

Health and Safety Tribunal

Homepage

Welcome to the website for the Health and Safety Tribunal in the Isle of Man.

This website is provided by the General Registry to give general guidance only in relation to the Health and Safety Tribunal and is not, and should not be treated as, a complete and authoritative statement of the law. Advice from legal or other appropriate sources should be sought as necessary.

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General

1 What is the Health and Safety Tribunal and what does it do?

The Health and Safety Tribunal ("the Tribunal") is an independent judicial body established in law. The principal function of the Tribunal is to hear and determine appeals brought under the following sections of the Health and Safety at Work, Etc. Act 1974 (of Parliament) ("the 1974 Act") as applied to the Island:

- Section 24 - appeal by a person on whom an improvement notice or a prohibition notice has been served by an Inspector;
- Section 44 - appeal by a person who is aggrieved by a decision of an Authority or Inspector having power to issue certain licences under any of the "relevant statutory provisions" as defined in the 1974 Act.

Where an appeal has been brought against a prohibition notice under Section 24 of the 1974 Act, the person bringing the appeal ("the Appellant") can apply to the Tribunal for a direction suspending the operation of the notice until the appeal is finally disposed of or withdrawn.

The 1974 Act is applied to the Isle of Man by virtue of the Health and Safety at Work Order 1998 (as amended) made under the Health and Safety at Work, Etc., Act 1977.

A copy of the 1974 Act is available to view or download on the Department of Infrastructure, Health and Safety website: www.gov.im/transport/msd/healthandsafety

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2 Who sits on the Tribunal and how are they appointed?

Normally the Tribunal, at a hearing, comprises of a Chairperson and two lay members.

The Chairperson and the lay members are appointed by the Appointments Commission, established under the provisions of the Tribunals Act 2006.

The Chairperson is required to be a barrister, advocate or solicitor of not less than 7 years' standing.

Lay members of the Tribunal are not directly appointed to the Health and Safety Tribunal, but rather are selected, when required, from the two panels of persons appointed by the Appointments Commission to the Employment Tribunal, one from the panel representative of employers and the other from the panel representative of employees.

In respect of an appeal under Section 24 of the 1974 Act the Tribunal may, if it thinks fit, appoint a person or persons having special knowledge or experience in relation to the subject matter of the appeal to sit with the tribunal as assessor or assessors. In respect of an appeal under Section 44 of the 1974 Act, the Tribunal shall, on the application of a party to the appeal, appoint such a person or persons.

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3 Who are the current persons appointed to the Tribunal?

The current appointments made by the Appointments Commission are:

Chairperson – Mr D Reynolds

The two panels of persons appointed to the Employment & Equality Tribunal are:

Panel of persons appointed after consultation with organisation(s) representative of employers –

Mrs F J Robinson, Mr D M Booth, Mrs S Hammond, Mrs E P Chinn, Mr C P Andrew, Mrs S L Blayden, Mr C K Kerruish, Mrs J Kaye and Ms A M Main Thompson OBE.

Panel of persons appointed after consultation with organisation(s) representative of employees –

Ms K Corlett, Mr R C Turton, Mr C S Barr, Mr A W Bath, Mrs R M Gale, Mr M D Young, Mr A P S Jones, Mr D A Keates, Mrs L M Grady & Mr M A Johnson.

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4 Are there rules governing the procedure of the Tribunal?

Yes - the current rules are the Health and Safety (Improvement and Prohibition Notices and Licences Appeals to Industrial Tribunal) Rules 1981 ("the Rules").

Note - the "Industrial Tribunal" was renamed as the "Health and Safety Tribunal" under the provisions of the Health and Safety at Work Etc. Act (Application) (Amendment) Order 1995.

A copy of the Rules can be accessed [here](#).

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Making an Appeal

5 Who can lodge an appeal?

Section 24 of the 1974 Act provides for **Appeal against improvement or prohibition notice:**

"(1) In this section "a notice" means an improvement notice or a prohibition notice.

(2) A person on whom a notice is served may within such period from the date of its service as may be prescribed appeal to the Tribunal; and on such an appeal the Tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit.

(3) Where an appeal under this section is brought against a notice within the period allowed under the preceding subsection, then -

(a) in the case of an improvement notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal;

(b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the tribunal so directs (and then only from the giving of the direction).

