

CONSULTATION ON THE CARE STANDARDS TRIBUNAL REGULATIONS

Introduction

The Care Standards Tribunal is an independent judicial body established to hear appeals against certain decisions by:

- the Commission for Social Care Inspection and the Health Care Commission
- the Secretary of State for Education and Skills
- the Chief Inspector of Schools in England
- The General Social Care Council and the Care Council for Wales
- the National Assembly for Wales

The Tribunal's jurisdiction covers England and Wales only and has been operational since 1 April 2002. It operates under the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 and subsequent amendments to those regulations. More information on the Care Standards Tribunal and its operation can be found at:

<http://www.carestandardstribunal.gov.uk/>

This consultation seeks views on a new set of Care Standards Tribunal regulations.

The proposals

This consultation seeks views on a set of Care Standards Tribunal (CST) regulations. They are as follows:

Reviewing disqualification orders

The enclosed set of regulations provide procedural rules that will enable the Tribunal to consider applications from individuals for a revocation of a disqualification order made under the Criminal Justice and Court Services Act 2000 which prevents the individual from working with children.

People that have been disqualified from working with children under the Criminal Justice and Court Services Act 2000 provisions have a right to apply to the Care Standards Tribunal to have their case reviewed if certain conditions are met. These are not appeals against the original decision, but applications for disqualification orders to be lifted on the basis that the individual's circumstances have changed since the original decision. An application for review cannot be made to the Tribunal until between 5 and 10 years (depending on age) have elapsed from the date the order takes effect. In such cases the Tribunal will decide whether an individual's circumstances have changed sufficiently and that he/ she is, at the time of the review application, now suitable to work with children. Regulations are needed to establish the procedure for the Tribunal to deal with in these cases.

You are invited to comment on the draft regulations as set out in Annex A.

Appeal periods for child care providers and social workers

Child care providers and social workers are currently given 28 days to appeal against a decision in relation to their registration. EU legislation now gives migrant social workers and childminders from the EU 3 months to appeal against decisions not to register them. We therefore need to amend our regulations to ensure UK nationals are given equal treatment, and to make the regulations ECHR compliant.

You are invited to comment on the draft regulations set out in Annex B.

How to Respond

The consultation period began on 5 May 2006 and will run until 2 June 2006 please ensure that your response reaches us by that date. If you would like further copies of this consultation document it can be found at www.dh.gov.uk/consultations or you can contact helen.o'kelly@dh.gsi.gov.uk
Please send consultation responses to:

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When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

A list of those consulted is attached at Annex C. If you have any suggestions of others who may wish to be involved in this process please contact us.

The information you send us may need to be passed to colleagues within insert your department and/or published in a summary of responses received in response to this consultation **We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.**

Please ensure that if you want your name or response to be kept confidential, you state this clearly in your response. (*Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.*)

What will happen next

A summary of responses, including the next steps will be published on www.dh.gov.uk paper copies will be available on request.

RIA Regulatory Impact Assessment

No Regulatory Impact Assessment has been undertaken as these changes impose negligible costs or savings.

The Consultation criteria

The consultation is being conducted in line with the Code or Practice on Consultation. The criteria are listed below, a full version of the criteria can be found at <http://www.cabinet-office.gov.uk/regulation/Consultation/Code.htm>

If you feel that this consultation does not fulfil these criteria please contact

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2005 No. []

CHILDREN AND YOUNG PERSONS, ENGLAND AND WALES

The Protection of Children and Vulnerable Adults and Care Standards Tribunal (Review of Disqualification Orders) Regulations 2005

| | |
|--------------------------------|--------|
| <i>Made</i> - - - - | 200[5] |
| <i>Laid before Parliament</i> | 200[5] |
| <i>Coming into operation</i> - | 200[6] |

The Secretary of State, in exercise of the powers conferred upon her by section 9(2)(e), (3) and (3B) of the Protection of Children Act 1999(1), and of all other powers enabling her in that behalf, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(2), hereby makes the following Regulations:—

PART 1

INTRODUCTORY

Citation, commencement and interpretation

1.—• These Regulations may be cited as the Protection of Children and Vulnerable Adults and Care Standards Tribunal (Review of Disqualification Orders) Regulations 2005 and shall come into force on [] January 2006.

