



Jersey

**HEALTH AND SAFETY AT WORK  
(IMPROVEMENT AND PROHIBITION  
NOTICES APPEALS) (JERSEY)  
REGULATIONS 1989**

**Official Consolidated Version**

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# HEALTH AND SAFETY AT WORK (IMPROVEMENT AND PROHIBITION NOTICES APPEALS) (JERSEY) REGULATIONS 1989

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## HEALTH AND SAFETY AT WORK (IMPROVEMENT AND PROHIBITION NOTICES APPEALS) (JERSEY) REGULATIONS 1989

**THE STATES**, in pursuance of Article 17 of the [Health and Safety at Work \(Jersey\) Law 1989](#), have made the following Regulations –

Commencement [\[see endnotes\]](#)

### 1 Interpretation

- (1) In these Regulations, unless the context otherwise requires –
  - “appeal” means an appeal under Article 16 of the Law;
  - “appellant” means a person who has appealed to the Tribunal under Article 16 of the Law;
  - “Law” means the [Health and Safety at Work \(Jersey\) Law 1989](#);
  - “register” means the register to be maintained under Rule 3;
  - “respondent” means the inspector who issued the improvement notice or prohibition notice which is the subject of the appeal;
  - “Rule” means a Rule of Procedure contained in the Schedule to these Regulations;
- (2) The expressions “chairman”, “deputy chairman”, “hearing”, the “Law”, “secretary” and the “Tribunal” have the same meanings, respectively, as in the [Health and Safety at Work \(Appeal Tribunal\) \(Jersey\) Regulations 1989](#).
- (3) Where in these Regulations the exercise of any power or the performance of any function is conferred on the chairman, that power or function may, in the absence of the chairman from Jersey or in case the chairman shall for any reason be incapable of performing or exercising that power or function or if the chairman shall so direct in any case, be exercised or performed by the deputy chairman.
- (4) A reference in these Regulations to an enactment, including an enactment of the United Kingdom, is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment.

## **2 Power of Tribunal to award compensation**

- (1) Subject to paragraphs (2) and (3), where the Tribunal allows an appeal and cancels or modifies a notice, it may, if it is satisfied that the appellant has suffered loss in consequence of the service of the notice, order that the appellant be paid compensation.
- (2) The Tribunal shall not order compensation to be paid in any case unless it is satisfied that the action of the inspector in serving the notice was unreasonable in all the circumstances of the case.
- (3) The Tribunal shall not order compensation where the appeal is against a prohibition notice unless the appellant has made an application under Article 16(3)(b) of the Law for the suspension of the notice.

## **3 Procedure on appeals**

The Rules of procedure in the Schedule to these Regulations shall have effect in relation to appeals under Article 16 of the Law.

## **4 Citation**

These Regulations may be cited as the Health and Safety at Work (Improvement and Prohibition Notices Appeals) (Jersey) Regulations 1989.

## **SCHEDULE**

(Regulation 3)

### **RULES OF PROCEDURE FOR APPEALS UNDER ARTICLE 16 OF THE LAW**

#### **1 Notice of appeal**

An appeal shall be commenced by the appellant sending to the secretary a notice of appeal which shall be in writing and shall set out –

- (a) the name of the appellant and the appellant's address for service of documents;
- (b) the date of the improvement notice or prohibition notice appealed against and the address of the premises concerned;
- (c) the name and address of the respondent;
- (d) particulars of the requirements or directions appealed against; and
- (e) the grounds of the appeal.

#### **2 Time limit for bringing an appeal**

- (1) Subject to paragraph (2), the notice of appeal shall be sent to the secretary within 21 days of the date of service on the appellant of the notice appealed against.
- (2) The Tribunal may extend the time mentioned above where it is satisfied, on an application made in writing to the secretary either before or after the expiration of that time, that it is not or was not reasonably practicable for an appeal to be brought within that time.

#### **3 Action on receipt of notice**

Upon receipt of a notice of appeal the secretary shall enter particulars of it in a register, to be maintained by the secretary for that purpose and for the purpose of entering the decisions of the Tribunal, and shall forthwith send a copy of the notice to the respondent and inform the parties in writing of the 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 secretary shall be sent.

#### **4 Application for a direction suspending the operation of a prohibition notice**

- (1) Where an appeal has been brought against a prohibition notice and an application is made to the Tribunal by the appellant in pursuance of Article 16(3)(b) of the Law for a direction suspending the operation of the notice until the appeal is finally disposed of or withdrawn, the application shall be sent in writing to the secretary and shall set out –
  - (a) the case number of the appeal if known to the appellant or particulars sufficient to identify the appeal; and

- (b) the grounds on which the application is made.
- (2) Upon receiving the application, the secretary shall enter the particulars of it against the entry in the register relating to the appeal and shall forthwith send a copy of it to the respondent.

