to be held;
 - (b) provide for —
 - (i) the exchange between the parties of lists of documents held by them which are relevant to the appeal or reference,
 - (ii) the inspection by the parties of the documents so listed,
 - (iii) the exchange between the parties of statements of evidence, and
 - (iv) the provision by the parties to the Tribunal of statements or lists of agreed matters;
 - (c) require any party to send to the Tribunal and to the other party —

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- (i) statements of facts and statements of the evidence which will be adduced, including such statements provided in a modified or edited form;
 - (ii) a skeleton argument which summarises the submissions which will be made and cites the authorities which will be relied upon, identifying any particular passages to be relied upon;
 - (iii) a chronology of events;
 - (iv) any other particulars or supplementary statements which may reasonably be required for the determination of the appeal or reference;
 - (v) any document or other material which the Tribunal may require and which it is in the power of that party to deliver;
 - (vi) an estimate of the time which will be needed for any hearing; and
 - (vii) a list of the witnesses the party intends to call to give evidence at any hearing;
- (d) limit the length of oral submissions and the time allowed for the examination and cross-examination of witnesses; and
- (e) limit the number of expert witnesses to be heard on either side.
- (3) The Tribunal may, subject to any specific provisions of these Rules, specify time limits for steps to be taken in the proceedings and may extend any time limit.
- (4) Nothing in this rule may require the production of any document or other material which the party could not be compelled to produce on the trial of an action in the High Court.
- (5) It shall be a condition of the supply of any information or material provided under this rule that any recipient of that information or material may use it only for the purposes of the appeal or reference.
- (6) The power to give directions may be exercised in the absence of the parties.
- (7) Notice of any directions given under this rule shall be served on the parties, and the Tribunal may, on the application of any party, set aside or vary such directions.
- (8) In its application to appeals to which Part 3 applies —
- (a) this rule is subject to rule 40; and
 - (b) in relation to appeals under section 24(7) references to a "party" include the Chief Minister even though he may not be a party to the appeal.

4. Default of appearance at hearing

If, without furnishing the Tribunal with sufficient reason for his absence, a party fails to appear at a hearing, having been duly notified of the hearing, the Tribunal may, if that party is the appellant, dismiss the appeal or, in any case, hear and determine the appeal or reference, or any particular issue, in the party's absence and may make such order as to costs as it thinks fit.

5. Summoning of witnesses

(1) Subject to paragraph (2), the Tribunal may by summons require any person in the Island to attend as a witness at a hearing of an appeal or reference at such time and place as may be specified in the summons and, subject to rule 6(2) and (3), at the hearing to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the appeal or reference.

(2) No person shall be required to attend in obedience to a summons under paragraph (1) unless he has been given at least 7 days' notice of the hearing or, if less than 7 days, he has informed the Tribunal that he accepts such notice as he has been given.

(3) The Tribunal may upon the application of a person summoned under this rule set the summons aside.

(4) A person who has attended a hearing as a witness in obedience to a summons shall be entitled to such sum as the Tribunal considers reasonable in respect of his attendance at, and his travelling to and from, the hearing; and where the summons was issued at the request of a party such sum shall be paid or tendered to him by that party.

(5) This rule is subject to rule 40 in the case of appeals to which Part 3 applies

6. Evidence

(1) The Tribunal may receive in evidence any document or information even though such document or information would be inadmissible in a court of law.

(2) No person shall be compelled to give any evidence or produce any document which he could not be compelled to give or produce on the trial of an action in the High Court.

(3) The Tribunal may require oral evidence of a witness (including a party) to be given on oath or affirmation and for that purpose the chairman or the secretary shall have power to administer oaths or take affirmations.

7. Irregularities

(1) Any irregularity resulting from failure to comply with any provision of these Rules or of any direction of the Tribunal before the Tribunal has reached its decision shall not of itself render the proceedings void, but the Tribunal may, and shall if it considers that any person may have been prejudiced by that irregularity,

give such directions or take such steps as it thinks fit before reaching its decision to cure or waive the irregularity, whether by amendment of any document, the giving of notice or otherwise.

(2) Clerical mistakes in any document recording or certifying a direction, decision or determination of the Tribunal or chairman, or errors arising in such a document from an accidental slip or omission, may at any time be corrected by the chairman, by certificate signed by him.

8. Costs: general

(1) The Tribunal shall not make an order awarding costs against a party without first giving that party an opportunity of making representations against the making of the order.

(2) An order awarding costs against a party may be that the party or parties in question to pay to the other party or parties either a specified sum in respect of the costs incurred by that other party or parties in connection with the proceedings or the whole or part of such costs as taxed (if not otherwise agreed).

(3) Any costs required by an order to be taxed may be taxed in the High Court.

9. Notices etc.

(1) Any notice or other document required or authorised by these Rules to be served on or sent to any person or authority may be sent by post in a registered letter or by the recorded delivery service —

- (a) in the case of the Tribunal, to the secretary of the Tribunal;
- (b) in the case of an appellant or a respondent, to him at his address for service under these Rules;
- (c) in the case of the Chief Minister, to the Chief Secretary at Government Office;
- (d) in the case of the Supervisor, to him at his office;
- (e) in the case of an occupier within the provisions of rule 59, to him at the premises in question.

(2) An appellant or respondent may at any time by notice to the Tribunal change his address for service under these Rules.

PART 2

REFERENCES

10. Application etc.

- (1) This Part applies to references under section 20.

(2) In this Part, "party" means the Supervisor or the respondent, and references to a party include a person appointed under rule 20 to represent his interests.

11. Method of reference

(1) A reference must be made by a written notice of reference served on the Tribunal.

(2) The notice of reference shall —

(a) include a copy of the notification to which the reference relates;

(b) specify —

(i) the registrable particulars to which the reference relates,

(ii) the data protection principles which the Supervisor considers would be contravened by the processing of personal data in accordance with those particulars, and

(iii) the grounds for that opinion;

(c) state —

(i) the name and address of the respondent;

(iii) whether the Supervisor considers that he is likely to wish a hearing to be held or not; and

(iv) an address in the Island for service of notices and other documents on the Supervisor.