(1) In these Regulations—

“the Act” means the Criminal Justice and Court Services Act 2000(3);

“application”, except in regulations 3(1), 8(5) and 17, means an application under regulation 3;

“appropriate conditions” means the conditions set out in section 33(3) or (4) of the Act;

“case” in Parts 4, 5 and 6 (except in regulation 17(5)) means an application which has been granted leave to proceed;

“document” means information recorded in writing or in any other form;

“grant conditions” means the conditions set out in section 33(5) of the Act;

(1) 1999 c.14 (“the 1999 Act”). Section 9(2) of the 1999 Act was amended by the Care Standards Act 2000 (c.14) (“the 2000 Act”), section 116 and Schedule 4, paragraph 26(1) and (3)(a), and by the Criminal Justice and Court Services Act 2000 (c. 43), Schedule 7, paragraphs 154 and 157. Section 9(3A) to (3C) of the 1999 Act was inserted by the 2000 Act, section 116 and Schedule 4, paragraph 26(1) and (3)(b).

(2) 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 2000 Act, Schedule 4, paragraph 21.

(3) 2000 c.43.

“lay panel” means the panel appointed pursuant to regulation 3 of the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002(4), and references to membership of the lay panel shall be construed accordingly;

“nominated chairman” means the chairman appointed by the President in accordance with regulation 8;

“the Order” means an order made under sections 28, 29 or 29A of the Act;

“records” means the records of the Tribunal;

“the Secretary” means the person for the time being acting as the Secretary to the Tribunal;

“vulnerable adult” means a person of 18 years and over who—

(a) suffers from a mental disorder within the meaning of the Mental Health Act 1983(5), or otherwise has a significant impairment of intelligence and social functioning; or

(b) has a physical disability or is suffering from a physical disorder;

“working day” means any day other a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a Bank Holiday in England and Wales within the meaning of the Banking and Financial Dealings Act 1971(6).

PART 2

CONSTITUTION

Powers and functions exercisable by the President and Secretary

2.—• Anything which must or may be done by the President (except under regulation 8(1), (2), (4) or (5) or 17(4)), may be done by a member of the chairmen’s panel authorised by the President(7).

(1) Anything which must or may be done by the Secretary may be done by a member of the Tribunal’s staff authorised by the Secretary.

PART 3

APPLICATIONS AND DETERMINATIONS

Initiating an application

3.—• A person who wishes to make an application to the Tribunal under sections 32 and 33 of the Act must do so in writing to the Secretary.

(1) Applications may be made on the application form available from the Secretary.

(2) An application must—

(a) give the applicant’s name, date of birth and full postal address;

(b) give the date of the Order to which the application relates together with details of any change in the applicant’s circumstances since the Order was made that leads the applicant to believe that he should no longer continue to be subject to the Order;

(c) give the date of any previous application;

(d) give the name, address and profession of the person (if any) representing the applicant;

(e) give the address within the United Kingdom to which the Secretary should send documents concerning the application;

(4) S.I. 2002/816 to which there are amendments not relevant to these Regulations.

(5) 1983 c. 20.

(6) 1971 c.80.

(7) See paragraphs 1 and 2 of the Schedule to the 1999 Act for details of the chairmen’s panel.

- (f) give, where these are available, the applicant's telephone number, fax number and e-mail address and those of the applicant's representative; and
- (g) be signed and dated by the applicant.

Acknowledgement and notification of application

- 4.—• On receiving an application, the Secretary shall—
 - (a) immediately send an acknowledgement of its receipt to the applicant; and
 - (b) subject to the following provisions of this regulation, enter particulars of the application and the date of its receipt in the records.
- (2) If the President is of the opinion that the applicant is asking the Tribunal to do something which it cannot do, he may notify the applicant in writing—
 - (a) of the reasons for his opinion; and
 - (b) that the application will not be entered in the records unless within five working days the applicant notifies the President in writing that he wishes to proceed with it.
- (3) 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 accordingly; and
 - (c) unless within five working days of receipt of the notification under sub-paragraph (b) of this paragraph the applicant notifies the Secretary in writing that he objects to the correction, the application shall be amended accordingly.

Misconceived applications etc.