(4) One or more suitably qualified assessors may be appointed for the purposes of any proceedings brought before the Tribunal under this section."

Section 44 of the 1974 Act provides for **Appeals in connection with licensing provisions in the relevant statutory provisions:**

"(1) Any person who is aggrieved by a decision of an authority or inspector having power to issue licences under any of the relevant statutory provisions –

(a) refusing to issue him a licence, to renew a licence held by him, or to transfer to him a licence held by another;

(b) issuing him a licence on or subject to any term, condition or restriction whereby he is aggrieved;

(c) varying or refusing to vary any term, condition or restriction on or subject to which a licence is held by him; or

(d) revoking a licence held by him,

may appeal to the Tribunal.

(subsections 2-6 omitted from the legislation)

(7) In this section "licence" means a licence under any of the relevant statutory provisions [as defined in the 1974 Act].

(7A) On the application of a party to the proceedings, one or more suitably qualified assessors shall be appointed for the purposes of the proceedings before the Tribunal under this section."

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6 Is there a charge for bringing an appeal?

No – there is no charge for bringing an appeal.

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7 How do I appeal?

The Rules require that an appeal shall be commenced by the Appellant sending to the Secretary to the Tribunal ("the Secretary") a notice of appeal which shall be in writing and shall set out:

- the name of the Appellant and his address for the service of documents;
- the date of the improvement notice or prohibition notice or licensing decision appealed against and the address of the premises or place concerned;
- the name and address of the Respondent;
- particulars of the requirements, directions or decision appealed against; and
- the grounds of the appeal.

There is no prescribed form that you have to use. It would be very helpful if telephone and e-mail contact details are also provided.

Where an appeal has been brought against a prohibition notice and the Appellant wishes to pursue an application to the Tribunal for a direction suspending the operation of the notice until the appeal is finally disposed of or withdrawn, such 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.

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8 How long do I have to lodge an appeal?

The Rules provide that the notice of appeal shall be sent to the Secretary **within 21 days** from the date of the service on the Appellant of the notice or decision appealed against.

The Tribunal may extend the 21 day time limit where it is satisfied on an application made in writing to the Secretary either before or after the expiration of that time limit that it is not or was not reasonably practicable for an appeal to be brought within that time.

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9 Who should I send my appeal to?

You should send your appeal to:

The Secretary to the Health and Safety Tribunal
Tribunals Office
Isle of Man Courts of Justice
Deemster's Walk, Bucks Road
Douglas, Isle of Man
IM1 3AR

Tel: 685941 Fax: 685573 or Email: tribunals@gov.im

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10 Can I be represented in proceedings before the Tribunal?

Yes – the Rules provide that a party may appear before the Tribunal in person and may be represented by an Advocate or by any other person whom he desires to represent him including, in the case of the Appellant, a representative of a trade union or an employers' association.

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11 So does that mean I can get an Advocate to represent me?

Yes - as stated above, you can be represented by any other person you wish although you should be aware that if you use an Advocate, you will be personally responsible for any professional fees charged by the Advocate to act on your behalf.

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12 Is Legal Aid available for proceedings before the Health and Safety Tribunal?

No – Legal Aid is not available for proceedings before the Tribunal, although very limited assistance may be available (should your means be such as to comply with the rules) under what is termed the Green Form Scheme. This enables persons to obtain legal advice from an Advocate, but this does not include representation at a Tribunal hearing.

Advice on the Green Form Scheme should be sought from an Advocate, a list of which is available at the Isle of Man Law Society, 27 Hope Street, Douglas. Their website is www.iomlawsociety.co.im

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Before the Hearing

13 How will my appeal be progressed?

The Secretary will acknowledge receipt of your appeal in writing and inform you of the case number allocated to your appeal. The Secretary will also send a copy of your appeal to "the Respondent" (the Inspector who issued the improvement notice or prohibition notice or the Authority or Inspector who issued the licence which is the subject of the appeal).

Particulars of the appeal will be entered in a Register ("the Register") of applications and decisions which is open to the inspection of any person without charge at all reasonable hours.

The Respondent will be asked to provide a written response to your appeal within a reasonable time as directed by the Tribunal Chairperson. You, or your representative, will be sent a copy of the response by the Secretary.

