

STATES OF JERSEY



DRAFT DATA PROTECTION (APPEALS) (JERSEY) REGULATIONS 200-

**Lodged au Greffe on 12th September 2006
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

DRAFT DATA PROTECTION (APPEALS) (JERSEY) REGULATIONS 200-

REPORT

These Regulations refer to the powers of the Commissioner to serve an enforcement notice, an information notice and a special information notice in relation to regulatory powers contained within the Law and provide for the exercise of rights of appeal and the practice and procedure of the Tribunal.

They set out the timescales for appeals and the administration of appeals by the Commissioner and the Tribunal.

These Regulations contribute to the implementation of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

There are no financial or manpower implications for the States arising from these Draft Regulations.

Explanatory Note

Under Part 5 of the Data Protection (Jersey) Law 2005, the Commissioner may serve on a person an enforcement notice, an information notice or a special information notice.

An enforcement notice requires a person who is alleged to have contravened a data protection principle to take or refrain from taking action specified in the notice.

An information notice requires a person to supply to the Commissioner information relating to compliance with the Law in processing personal data, or in complying with data principles.

A special information notice requires a person to supply to the Commissioner information relating to compliance with the Law in processing personal data for journalistic, artistic or literary purposes.

Article 48 of the Law gives a person on whom an enforcement notice, an information notice or a special information notice is served a right of appeal to the Data Protection Tribunal in respect of the notice.

These Regulations (which should be read with Schedule 6 to the Law) provide for the exercise of rights of appeal under Article 48, and the practice and procedure of the Tribunal.

They are arranged in the following way –

Regulation 1 defines expressions used in the Regulations.

Regulation 2 provides that they apply to appeals under Article 48 of the Law.

Regulation 3 prescribes how appeals may be brought. They are commenced by notice in writing. The notice must set out the grounds of appeal.

Regulation 4 stipulates a time limit of 28 days for bringing an appeal. However, the Tribunal may grant an extension of time.

Regulation 5 provides that when a notice of appeal is delivered to the Tribunal, it shall ordinarily send a copy to the Commissioner.

Regulation 6 requires the Commissioner to acknowledge receipt of the copy of the notice, to indicate whether the appeal is opposed and to file any reply. The time limit for doing these things is 21 days, but it may be extended by the Tribunal.

Regulation 7 permits the Commissioner to apply to strike out an appeal.

Regulation 8 provides for a party to amend his or her notice of appeal or reply.

Regulation 9 permits a person to withdraw his or her appeal.

Regulation 10 enables the Tribunal to give pre-hearing directions for the despatch of an appeal.

Regulation 11 empowers the Tribunal to summon witnesses, and to require them to produce documents. It also enables it to administer oaths and affirmations to witnesses.

Regulation 12 deals with cases in which appeals may be determined without a hearing.

Regulation 13 provides that, ordinarily, appeals in respect of information notices will be dealt with by the president of the Tribunal sitting alone (instead of the usual panel of 3 members).

Regulation 14 provides that a party to any appeal may appear in person or by any representative chosen by him.

Regulation 15 provides for the determination of an appeal where a party is in default of appearance.

Regulation 16 provides that proceedings on an appeal must be held in public. However, the Tribunal has a discretion to direct that any of the proceedings shall be heard privately, to the extent that it considers it desirable to safeguard the privacy of data protection subjects or commercially sensitive information, or to be in the public interest.

Regulation 17 places on the Commissioner the onus of showing that an appeal should be dismissed.

Regulation 18 provides for the decision of the Tribunal on an appeal (including its determination of any facts and its reasons) to be certified, given to the parties and published. However, the Tribunal may edit the published decision on the same grounds as it may sit *in camera*.

Regulation 19 enables the Tribunal to make orders for costs.

Regulation 20 specifies how documents may be delivered to the Tribunal and served on parties.

Regulation 21 provides for the citation of the Regulations, and for them to come into force on 1st November 2006.



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Arrangement

Regulation

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Jersey

DRAFT DATA PROTECTION (APPEALS) (JERSEY) REGULATIONS 200-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Articles 28, 48 and 67 of the Data Protection (Jersey) Law 2005^[1], have made the following Regulations –

1 Interpretation

In these Regulations –

“the Law” means the Data Protection (Jersey) Law 2005^[2];

“responsible officer”, when used in a particular Regulation, means an employee of the States made available by the Chief Minister to perform the duties of a responsible officer under that Regulation.