(4) A notice of reference may include a request for an early hearing of the reference and the reasons for that request.

12. Acknowledgement of notice of reference

(1) Upon receipt of a notice of reference, the secretary shall send an acknowledgement of the service of a notice of reference to the Supervisor and a copy of the notice to the respondent.

(2) A copy of the notice of reference sent under paragraph (1) shall be accompanied by a statement of the Tribunal's powers to award costs against the respondent under rule 26.

13. Reply by respondent

(1) The respondent shall, within 21 days of receipt of the copy notice of reference under rule 12, send to the Tribunal and the Supervisor a written reply acknowledging service upon him of the notice of reference, and stating —

(a) whether or not he intends to oppose the reference and, if so,

(b) the grounds upon which he relies in opposing the reference.

(2) Before the expiry of the period referred to in paragraph (1), the respondent may apply to the Tribunal for an extension of that period, showing cause why, by reason of special circumstances, it would be just and right to do so, and the Tribunal may grant such extension as it considers appropriate.

(3) Where the notice of reference has stated that the Supervisor is not likely to wish a hearing to be held, the respondent shall in his reply inform the Tribunal and the Supervisor whether he considers that a hearing is likely to be desirable.

(4) A reply under this rule may include a request for an early hearing of the reference and the reasons for that request.

14. Application for striking out

(1) Where the respondent is of the opinion that a reference cannot be entertained by the Tribunal, or that the notice of reference discloses no reasonable grounds on which a reference may be made, he may include in his reply under rule 13(1) a notice to that effect stating the grounds for such contention and applying for the reference to be struck out.

(2) An application under this rule may be heard as a preliminary issue or at the beginning of the hearing of the substantive reference.

15. Amendment and supplementary grounds

(1) With the leave of the Tribunal, the Supervisor may amend his notice of reference.

(2) Rule 12(1) applies to an amended notice of reference under paragraph (1) as it does to a notice of reference.

(3) Upon receipt of a copy of an amended notice of reference under rule 12(1), the respondent may amend his reply to the notice of reference, and must send the amended reply to the Tribunal and the Supervisor within 21 days of the date of that receipt.

(4) Rule 13(2) applies to the period referred to in paragraph (3).

(5) Without prejudice to paragraph (3), the respondent may, with the leave of the Tribunal, amend his reply to the notice of reference, and must send the amended reply to the Tribunal and the Supervisor.

16. Withdrawal of reference

(1) The Supervisor may at any time withdraw a reference by sending to the Tribunal a notice of withdrawal signed by him or on his behalf, and the secretary shall send a copy of that notice to the respondent.

(2) A notice of withdrawal shall if sent by post in the Island in accordance with rule 9(1) have effect on the date on which it is received for dispatch by the Isle of Man Post Office.

(3) Where a reference is withdrawn under this rule a fresh reference may not be made by the Supervisor in relation to the same notification except with the leave of the Tribunal.

17. Consolidation of references

(1) Subject to paragraph (2), where in the case of 2 or more references it appears to the Tribunal —

- (a) that some common question of law or fact arises in both or all of them, or
- (b) that for some other reason it is desirable to proceed with the references under this rule,

the Tribunal may order that the references be consolidated or heard together.

(2) The Tribunal shall not make an order under this rule without giving the parties an opportunity to show cause why such an order should not be made.

18. Power to determine without a hearing

(1) Where either —

- (a) the parties so agree in writing, or
- (b) it appears to the Tribunal that the issues raised on the reference have been determined on a previous reference made by the Supervisor on the basis of facts which did not materially differ from those to which the reference relates and the Tribunal has given the parties an opportunity of making representations to the effect that the reference ought not to be determined without a hearing,

the Tribunal may determine a reference, or any particular issue, without a hearing.

(2) Before determining any matter under this rule, the Tribunal may if it thinks fit direct any party to provide in writing further information about any matter relevant to the reference within such time as the Tribunal may allow.

19. Time and place of hearings

(1) Except where rule 18 applies, as soon as practicable after notice of reference has been given, and with due regard to the convenience of the parties and any request made under rule 11(4) or 13(4), the Tribunal shall appoint a time and place for a hearing of the reference.

(2) The secretary shall send to each party a notice informing him of the time and place of any hearing.

(3) The time notified under paragraph (1) shall not be earlier than 14 days after the date on which the notice is sent unless the parties agree otherwise.

(4) A notice to a party under this rule shall inform him of the effect of rule 4.

- (5) The Tribunal may —
 - (a) postpone the time appointed for any hearing;
 - (b) adjourn a hearing to such time as the Tribunal may determine; or
 - (c) alter the place appointed for any hearing;

and, if it exercises any of the powers, it shall notify each party previously notified of that hearing under this rule, and any person summoned under rule 5 to attend as a witness at that hearing, of the revised arrangements.

20. Representation at a hearing

At any hearing by the Tribunal a party may conduct his case himself or may appear and be represented by any person whom he may appoint for the purpose.

21. Hearings in public or in private

(1) All hearings by the Tribunal (including preliminary hearings) shall be in public unless, having regard to the desirability of safeguarding —

- (a) the privacy of data subjects or
- (b) commercially sensitive information,

the Tribunal directs that the hearing or any part of the hearing shall take place in private.

(2) Without prejudice to paragraph (1), the following persons, in addition to the parties, may attend a hearing even though it is in private —

- (a) the chairman or any deputy chairman or member of the Tribunal in his capacity as such, even though they do not constitute the Tribunal for the purpose of the hearing; and
- (b) any other person with the leave of the Tribunal and the consent of the parties present.