In the case of an application to suspend the operation of a prohibition notice, a copy of it will be sent to the Respondent and particulars will be entered in the Register against the entry relating to the appeal. The Respondent will be asked to provide a written response to your application within a reasonable time as directed by the Tribunal Chairperson. You, or your representative, will be sent a copy of the response by the Secretary.

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14 What if I have any further information to add to my appeal?

You may submit any further information to the Secretary at any time up until the Tribunal hearing but if the Respondent and the Tribunal have not had enough opportunity to consider the information supplied the hearing may be adjourned.

In order to avoid delays, it is therefore important that you make every effort to include all the information, and supporting documentation that you wish the Tribunal to consider, as part of your initial appeal wherever possible – where it is not possible to lodge all the information as part of the appeal, you should forward the additional information as soon as you can and ideally not later than 7 days before the date of the hearing.

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15 When will I be advised of the date for the hearing before the Tribunal?

Once a date for the hearing of the matter has been fixed by the Tribunal Chairperson, the Secretary will, not less than 14 days (or such shorter period as may be agreed by him with the parties) before the hearing date send to each party a notice of hearing, which will include information and guidance as to attendance at the hearing, witnesses and the bringing of documents, representation by another person and written representations.

The notice of hearing will also indicate the venue for the hearing and the time that you will have to attend. The Secretary will ask you to forward any further submissions you may wish to make to the Tribunal – please note that if you do wish to make further submissions, you are encouraged to do so at the earliest opportunity possible in order to avoid the possibility of the hearing being adjourned (see section 14 above).

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16 What if my address, or that of my representative, changes after my appeal is submitted?

In the event that there is a change of address or telephone number for you, or your representative, it is important that such is communicated immediately in writing to the Secretary.

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17 Can I ask for a postponement?

Yes, although any request must be made in writing prior to the hearing and should clearly explain the reason(s) why you are asking for a postponement. The request should be forwarded to the Secretary, who in turn will bring it to the attention of the Chairperson for their consideration. The views of the Respondent may also be sought.

If, after considering your application, the Chairperson decides to grant a postponement, the Secretary will notify you and the Respondent accordingly and will arrange for a new date for the appeal to be considered.

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18 What if I do not wish to attend the hearing?

The Rules provide that if a party fails to appear or 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 an appeal in the absence of a party the Tribunal shall consider any written representations submitted by that party.

Such representations in writing must be sent by the party to the Secretary not less than 7 days before the hearing, and must at the same time also be sent to the other party.

Generally speaking it is important that a party does attend at a hearing. Whilst the Tribunal may decide to proceed in the absence of a party and consider the written representations, that alone may not tell the whole story. By attending the hearing you will be offered the opportunity to put your side of the story forward, as well as calling any witnesses you may wish to give relevant evidence, and answer any questions the Tribunal or the Respondent may have - all information which may lead to the Tribunal reaching a decision in your favour. You will also be able to ask questions of the Respondent.

You may bring anyone you choose to attend the appeal hearing with you, even if it is just a friend or relative for moral support, although please note, at section 10 above, the provisions as to representation before the Tribunal.

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19 If an appeal is made can it be withdrawn?

Yes – the Rules provide that if the Appellant shall at any time give notice of the abandonment of his appeal the Tribunal may, if it thinks fit, dismiss the appeal.

Notice of the abandonment of an appeal should be provided in writing to the Secretary.

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20 What about travel and parking arrangements for the hearing?

Each party will have been notified of the date, time and place of the hearing and will normally be asked to arrive 15 minutes before the hearing is due to commence. It is important that consideration is given to travel arrangements, parking etc so as to ensure that a party arrives on time. If you are not sure as to the location of the hearing, or indeed any other matters, please contact the Secretary.

Arrangements for car parking should be made, by both parties and witnesses, for sufficient time to avoid parking penalties being incurred whilst the hearing proceeds. Please note parties and witnesses are responsible for their own parking fees, and indeed any parking penalties incurred.

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The Hearing

21 Who will be present in the hearing room?

As well as the Tribunal Chairperson and members, the Secretary will also be present as the Secretary is responsible for recording the hearing. Prior to the hearing, if you have any questions, please do not hesitate to contact the Secretary who will do their utmost to assist you. However, please bear in mind the Secretary will not be able to provide you with legal advice or comment on the merit of your appeal.