## **5 Power to require attendance of witnesses and production of documents etc.**

- (1) The Tribunal may on the application of a party made either by notice to the secretary or at the hearing –
  - (a) require a party to furnish in writing to the other party further particulars of the grounds on which the party relies and of any facts and contentions relevant thereto;
  - (b) grant to either party such discovery or inspection of documents as might be granted by the Royal Court; and
  - (c) require the attendance of any person as a witness or require the production of any document relating to the matter to be determined,and may appoint the time at or within which or the place at which any act required in pursuance of this Rule is to be done.
- (2) The Tribunal shall not under paragraph (1) require the production of any document certified by the Attorney General as being a document the production of which would be against the interests of national security.
- (3) A person on whom a requirement has been made under paragraph (1) may apply to the Tribunal either by notice to the secretary or at the hearing to vary or set aside the requirement.
- (4) No such application to vary or set aside shall be entertained in a case where a time has been appointed under paragraph (1) in relation to the requirement unless it is made before the time or, as the case may be, expiration of the time so appointed.

## **6 Time and place of hearing and appointment of assessor**

- (1) The chairman shall fix the date, time and place of the hearing of the appeal and of any application under Rule 4, and the secretary shall not less than 14 days (or such shorter period as may be agreed by the parties) before the date so fixed send to each party a notice of the hearing which shall include information and guidance as to attendance at the hearing, witnesses and the bringing of documents (if any), representation by another person and written representations.
- (2) Where the chairman so directs, the secretary shall also send notice of the hearing to such persons as may be directed, but the requirement as to the period of notice contained in the foregoing paragraph shall not apply to any such notices.
- (3) The chairman may, if the chairman thinks fit, appoint a person or persons with special knowledge or experience in relation to the subject matter of the appeal to sit with the Tribunal as assessor or assessors.

## **7 The hearing**

Any hearing of or in connection with an appeal shall take place in public unless the Tribunal on the application of a party decides that a private hearing is appropriate for the purpose of hearing evidence –

- (a) which relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public; or
- (b) from any person which in the opinion of the Tribunal is likely to consist of information the disclosure of which would be prejudicial to the interests of –
  - (i) the undertaking of the appellant, or
  - (ii) any undertaking in which the appellant works,for reasons other than its effects on negotiations with respect to a trade dispute within the meaning given to that term in section 29(1) of the Trade Union and Labour Relations Act 1974 of the United Kingdom.

## **8 Written representations**

If a party shall desire to submit representations in writing for consideration by the Tribunal at the hearing of the appeal, that party shall send such representations to the secretary not less than 7 days before the hearing and shall at the same time send a copy of it to the other party.

## **9 Right of appearance**

At any hearing of or in connection with an appeal a party may appear before the Tribunal in person or may be represented by an advocate or by any other person whom the party desires to represent him or her, including in the case of an appellant a representative of a trade union or an employers' association.

## **10 Procedure at hearing**

- (1) At any hearing of or in connection with an appeal a party shall be entitled to make an opening statement, to give evidence on the party's own behalf, to call witnesses, to cross-examine any witness called by the other party and to address the Tribunal.
- (2) If a party shall fail to appear or to be represented at the time and place fixed for the hearing of an appeal, the Tribunal may dispose of the appeal in the absence of that party or may adjourn the hearing to a later date:

Provided that before disposing of the appeal in the absence of a party the Tribunal shall consider any written representations submitted by that party in pursuance of Rule 8.
- (3) The Tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

## **11 Decision of Tribunal**

- (1) A decision of the Tribunal may be taken by a majority thereof and, if the Tribunal shall be constituted of 2 members only, the chairman shall have a second or casting vote.
- (2) The decision of the Tribunal shall be recorded in a document signed by the chairman which shall contain the reasons for the decision.
- (3) As soon as may be, the document signed by the chairman shall be entered in the register by the secretary, who shall also send a copy to each of the parties.
- (4) The specification of the reasons for the decision shall be omitted from the register in any case in which evidence has been heard in private and the Tribunal so directs and in that event a specification of the reasons shall be sent to the parties and to the Royal Court in any proceedings relating to such decision together with the copy of the entry.
- (5) The register shall be kept at the offices of the Judicial Greffier and shall be open to inspection by any person without charge at all reasonable hours.
- (6) The chairman shall have power by certificate under the chairman's hand to correct in documents recording the Tribunal's decisions clerical mistakes or errors arising therein from any accidental slip or omission.
- (7) The secretary shall as soon as may be after receipt of a certificate of the chairman make such correction as may be necessary in the register and shall send a copy of the corrected entry or of the corrected specification of the reasons, as the case may be, to the parties.
- (8) If any decision is –
  - (a) corrected under paragraph (6);
  - (b) reviewed, revoked or varied under Rule 12; or
  - (c) altered in any way by order of a superior court,the secretary shall alter the entry in the register to conform with any such certificate or order and shall send a copy of the new entry to the parties.