2 Application of Regulations

These Regulations apply to appeals to the Data Protection Tribunal under Article 48 of the Law.

3 Notice of appeal

- (1) An appeal is brought by a notice in writing.
- (2) The notice shall state –
 - (a) the appellant’s name and address;
 - (b) the grounds of appeal;
 - (c) whether or not the appellant is likely to wish a hearing to be held; and
 - (d) his or her address for service.
- (3) If the appeal is not brought within the period specified in Regulation 4(1), the notice of appeal shall also state any grounds on which the appellant relies for the extension of the period under paragraph (2) of that Regulation.
- (4) If the appeal is brought under Article 48(1) of the Law in relation to an information notice, and the appellant wishes to make any representations as to why Regulation 13(2) should not apply, the notice of appeal shall also contain a statement setting out those representations.
- (5) A notice of appeal may include a request for an early hearing, and the reasons for the request.
- (6) The appeal is brought when the notice of appeal is delivered to the Tribunal.
- (7) When the notice of appeal is delivered to the Tribunal, the responsible officer shall send to the appellant a written acknowledgment of receipt.

4 Time for appealing

- (1) The period within which an appeal can be brought is the period of 28 days after the appellant is served with notice of the issue to which the appeal relates.
- (2) However, the Tribunal may extend the period if it thinks fit.

5 Commissioner to be given copy of notice of appeal

- (1) When a notice of appeal has been delivered to the Tribunal, the responsible officer shall send a copy of the notice to the Commissioner.
- (3) However, paragraph (1) does not apply to an appeal under Article 48(3) of the Law unless the Tribunal is of the opinion that the interests of justice require the Commissioner to assist the Tribunal by giving evidence or being heard.
- (3) Where the Tribunal is of that opinion –
 - (a) the responsible officer shall send a copy of the notice of appeal to the Commissioner; and
 - (b) the president or a vice-president of the Tribunal shall not exercise *ex parte* the jurisdiction to which paragraph 4 of Schedule 6 to the Law refers.

6 Reply by Commissioner

- (1) If the Commissioner is given a copy of a notice of appeal, he or she shall within 21 days –
 - (a) deliver to the Tribunal a copy of the notice, served by the Commissioner, to which the appeal relates;
 - (b) deliver to the Tribunal a written reply, acknowledging receipt of the notice of appeal by the Commissioner and stating whether or not the Commissioner intends to oppose the appeal;
 - (c) if the Commissioner intends to oppose the appeal, include in the reply a statement of the grounds on which the Commissioner relies in opposing the appeal; and
 - (d) serve a copy of the reply on the appellant.
- (2) If the Commissioner applies to the Tribunal before the expiry of the period specified in paragraph (1) for an extension of that period, the Tribunal may extend the period if it thinks fit.
- (3) If the notice of appeal states that the appellant is not likely to wish a hearing to be held, the Commissioner's reply shall state whether or not the Commissioner considers that a hearing is likely to be desirable.
- (4) If the appeal is brought under Article 48(1) of the Law in relation to an information notice, and the Commissioner wishes to make any representations as to why Regulation 13(2) should not apply, the notice of appeal shall also contain a statement setting out those representations.
- (5) A reply may include a request for an early hearing, and the reasons for the request.

7 Application to strike out appeal

- (1) The Commissioner's reply to a notice of appeal may include an application for the appeal to be struck out on any of the following grounds –
 - (a) that an appeal does not lie to the Tribunal;
 - (b) that the Tribunal cannot entertain the appeal; or
 - (c) that the notice of appeal does not disclose any reasonable ground of appeal.
- (2) An application for an appeal to be struck out may be heard as a preliminary issue or during the

hearing of the substantive appeal.

(3) However, this Regulation does not apply to an appeal under Article 48(3) of the Law.

