

EXPLANATORY MEMORANDUM TO
THE PROTECTION OF CHILDREN AND VULNERABLE ADULTS AND CARE
STANDARDS TRIBUNAL (REVIEW OF INCLUSION ON THE POCA LIST
AND REVIEW OF SECTION 142 DIRECTIONS) REGULATIONS 2007

2007 No. 2620

1. This explanatory memorandum has been prepared by the Ministry of Justice with the Department of Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. These regulations apply the procedural rules set out in the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations (Review of Disqualification Orders) 2006 (SI 2006/1684) to applications from people included on the Protection of Children Act List under sections 4A and 4B of the Protection of Children Act 1999 and to people barred from working with children in schools under section 142 of the Education Act 2002 as given force by the Education (Prohibition from Teaching or Working with Children) Regulations 2003 recently amended by the Education (Prohibition from Teaching or Working with Children) Regulations 2007/195.

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

3.1 None

4. Legislative Background

4.1. The Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (SI 2002/816) and the Protection of Children and Vulnerable Adults and Care Standards Tribunal (Review of Disqualification Orders) Regulations (2006/1684) [the Tribunal Regulations] set out the procedural rules by which the tribunal handles appeals and applications for review under its various jurisdictions. These include appeals in relation to inclusion on the Protection of Children Act List under 4A and 4B of the Protection of Children Act 1999 and people barred from teaching or working with children in schools under section 142 of the Education Act 2002 and the Education (Prohibition from Teaching or Working with Children) Regulations 2003. 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 procedures of the Tribunal are contained in section 9(2) of that Act.

The Education (Prohibition from Teaching or Working with Children) Regulations 2007 (SI2007/195) provides for a new category and extension of automatic bar in relation to people working with children which provides for an immediate right to make representations and appeal to the CST. Because of the change in the auto barring criteria people currently auto barred will also have the right to apply for a review of their bar to the CST.

These current barring regulations for people working with children will be superseded from autumn 2008 when the Safeguarding Vulnerable Groups Act 2006 is implemented. The 2006 Act introduces a new barring scheme for anyone working with children or vulnerable adults.

These Tribunal regulations are required to apply the Review of Disqualification Orders procedural rules to applications under the list 99 amendment regulations.

5. Extent

5.1. The Regulations apply to England and Wales.

6. European Convention on Human Rights

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

7. Policy Background

7.1 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 and in relation to people prohibited from teaching and working with children in schools under the Education Act 2002 and the Education (Prohibition from Teaching or Working with Children) Regulations 2003 (list 99). The amendment of the 2003 list 99 regulations by the list 99 2007 amendment regulations may result in people currently auto barred from working with children applying to the Tribunal to have their bar reviewed. It is therefore important that there should be an appeal mechanism for persons who make such applications. The 2006 Review of Disqualification Orders Regulations relate only to persons who wish to apply for a review of a disqualification order issued by a Court.

The Council on Tribunals has been consulted on these changes and is 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

- 8.1 A regulatory impact assessment has not been prepared as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is considered to be negligible. The changes have no costs implementation for the public. The change to the list 99 regulations may produce more application to the Tribunal but if it does the costs will be met from the Tribunal's existing funds or funds put aside for the new scheme.

9. Contact

- 9.1. Any enquiries about the contents of this memorandum should be addressed to:
Barbara Erne, Secretary to the Care Standards Tribunal, Tribunals Service,
Ministry of Justice
Email: Barbara.erne@tribunals.gsi.gov.uk Tel. 020 7 9600664