- 5.—• The nominated chairman may at any time strike out an application on the grounds that—
 - (a) except where paragraph (2) applies, it is made otherwise than in accordance with the provisions in the Act or in these Regulations for initiating that application;
 - (b) it is outside the jurisdiction of the Tribunal or is otherwise misconceived; or
 - (c) it is frivolous or vexatious.
- (2) The nominated chairman shall strike out an application if the appropriate conditions are not satisfied.
- (3) Before striking out an application under paragraph (1), the nominated chairman must—
 - (a) invite the applicant 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 applicant an opportunity to make oral representations; and
 - (c) consider any representations the applicant may make.

Grant or refusal of leave

- 6.—• The nominated chairman shall grant or refuse leave to proceed with an application without a hearing in accordance with the following provisions of this regulation.
- (1) If, in the opinion of the nominated chairman the grant conditions are met, then leave shall be granted; otherwise it shall be refused.
- (2) The Secretary must without delay notify the applicant in writing of the decision of the nominated chairman, and if he has refused leave—
 - (a) must notify him of his reasons for doing so; and
 - (b) must inform the applicant of his right to request a reconsideration of the decision under regulation 7.

Reconsideration of refusal of leave

7.—• The nominated chairman must reconsider a decision to refuse leave to proceed with an application if within ten working days after receipt of a notice under regulation 6(3) the Secretary receives a written request to do so from the applicant.

(1) If in his request under paragraph (1) the applicant has asked to make oral representations about leave at a hearing, the Secretary must fix a hearing for those representations to be heard, and the applicant may appear or be represented by any person at that hearing.

(2) If the nominated chairman again refuses leave after reconsideration—

(a) he must give his reasons for doing so in writing; and

(b) the Secretary must without delay send to the applicant a copy of the decision of the nominated chairman and, if he has refused leave, of his reasons for doing so.

PART 4

APPOINTMENT OF TRIBUNAL

Appointment of Tribunal

8.—• The President shall, at such time as he considers it appropriate to do so, nominate a chairman to determine the grant or refusal of leave to proceed with an application.

(1) The President shall, at such time as he considers it appropriate to do so, nominate a chairman and two members of the lay panel to determine the case.

(2) The President may, at any time before the hearing (or, if the application is to be determined without an oral hearing, before the application is determined) nominate from the appropriate panel another person in substitution for the chairman or other member previously nominated.

(3) The President shall nominate members of the lay panel who appear to him to have experience and qualifications relevant to the subject matter of the case.

(4) The nominated chairman may determine any application made in relation to the case.

PART 5

REVIEW OF ORDERS AND CONDUCT OF PROCEEDINGS

Review of orders

9.—○ Following the grant of leave under regulation 6, the Secretary shall, without delay, send a notice to the applicant informing him of his right to appear, and to be represented, before the Tribunal to argue his case.

(1) Where the applicant, before the end of the period of 28 days beginning with the date on which the notice under paragraph (1) is sent, sends a notice to the Secretary stating that he wishes to appear before it, the Secretary shall fix a day on which the Tribunal is to hear the case and send to the applicant notice of the day, time and venue for the hearing.

(2) The Secretary shall not fix a date for the hearing which is before the end of the period of 28 days beginning with the date on which the applicant sends the notice referred to in paragraph (2) to the Secretary.

(3) The applicant may be legally represented in any proceedings.

(4) The Tribunal (or the nominated chairman) may require any person (other than the applicant) to attend and give evidence or produce documents at the hearing.

(5) The Tribunal (or the nominated chairman) may invite any person who, in its, or his, opinion, has an interest in the proceedings to submit written representations and any such representations

shall be sent to the Secretary before the end of the period of 14 days beginning with the date on which the invitation is sent to that person.

(6) If the applicant requests a preliminary hearing, or if the nominated chairman considers that a preliminary hearing is necessary, or would be helpful, the nominated chairman shall fix a date for such a hearing as soon as possible.

(7) At any preliminary hearing which the nominated chairman conducts under paragraph (7), he may give such directions as he considers appropriate.

(8) The Secretary shall notify the applicant and his representatives in writing of any directions the nominated chairman gives under paragraph (8) above.

General Conduct of Hearing

10.—○ The Tribunal may regulate its own procedure.

(1) At the beginning of the hearing the nominated chairman must explain the order of proceedings which the Tribunal proposes to adopt.

(2) The applicant has the right to give evidence at the hearing in person, and any other person may do so unless the nominated chairman has directed otherwise.