22. Conduct of proceedings at hearing

(1) Subject to rule 4, the Tribunal shall at the hearing of a reference give to each party an opportunity —

- (a) to address the Tribunal and to amplify orally written statements previously furnished under these Rules, to give evidence and to call witnesses, and to put questions to any person giving evidence before the Tribunal, and
- (b) to make representations on the evidence (if any) and on the subject matter of the reference generally but, where evidence is taken, such opportunity shall not be given before the completion of the taking of evidence.

(2) Except as provided by these Rules, the Tribunal shall conduct the proceedings in such manner as it considers appropriate in the circumstances for discharging its functions and shall so far as appears to it appropriate seek to avoid formality in its proceedings.

23. Preliminary and incidental matters

As regards matters preliminary or incidental to a reference the chairman may act for the Tribunal under rules 3 to 5, 13(2), 15 to 17 and 19(1) and (5)(a) and (c).

24. Burden of proof

In any proceedings before the Tribunal relating to a reference, it shall be for the Supervisor to satisfy the Tribunal that the processing in question would contravene any of the data protection principles.

25. Determination of reference

(1) As soon as practicable after the Tribunal has determined a reference, the chairman shall certify in writing that determination and sign and date the certificate.

(2) The certificate shall include —

- (a) any material finding of fact, and
- (b) the reasons for the decision.

(3) The secretary shall send a copy of the certificate to the parties.

(4) The Tribunal shall make arrangements for the publication of its determination but in doing so shall have regard to the desirability of safeguarding the privacy of data subjects and commercially sensitive information, and for that purpose may make any necessary amendments to the text of the certificate.

26. Costs

Subject to rule 8, in any reference, including one withdrawn under rule 16, the Tribunal may make an order awarding costs —

- (a) against the Supervisor and in favour of the respondent where it considers that the reference was manifestly unreasonable;
- (b) against the respondent and in favour of the Supervisor where it considers that the respondent's contention that the processing in question would not contravene any of the data protection principles was manifestly unreasonable;
- (c) where it considers that a party has been responsible for frivolous, vexatious, improper or unreasonable action, or for any failure to comply with a direction or any delay which with diligence could have been avoided, against that party and in favour of the other.

PART 3

NATIONAL SECURITY APPEALS

27. Application etc.

(1) This Part applies to appeals under section 24.

(2) Anything to be done by the Chief Minister under this Part may be signified under the hand of the Chief Secretary or any person authorised by the Chief Secretary to act on his behalf; and where anything purports to bear the signature of a person so authorised he shall be presumed, until the contrary is proved, to have been so authorised.

(3) In this Part "party " means the appellant or —

(a) in relation to an appeal under section 28(4), the Chief Minister, and

(b) in relation to an appeal under section 28(6), the respondent,

and references to a party or to any such party include a person appointed under rule 44 to represent his interests.

28. General duty of the Tribunal

(1) When exercising its functions under this Part, the Tribunal shall secure that information is not disclosed contrary to the interests of national security.

(2) For the purposes of paragraph (2), but without prejudice to the application of that paragraph, the disclosure of information is to be regarded as contrary to the interests of national security if it would indicate the existence or otherwise of any material.

29. Method of appealing

(1) An appeal must be brought by a written notice of appeal served on the Tribunal.

(2) The notice of appeal shall —

(a) identify the disputed certification; and

(b) state —

(i) the name and address of the appellant;

(ii) the grounds of the appeal; and

(iii) an address in the Island or the United Kingdom for service of notices and other documents on the appellant.

(3) In the case of an appeal under section 24(7), the notice of appeal shall also state —

- (a) the date on which the respondent made the claim constituting the disputed certification;
- (b) an address in the Island or the United Kingdom for service of notices and other documents on the respondent; and
- (c) where applicable, the special circumstances which the appellant considers justify the Tribunal's accepting jurisdiction under rule 30(3).

30. Time limit for appealing

(1) In the case of an appeal under section 24(4), a notice of appeal may be served on the Tribunal at any time during the currency of the disputed certification to which it relates.

(2) In the case of an appeal under section 24(7), subject to paragraph (3), a notice of appeal must be served on the Tribunal within 28 days of the date on which the claim constituting the disputed certification was made.

(3) The Tribunal may accept a notice of appeal served after the expiry of the period permitted by paragraph (2) if it is of the opinion that, by reason of special circumstances, it is just and right to do so.

(4) A notice of appeal shall if sent by post in accordance with rule 9(1) be treated as having been served on the date on which it is received for dispatch by the Isle of Man Post Office.

31. Acknowledgment of notice of appeal and notification by the Tribunal

(1) Upon receipt of a notice of appeal, the secretary shall send —

- (a) an acknowledgment of the service of a notice of appeal to the appellant, and
- (b) a copy of the notice of appeal to —
 - (i) the Chief Minister,
 - (ii) the Supervisor, and
 - (iii) in the case of an appeal under section 24(7), the respondent.

(2) An acknowledgment of service under paragraph (1)(a) shall be accompanied by a statement of the Tribunal's powers to award costs against the appellant under rule 49.

32. Notice in reply

(1) No later than 42 days after receipt of a copy of a notice of appeal under rule 31(1)(b), the Chief Minister shall send to the Tribunal —

- (a) a copy of the certificate to which the appeal relates, and
 - (b) a written notice in accordance with paragraph (2).
- (2) The notice shall state —

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- (a) with regard to an appeal under section 24(4), whether or not the Chief Minister intends to oppose the appeal and, if so —
 - (i) a summary of the circumstances relating to the issue of the certificate, and the reasons for the issue of the certificate;
 - (ii) the grounds upon which he relies in opposing the appeal; and
 - (iii) a statement of the evidence upon which he relies in support of those grounds; and
 - (b) with regard to an appeal under section 24(7), whether or not the Chief Minister wishes to make representations in relation to the appeal and, if so —
 - (i) the extent to which he intends to support or oppose the appeal;
 - (ii) the grounds upon which he relies in supporting or opposing the appeal; and
 - (iii) a statement of the evidence upon which he relies in support of those grounds.
- (3) Except where the Tribunal proposes to determine the appeal in accordance with rule 36, and subject to rule 37, the secretary shall send a copy of the notice to —
- (a) the appellant,
 - (b) the Supervisor, and
 - (c) in the case of an appeal under section 24(7), the respondent.

