

2003 No. 2043

CHILDREN AND YOUNG PERSONS, ENGLAND AND WALES

**The Protection of Children and Vulnerable Adults and
Care Standards Tribunal (Amendment No. 3)
Regulations 2003**

Made - - - - - 7th August 2003

Laid before Parliament 8th August 2003

Coming into force - - 1st September 2003

The Secretary of State, in exercise of the powers conferred upon him by section 9(2)(f), (3) and (3B) of the Protection of Children Act 1999(a) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(b), hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Protection of Children and Vulnerable Adults and Care Standards Tribunal (Amendment No. 3) Regulations 2003 and shall come into force on 1st September 2003.

(2) In these Regulations “the Tribunal Regulations” means the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002(c).

Amendment of regulation 1 of the Tribunal Regulations

2. In regulation 1(2) of the Tribunal Regulations (citation, commencement and interpretation)—

(a) in the appropriate place insert the following definition—

““the 2002 Act” means the Education Act 2002(d);”;

(b) in the definition of “case”—

(i) at the end of paragraph (j), the word “or” is omitted; and

(ii) at the end, add the following—

“or

(l) an appeal under section 166 of the 2002 Act including an application for, or consideration by the Tribunal of the making of, an order under section 166(5);”;

(c) in the definition of “registration authority”—

(i) at the end of paragraph (a), the word “and” is omitted; and

(a) 1999 c. 14. Section 9(2) of the Protection of Children Act 1999 was amended by the Education Act 2002 (c. 32) Schedule 21, paragraph 122.

(b) 1992 c. 53. Schedule 1, paragraph 36A of the Tribunals and Inquiries Act 1992 (“the 1992 Act”) was inserted by the Schedule to the Protection of Children Act 1999, paragraph 8. Schedule 1, paragraph 36A of the 1992 Act was renumbered as paragraph 36B and amended by the Care Standards Act 2000, Schedule 4, paragraph 21.

(c) S.I. 2002/816 as amended by S.I. 2003/626 and S.I. 2003/1060.

(d) 2002 c. 32.

- (ii) at the end, add the following—
- “(c) in relation to an appeal under section 166 of the 2002 Act, the Secretary of State for Education and Skills or the Assembly;” and
- (d) in the definition of “the respondent”, at the end, add—
- “(k) in relation to an appeal under section 166 of the 2002 Act, the registration authority.”.

Amendment of regulation 4 of the Tribunal Regulations

- 3. In regulation 4 of the Tribunal Regulations (procedure for appeals, determinations and applications for leave) at the end, add the following—
- “(9) In the case of an appeal under section 166 of the 2002 Act (including in relation to the making of an order under section 166(5)), the procedure set out in Schedule 9 shall apply.”.

Amendment of regulation 6 of the Tribunal Regulations

- 4. In regulation 6 of the Tribunal Regulations (directions)—
- (a) in paragraph (Z1)(a), after the words “Suspension Regulations” add “or in relation to an application for an order under section 166(5) of the 2002 Act pursuant to paragraph 7(1) of Schedule 9”; and
- (b) in paragraph (1), for the words “in paragraph 6 of Schedule 1, 2, 3, 6 or 8” substitute “in paragraph 6 of Schedule 1, 2, 3, 6, 8 or 9”.

Amendment of regulation 6A of the Tribunal Regulations

- 5. In regulation 6A of the Tribunal Regulations (directions: appeals under the suspension regulations)(b), in paragraph (1), after the words “Suspension Regulations” add “and in the case of an application for an order under section 166(5) of the 2002 Act”.

Amendment of regulation 7 of the Tribunal Regulations

- 6. In regulation 7 of the Tribunal Regulations (fixing and notification of hearing), at the beginning, add the following paragraph—
- “(Z1) This regulation shall not apply in relation to an application for an order under section 166(5) of the 2002 Act.”.

Amendment of regulation 9 of the Tribunal Regulations

- 7. In regulation 9 of the Tribunal Regulations (further directions), in paragraph (2)(b), at the beginning, add “except in relation to an application for an order under section 166(5) of the 2002 Act,”.

Amendment of regulation 23 of the Tribunal Regulations

- 8. In regulation 23 of the Tribunal Regulations (the decision), in paragraph (4), after the words “in paragraph (2) and” insert “(except where the decision relates to the making of an order under section 166(5) of the 2002 Act)”.