8 Amendment of notice of appeal or reply

- (1) An appellant may amend his or her notice of appeal with the leave of the Tribunal.
- (2) An amended notice of appeal may include supplementary grounds of appeal, but this paragraph does not limit the generality of paragraph (1).
- (3) Regulations 3(7) and 5 apply to an amended notice of appeal as they apply to a notice of appeal.
- (4) If the Commissioner is given an amended notice of appeal, he or she may within 21 days send an amended written reply to the Tribunal and serve a copy of the amended reply on the appellant.
- (5) Regulation 6(2) applies to paragraph (4) of this Regulation as it applies to paragraph (1) of the Regulation.
- (6) The Commissioner may in any event amend his or her reply with the leave of the Tribunal.
- (7) If the Commissioner amends his or her reply under paragraph (6), the amendment does not have effect until it is delivered to the Tribunal and a copy of it is served on the appellant.

9 Withdrawal of appeal

- (1) An appellant may at any time withdraw his or her appeal, by delivering notice in writing to that effect to the Tribunal and serving a copy of the notice on each other party.
- (2) An appellant who withdraws an appeal cannot bring a fresh appeal on the same issue without the leave of the Tribunal.

10 Directions

- (1) The Tribunal may give directions to enable the parties to prepare for the hearing of any appeal or to assist the Tribunal to determine any issue. It may do so on the application of a party, or of its own motion.
- (2) Directions may relate to any of the following things –
 - (a) the consolidation or hearing together of 2 or more appeals;
 - (b) the determination of any preliminary issue;
 - (c) the holding of a pre-hearing review;
 - (d) the exchange between parties of lists of documents;
 - (e) the inspection by parties of documents so listed;
 - (f) the exchange between parties of statements of evidence;
 - (g) the provision by the parties, to the Tribunal, of statements or lists of agreed matters;
 - (h) the provision by parties, to the Tribunal and to other parties, of statements or summaries of facts and of evidence to be adduced at the hearing, lists of witnesses, summaries of arguments, lists of authorities and chronologies of events;
 - (i) estimates of the time needed for the hearing;
 - (j) the limiting of the time to be allowed for the examination and cross-examination of witnesses, and the length of oral submissions; and
 - (k) the limiting of the number of expert witness who may be called.
- (3) Paragraph (2) does not limit the generality of paragraph (1).

11 Summoning of witnesses

- (1) The Tribunal may, by notice in writing signed by any member of the Tribunal, summon a person –
 - (a) to attend and give evidence before it at the hearing of an appeal; and
 - (b) to produce to it any documents in the person's custody or control that relate to the subject matter of the appeal.
- (2) However, a person is not obliged to comply with a summons under paragraph (1) unless he or she is given at least 7 days' notice of the hearing.
- (3) The Tribunal may require a person to give evidence on oath or under affirmation, and for that purpose any member of the Tribunal may administer an oath or take an affirmation.
- (4) A person who, without lawful excuse –
 - (a) fails to comply with a requirement made by the Tribunal under paragraph (1); or
 - (b) on being required to do so under paragraph (3), refuses to take an oath or make an affirmation or to give evidence,shall be guilty of an offence and liable to a fine not exceeding level 2 on the standard scale.
- (5) A person giving evidence (on oath or otherwise), or appearing before the Tribunal has the same privileges and immunities as if he or she were giving evidence in or appearing before a court of law.
- (6) A person who is required under paragraph (1) to attend and give evidence before the Tribunal, or to produce a document to it, shall be entitled to be reimbursed for his or her reasonable expenses in doing so.
- (7) If the person is required by the Tribunal to attend at the request of a party to the appeal, those expenses shall be a debt due to the person by that party.

12 Determination of appeal without hearing

- (1) In either of the circumstances described in paragraph (2), the Tribunal may determine an appeal or any particular issue in an appeal without a hearing.
- (2) The circumstances to which paragraph (1) refers are –
 - (a) where the parties agree in writing that there need not be a hearing; or
 - (b) where it appears to the Tribunal that the issues raised on the appeal have been determined on a previous appeal by the appellant, and the conditions in paragraph (3) are fulfilled.
- (3) The conditions are –
 - (a) that it appears to the Tribunal that the issues were so determined, in the previous appeal, on the basis of facts that do not differ materially from those to which the later appeal relates; and
 - (b) the Tribunal has given the parties to the later hearing an opportunity to be heard as to whether or not there should be a hearing.