33. Reply by respondent

(1) A respondent shall, within 42 days of the date on which he receives a copy of a notice of appeal under rule 31(1)(b), send to the Tribunal a written reply acknowledging service upon him of the notice of appeal, and stating —

- (a) whether or not he intends to oppose the appeal and, if so,
- (b) the grounds upon which he relies in opposing the appeal.

(2) Before the expiry of the period of 42 days referred to in paragraph (1), the respondent may apply to the Tribunal for an extension of that period, showing cause why, by reason of special circumstances, it would be just and right to do so, and the Tribunal may grant such extension as it considers appropriate.

(3) Except where the Tribunal proposes to determine the appeal in accordance with rule 36, the secretary shall send a copy of the reply to —

- (a) the Chief Minister; and
- (b) subject to paragraph (4) and rule 37, the appellant and the Supervisor.

(4) No copy may be sent under paragraph (3)(b) before the period of 42 days referred to in 12(2)(b) has expired, otherwise than in accordance with rule 37, unless the Chief Minister has indicated that he does not object.

34. Amendment and supplementary grounds

(1) With the leave of the Tribunal, the appellant may amend his notice of appeal or deliver supplementary grounds of appeal.

(2) Rule 31(1) and rule 36(1)(a) apply to an amended notice of appeal and to supplementary grounds of appeal provided under paragraph (1) as they do to a notice of appeal.

(3) Upon receipt of a copy of an amended notice of appeal or amended grounds of appeal under rule 31(1), the Chief Minister may amend his notice in reply and, in the case of an appeal under section 24(7), the respondent may amend his reply to the notice of appeal.

(4) An amended notice or reply under paragraph (3) must be sent to the Tribunal within 28 days of the date on which the copy referred to in that paragraph is received.

(5) Without prejudice to paragraph (3), and with the leave of the Tribunal—

(a) the Chief Minister may amend a notice in reply, and

(b) the respondent may amend a reply to the notice of appeal.

(6) Rule 32(3) and rules 36(1)(b) and 37(1)(a) apply to an amended notice in reply by the Chief Minister provided under paragraph (3) or (5) as they do to a notice in reply.

(7) Rule 31(3) and (4) and rules 36(1)(c) and 37(1)(b) apply to an amended reply by the respondent provided under paragraph (3) or (5) as they do to a reply.

35. Application for striking out

(1) Where the Chief Minister or, in the case of an appeal under section 24(7), the respondent is of the opinion that an appeal does not lie to, or cannot be entertained by, the Tribunal, or that the notice of appeal discloses no reasonable grounds of appeal, the Chief Minister or the respondent, as the case may be, may include in his notice under rule 32 or his reply under rule 33 a notice to that effect stating the grounds for such contention and applying for the appeal to be struck out.

(2) An application under this rule may be heard as a preliminary issue or at the beginning of the hearing of the substantive appeal.

36. Summary disposal of appeals

(1) Where, having considered —

(a) the notice of appeal,

(b) the Chief Minister's notice in reply and,

(c) in the case of an appeal under section 24(7), the respondent's reply,

the Tribunal is of the opinion that the appeal is of such a nature that it can properly be determined by dismissing it forthwith, it may, subject to the provisions of this rule, so determine the appeal.

(2) Where the Tribunal proposes to determine an appeal under paragraph (1), it must first notify the appellant and the Chief Minister of the proposal.

(3) A notification to the appellant under paragraph (2) must contain particulars of the appellant's entitlements set out in paragraph (4).

(4) An appellant notified in accordance with paragraph (2) is entitled, within such time as the Tribunal may reasonably allow —

- (a) to make written representations, and
- (b) to request the Tribunal to hear oral representations,

against the proposal to determine the appeal under paragraph (1).

(5) Where an appellant requests a hearing under paragraph (4)(b), the Tribunal shall, as soon as practicable and with due regard to the convenience of the appellant, appoint a time and place for a hearing accordingly.

(6) The secretary shall send to the appellant a notice informing him of —

- (a) the time and place of any hearing under paragraph (5), which, unless the appellant otherwise agrees, shall not be earlier than 14 days after the date on which the notice is sent, and
- (b) the effect of rule 4.

(7) The Tribunal must as soon as practicable notify the appellant and the Chief Minister if, having given a notification under paragraph (2), it ceases to propose to determine the appeal under paragraph (1).

37. Chief Minister's objection to disclosure

(1) Where the Chief Minister objects, on grounds of the need to secure that information is not disclosed contrary to the interests of national security, to the disclosure of —

- (a) the Chief Minister's notice in reply to the appellant, the Supervisor or, in the case of an appeal under section 24(7), the respondent; or
- (b) the reply of the respondent to the appellant or the Supervisor,

the Chief Minister may send a notice of objection to the Tribunal.

(2) A notice of objection under paragraph (1) must be sent —

- (a) where paragraph (1)(a) applies, with the notice in reply; and
- (b) where paragraph (1)(b) applies, within 42 days of the date on which he receives the copy mentioned in rule 33(3).

(3) A notice of objection under paragraph (1) shall —

- (a) state the reasons for the objection; and

- (b) where paragraph (1)(a) applies, if and to the extent it is possible to do so without disclosing information contrary to the interests of national security, be accompanied by a version of the Chief Minister's notice in a form which can be shown to the appellant, the Supervisor or, as the case may be, the respondent.

(4) Where the Chief Minister sends a notice of objection under paragraph (1), the Tribunal must not disclose the material in question otherwise than in accordance with rule 41.

38. Withdrawal of appeal

(1) The appellant may at any time withdraw his appeal by sending to the Tribunal a notice of withdrawal signed by him or on his behalf, and the secretary shall send a copy of that notice to —

- (a) the Chief Minister,
- (b) the Supervisor, and
- (c) in the case of an appeal under section 24(7), the respondent.