Amendment of regulation 25 of the Tribunal Regulations

- 9. In regulation 25 of the Tribunal Regulations (review of the tribunal’s decision), at the beginning add the following paragraph—
- “(Z1) This regulation shall not apply in relation to an application for an order under section 166(5) of the 2002 Act.”.

(a) Paragraph (Z1) was added to regulation 6 by regulation 4 of S.I. 2003/626.
(b) Regulation 6A was inserted by regulation 5 of S.I. 2003/626.

Amendment of regulation 26 of the Tribunal Regulations

10. In regulation 26 of the Tribunal Regulations (powers of tribunal on review), at the beginning add the following paragraph—

“(Z1) This regulation shall not apply in relation to an application for an order under section 166(5) of the 2002 Act.”.

Amendment of regulation 35 of the Tribunal Regulations

11. In regulation 35(3) of the Tribunal Regulations, for the words “Schedule 2, 6, 7 or 8”, substitute “Schedule 2, 6, 7, 8 or 9.”.

Amendment of the Tribunal Regulations: Schedule 9

12. After Schedule 8 of the Tribunal Regulations (appeal under paragraph 10(1A) of Schedule 26 to the 1998 Act against a decision of the chief inspector), add the Schedule 9 set out in the Schedule to these Regulations.

Signed by authority of the Secretary of State for Health

7th August 2003

Warner
Minister of State,
Department of Health

“SCHEDULE 9

Regulation 4(9)

APPEALS AGAINST REFUSALS, DETERMINATIONS OR ORDERS OF THE
REGISTRATION AUTHORITY UNDER THE 2002 ACT**Initiating an appeal**

1.—(1) A person who wishes to appeal to the Tribunal under section 166 of the 2002 Act against a refusal, determination or order made by the registration authority must do so by application in writing to the Secretary.

(2) An application under this paragraph may be made on the application form available from the Secretary.

(3) 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 particulars of whether the appeal is against—
 - (i) a refusal under section 162 of the 2002 Act to approve a material change;
 - (ii) a determination under section 165 of the 2002 Act to remove the school from the register;
 - (iii) an order under section 165(8) of the 2002 Act requiring the taking of specified action; or
 - (iv) a refusal under section 165(10) of the 2002 Act to vary or revoke such an order;
- (f) give a short statement of the grounds of the appeal; and
- (g) be signed and dated by the applicant.

Acknowledgement and notification of application

2.—(1) On receiving an application made within the period for bringing an appeal specified in section 166(2) of the 2002 Act, the Secretary must—

- (a) immediately send an acknowledgement of its receipt to the applicant; and
- (b) 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, in the Secretary’s opinion, there is an obvious error in the application—

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

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 he respond to the application within 20 working days of receiving it.

(2) If the respondent fails to respond as directed, he 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 the respondent opposes it, and if he does, give the reasons why he opposes the application;
- (c) provide the following information and documents—
 - (i) the name, address and profession of the person (if any) representing the respondent and whether the Secretary should send documents concerning the appeal to the representative rather than to the respondent; and

- (ii) a copy of the notice of the refusal, determination or order which is the subject of the appeal and the reasons for it.

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

Misconceived appeals etc.

4.—(1) The President or the nominated 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 Tribunal or is otherwise misconceived; or
- (c) it is frivolous or vexatious.

(2) Before striking out an appeal under this paragraph, the President or the nominated 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.

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 sends the Secretary, within 15 working days after the date on which he receives the Secretary's letter, the following information—

- (a) name of any witness whose evidence the party wishes the Tribunal to consider (and whether the party may wish the 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 President or the nominated 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 the 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 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.

Orders under section 166(5) of the 2002 Act

7.—(1) Where the respondent in relation to an appeal under section 166 of the 2002 Act wishes the Tribunal to make an order under section 166(5) of that Act, he must make an application in writing to the Secretary and, at the same time, send a copy of that application to the applicant in the appeal.

(2) The respondent may make an application under this paragraph at any time from the date he receives the copy of the application under paragraph 3(1) until 20 working days following that date.

(3) An application under this paragraph must—

- (a) set out the grounds for the application;
- (b) give the names of any witnesses that the respondent will be calling to support his application and provide a statement as to the nature of the evidence to be given by those witnesses;
- (c) specify any working days within the 28 working days following the making of the application when the respondent or any such witnesses will not be available to attend a hearing before the Tribunal, and the reasons why the respondent or they (as the case may be), will not be so available; and
- (d) be signed and dated by or on behalf of the respondent.

