

2008 No. 2938

LOCAL GOVERNMENT, ENGLAND

The Case Tribunals (England) Regulations 2008

Made - - - - *13th November 2008*

Laid before Parliament *18th November 2008*

Coming into force - - *12th December 2008*

The Secretary of State for Communities and Local Government, having consulted the Administrative Justice and Tribunals Council in accordance with section 44 of, and paragraph 24(1) of Schedule 7 to, the Tribunals Courts and Enforcement Act 2007(a), in exercise of the powers conferred by sections 64(7), 65(4A), 77(2) and (6), 78A(4), (5), (7) and (8) and 105(2) of the Local Government Act 2000(b) makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Case Tribunals (England) Regulations 2008 and shall come into force on 12th December 2008.

(2) These Regulations apply in relation to England.

Interpretation

2. In these Regulations—

“the Act” means the Local Government Act 2000;

“Adjudication Panel” means the Adjudication Panel for England constituted under section 75 of the Act;

“any relevant authority concerned” means any relevant authority(c) in England of which a respondent is a member or co-opted member;

“case tribunal” means an English case tribunal;

“ethical standards officer” means an ethical standards officer appointed under section 57(5)(a) of the Act;

“respondent” means a person who is the subject of the investigation which gave rise to the reference to the Adjudication Panel for England under section 64(3) or 65(4) of the Act, or regulations made under section 66 of the Act; and

(a) 2007 c. 15. Case tribunals and interim case tribunals constituted under section 76 of the Local Government Act 2000 (c. 22) are listed tribunals for the purposes of paragraph 24(1) of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 by virtue of article 2 of the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007 (SI 2007/2951).

(b) 2000 c.22. Section 64(7) was inserted by section 192(5) of the Local Government and Public Involvement in Health Act 2007 (c. 28); section 65(4A) was inserted by section 192(8) of that Act; and section 78A was inserted by section 198 of that Act.

(c) Relevant authority is defined in section 49(6) of the Local Government Act 2000.

“the relevant authority concerned” means the authority of which a respondent is a member or co-opted member and with whose code of conduct the respondent is alleged to have failed or, in the opinion of a case tribunal, has failed to comply.

Sanctions available to case tribunals

3.—(1) If a case tribunal makes a decision under section 78A(4) of the Act in respect of a respondent, other than a decision to take no action, it may, subject to paragraphs (2) and (3), impose any one of, or any combination of, the following sanctions—

- (a) censure of the respondent;
- (b) restriction for a period not exceeding 12 months of the respondent’s access to the premises of, or the respondent’s use of the resources of, the relevant authority concerned, or any relevant authority concerned, provided that any such restriction—
 - (i) is reasonable and proportionate to the nature of the failure to comply with the authority’s code of conduct; and
 - (ii) does not unduly restrict the respondent’s ability to perform the functions of a member;
- (c) partial suspension^(a) of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months;
- (d) suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months;
- (e) a requirement that the respondent submit a written apology in a form specified by the case tribunal;
- (f) a requirement that the respondent undertake such training or participate in such conciliation as the case tribunal specifies;
- (g) partial suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months or until such time as the respondent submits a written apology in a form specified by the case tribunal;
- (h) partial suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months or until such time as the respondent has undertaken such training or participated in such conciliation as the case tribunal specifies;
- (i) suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months or until such time as the respondent has submitted a written apology in a form specified by the case tribunal;
- (j) suspension of the respondent from the relevant authority concerned, or any relevant authority concerned, for a period not exceeding 12 months or until such time as the respondent has undertaken such training or participated in such conciliation as the case tribunal specifies; or
- (k) disqualification of the respondent for being, or becoming (whether by election or otherwise) a member of the relevant authority concerned, or any other relevant authority, for a period not exceeding 5 years.

(2) If a case tribunal imposes a sanction under paragraph (1)(c) or (d) or any of the subparagraphs from (g) to (j), the period for which the respondent is suspended or partially suspended must not exceed the remainder of the respondent’s term of office.

(3) If a case tribunal makes a decision under section 78A(4) of the Act, other than a decision to take no action, in respect of a respondent who has ceased to be a member of any relevant authority at the date on which it makes the decision, it may only impose a sanction under either paragraph (1)(a) or (1)(k).

(a) See section 83(7) of the Local Government Act 2000 (c.22) for the meaning of partial suspension.