13 Appeals against information notices

- (1) A hearing relating to an appeal under Article 48(1) of the Law in respect of an information notice shall be heard and determined by the president of the Tribunal sitting alone.
- (2) However, paragraph (1) does not apply if it appears to the president, after taking into account any representations made under Regulation 3(4) and any representations made under Regulation 6(4), that it is necessary in the interests of justice to have a hearing or determination by the Tribunal as constituted in accordance with paragraph 2 of Schedule 6 to the Law.

14 Representation at hearing

- (1) At any hearing by the Tribunal, a party may conduct his or her case in person, or may appear and be represented by any person appointed by the party for the purpose.
- (2) Paragraph (1) does not preclude a party from being present at a hearing when he or she has appointed someone to appear on his or her behalf.

15 Default of appearance

- (1) If a party fails to appear at a hearing, the Tribunal may –
 - (a) if the party concerned is the appellant, dismiss the appeal;
 - (b) in any case, proceed to hear and determine the appeal, or any particular issue in the appeal, in that party's absence; and
 - (c) in any case, make such order as to costs as it thinks fit.
- (2) However, paragraph (1) does not apply where the party who fails to appear –
 - (a) has not been given adequate notice of the time and place of the hearing; or
 - (b) has before the hearing given the Tribunal sufficient reason for his or her failure to appear.

16 Hearings *in camera*

- (1) All proceedings in an appeal shall be held in public, unless the Tribunal directs otherwise under paragraph (2).
- (2) The Tribunal may direct that all or any of the proceedings in an appeal shall be held in private, if the Tribunal considers that such a direction is desirable –
 - (a) to safeguard the privacy of data subjects;
 - (b) to safeguard commercially sensitive information; or
 - (c) in the public interest.
- (3) The Tribunal may grant leave to any person to be present at any proceedings in an appeal that are being or are to be held in private.

17 Burden of proof

On an appeal (other than an appeal under Article 48(3) of the Law), it is for the Commissioner to prove that the appeal should be dismissed.

18 Determination of appeals

- (1) Where the Tribunal has determined an appeal, the member presiding shall certify in writing that it has done so, and shall sign and date the certificate.
- (2) The certificate shall include –
 - (a) each material finding of fact; and
 - (b) the reasons for the decision.
- (3) The responsible officer shall as soon as reasonably practicable send a copy of the certificate to each party.
- (4) The Tribunal shall publish its determination.

- (5) In doing so, the Tribunal shall have regard to the desirability of –
 - (a) safeguarding the privacy of data subjects;
 - (b) safeguarding commercially sensitive information; and
 - (c) restricting, in the public interest, any details of the determination.
- (6) For the purposes of paragraph (5), the Tribunal may in publishing a determination edit the text.

19 Costs

- (1) In an appeal, the Tribunal may make any of the following orders as to costs –
 - (a) if the Tribunal thinks that an appeal is manifestly unreasonable, an order that the appellant pay the costs of any other party;
 - (b) if the Tribunal thinks that the decision of the Commissioner to which the appeal relates is manifestly unreasonable, an order that the Commissioner pay the costs of the appellant; and
 - (c) if the Tribunal thinks that any party has been responsible for frivolous, vexatious, improper or unreasonable action, or for any failure to comply with a direction by the Tribunal or for any avoidable delay, an order that that party pay the costs of any other party.
- (2) An order for costs may relate to all or some of a party's costs.
- (3) An order for costs under these Regulations is taxable and enforceable as an order for costs in a civil action in the Magistrate's Court.

20 Service

- (1) Any notice or other document may be delivered or given to a body or person, or served on a body or person, under these Regulations –
 - (a) if the body is the Tribunal, by delivering it to the responsible officer;
 - (b) if the person is the Commissioner, by delivering it to his or her office; and
 - (c) if the person is the appellant or any other party, by delivering it to that person personally or at his or her address for service.
- (2) Delivery may be effected personally or by being sent by post in a registered letter or by the recorded delivery service.

21 Citation and commencement

- (1) These Regulations may be cited as the Data Protection (Appeals) (Jersey) Regulations 200-.
- (2) These Regulations shall come into force on 1st November 2006.

[1]

chapter 15.240

[2]

chapter 15.240