(3) The Tribunal may consider any evidence, whether or not such evidence would be admissible in a court of law.

(4) The Tribunal may require any witness to give evidence on oath or affirmation which may be administered for the purpose by the nominated chairman or the clerk.

(5) Subject to paragraph (7), the nominated chairman may adjourn the proceedings from time to time either at the request of the applicant or on his own initiative.

(6) The nominated chairman shall not adjourn the hearing at the request of the applicant unless satisfied that refusing the applicant's request for an adjournment would prevent the just disposal of the application.

(7) If the nominated chairman adjourns the hearing, then the Secretary must, without delay, inform the applicant in writing of the date, time and venue at which the hearing will be resumed.

(8) If the applicant fails to attend or be represented at the hearing, the Tribunal may determine the case in his absence.

Hearing to be in public

11.—○ The hearing must be in public except in so far as any person is excluded under regulation 15.

(1) Whether or not the hearing is held in public—

(a) a member of the Council on Tribunals;

(b) the President;

(c) the clerk; and

(d) any person whom the nominated chairman permits to be present in order to assist the Tribunal,

are entitled to attend the hearing.

(2) Whether or not the hearing is held in public—

(a) a member of the Council on Tribunals; and

(b) the President,

may remain present during the Tribunal's deliberations, but must not take part in those deliberations, except where the President is the nominated chairman of the Tribunal.

Summoning of witnesses

12.—○ The nominated chairman may, upon being requested to do so by the applicant, or on his own initiative, issue a summons requiring any person—

- (a) to attend as a witness at the hearing, at the date, time and place set out in the summons; and
- (b) to answer any questions or produce any documents or other material in his possession or under his control which relate to any matter in question in the case.

(2) The summons must—

- (a) explain that it is an offence under section 9(5)(c) of the Protection of Children Act 1999⁽⁸⁾ to fail, without reasonable excuse, to comply with it; and
- (b) explain the right to apply under this regulation to have it varied or set aside.

(3) A person summoned under this regulation may apply in writing to the Secretary for the summons to be varied or set aside by the nominated chairman, and—

- (a) the nominated chairman may do so if he sees fit; and
- (b) the Secretary must notify him and the applicant in writing of the decision.

(4) No person shall be required to attend, answer questions or produce any document in obedience to a summons issued under this regulation unless—

- (a) he has been given at least 5 working days' notice of the hearing; and
- (b) the necessary expenses of his attendance are paid or tendered to him by the applicant or by the Tribunal, as the nominated chairman shall direct.

(5) No person shall be required under this regulation to give any evidence or produce any document or other material that he could not be required to produce in legal proceedings in a county court.

Child and vulnerable adult witnesses

13.—○ A child shall only give evidence in person where, having regard to all the available evidence, and any representations made by the applicant, the nominated chairman considers that the welfare of the child will not be prejudiced by so doing.

(1) If he directs that a child shall give evidence in person, the nominated chairman shall—

- (a) secure that any arrangements he considers appropriate (such as the use of a video link) are made to safeguard the welfare of the child; and
- (b) appoint for the purpose of the hearing a person with appropriate skills or experience in facilitating the giving of evidence by children.

(2) Where the nominated chairman believes that it might not be in the best interests of a vulnerable adult for the vulnerable adult to give oral evidence to the Tribunal, the nominated chairman shall, having regard to all the available evidence, including any representations made by the applicant consider whether it would prejudice the vulnerable adult's welfare to give oral evidence to the Tribunal—

- (a) in any circumstances; or
- (b) otherwise than in accordance with paragraph (5).

(3) If the nominated chairman considers that—

- (a) it would prejudice the vulnerable adult's welfare to give oral evidence to the Tribunal in any circumstances, he shall direct that the vulnerable adult shall not do so; or
- (b) it would prejudice the vulnerable adult's welfare to give oral evidence to the Tribunal otherwise than in accordance with paragraph (5) he shall direct that paragraph (5) shall apply in relation to the vulnerable adult.

⁽⁸⁾ 1999 c. 14.

(4) If he directs that this paragraph shall apply in relation to the vulnerable adult, the nominated chairman shall—

- (a) secure that any arrangements he considers appropriate (such as the use of a video link) are made to safeguard the welfare of the vulnerable adult; and
- (b) appoint for the purpose of the hearing a person with appropriate skills or experience in facilitating the giving of evidence by vulnerable adults.