## **12 Review of the Tribunal's decision**

- (1) The Tribunal shall have power on the application of a party to review and to revoke or vary by certificate under the chairman's hand any of its decisions on the grounds that –
  - (a) the decision was wrongly made as a result of an error on the part of the Tribunal staff;
  - (b) a party did not receive notice of the proceedings leading to the decision;
  - (c) the decision was made in the absence of a party;
  - (d) new evidence has become available since the making of the decision provided that its existence could not have been reasonably known of or foreseen; or<sup>1</sup>
  - (e) the interests of justice require such a review.

- (2) An application for the purposes of paragraph (1) may be made at the hearing. If the application is not made at the hearing, such application shall be made to the secretary within 14 days from the date of the entry of the decision in the register and must be in writing stating the grounds in full.
- (3) An application for the purposes of paragraph (1) may be refused by the chairman, if in the chairman's opinion it has no reasonable prospect of success and the chairman shall state the reasons for the chairman's opinion.
- (4) If such an application is not refused under paragraph (3), it shall be heard by the Tribunal and if it is granted the Tribunal shall either vary its decision or revoke its decision or order a re-hearing.
- (5) The secretary shall as soon as may be after receipt of a certificate of the chairman as to any revocation or variation of the Tribunal's decision make such correction as may be necessary in the register and shall send a copy to each of the parties.

### **13 Costs**

- (1) The Tribunal may make an order that a party shall pay to another party either a specified sum in respect of the costs of or in connection with an appeal incurred by that other party or, in default of agreement, the taxed costs.
- (2) Any costs required by an order under this Rule to be taxed may be taxed in the Royal Court according to such scales prescribed by the Royal Court for proceedings in the Court as shall be directed by the order.

### **14 Miscellaneous powers of the Tribunal**

- (1) Subject to the provisions of these Rules, the Tribunal may regulate its own procedure.
- (2) The Tribunal may, if it thinks fit –
  - (a) postpone the day or time fixed for, or adjourn, any hearing;
  - (b) before granting an application under Rule 5 or 12 require the party making the application to give notice thereof to the other party;
  - (c) either on the application of any person or of its own motion, direct any other person to be joined as a party to the appeal (giving such consequential directions as it considers necessary), but may do so only after having given to the person proposed to be joined a reasonable opportunity of making written or oral objection;
  - (d) make any necessary amendments to the description of a party in the register and in other documents relating to the appeal;
  - (e) if the appellant shall at any time give notice of the abandonment of the appellant's appeal, dismiss the appeal;
  - (f) if the parties agree in writing upon the terms of a decision to be made by the Tribunal, decide accordingly.
- (3) Any act, other than the hearing of an appeal or of an application for the purposes of Rule 4 or 12(1) or the granting of an extension of time under Rule 2(2), required or authorized by these Rules to be done by the Tribunal may be done by, or on the direction of, the chairman.

- (4) Rule 13 shall apply to an order dismissing proceedings under paragraph (2) of this Rule.

## **15 Notices, etc.**

- (1) Any notice given under these Rules shall be in writing and all notices and documents required or authorized by these Rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to paragraphs (3) and (4)) or delivered to or at –
- (a) in the case of a document directed to the secretary, such office as may be notified to the parties by the secretary;
  - (b) in the case of a document directed to a party, the party's address for service specified in the notice of appeal or in a notice under paragraph (2) of this Rule or (if no address is so specified), the party's last known address or place of business in Jersey or, if the party is a corporation, the corporation's registered or principal office,
- and if sent to the authorized representative of a party shall be deemed to have been sent or given to that party.
- (2) A party may at any time by notice to the secretary and to the other party change the party's address for service under these Rules.
- (3) Where a notice of appeal is not delivered, it shall be sent by the recorded delivery service.
- (4) Where for any sufficient reason service of any document or notice cannot be effected in the manner prescribed under this Rule, the chairman may make an order for substituted service in such manner as the chairman may deem fit and such service shall have the same effect as service in the manner prescribed under this Rule.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Health and Safety at Work (Improvement and Prohibition Notices Appeals) (Jersey) (Regulations) 1989	<a href="#">R&amp;O.7975</a>	1 November 1989

### Table of Renumbered Provisions

Original	Current
1(5) and (6)	spent, omitted from this revised edition

### Table of Endnote References

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<sup>1</sup> Schedule, rule 12(1)(d) editorial change, “forseen” deleted, “foreseen” inserted instead