(2) A notice of withdrawal shall if sent by post in the Island in accordance with rule 9(1) have effect on the date on which it is received for dispatch by the Isle of Man Post Office.

(3) Where an appeal is withdrawn under this rule a fresh appeal may not be brought by the same appellant in relation to the same disputed certification except with the leave of the Tribunal.

39. Consolidation of appeals

(1) Subject to paragraph (2), where in the case of 2 or more appeals to which this Part applies it appears to the Tribunal —

- (a) that some common question of law or fact arises in both or all of them,
or
- (b) that for some other reason it is desirable to proceed with the appeals under this rule,

the Tribunal may order that the appeals be consolidated or heard together.

(2) The Tribunal shall not make an order under this rule without giving the parties and the Chief Minister an opportunity to show cause why such an order should not be made.

40. Applications by Chief Minister

- (1) This rule applies in any case where the Tribunal proposes to —
 - (a) give or vary any direction under rule 3 or rule 42(2),
 - (b) issue a summons under rule 5, or

- (c) certify or publish a determination under rule 48.
- (2) Before the Tribunal proceeds as proposed in any case to which this rule applies, it must first notify the Chief Minister of the proposal.
- (3) If the Chief Minister considers that proceeding as proposed by the Tribunal would cause information to be disclosed contrary to the interests of national security, he may make an application to the Tribunal requesting it to reconsider the proposal or reconsider it to any extent.
- (4) An application by the Chief Minister under paragraph (3) must be made within 14 days of receipt of notification under paragraph (2), and the Tribunal must not proceed as proposed in any case to which this rule applies before that period has expired, otherwise than in accordance with rule 41, unless the Chief Minister has indicated that he does not object.
- (5) Where the Chief Minister makes an application under this rule, the Tribunal must not proceed as proposed otherwise than in accordance with rule 41.

41. Determinations on Chief Minister's objections and applications

- (1) Except where rule 36 applies, the Tribunal shall determine whether to uphold any objection of the Chief Minister under rule 37, and any application under rule 40, in accordance with this rule.
- (2) Subject to paragraph (3), proceedings under this rule shall take place in the absence of the parties.
- (3) The Chief Minister (or a person authorised to act on his behalf) may attend any proceedings under this rule, whether or not he is a party to the appeal in question.
- (4) An objection under rule 37 must be considered under this rule as a preliminary issue, and an application under rule 40 may be considered as a preliminary issue or at the hearing of the substantive appeal.
- (5) Where, in the case of an objection under rule 37, the Tribunal is minded to overrule the Chief Minister's objection, or to require him to provide a version of his notice in a form other than that in which it was provided under rule 37(3)(b), the Tribunal must invite the Chief Minister to make oral representations.
- (6) Where the Tribunal under paragraph (5) overrules an objection by the Chief Minister under rule 37, or requires him to provide a version of his notice in a form other than that in which it was provided under rule 37(3)(b), the Tribunal shall not disclose, and the Chief Minister shall not be required to disclose, any material which was the subject of the unsuccessful objection if he chooses not to rely upon it in opposing the appeal.
- (7) Where, in the case of an objection under rule 37, the Tribunal upholds the Chief Minister's objection and either —
 - (a) approves the version of the notice provided under rule 37(3)(b) or
 - (b) requires the Chief Minister to provide a version of the notice in a form other than that in which it was provided under rule 37(3)(b),rule 32(3) applies to that version of the notice.

42. Power to determine without a hearing

- (1) Without prejudice to rule 36, where either —
 - (a) the parties so agree in writing, or
 - (b) it appears to the Tribunal that the issues raised on the appeal have been determined on a previous appeal brought by the appellant on the basis of facts which did not materially differ from those to which the appeal relates and the Tribunal has given the parties an opportunity of making representations to the effect that the appeal ought not to be determined without a hearing,

the Tribunal may determine an appeal, or any particular issue, without a hearing.

- (2) Before determining any matter under this rule, the Tribunal may, subject to rule 40, if it thinks fit direct any party to provide in writing further information about any matter relevant to the appeal within such time as the Tribunal may allow.

43. Time and place of hearings

- (1) Except where rule 36 or 42 applies, as soon as practicable after notice of appeal has been given, and with due regard to the convenience of the parties, the Tribunal shall appoint a time and place for a hearing of the appeal.

- (2) Except in relation to a hearing under rule 36(5), the secretary shall send to each party, the Supervisor and the Chief Minister a notice informing him of the time and place of any hearing, which, unless the parties otherwise agree, shall not be earlier than 14 days after the date on which the notice is sent.

- (3) A notice to a party under this rule shall inform him of the effect of rule 4.

- (4) The Tribunal may —
 - (a) postpone the time appointed for any hearing;
 - (b) adjourn a hearing to such time as the Tribunal may determine; or
 - (c) alter the place appointed for any hearing;

and, if it exercises any of the powers, it shall notify each person previously notified of that hearing under this rule or rule 36(6), and any person summoned under rule 5 to attend as a witness at that hearing, of the revised arrangements.

44. Representation at a hearing

- (1) At any hearing by the Tribunal, other than a hearing under rule 36 —
 - (a) a party may, subject to rules 41(2) and 45(3), conduct his case himself or may appear and be represented by any person whom he may appoint for the purpose, and

(b) the Chief Minister may appear and be represented by the Attorney General or any other person whom he may appoint for the purpose.

(2) At any hearing by the Tribunal under rule 36(5), the appellant may conduct his case himself or may appear and be represented by any person whom he may appoint for the purpose.

45. Hearings to be in private

(1) All hearings by the Tribunal (including preliminary hearings) shall be in private unless the Tribunal, with the consent of the parties and the Chief Minister, directs that the hearing or any part of the hearing shall take place in public.

(2) Where the Tribunal sits in private it may, with the consent of the parties and the Chief Minister, admit to a hearing such persons on such terms and conditions as it considers appropriate.