(5) The nominated chairman shall pay such fees as he may determine to any person appointed under this regulation.

Expert evidence

14.—○ The nominated chairman may, if he thinks that any question arises in relation to the case on which it would be desirable for the Tribunal to have the assistance of an expert, appoint a person having appropriate qualifications to enquire into and report on the matter.

(1) The Secretary must supply the applicant with a copy of any written report received under paragraph (1) in advance of the hearing or, if the case is to be determined without an oral hearing, before the case is determined.

(2) If the nominated chairman sees fit, he may direct that the expert shall attend the hearing, and give evidence.

(3) The Tribunal shall pay such reasonable fees as the nominated chairman may determine to any person appointed under this regulation.

Exclusion of press and public

15.—○ Where paragraph (2) applies, the nominated chairman (or, at the hearing, the Tribunal) may on his (or its) own initiative, or on a request by the applicant that the hearing or any part of it should be conducted in private, direct that—

- (a) any member of the public specified in the direction;
- (b) members of the public generally; or
- (c) members of the press and members of the public,

be excluded from all or part of the hearing.

(2) This paragraph applies where the nominated chairman (or, at the hearing, the Tribunal) is satisfied that a direction under paragraph (1) is necessary in order to—

- (a) safeguard the welfare of any child or vulnerable adult;
- (b) protect a person's private life; or
- (c) avoid the risk of injustice in any legal proceedings.

PART 6

DECISION

The decision

16.—○ The Tribunal's decision may be taken by a majority and the decision shall record whether it was unanimous or taken by a majority.

(1) The decision may be made and announced at the end of the hearing or reserved, and in any event, the decision must be recorded without delay in a document signed and dated by the nominated chairman (or if as a result of his death or incapacity he is unable to sign, or if he ceases to be a member of the chairmen's panel, by another member of the Tribunal).

(2) The document mentioned in paragraph (2) must also state the reasons for the decision.

(3) The Secretary must, as soon as reasonably possible, send to the applicant a copy of the document mentioned in paragraph (2) and a notice explaining to him any right of appeal which he may have against the Tribunal's decision, and the right to apply for a review of the Tribunal's decision.

(4) Except where a decision is announced at the end of the hearing, the decision shall be treated as having been made on the day on which a copy of the document mentioned in paragraph (2) is sent to the applicant.

(5) The decision shall be entered in the records.

Review of the Tribunal's decision

17.—○ The applicant may apply to the President for the Tribunal's decision to be reviewed on the grounds that—

- (a) it was wrongly made as a result of an error on the part of the Tribunal staff;
- (b) a person, who was invited (or required) to attend and be heard at the hearing but failed to appear or to be represented, had good and sufficient reason for failing to appear; or
- (c) there was an obvious error in the decision.

(2) An application under this regulation must—

- (a) be made not later than ten working days after the day on which the decision was sent to the applicant; and
- (b) must be in writing stating the grounds in full.

(3) An application under this regulation may be refused by the President, or by the chairman of the Tribunal which decided the case, if in his opinion it has no reasonable prospect of success.

(4) Unless an application under this regulation is refused under paragraph (3), it shall be determined, after the applicant has had an opportunity to be heard, by the Tribunal which decided the case or, where that is not practicable, by another Tribunal appointed by the President.

(5) The Tribunal may on its own initiative propose to review its decision on any of the grounds referred to in paragraph (1) above, in which case—

- (a) the Secretary shall serve notice on the applicant not later than ten working days after the date on which the decision was sent to him; and
- (b) the applicant shall have an opportunity to be heard.

(6) If, following an application, or on its own initiative, the Tribunal is satisfied as to any of the grounds referred to in paragraph (1)—

- (a) it shall order that the decision be reviewed; and
- (b) it may give directions to be complied with before or after the hearing of the review.

(7) The power to give directions under paragraph (6) includes a power to give a direction requiring the applicant to provide such particulars, evidence or statements as may reasonably be required for the determination of the review.

