

2003 No. 626

CHILDREN AND YOUNG PERSONS, ENGLAND AND WALES

SOCIAL CARE, ENGLAND AND WALES

The Protection of Children and Vulnerable Adults and Care Standards Tribunal (Amendment) Regulations 2003

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| <i>Made</i> - - - - | <i>10th March 2003</i> |
| <i>Laid before Parliament</i> | <i>11th March 2003</i> |
| <i>Coming into force</i> | <i>1st April 2003</i> |

The Secretary of State, in exercise of the powers conferred upon him by section 9(2)(c) and (d), (3) and (3B) of the Protection of Children Act 1999(a) and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(b), and with the National Assembly for Wales in accordance with section 9(3C) of the Protection of Children Act 1999, 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) Regulations 2003 and shall come into force on 1st April 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 definition of “case”—

(i) at the end of paragraph (g), the word “or” shall be omitted;

(ii) there shall be added at the end the following—

“(i) an appeal under section 68 of the 2000 Act; or

(j) an appeal under the Suspension Regulations;”;

(a) 1999 c.14. Section 9(2) of the Protection of Children Act 1999 (“the 1999 Act”) was amended by the Care Standards Act 2000 (c.14) (“the 2000 Act”), section 116 and Schedule 4, paragraph 26(1), (3)(a). Section 9(3A) to (3C) of the 1999 Act was inserted by the 2000 Act, section 116 and Schedule 4, paragraph 26(1), (3)(b), in the case of section 9(3A) on a date to be appointed.

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

(c) S.I. 2002/816.

- (b) at the end of the definition of “the respondent” there shall be added the following—
- “(h) in relation to an appeal under section 68 of the 2000 Act, the Council;
 - (i) in relation to an appeal under the Suspension Regulations, the Chief Inspector;”;
- (c) the following definitions shall be added at the appropriate places—
- ““Council” means in relation to England, the General Social Care Council or in relation to Wales, the Care Council for Wales(a);
 - “the Suspension Regulations” means the Child Minding and Day Care (Suspension of Registration) (England) Regulations 2003(b);”.

Amendment of regulation 4 of the Tribunal Regulations

3. In regulation 4 of the Tribunal Regulations (procedure for appeals, determinations and applications for leave), there shall be added at the end the following paragraphs—

- “(6) In the case of an appeal under section 68 of the 2000 Act against a decision of the Council under Part IV of the 2000 Act, the procedure set out in Schedule 6 shall apply.
- (7) In the case of—
 - (a) an appeal under regulation 8(1)(a) of the Suspension Regulations against a decision to suspend the registration of a person acting as a child minder or providing day care; or
 - (b) an appeal under regulation 8(1)(b) of the Suspension Regulations against a refusal to lift the suspension of such registration,the procedure set out in Schedule 7 shall apply.”.

Amendment of regulation 6 of the Tribunal Regulations

4. In regulation 6 of the Tribunal Regulations (directions)—

- (a) there shall be added at the beginning the following paragraph—
 - “(Z1) This regulation shall not apply in the case of an appeal under the Suspension Regulations.”;
- (b) in paragraph (1), for the words “in paragraph 6 of Schedule 1, 2 or 3”, there shall be substituted the words “in paragraph 6 of Schedule 1, 2, 3 or 6”.

Insertion of regulation 6A in the Tribunal Regulations

5. After regulation 6 of the Tribunal Regulations there shall be inserted the following new regulation—

“Directions: appeals under the Suspension Regulations

6A.—(1) This regulation shall apply in the case of an appeal under the Suspension Regulations.

(2) The President or the nominated chairman may, if he considers it necessary or expedient (and whether at the request of either party or otherwise)—

- (a) give directions as to the dates by which any document, witness statement or other material upon which any party is intending to rely shall be sent to the Tribunal, and, if the President or the nominated chairman considers it appropriate, to the other party;

(a) See: section 54 of the Care Standards Act 2000 (c.14).

(b) S.I. 2003/332.

- (b) give any other direction in exercise of his powers under this Part;
- (c) where the applicant has requested that the case be determined without an oral hearing, give a direction as to the date by which the parties shall send any written representations, regarding the appeal, to the Tribunal.

(3) The President or the nominated chairman may direct that exchange of witness statements or other material shall be simultaneous or sequential, as he considers appropriate.

(4) The Secretary shall notify the parties as soon as possible in writing of any directions the President or the nominated chairman gives in writing under paragraphs (2) and (3).”.