(3) Where the Tribunal considers it necessary for any party other than the Chief Minister to be excluded from proceedings or any part of them in order to secure that information is not disclosed contrary to the interests of national security, it must

(a) direct accordingly,

(b) inform the person excluded of its reasons, to the extent that it is possible to do so without disclosing information contrary to the interests of national security, and record those reasons in writing, and

(c) inform the Chief Minister.

(4) The Chief Minister, or a person authorised to act on his behalf, may attend any hearing, other than a hearing under rule 36, even though it is in private.

46. Conduct of proceedings at hearing

(1) Subject to rules 4 and 45(3), the Tribunal shall at the hearing of an appeal give to each party and the Chief Minister an opportunity —

(a) to address the Tribunal and to amplify orally written statements previously furnished under these Rules, to give evidence and to call witnesses, and to put questions to any person giving evidence before the Tribunal, and

(b) to make representations on the evidence (if any) and on the subject matter of the appeal generally but, where evidence is taken, such opportunity shall not be given before the completion of the taking of evidence.

(2) Except as provided by these Rules, the Tribunal shall conduct the proceedings in such manner as it considers appropriate in the circumstances for discharging its functions and shall so far as appears to it appropriate seek to avoid formality in its proceedings.

47. Preliminary and incidental matters

As regards matters preliminary or incidental to an appeal the chairman may act for the Tribunal under rules 3 to 5, 30(3), 33(2), 34, 38, 39 and 43(1) and (4)(a) and (c).

48. Determination of appeal

(1) As soon as practicable after the Tribunal has determined an appeal, the chairman shall certify in writing that determination and sign and date the certificate.

(2) If and to the extent that it is possible to do so without disclosing information contrary to the interests of national security, and subject to rule 40, the certificate shall include —

(a) any material finding of fact, and

(b) the reasons for the decision.

(3) The secretary shall send a copy of the certificate to —

(a) the parties,

(b) the Chief Minister, and

(c) the Supervisor.

(4) Subject to rule 40, the Tribunal shall make arrangements for the publication of its determination but in doing so shall have regard to —

(a) the desirability of safeguarding the privacy of data subjects and commercially sensitive information, and

(b) the need to secure that information is not disclosed contrary to the interests of national security,

and for those purposes may make any necessary amendments to the text of the certificate.

(5) For the purposes of this rule (but without prejudice to its generality), the disclosure of information is to be regarded as contrary to the interests of national security if it would indicate the existence or otherwise of any material.

49. Costs

Subject to rule 8, in any appeal, including one withdrawn under rule 38, the Tribunal may make an order awarding costs —

(a) in the case of an appeal under section 24(4) —

(i) against the appellant and in favour of the Chief Minister where it considers that the appeal was manifestly unreasonable;

(ii) against the Chief Minister and in favour of the appellant where it allows the appeal and quashes the disputed certification, or does so to any extent;

(b) in the case of an appeal under section 24(7) —

- (i) against the appellant and in favour of any other party where it dismisses the appeal or dismisses it to any extent;
- (ii) in favour of the appellant and against any other party where it allows the appeal or allows it to any extent; and
- (c) where it considers that a party has been responsible for frivolous, vexatious, improper or unreasonable action, or for any failure to comply with a direction or any delay which with diligence could have been avoided, against that party and in favour of the other.

PART 4

ENFORCEMENT APPEALS

50. Application etc.

- (1) This Part applies to appeals under section 44.
- (2) In this Part, "party" means the appellant or respondent or the Supervisor, and references to a party (including references in rule 59) include a person appointed under rule 62 to represent his interests.

51. Method of appealing

- (1) An appeal must be brought by a written notice of appeal served on the Tribunal.
- (2) The notice of appeal shall —
 - (a) identify the disputed decision and the date on which the notice relating to such decision was served on or given to the appellant; and
 - (b) state —
 - (i) the name and address of the appellant;
 - (ii) the grounds of the appeal;
 - (iii) whether the appellant considers that he is likely to wish a hearing to be held or not;
 - (iv) where applicable, the special circumstances which the appellant considers justify the Tribunal's accepting jurisdiction under rule 52(2); and
 - (v) an address in the Island or the United Kingdom for service of notices and other documents on the appellant.
- (3) Where an appeal is brought under section 44(1) in relation to an information notice, the notice of appeal shall also contain a statement of any representations the appellant wishes to make as to why it might be necessary in the interests of justice for the appeal to be heard and determined otherwise than by the chairman sitting alone as provided by rule 63(2).

(4) A notice of appeal may include a request for an early hearing of the appeal and the reasons for that request.

52. Time limit for appealing

(1) Subject to paragraph (2), a notice of appeal must be served on the Tribunal within 28 days of the date on which the notice relating to the disputed decision was served on or given to the appellant.

(2) The Tribunal may accept a notice of appeal served after the expiry of the period permitted by paragraph (1) if it is of the opinion that, by reason of special circumstances, it is just and right to do so.

(3) A notice of appeal shall if sent by post in the Island in accordance with rule 9(1) be treated as having been served on the date on which it is received for dispatch by the Isle of Man Post Office.

53. Acknowledgement of notice of appeal and notification to the Supervisor

(1) Upon receipt of a notice of appeal, the secretary shall send —

- (a) an acknowledgement of the service of a notice of appeal to the appellant, and
- (b) subject to paragraph (3), a copy of the notice of appeal to the Supervisor.

(2) An acknowledgement of service under paragraph (1)(a) shall be accompanied by a statement of the Tribunal's powers to award costs against the appellant under rule 69.

(3) Paragraph (1)(b) does not apply to a notice of appeal relating to an appeal under section 48(3), but in such a case the secretary shall send a copy of the notice of appeal to the Supervisor if the Tribunal is of the opinion that the interests of justice require the Supervisor to assist it by giving evidence or being heard on any matter relating to the appeal.