Powers of Tribunal on review

18.—○ The Tribunal may, having reviewed a decision—

- (a) set aside the decision by certificate signed by the nominated chairman (or if as a result of his death or incapacity he is unable to sign, or if he ceases to be a member of the chairmen's panel, by another member of the Tribunal); and
- (b) substitute such other decision as it is lawfully entitled to do, or order a rehearing before the same or a differently constituted Tribunal.

(2) If any decision is set aside (whether as a result of a review or by order of the High Court), the Secretary shall alter the relevant entry in the records to conform to the chairman's certificate or the Order of the High Court and shall notify the applicant accordingly.

(3) Any decision of the Tribunal under this regulation may be taken by a majority and the decision shall record whether it was unanimous or taken by a majority.

Publication

19.—○ The President must make such arrangements as he considers appropriate for the publication of Tribunal decisions.

- (1) Decisions may be published electronically.
- (2) The decision may be published in an edited form, or subject to any deletions, if the nominated chairman considers it appropriate bearing in mind—
 - (a) the need to safeguard the welfare of any child or vulnerable adult;
 - (b) the need to protect the private life of any person;
 - (c) any representations on the matter which the applicant has provided in writing; and
 - (d) the effect of any direction under regulation 9(8) or 17(6).

PART 7

SUPPLEMENTARY

Methods of sending documents

20.—○ Any document may be sent to the Secretary by post, by fax, electronically or through a document exchange, unless the nominated chairman directs otherwise.

- (1) Any notice or document which these Regulations authorise or require the Secretary to send to an applicant shall be sent—
 - (a) by first-class post to the address given for the purpose by the applicant in accordance with these Regulations;
 - (b) by fax or electronically to a number or address given by the applicant for the purpose; or
 - (c) where the applicant has given for the purpose an address which includes a numbered box number at a document exchange, by leaving the notice or document addressed to that numbered box at that document exchange or at a document exchange which transmits documents on every working day to that exchange.
- (2) If a notice or document cannot be sent to an applicant in accordance with paragraph (2), the nominated chairman may dispense with service of it or direct that it be served on the applicant in such manner as he thinks appropriate.
- (3) Any notice or document sent by the Secretary to an applicant in accordance with these Regulations shall be taken to have been received—
 - (a) if sent by post and not returned, on the second working day after it was posted;
 - (b) if sent by fax or electronically, unless the Secretary has been notified that the transmission has been unsuccessful, on the next working day after it was sent;
 - (c) if left at a document exchange in accordance with paragraph (2)(c), on the second working day after it was left; and
 - (d) if served in accordance with a direction under paragraph (3), on the next working day after it was so served.

Irregularities

21.—○ Any irregularity resulting from failure to comply with any provision of these Regulations or any direction given in accordance with them before the Tribunal has reached its decision shall not of itself render the proceedings void.

(1) Where any irregularity comes to the attention of the nominated chairman (before the hearing) or the Tribunal he or it may and, if it appears that any person may have been prejudiced by the irregularity shall, before reaching a decision, give such directions as he or it thinks just to cure or waive the irregularity.

(2) Clerical mistakes in any document recording the decision of the Tribunal or a direction or decision of the nominated chairman, or errors arising in such documents from accidental slips or omissions, may at any time be corrected by the nominated chairman by means of a certificate signed by him.

(3) The Secretary shall as soon as practicable where a document is corrected in accordance with paragraph (3) send the applicant a copy of any corrected document together with reasons for the decision to correct the document.

Death of applicant

22. If the applicant dies before the application is determined, the nominated chairman may strike out the application.

Withdrawal of application

23. If the applicant at any time notifies the Secretary of State in writing, or states at a hearing, that he no longer wishes to pursue the application, the nominated chairman (or at the hearing, the Tribunal) must dismiss the application.

Proof of documents and certification of decisions

24.—○ A document purporting to be issued by the Secretary shall be taken to have been so issued, unless the contrary is proved.

(1) A document purporting to be certified by the Secretary to be a true copy of a document containing—

- (a) a decision of the Tribunal; or
- (b) an order of the President or the nominated chairman or of the Tribunal,

shall be sufficient evidence of the matters contained in it, unless the contrary is proved.

Time

25.—○ The nominated chairman may extend any time limit mentioned in these Regulations if in the circumstances—

- (a) it would be unreasonable to expect it to be, or to have been, complied with; and
- (b) it would be unfair not to extend it.