Amendment of regulation 7 of the Tribunal Regulations

6. In regulation 7 of the Tribunal Regulations (fixing and notification of hearing)—

- (a) at the beginning of paragraph (2), for the words “The date” there shall be substituted the words “Except in the case of an appeal under the Suspension Regulations, the date”;
- (b) after paragraph (2), there shall be inserted the following new paragraph—

“(2A) In the case of an appeal under the Suspension Regulations, the date fixed for the 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 be not later than 10 working days after the date on which the Secretary receives the written response from the respondent under paragraph 3 of Schedule 7.”;

- (c) at the beginning of paragraph (3), for the words “The Secretary” there shall be substituted the words “Except in the case of an appeal under the Suspension Regulations, the Secretary”;
- (d) after paragraph (3) there shall be inserted the following new paragraph—

“(3A) In the case of an appeal under the Suspension Regulations, the Secretary must inform the parties in writing of the date, time and place of the hearing—

- (a) subject to sub-paragraph (b), by no later than 5 working days before the date fixed for the hearing, or by such later date as the parties may agree;
- (b) where it appears to the President or the nominated chairman that it is necessary or expedient for the parties to be informed of the hearing at a date later than 5 working days before the date fixed for the hearing, by such date as the President or the nominated chairman may direct.”.

Amendment of regulation 8 of the Tribunal Regulations

7. In regulation 8 of the Tribunal Regulations (multiple appeals)—

- (a) in paragraph (5), for the words “to make written representations” on both occasions where they occur there shall be substituted the following—

“to make—

- (i) in the case of an appeal under the Suspension Regulations, oral representations at the commencement of the hearing; or
- (ii) in any other case, written representations”;

- (b) in paragraph (6), for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) any representations made by either party under paragraph (5);”.

Amendment of regulation 16 of the Tribunal Regulations

8. In regulation 16(4)(a) of the Tribunal Regulations (summoning of witnesses), there shall be added after the word “hearing” the words “or has consented to a shorter period of notice”.

Amendment of regulation 35 of the Tribunal Regulations

9. In regulation 35 of the Tribunal Regulations (time), for paragraph (3) there shall be substituted the following paragraph—

“(3) This regulation does not apply to the time limits provided for initiating an appeal mentioned in paragraph 1 of Schedule 2, 6 or 7.”.

Amendment of the Tribunal Regulations: Schedules 6 and 7

10. After Schedule 5 to the Tribunal Regulations (appeals and applications for leave under section 86 of the 2000 Act), there shall be added the Schedules set out in the Schedule to these Regulations.

Signed by authority of the Secretary of State for Health

10th March 2003

Jacqui Smith
Minister of State,
Department of Health

“SCHEDULE 6

Regulation 4(6)

APPEAL UNDER SECTION 68 OF THE 2000 ACT
AGAINST A DECISION OF A COUNCIL IN RESPECT OF REGISTRATION
UNDER PART IV OF THAT ACT**Initiating an appeal**

1.—(1) A person who wishes to appeal to the Tribunal under section 68 of the 2000 Act against a decision of the Council under Part IV of the 2000 Act in respect of registration 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 be received by the Secretary no later than 28 days after the date of service on the applicant of notice of the decision.

(4) An application under this paragraph must—

- (a) give the applicant’s name, date of birth and full postal address;
- (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 the applicant’s telephone number, fax number and e-mail address and those of the applicant’s representative where these are available;
- (e) identify the decision against which the appeal is brought and give particulars of whether the appeal is against—
 - (i) the refusal of registration of the applicant as a social worker or, as the case may be, a social care worker in the relevant part of the register;
 - (ii) the removal of the applicant from a part of the register;
 - (iii) the suspension, or the refusal to terminate the suspension, of the applicant from a part of the register;
 - (iv) the grant of an application for registration subject to conditions; or
 - (v) the removal, alteration or restoration of an entry relating to the applicant in a part of the register;
- (f) give a short statement of grounds for the appeal; and
- (g) be signed and dated by the applicant.

(5) In this Schedule, “register” means the register maintained by the Council under section 56(1) of the Act and “relevant part” of the register means—

- (a) in relation to a social worker, the part of the register for social workers; and
- (b) in relation to a social care worker of a specified description, the part of the register for a social care worker of that description.

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) 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 shall notify the applicant in writing accordingly; and
 - (c) unless within five working days of receipt of notification under head (b) 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 requested, 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 he opposes it, and if he 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 Secretary should send documents concerning the appeal to the representative rather than to the respondent;
 - (ii) a copy of the decision which is the subject of the appeal and the reasons for the decision; and
 - (iii) a copy of the relevant entry in the register.

(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 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 the 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 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 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.

SCHEDULE 7

Regulation 4(7)

APPEALS UNDER THE SUSPENSION REGULATIONS

Initiating an appeal

1.—(1) A person who wishes to appeal to the Tribunal—

- (a) under regulation 8(1)(a) of the Suspension Regulations against a decision to suspend the registration of a person acting as a child minder or providing day care; or
- (b) under regulation 8(1)(b) of the Suspension Regulations against a refusal to lift the suspension of such registration,

must do so by application in writing to the Secretary.

(2) An application under sub-paragraph (1)(a) must be received by the Secretary no later than 10 working days after service on the applicant of a notice suspending his registration.

(3) An application under sub-paragraph (1)(b) must be received by the Secretary no later than 10 working days after service on the applicant of a notice informing him of the decision not to lift his suspension.