54. Reply by Supervisor

(1) The Supervisor shall take the steps specified in paragraph (2) —

- (a) where he receives a copy of a notice of appeal under rule 52(1)(b), within 21 days of the date of that receipt, and
- (b) where he receives a copy of a notice of appeal under rule 52(3)(a), within such time, not exceeding 21 days from the date of that receipt, as the Tribunal may allow.

(2) The steps mentioned in paragraph (1) are that the Supervisor must —

- (a) send to the Tribunal a copy of the notice relating to the disputed decision, and

- (b) send to the Tribunal and the appellant a written reply acknowledging service upon him of the notice of appeal, and stating —
 - (i) whether or not he intends to oppose the appeal and, if so,
 - (ii) the grounds upon which he relies in opposing the appeal.

(3) Before the expiry of the relevant period referred to in paragraph (1), the Supervisor may apply to the Tribunal for an extension of that period, showing cause why, by reason of special circumstances, it would be just and right to do so, and the Tribunal may grant such extension as it considers appropriate.

(4) Where the appellant's notice of appeal has stated that he is not likely to wish a hearing to be held, the Supervisor shall in his reply inform the Tribunal and the appellant whether he considers that a hearing is likely to be desirable.

(5) Where an appeal is brought under section 44(1) in relation to an information notice, the Supervisor may include in his reply a statement of representations as to why it might be necessary in the interests of justice for the appeal to be heard and determined otherwise than by the chairman sitting alone as provided by rule 63(2).

(6) A reply under this rule may include a request for an early hearing of the appeal and the reasons for that request.

55. Application for striking out

(1) Subject to paragraph (3), where the Supervisor is of the opinion that an appeal does not lie to, or cannot be entertained by, the Tribunal, or that the notice of appeal discloses no reasonable grounds of appeal, he may include in his reply under rule 53(2) a notice to that effect stating the grounds for such contention and applying for the appeal to be struck out.

(2) An application under this rule may be heard as a preliminary issue or at the beginning of the hearing of the substantive appeal.

- (3) This rule does not apply in the case of an appeal under section 44(3).

56. Amendment and supplementary grounds

(1) With the leave of the Tribunal, the appellant may amend his notice of appeal or deliver supplementary grounds of appeal.

(2) Rule 53(1) and (3) applies to an amended notice of appeal and to supplementary grounds of appeal provided under paragraph (1) as they do to a notice of appeal.

(3) Upon receipt of a copy of an amended notice of appeal or amended grounds of appeal under rule 53(1)(b) or (3), the Supervisor may amend his reply to the notice of appeal, and must send the amended reply to the Tribunal and the appellant —

- (a) where he receives a copy of a notice of appeal under rule 53(1)(b), within 21 days of the date of that receipt, and

- (b) where he receives a copy of a notice of appeal under rule 53(3), within such time, not exceeding 21 days from the date of that receipt, as the Tribunal may allow.
- (4) Rule 54(3) applies to the periods referred to in paragraph (3).
- (5) Without prejudice to paragraph (3), the Supervisor may, with the leave of the Tribunal, amend his reply to the notice of appeal, and must send the amended reply to the Tribunal and the appellant.

57. Withdrawal of appeal

- (1) The appellant may at any time withdraw his appeal by sending to the Tribunal a notice of withdrawal signed by him or on his behalf, and the secretary shall send a copy of that notice to the Supervisor.
- (2) A notice of withdrawal shall if sent by post in the Island in accordance with rule 9(1) have effect on the date on which it is received for dispatch by the Isle of Man Post Office.
- (3) Where an appeal is withdrawn under this rule a fresh appeal may not be brought by the appellant in relation to the same disputed decision except with the leave of the Tribunal.

58. Consolidation of appeals

- (1) Subject to paragraph (2), where in the case of 2 or more appeals to which these Rules apply it appears to the Tribunal —
 - (a) that some common question of law or fact arises in both or all of them, or
 - (b) that for some other reason it is desirable to proceed with the appeals under this rule,

the Tribunal may order that the appeals be consolidated or heard together.

- (2) The Tribunal shall not make an order under this rule without giving the parties an opportunity to show cause why such an order should not be made.

59. Power to require entry of premises for testing of equipment or material

- (1) Subject to paragraph (8), the Tribunal may, for the purpose of determining an appeal, make an order requiring the occupier of any premises ("the occupier") to permit the Tribunal to enter those premises at a specified time and inspect, examine, operate or test any equipment on those premises used or intended to be used in connection with the processing of personal data, and to inspect, examine or test any documents or other material on those premises connected with the processing of personal data.

(2) An order under paragraph (1) shall also require the occupier to permit the Tribunal to be accompanied by —

- (a) the parties, and

- (b) such number of the officers or members of staff provided to the Tribunal under paragraph 7 of Schedule 5 as it considers necessary.
- (3) The Tribunal shall serve a copy of the order on the occupier and the parties.
- (4) The time specified in the order shall not be earlier than 7 days after the date of service of the copy.
- (5) The Tribunal may upon the application of the occupier set the order aside.
- (6) Subject to paragraph (4), the Tribunal may upon the application of any person mentioned in paragraph (3) alter the time specified in the order without being obliged to serve further copies under that paragraph, but shall notify the other persons so mentioned of the revised time.
- (7) This rule also applies where the occupier is a party to the appeal.
- (8) Documents or other material which the appellant could not be compelled to produce on the trial of an action in the High Court shall be immune from inspection, examination or testing under this rule.

60. Power to determine without a hearing

- (1) Where either —
 - (a) the parties so agree in writing, or
 - (b) it appears to the Tribunal that the issues raised on the appeal have been determined on a previous appeal brought by the appellant on the basis of facts which did not materially differ from those to which the appeal relates and the Tribunal has given the parties an opportunity of making representations to the effect that the appeal ought not to be determined without a hearing,

the Tribunal may determine an appeal, or any particular issue, without a hearing.

- (2) Before determining any matter under this rule, the Tribunal may if it thinks fit direct any party to provide in writing further information about any matter relevant to the appeal within such time as the Tribunal may allow.

