

SCHEDULE 2

Regulation 4(2)

APPEAL UNDER ARTICLE 78A OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995 AGAINST A DECISION OF THE REGULATION AND IMPROVEMENT AUTHORITY REFUSING TO GIVE CONSENT UNDER ARTICLE 78(3) AND 94(3) OF THAT ORDER

Initiating an appeal

1.—(1) A person who wishes to appeal to the Care Tribunal under Article 78A or 94A of the 1995 Order against a decision of the Regulation and Improvement Authority must do so by application in writing to the Care Tribunal.

(2) An application under this paragraph must be received by the Secretary no later than 28 days after service of notice of the decision on the applicant.

(3) An application under this paragraph may be made on the application form available from the Care Tribunal.

(4) An application under this paragraph must –

- (a) give the applicant's name and full postal address, if the applicant is an individual his date of birth and, if the applicant is a company, the address of its registered office;
- (b) give the name, address and profession of the person (if any) representing the applicant;
- (c) give the address within the United Kingdom to which the Secretary should send documents concerning the appeal;
- (d) give, where these are available, the applicant's telephone number, fax number and e-mail address and those of the applicant's representative;
- (e) give sufficient information concerning the decision appealed against to make it clear whether it falls within Article 78(3) or Article 94(3) of the Children (Northern Ireland) Order 1995;
- (f) give a short statement of the grounds of appeal; and
- (g) be signed and dated by the applicant.

Acknowledgement and notification of application

2.—(1) On receiving an application, the Secretary must –

- (a) immediately send an acknowledgement of its receipt to the applicant; and
- (b) subject to the following provisions of this paragraph, enter particulars of the appeal and the date of its receipt in the records and send a copy of it, together with any documents supplied by the applicant in support of it, to the respondent.

(2) If the Chairman is of the opinion that the applicant is asking the Care Tribunal to do something which it cannot do, he may notify the applicant in writing –

- (a) of the reasons for his opinion; and
- (b) that the appeal will not be entered in the records unless within five working days the applicant notifies the Chairman in writing that he wishes to proceed with it.

(3) If in the Secretary's opinion there is an obvious error in the application –

- (a) he may correct it;
- (b) he must notify the applicant accordingly; and
- (c) unless within five working days of receipt of notification under head (b) the applicant notifies the Secretary in writing that he objects to the correction, the application shall be amended accordingly.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Response to application

3.—(1) The Secretary must send the information provided by the applicant under paragraph 1 to the respondent together with a request that it respond to the application within 20 working days of receiving it.

(2) If the respondent fails to respond as requested it shall not be entitled to take any further part in the proceedings.

(3) The response must –

(a) acknowledge that the respondent has received a copy of the application;

(b) indicate whether or not it opposes it, and if it does, why; and

(c) provide the following information and documents –

(i) the name, address and profession of the person (if any) representing the respondent and whether the Care Tribunal should send documents concerning the appeal to the representative rather than to the respondent; and

(ii) a copy of the written notice of the decision which is the subject of the appeal and the reasons for the decision.

(4) The Secretary must without delay send to the applicant a copy of the response and the information and documents provided with it.

Misconceived appeals etc.

4.—(1) The Chairman may at any time strike out the appeal on the grounds that –

(a) it is made otherwise than in accordance with paragraph 1;

(b) it is outside the jurisdiction of the Care Tribunal or is otherwise misconceived; or

(c) it is frivolous or vexatious.

(2) Before striking out an appeal under this paragraph, the Chairman must –

(a) invite the parties to make representations on the matter within such period as he may direct;

(b) if within the period specified in the direction the applicant so requests in writing, afford the parties an opportunity to make oral representations; and

(c) consider any representations the parties may make.

(3) Where the Chairman strikes out an appeal under paragraph (1), regulation 25 (costs) shall apply as if the references to “the Care Tribunal” were instead references to “the Chairman”.

(4) Where, under paragraph (1), the Chairman has made a determination to strike out an appeal (“the determination”), the applicant may apply to the Chairman, for the determination to be set aside.

(5) An application under paragraph (4) must –

(a) be made not later than 10 working days after the date on which notice of the determination was sent to the applicant; and

(b) must be in writing stating the grounds in full.

(6) In the case of an application under paragraph (4), the Chairman, may, if he considers that it is appropriate to do so, set aside the determination (including, where applicable, a costs order made pursuant to paragraph (3)), and may give such directions in exercise of his powers under Part IV of these Regulations as he considers appropriate.

(7) Before setting aside the determination, the Chairman may invite the parties to make representations on the matter within such period as he may direct.

(8) Where the determination is set aside, the Secretary shall alter the relevant entry in the records.

Further information to be sent by the applicant and respondent

5.—(1) As soon as the respondent has provided the information set out in paragraph 3 the Secretary must write to each party requesting that he send to the Secretary within 15 working days after the date on which he receives the Secretary's letter the following information –

- (a) the name of any witness whose evidence the party wishes the Care Tribunal to consider (and whether the party may wish the Care Tribunal to consider additional witness evidence from a witness whose name is not yet known) and the nature of that evidence;
- (b) whether the party wishes the Chairman to give any directions or exercise any of his powers under Part IV of these Regulations;
- (c) whether the party wishes there to be a preliminary hearing with regard to directions;
- (d) a provisional estimate of the time the party considers will be required to present his case;
- (e) the earliest date by which the party considers he would be able to prepare his case for hearing; and
- (f) in the case of the applicant, whether he wishes his appeal to be determined without a hearing.

(2) Once the Secretary has received the information referred to in sub-paragraph (1) from both parties, he must without delay send a copy of the information supplied by the applicant to the respondent and that supplied by the respondent to the applicant.

Changes to further information supplied to the Care Tribunal

6.—(1) Either party, within 5 working days of receiving the further information in respect of the other party from the Secretary, may ask the Secretary in writing to amend or add to any of the information given under paragraph 5(1).

(2) If the Secretary receives any further information under sub-paragraph (1) from either party he must, without delay, send a copy of it to the other party.