(2) The nominated chairman may reduce any time limit mentioned in these Regulations if he considers it reasonable to do so and the applicant agrees to the reduction.

(3) Where the time prescribed by these Regulations, or specified in any direction given by the nominated chairman, for taking any step expires on a day which is not a working day, the step must be treated as having been done in time if it is done on the next working day.

Signed by authority of the Secretary of State for Health

[Date]

Name
Parliamentary Under Secretary of State
Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the proceedings of the Tribunal established by section 9 of the Protection of Children Act 1999. The jurisdiction of the Tribunal has been extended by the Criminal Justice and Court Services Act 2000 (c.43) (“the 2000 Act”), Schedule 7. These Regulations make provision for the conduct of proceedings of the Tribunal in relation to the review of determinations under sections 32 and 33 of the 2000 Act (Disqualification Orders).

Part 1 makes provision in respect of citation, commencement and interpretation (regulation 1).

Part 2 makes provision as to the constitution of the Tribunal, in respect of the powers and functions that may be exercised by the President and the Secretary (regulation 2).

Part 3 makes provision in relation to applications and determinations and sets out the procedural steps involved in the making and acknowledgement of applications (regulations 3 and 4). It also enables misconceived applications to be struck out (regulation 5) and deals with the grant or refusal of leave (regulation 6) and the re-consideration of a refusal of leave (regulation 7).

Part 4 makes provision about the appointment of the Tribunal (regulation 8).

Part 5 makes provision about case management (regulation 9), and the conduct of the hearing (regulation 10 and 11). In addition, provision is made about the summoning of witnesses (regulation 12) and particular arrangements applying to child and vulnerable adult witnesses (regulation 13), allowing for the provision of expert evidence (regulation 14) and for excluding the press and public from hearings (regulation 15).

Part 6 deals with the Tribunal’s decision (regulation 16), the power of the Tribunal to review its decision either on its own initiative or at the request of the applicant (regulation 17), the powers of the Tribunal on such a review (regulation 18) and the publication of the decision (regulation 19).

Part 7 deals with supplementary matters. Regulation 20 provides for the method of sending documents, regulation 21 provides for dealing with any irregularities, regulation 22 provides for cases where the applicant dies, regulation 23 provides for withdrawal of applications, regulation 24 makes provision for the proof of documents and certifying of decisions and regulation 25 provides for extending and in certain circumstances reducing time limits mentioned in the Regulations.

2006 No. XXXX

SOCIAL CARE, ENGLAND AND WALES

CHILDREN AND YOUNG PERSONS, ENGLAND AND WALES

The Protection of Children and Vulnerable Adults and Care Standards Tribunal (Amendment) Regulations 2006

Made - - - - [2006]

Laid before Parliament [2006]

Coming into force - - [2006]

The Secretary of State makes the following regulations in exercise of the powers conferred by sections 9(2), (3)(b) and (d) and (3B) of the Protection of Children Act 1999⁽⁹⁾. In accordance with section 8 of the Tribunals and Inquiries Act 1992⁽¹⁰⁾ she has consulted the Council on Tribunals. In accordance with section 9(3C) of the Protection of Children Act 1999 she has consulted the National Assembly for Wales.

Citation, commencement and interpretation

26.—• These Regulations may be cited as the Protection of Children and Vulnerable Adults and Care Standards Tribunal (Amendment) Regulations 2006, and shall come into force on [] 2006.

(1) In these Regulations, “the Tribunal Regulations” means the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002⁽¹¹⁾.

Amendment of regulation 1 of the Tribunal Regulations

27. In regulation 1 of the Tribunal Regulations (citation, commencement and interpretation), in paragraph (2), in the definition of “working day” after “bank holiday” insert “in England and Wales”.

Amendment of regulation 8 of the Tribunal Regulations

28. In regulation 8 of the Tribunal Regulations (multiple appeals), in paragraph (1), after the words “establishment or agency” insert “or share the same factual background”.

⁽⁹⁾ 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) and (3)(a); by the Criminal Justice and Court Services Act 2000 (c.43), Schedule 7, paragraphs 154 and 157; by the Education Act 2002 (c.32), section 155, Schedule 14, paragraph 6 and section 215(1) and (2), Schedule 21, paragraphs 122(a) and (b) and Schedule 22, Part 3 and by the Education Act 2005 (c.18), sections 61 and 123, Schedule 9, paragraph 23 and Schedule 19, Part 1. Section 9(3A) to (3C) of the 1999 Act was inserted by the 2000 Act, section 116 and Schedule 4, paragraph 26(1) and (3)(b).