Notices

4.—(1) Where a case tribunal makes a decision under section 78A(4) of the Act it must give a notice to the standards committee of any relevant authority concerned, and may give a copy of that notice to the standards committee of any other relevant authority of which the respondent has been a member or co-opted member.

(2) The notice specified in paragraph (1) must—

- (a) state that the case tribunal has decided that the respondent has failed to comply with the code of conduct of a relevant authority;
- (b) specify the details of that failure;
- (c) specify whether the case tribunal has decided to impose a sanction under regulation 3(1), and if so what that sanction is;
- (d) specify the date from which any sanction is to take effect; and
- (e) state that the respondent may, by virtue of section 78B(4) of the Act, seek leave to appeal to the High Court against the decision, or any other decision of the case tribunal which relates to the respondent.

(3) Subject to paragraph (4) where a notice given under paragraph (1) specifies any sanction under regulation 3(1) the notice shall have the effect of bringing the sanction into force on the date specified in the notice.

(4) The president or deputy president of the Adjudication Panel may suspend the effect of a notice given under paragraph (1) if requested to do so by a respondent who intends to seek leave to appeal to the High Court under section 78B(4) of the Act.

Withdrawal of references by ethical standards officer

5.—(1) An ethical standards officer who has referred a matter to the president of the Adjudication Panel under section 64(3)(b) or 65(4) of the Act may withdraw that reference if—

- (a) the circumstances are as mentioned in any of sub-paragraphs (a) to (c) of paragraph (2); and
- (b) the requirements of paragraphs (3) and (4) of this regulation are satisfied.

(2) (a) A sentence of imprisonment (whether suspended or not) for a period of not less than three months, without the option of a fine, has been passed on the respondent.

(b) The ethical standards officer is satisfied—

- (i) that the matter is materially less serious than appeared to be the case when it was referred to the president of the Adjudication Panel and that as a consequence is not sufficiently serious to be determined by a case tribunal or a standards committee; or
- (ii) that the pursuit of the matter would not be in the public interest.

(c) The president or deputy president of the Adjudication Panel invites the ethical standards officer to withdraw the reference.

(3) Except in a case where the president or deputy president of the Adjudication Panel agrees to dispense with the requirement in this paragraph, the ethical standards officer—

(a) has given 28 days notice in writing to—

- (i) the person who made the written allegation under section 57A of the Act which gave rise to the investigation;
 - (ii) the respondent;
 - (iii) the standards committee of any relevant authority concerned; and
 - (iv) the monitoring officer of any relevant authority concerned,
- that a request is to be made to the president of the Adjudication Panel to withdraw the reference, and

(b) has considered any representations received from any person in that regard.

(4) The president of the Adjudication Panel, or in the absence of the president, the deputy president of the Adjudication Panel, has given consent to the withdrawal of the reference.

(5) The president of the Adjudication Panel, or the deputy president, as the case may be, shall give reasons in writing for the giving of an invitation under paragraph (2)(c) or of consent under paragraph (4).

(6) Where a reference to the president of the Adjudication Panel is withdrawn under this regulation, the ethical standards officer shall give to each person or body to whom notice was given under paragraph (3)(a)—

- (a) written notice of the withdrawal; and
- (b) a copy of the reasons referred to in paragraph (5).

Signed by authority of the Secretary of State for Communities and Local Government

John Healey
Minister of State

13th November 2008

Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

Tribunals drawn from the Adjudication Panel for England, known as “case tribunals” consider matters referred to them in order to determine whether members and co-opted members (or former members or co-opted members) of relevant authorities in England have failed to comply with an authority’s code of conduct, and if so whether any sanction should be imposed.

Regulation 3(1) makes provision as to the sanctions which are available to a case tribunal when it has decided that a person has failed to comply with an authority’s code of conduct and that a sanction should be imposed. The sanctions specified in paragraphs (1)(b) to (d) and (g) to (j) of that regulation may have effect in respect of any relevant authority in England of which the person is a member or co-opted member. Paragraph (1)(k) enables a case tribunal to disqualify a person, for a period not exceeding five years, for being or becoming a member or co-opted member of the relevant authority with whose code of conduct that person has failed to comply, or any other relevant authority in England and Wales.

Regulation 4 makes provision as to the content and effect of notices served on standards committees by case tribunals.

Regulation 5 makes provision as to the circumstances in which references of matters by an ethical standards officer to the president of the Adjudication Panel for England for adjudication by a case tribunal or interim case tribunal may be withdrawn, and the procedure for so doing.

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