61. Time and place of hearings

- (1) Except where rule 60 applies, as soon as practicable after notice of appeal has been given, and with due regard to the convenience of the parties and any request made under rule 51(4) or 54(6) above, the Tribunal shall appoint a time and place for a hearing of the appeal.

- (2) The secretary shall send to each party a notice informing him of the time and place of any hearing.

- (3) The reference to a "party" in paragraph (2) does not include the Supervisor in the case of an appeal under section 44(3) other than a case to which rule 53(3) applies.

(4) The time notified under paragraph (1) shall not be earlier than 14 days after the date on which the notice is sent unless —

- (a) the parties agree otherwise, or
- (b) the appellant agrees otherwise, and the hearing relates to an appeal under section 44(3).

(5) A notice to a party under this rule shall inform him of the effect of rule 4.

(6) The Tribunal may —

- (a) postpone the time appointed for any hearing;
- (b) adjourn a hearing to such time as the Tribunal may determine; or
- (c) alter the place appointed for any hearing;

and, if it exercises any of the powers, it shall notify each party previously notified of that hearing under this rule, and any person summoned under rule 5 to attend as a witness at that hearing, of the revised arrangements.

62. Representation at a hearing

(1) At any hearing by the Tribunal a party may conduct his case himself or may appear and be represented by any person whom he may appoint for the purpose.

(2) In this rule, references to a "party" do not include the Supervisor in the case of an appeal under section 44(3) other than a case to which rule 53(3) applies.

63. Hearings and determinations in the case of appeals against an information notice

(1) This rule applies to any appeal under section 44(1) in respect of an information notice.

(2) Subject to paragraph (3), any hearing of or relating to an appeal to which this rule applies shall be by the chairman sitting alone, and any appeal or issue relating to an appeal to which this rule applies shall be determined by the chairman sitting alone.

(3) Paragraph (2) does not apply where it appears to the chairman that a hearing or determination by the Tribunal constituted in accordance with paragraph 3 of Schedule 6 is necessary in the interests of justice, taking into account any representations made under rule 51(3) or 54(5).

64. Hearings in public or in private

(1) All hearings by the Tribunal (including preliminary hearings) shall be in public unless, having regard to the desirability of safeguarding —

- (a) the privacy of data subjects or
- (b) commercially sensitive information,

the Tribunal directs that the hearing or any part of the hearing shall take place in private.

(2) Without prejudice to paragraph (1), the following persons, in addition to the parties, may attend a hearing even though it is in private —

- (a) the chairman or any deputy chairman or member of the Tribunal in his capacity as such, even though they do not constitute the Tribunal for the purpose of the hearing; and
- (b) any other person with the leave of the Tribunal and the consent of the parties present.

65. Conduct of proceedings at hearing

(1) Subject to rule 4, the Tribunal shall at the hearing of an appeal give to each party an opportunity —

- (a) to address the Tribunal and to amplify orally written statements previously furnished under these Rules, to give evidence and to call witnesses, and to put questions to any person giving evidence before the Tribunal, and
- (b) to make representations on the evidence (if any) and on the subject matter of the appeal generally but, where evidence is taken, such opportunity shall not be given before the completion of the taking of evidence.

(2) Subject to paragraph (3), in this rule, references to a "party" do not include the Supervisor in the case of an appeal under section 44(3).

(3) In a case to which rule 53(3) applies, the Tribunal shall give the Supervisor the opportunity referred to in paragraph (1) to the extent that it is of the opinion that the interests of justice require the Supervisor to assist it by giving evidence or being heard on any matter relating to the appeal.

(4) Except as provided by these Rules, the Tribunal shall conduct the proceedings in such manner as it considers appropriate in the circumstances for discharging its functions and shall so far as appears to it appropriate seek to avoid formality in its proceedings.

66. Preliminary and incidental matters

As regards matters preliminary or incidental to an appeal the chairman may act for the Tribunal under rules 3 to 5, 52(2), 54(1) and (3), 56 to 59, and 61(1) and (6)(a) and (c).

67. Burden of proof

In any proceedings before the Tribunal relating to an appeal to which this Part applies, other than an appeal under section 44(3), it shall be for the Supervisor to satisfy the Tribunal that the disputed decision should be upheld.

68. Determination of appeal

(1) As soon as practicable after the Tribunal has determined an appeal, the chairman shall certify in writing that determination and sign and date the certificate.

(2) The certificate shall include —

(a) any material finding of fact, and

(b) the reasons for the decision.

(3) The secretary shall send a copy of the certificate to the parties.

(4) The Tribunal shall make arrangements for the publication of its determination but in doing so shall have regard to the desirability of safeguarding the privacy of data subjects and commercially sensitive information, and for that purpose may make any necessary amendments to the text of the certificate.

69. Costs

Subject to rule 8, in any appeal before the Tribunal, including one withdrawn under rule 57, the Tribunal may make an order awarding costs —

(a) against the appellant and in favour of the Supervisor where it considers that the appeal was manifestly unreasonable;

(b) against the Supervisor and in favour of the appellant where it considers that the disputed decision was manifestly unreasonable;

(c) where it considers that a party has been responsible for frivolous, vexatious, improper or unreasonable action, or for any failure to comply with a direction or any delay which with diligence could have been avoided, against that party and in favour of the other.

MADE *30th January* 2003

May Williams

Chief Secretary

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules set out the procedures of the Isle of Man Data Protection Tribunal in proceedings under the Data Protection Act 2002. Part 1 applies generally. Part 2 deals with references by the Isle of Man Data Protection Supervisor under section 20 of the Act where a notification under section 16 by a data controller is thought to indicate that the data protection principles will be contravened. Part 3 deals with appeals under section 24 against a certificate by the Chief Minister that exemption from those principles or certain provisions of the Act is necessary in the interests of national security, and against a claim by a data controller that such a certificate applies to particular data. Part 4 deals with appeals under section 44 relating to enforcement notices and information notices served on data controllers.