

EXPLANATORY MEMORANDUM TO
THE PROTECTION OF CHILDREN AND VULNERABLE ADULTS AND
CARE STANDARDS TRIBUNAL (AMENDMENT) REGULATIONS 2007
No. 1684

1. This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Description

These Regulations amend the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 [S.I. 2002/816] and come into force on 2nd July 2007. The amendments are required for the purpose of providing an appeal mechanism in relation to the voluntary registration scheme for child care providers introduced by the Childcare Act 2006.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Background

The Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (SI 2002/ 816)) [the Tribunal Regulations] set out the procedural rules for the Tribunal (generally known as the Care Standards Tribunal) in relation to the various appeals that it handles under its various jurisdictions. These include appeals in relation to the regulation of child minders and child care providers under Part 10A of the Children Act 1989 (the 1989 Act) and under the Tax Credits (Approval of Child Care Providers) Scheme 2004 (the 2004 Scheme). The Tribunal was established under section 9 of the Protection of Children Act 1999(c.14), and the powers to make rules relating to the procedure of the Tribunal are contained in section 9(2) of that Act.

The Childcare Act 2006 (the 2006 Act) replaces Part 10A of the 1989 Act and the 2004 scheme. The 2006 Act introduces a new voluntary registration scheme with effect from April 2007 which will apply to nannies, child care providers caring for children over 8 years old and other child care provision not currently required to be registered. This scheme, known as the Voluntary Ofsted Childcare Register (VOCR), will include provision for the suspension of a person's registration in certain prescribed circumstances. The current regulatory arrangements will run alongside the new arrangements until September 2008 when a new compulsory registration scheme will be introduced.

The Tribunal Regulations require amendment in order to apply the appeal procedures set out in Schedule 2 to those Regulations to appeals against the suspension of registrants on the VOCR scheme. In addition, amendments are also made to substitute a new definition of the Suspension Regulations in order to include a reference to the regulations which establish the VOCR scheme.

Furthermore, the Regulations amend regulation 4A of the Tribunal Regulations (which deals with the striking out of appeals) in order to enable the President or

nominated chairman to strike out an appeal or application for leave to appeal on the ground that he considers it has no reasonable prospect of success.

5. Extent

This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

The Tribunal is established under section 9 of the Protection of Children Act 1999 and section 9 of that Act sets out the regulation making powers in relation to the procedural rules of the Tribunal. The Tribunal provides an appeal mechanism in relation to various jurisdictions, and in particular, in relation to the protection of children under that Act, under the Children Act 1989 and under the Childcare Act 2006. The setting up of a new voluntary registration scheme for child care providers as a result of the 2006 Act will result in the possible suspension of such providers from time to time in prescribed circumstances. It is therefore important that there should be an appeal mechanism for persons who are suspended, and these amending Regulations provide that.

The amendment contained in regulation 4 (amendment to regulation 4A) was requested by the President of the Tribunal and will assist with the disposal of an appeal where there is no chance that it can be upheld. As a result this will save the Tribunal both time and costs.

The Council on Tribunals and the National Assembly for Wales have been consulted on these changes, as required by section 9(3C) of the Protection of Children Act 1999, and they are both content with these changes. Given that these Regulations are concerned with procedural changes only, they are not considered to be in any way controversial and no wider consultation was undertaken.

8. Impact

A regulatory impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

The impact on the public sector is considered to be negligible. The changes have no costs implication for the public. It is not clear if the new VOCR will produce more appeals to the Tribunal, but if it does, the costs will be met from the Tribunal's existing funds.

9. Contact

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