⁽¹⁰⁾ 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.

⁽¹¹⁾ S.I. 2002/816; relevant amending instruments are: S.I. 2003/626 and 1060 and 2004/2073.

Amendment of regulation 35 of the Tribunal Regulations

29.—○ Regulation 35 of the Tribunal Regulations (time) is amended as follows—

- (a) in paragraph (3)(12), at the beginning, insert “Subject to paragraph (4),”; and
- (b) after paragraph (3), add—

“(4) Where sub-paragraph (2A) of paragraph 1 of Schedule 2 or sub-paragraph (3A) of paragraph 1 of Schedule 6 applies, the time limit for initiating an appeal may be extended as provided in paragraph (1) of this regulation.”.

Amendment of Schedule 2 to the Tribunal Regulations

30.—● Schedule 2 to the Tribunal Regulations (appeal under section 79M of the 1989 Act against a decision of the registration authority or an order of a justice of the peace) is amended in accordance with the following provisions of this regulation.

(1) In paragraph 1 (initiating an appeal)—

- (a) at the beginning of sub-paragraph (2), insert “Except where sub-paragraph (2A) applies,”; and
- (b) after sub-paragraph (2), insert—

“(2A) Where an application under this paragraph relates to an appeal against the taking of the step referred to in section 79L(1)(a) of the 1989 Act then the application must be received by the Secretary no later than 3 months after service on the applicant of notice of the decision to take that step.”.

Amendment of Schedule 6 to the Tribunal Regulations

31.—● Schedule 6 to the Tribunal Regulations (appeal under section 68 of the 2000 Act against a decision of a council in respect of registration under Part 4 of that Act) is amended in accordance with the following provisions of this regulation.

(1) In paragraph 1 (initiating an appeal)—

- (a) at the beginning of sub-paragraph (3), insert “Except where sub-paragraph (3A) applies,”; and
- (b) after sub-paragraph (3), insert—

“(3A) Where an application under this paragraph relates to an appeal against a decision of a Council to refuse an application for registration pursuant to section 58 of the 2000 Act, then the application must be received by the Secretary no later than 3 months after service on the applicant of notice of that refusal.”.

Signatory text

Date

Name
[Parliamentary Under Secretary of State]
Department of Health

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations, which apply to both England and Wales, amend the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (“the Tribunal Regulations”) and make provision in relation to the proceedings of the Tribunal established by section 9 of the Protection of Children Act 1999.

Regulation 2 amends the definition of “working day” in regulation 1 (interpretation) of the Tribunal Regulations in order to clarify that the term “bank holiday” refers only to such holidays in England and Wales.

Regulation 3 amends regulation 8 of the Tribunal Regulations, which deals with multiple appeals, in order to permit the Tribunal President (or the nominated chairman), on the application of either party or on his own initiative, to hear together cases that share the same factual background.

Regulation 4 amends regulation 35 (time) of the Tribunal Regulations so that the time limits set out in sub-paragraph (2A) of paragraph 1 of Schedule 2, or sub-paragraph (3A) of paragraph 1 of Schedule 6 (as inserted by these Regulations), can be extended in accordance with paragraph (1) of regulation 35.

Regulation 5 amends Schedule 2 to the Tribunal Regulations, which sets out the procedure for appeals under section 79M of the Children Act 1989, to provide that, where a person is appealing against a decision of the registration authority to refuse their application for registration as a childminder or day care provider under section 79D of that Act, then the period within which such an appeal must be lodged is 3 months after they have received notice of the decision to refuse their application for registration, instead of 28 days.

Regulation 6 amends Schedule 6 to the Tribunal Regulations, which sets out the procedure for appeals under section 68 of the Care Standards Act 2000, to provide that, where a person is appealing against a decision of a Council to refuse their application for registration as a social worker under section 58 of that Act, then the period within which such an appeal must be lodged is 3 months after they have received notice of the decision to refuse their application for registration, instead of 28 days.

Annex C: List of those consulted

Council on Tribunals
General Social Care Council
Care Council Wales
Ofsted
National Assembly for Wales