(4) The respondent must, so far as it is practicable to do so, ensure that the application includes a copy of any documentary evidence (including any statements from witnesses) that the respondent intends to rely upon in relation to the application.

(5) On receiving an application under this paragraph, the Secretary must immediately send a copy of it together with any documents supplied by the respondent in support of the application, to the applicant.

(6) The applicant must within 10 working days of receipt of the application from the Secretary, send to the Secretary and the respondent a written response to the application which must—

- (a) acknowledge that he has received a copy of the application and any documentary evidence enclosed with it;
- (b) state whether he wishes the Tribunal to determine the application without an oral hearing, and if that is not the case, give the names of any witnesses that he will be calling or is likely to call to support his case and provide a statement as to the nature of the evidence to be given by those witnesses;
- (c) unless he wishes the Tribunal to determine the application without an oral hearing, specify any working days within the 28 working days following the date of the application when he or any such witnesses will not be available to attend a hearing in respect of the application and the reasons why he or they (as the case may be) will not be so available.

(7) The applicant must, so far as it is practicable to do so, ensure that the response includes a copy of any documentary evidence (including any statements from witnesses) that he intends to rely upon in opposing the application.

(8) If the applicant fails to respond as required by sub-paragraph (6), he shall not be entitled to take any further part in the proceedings under this paragraph.

(9) An application shall be determined by way of oral hearing unless the applicant in the appeal requests that it be determined without an oral hearing.

(10) The date fixed for a hearing shall be the earliest practicable date having regard to any directions which have been made by the President or the nominated chairman with regard to the preparation of evidence but shall not be later than 10 working days after—

- (a) the date on which the Secretary receives the written response from the applicant; or
- (b) if the applicant fails to respond within the time limit set out in sub-paragraph (6), the date of the expiry of that time limit,

and the Secretary must then inform the parties of the date of the hearing by no later than 5 working days before the date fixed for the hearing, or (where the President or the nominated chairman considers it necessary or expedient) by such later date as the President or the nominated chairman may direct.

(11) This sub-paragraph applies where the respondent has not made an application under sub-paragraph (1) but the Tribunal is considering whether to make an order under section 166(5) of the 2002 Act.

(12) Subject to sub-paragraph (13), where sub-paragraph (11) applies, the President or the nominated chairman may—

- (a) give directions as to the dates by which any document, witness statement or any other material which the parties wish the Tribunal to take into account, shall be sent to the Secretary; and
- (b) give any other direction in exercise of his powers under Part IV of these Regulations.

(13) Where sub-paragraph (11) applies, the President or the nominated chairman may not make an order under section 166(5) of the 2002 Act unless the applicant has been given an opportunity of appearing before the Tribunal and being heard on the question of whether such an order should be made, in which case the date for the hearing shall be the earliest practicable date having regard to any direction made.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (S.I.2002/816) (“the Tribunal Regulations”). The Tribunal Regulations make provision about the proceedings of the Tribunal established by section 9 of the Protection of Children Act 1999 (c. 14). The jurisdiction of the Tribunal has been extended by the Care Standards Act 2000 (“the 2000 Act”) (c. 14).

These Regulations amend the Tribunal Regulations so as to make provision for the conduct of an appeal under section 166 of the Education Act 2002 (“the 2002 Act”) (c. 32) against a decision of the registration authority in relation to an independent school. The amendments made by these Regulations relate in particular to the procedure for such appeals. Regulation 12 and the Schedule add a new Schedule 9 to the Tribunal Regulations which makes provision in respect of the documents which the applicant must send to the Tribunal in order to initiate an appeal, the procedure for the Secretary to follow when an appeal is made, information which the respondent must send to the Tribunal, and the provision of further information by both parties.

Schedule 9 also contains provisions in relation to the making of an order by the Tribunal under section 166(5) of the 2002 Act where it considers that there is a risk of serious harm occurring to the welfare of pupils before the determination of the appeal. Paragraph 7 of that Schedule sets out the procedure to be followed where the respondent makes an application to the Tribunal for such an order, and also contains provisions dealing with the situation where, although there has been no such application, the Tribunal is considering whether to make such an order. Regulations 4 to 10 contain amendments which are consequential upon paragraph 7 of Schedule 9.

Regulations 2, 3 and 11 make minor consequential amendments.

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£2.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1173 9/2003 131173 19585

ISBN 0-11-047411-2



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