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

(5) An application under this paragraph must—

- (a) give the applicant's name, full postal address and, if the applicant is an individual, his date of birth or, where 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) identify the decision against which the appeal is brought and give particulars of whether the appeal is made under sub-paragraph (1)(a) or (1)(b) or both;

- (f) set out the reasons for and grounds upon which the applicant is appealing;
- (g) state whether or not the applicant wishes the Tribunal to determine the appeal by way of an oral hearing;
- (h) where the applicant wishes the Tribunal to determine the appeal by way of an oral hearing—
 - (i) insofar as the applicant is able to identify them at that stage, give the names of any witnesses that the applicant 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; and
 - (ii) specify any working days within the 20 working days following the date of the application when the applicant or any such witnesses will not be available to attend a hearing before the Tribunal, and the reasons for which he or they (as the case may be) will not be so available; and
- (i) be signed and dated by the applicant and must contain a statement as follows: “To the best of my knowledge, information and belief, the facts contained in this application are true”.

(6) The applicant 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 applicant intends to rely upon in presenting his case.

(7) At the same time as he sends the application to the Secretary, the applicant must send a copy of his application to the respondent.

Acknowledgement and notification of application

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

- (a) immediately send to the applicant an acknowledgement of its receipt;
- (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 the appeal, 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 as soon as reasonably practicable and wherever possible, in advance of any determination of the appeal notify the applicant that he has done so; and
- (c) amend the application accordingly unless, at any stage prior to the determination of the appeal by the Tribunal, the applicant notifies the Secretary that he objects to the correction.

Response to application

3.—(1) The respondent must, within 3 working days of the date of receipt of the application from the applicant or the Secretary (whichever is the earliest) send to the Secretary and to the applicant a written response to the application.

(2) Where the respondent fails to respond as directed under sub-paragraph (1), 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 and any documentary evidence enclosed with it;
- (b) indicate whether or not the respondent opposes the appeal;
- (c) provide a copy of the notice referred to in paragraph 1(2) or (3) that was served on the applicant;
- (d) provide a provisional estimate of the time the respondent considers he will require to present his case;
- (e) state whether the respondent wishes the President or the nominated chairman to give any directions or exercise any of his powers under Part IV of these Regulations;

- (f) provide the name, address and profession of the person (if any) representing the respondent and whether the Secretary should send any further documents relating to the appeal to the representative rather than the respondent;
- (g) where the applicant has requested an oral hearing—
 - (i) insofar as the respondent is able to identify them at that stage, give the names of any witnesses that the respondent 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;
 - (ii) specify any forthcoming working days within the period of 20 working days after the date of the application when the respondent or any such witnesses will not be available to attend a hearing before the Tribunal, and the reasons for which he or they (as the case may be) will not be so available.

(4) The respondent 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 the respondent intends to rely upon in presenting his case.

Further evidence

4.—(1) Subject to sub-paragraph (2), either party shall, at the earliest practicable date after he sent his application or response (as the case may be) to the Secretary, send to the Secretary and to the other party—

- (a) any further documentary evidence which he intends to rely upon at the hearing (or wishes the Tribunal to take into consideration in otherwise determining the appeal); and
- (b) the names of any witnesses or any further witnesses that he will be calling or is likely to call to support his case and a statement as to the nature of the evidence to be given by those witnesses.

(2) The evidence or information referred to in sub-paragraph (1)(a) or (b) must be received by the Secretary and the other party no later than 5 working days before the hearing or the determination of the appeal or, where it appears to the President or the nominated chairman that it is necessary or expedient for a later date to be substituted, by such date as the President or the nominated chairman may direct.

Misconceived appeals etc.

5.—(1) Subject to sub-paragraph (2), 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 Tribunal's jurisdiction 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.”.

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 (“the 1999 Act”) (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 the following appeals to the Tribunal—

appeals (“Part IV appeals”) under section 68 of the 2000 Act, against decisions of the General Social Care Council and the Care Council for Wales in respect of registration under Part IV of the 2000 Act;

appeals (“suspension appeals”) under regulation 8(1) of the Child Minding and Day Care (Suspension of Registration) (England) Regulations 2003, against decisions of Her Majesty’s Chief Inspector of Schools in England—

to suspend the registration, under Part XA of the Children Act 1989, of a person acting as a child minder or providing day care; or

to refuse to lift the suspension of such registration.

Part XA was inserted in the Children Act 1989 by section 79 of the Care Standards Act 2000.

The amendments made by these Regulations relate in particular to the procedure for the appeals. Regulation 10 and the Schedule add two new Schedules to the Tribunal Regulations, in respect of Part IV appeals and suspension appeals respectively. The two new Schedules make 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.

The Regulations amend the Tribunal Regulations, for the purposes of suspension appeals, with respect to the giving of directions by the President or nominated chairman (regulation 5), the fixing and notification of the appeal hearing (regulation 6) and multiple appeals (regulation 7).

Regulations 2, 3, 4, 8 and 9 make minor consequential amendments.

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Standards Tribunal (Amendment) Regulations 2003

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