The Respondent, or his representative, will also be present and you will be given the opportunity to ask them questions; they will also have the opportunity to ask you questions.

In certain cases there may also be present with the Tribunal an assessor or assessors (see section 2 above).

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22 What happens at the hearing?

The Secretary will come to collect you from the waiting area as soon as the Tribunal is ready to hear your appeal. Please bring your case papers with you as you will need to refer to them from time to time.

The Chairperson will introduce everyone and explain the procedure, however please do not hesitate to ask if you are unsure about anything.

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23 Is the hearing recorded?

Yes - the Secretary will ensure that the hearing is recorded and parties will see microphones for this purpose located on each of the tables.

Although copies of the recording may be purchased following the hearing (it usually takes a few days for copy discs to be made available), on payment of the prescribed fee, it is the responsibility of parties to take their own notes for their use during the proceedings.

Apart from the Secretary, it is **not permitted** for any other person in attendance at the hearing to use any form of recording equipment.

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24 Are members of the public allowed to attend the hearing?

The Rules provide that any hearing of, or in connection with, an appeal shall take place in public, unless the Tribunal decides that a private hearing is appropriate.

In cases in which the Tribunal decides that a private hearing is appropriate, a member of Tynwald, in his capacity as such, shall be entitled to attend the hearing.

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25 How do parties address the Chairperson and members of the Tribunal?

It is customary to address the Tribunal via the Chairperson who should be called either 'Sir' or 'Madam', as applicable. If it is necessary to address either of the lay members directly they may be referred to as 'Sir' or 'Madam', as applicable, or alternatively by name.

Tribunal hearings are less formal than, for example, in the High Court so there are no wigs and gowns worn. It is not necessary to bow to the Tribunal upon entering and leaving the hearing room and it is not necessary to stand to address the Tribunal, unless of course a party prefers to do so.

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26 Can a party be liable for costs in proceedings before the Tribunal?

Yes – the Rules provide that 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 amount of those costs.

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The Decision

27 When will I be given a decision?

The Rules provide that the decision of the Tribunal shall be in writing and signed by the Chairperson, and that the Secretary shall as soon as may be practicable send a copy of the decision to each of the parties.

The Rules also provide that the reasons for the decision shall be recorded in the Register (see section 13 above).

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28 Does the decision have to be unanimous?

No – a decision of the Tribunal may be taken by a majority.

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Review of Tribunal's decision

29 Can a party ask for a review of the Tribunal's decision?

Yes – a party may ask the Tribunal to review its decision in a case in which the interests of justice require such a review.

An application for a review may be made at the hearing or, if it is not made at the hearing such application shall be made to the Secretary within 14 days from the date of entry of the decision in the Register and must be in writing stating the grounds in full.

An application for a review may be refused by the Chairperson if in his opinion it has no reasonable prospect of success.

If the application is not refused it shall be heard by the Tribunal, and if it is granted the tribunal shall either vary its decision, revoke its decision or order a re-hearing.

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Appeals against the Tribunal's decision

30 Can I appeal against the Tribunal's decision?

Yes, the 1974 Act provides that an appeal shall lie to the High Court in accordance with rules of court on a question of law from any decision of the Tribunal.

Any person considering an appeal from a decision of the Tribunal should seek legal advice.

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31 Can the Respondent appeal against the decision?

Yes, the Respondent may also appeal a decision to the High Court but again only where the decision involves a question of law.

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Contacting the Tribunal

32 What is the address for the Health and Safety Tribunal?

The address to which correspondence should be sent is:

The Secretary to the Health and Safety Tribunal
Tribunals Office
Isle of Man Courts of Justice
Deemster's Walk, Bucks Road
Douglas, Isle of Man
IM1 3AR

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32 How do I contact the Secretary to the Health and Safety Tribunal?

If a person wishes to contact the Secretary they can do so during normal office hours (Monday - Friday 9am to 5pm) on:

Tel: 685941 Fax: 685573 or Email: tribunals@gov.im

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Useful Links

Isle of Man Law Society website: www.iomlawsociety.co.im

Department of Infrastructure, Health & Safety Website: www.gov.im/transport/msd/healthandsafety

The Tribunals Office is not responsible for the content of external internet sites.