
STATUTORY RULES OF NORTHERN IRELAND

2005 No. 178

HEALTH AND PERSONAL SOCIAL SERVICES

The Care Tribunal Regulations (Northern Ireland) 2005

Made - - - - *21st March 2005*
Coming into operation *1st April 2005*

The Department of Health, Social Services and Public Safety, in exercise of the powers conferred upon it by Articles 44(2) to (4) and 48(2) of, and paragraph 2(4) of Schedule 2 to the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003⁽¹⁾ and of all other powers enabling it in that behalf, hereby makes the following Regulations:

PART I
INTRODUCTORY

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Care Tribunal Regulations (Northern Ireland) 2005 and shall come into operation on the 1st April 2005.

(2) In these Regulations –

“the Order” means the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“the 2003 Order” means the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003⁽²⁾;

“the 1995 Order” means the Children (Northern Ireland) Order 1995⁽³⁾;

“the 1986 Order” means the Education and Libraries (Northern Ireland) Order 1986⁽⁴⁾;

“the 2001 Act” means the Health and Personal Social Services Act (Northern Ireland) 2001⁽⁵⁾;

“case” in Parts IV and VI means –

(a) an appeal under Article 22 of the Order;

(1) 2003/431 (N.I. 9)
(2) 2003/417 (N.I. 4)
(3) 1995/755 (N.I. 2)
(4) S.I. 1986/594 (N.I. 3)
(5) 2001 chapter 3

- (b) an appeal under Articles 78(A) and Article 94A of the 1995 Order;
 - (c) an appeal under Article 11(1)(a) or (b) of the 2003 Order;
 - (d) a determination under Article 11(2) of the 2003 Order;
 - (e) an appeal under Article 27 of the 2003 Order;
 - (f) appeals, determinations and applications for leave to appeal under Article 42 of the 2003 Order;
 - (g) appeals under section 15 of the 2001 Act;
 - (h) an appeal under Article 70(2) or Article 88A(2) of the 1986 Order;
- “application for leave” means an application to the Care Tribunal –
- (a) for leave to appeal under Article 11(1)(b) or Article 42(1)(b) of the 2003 Order;
 - (b) for leave for a determination by the Care Tribunal under Article 11 (2) or Article 42(2) of the 2003 Order;
- “costs order” means an order under regulation 25;
- “the Council” is the Northern Ireland Social Care Council established under Section 1 of the 2001 Act;
- “the Department” means the Department of Health Social Services and Public Safety;
- “document” means information recorded in writing or in any other form;
- “the Education and Library Board” shall be construed in accordance with Article 3 of the 1986 Order;
- “ HSS Board” means a Health and Services Board under the Health and Social Services (Northern Ireland) Order 1991(6);
- “ HSS Trust” has the same meaning as in the Health and Personal Social Services (Northern Ireland) Order 1991;
- “an institution of further education” shall be construed in accordance with Article 2(2) of the further Education (Northern Ireland) Order 1997(7);
- “nurse” means a person registered in the register maintained under Article 5 of the Nursing and Midwifery Order (Northern Ireland) 2001, by virtue of qualification in nursing or midwifery as the case may be;
- “medical practitioner” means a registered medical practitioner;
- “a party” means either the applicant or the respondent;
- “the DWC (NI) list” means the list of individuals who are considered unsuitable to work with children under Article 3 of the 2003 Order;
- “the DWVA (NI) list” means the list of individuals who are considered unsuitable to work with vulnerable adults under Article 35 of the 2003 Order
- “records” means the records of the Care Tribunal;
- “relevant programme” means a programme included in a programme service within the meaning of the Broadcasting Act 1996(8);
- “relevant social work” has the same meaning as in section 2(4) of the 2001 Act;
- “the respondent” means –

(6) 1991 No. 194 (N.I. 1)
(7) 1997 No. 1772 (N.I. 15)
(8) 1996 c. 55

- (a) in relation to an appeal under Article 22 of the 2003 Order, the Regulation and Improvement Authority;
- (b) in relation to an appeal under Article 78(A) or 94A of the 1995 Order the Regulation and Improvement Authority;
- (c) in relation to an appeal or an application for leave to appeal under Article 11 and 12 of the 2003 Order, the Department;
- (d) in relation to an appeal, an application for leave or a determination under Article 42 of the 2003 Order, the Department;
- (e) in relation to an appeal under regulations made in accordance with Article 70(2)(e) or 88(2)(b) of the 1986 Order the Department of Education;

in relation to an appeal under section 15 of the 2001 Act, the Council;

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

“school” has the same meaning as in Article 2 of the Order;

“vulnerable adult” has the same meaning as in Article 48(6) of the 2003 Order;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971(9).

PART II

CONSTITUTION

Powers and functions exercisable by the Care Tribunal

2.—(1) Anything which must or may be done by the chairman (except under regulation 5(1), (2), (4) or (5) or 26(4)), may be done by a member of the chairmen’s panel authorised by the chairman.

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

Requirements for membership of lay panel

3.—(1) A person may be appointed a member of the lay panel if he satisfies the requirements of—

- (a) paragraph (2);
- (b) paragraphs (3) and (4); or
- (c) paragraph (5).

(2) The requirements of this paragraph are –

- (a) experience in the provision of services –
 - (i) which must or may be provided by HSS Trusts under the 1995 Order or which are similar to such services;
 - (ii) for vulnerable adults;
- (b) experience in relevant social work.

(3) The requirements of this paragraph are –

- (a) experience in the provision of services by a HSS Board or HSS Trust;

- (b) experience in the provision of education in a school or in an institution within the further education sector; or
 - (c) experience of being employed by an Education and Library Board in connection with the exercise of its functions under the 1986 Order.
- (4) The requirements of this paragraph are –
- (a) experience in the conduct of disciplinary investigations;
 - (b) experience as a member of an Area Child Protection Committee, or similar experience;
 - (c) experience of taking part in child protection conferences or in child protection review conferences, or similar experience; or
 - (d) experience in negotiating the conditions of service of employees.
- (5) The requirements of this paragraph are –
- (a) experience in carrying out inspections under Part VI of the Order;
 - (b) experience in carrying out inspections under the Registered Homes (Northern Ireland) Order 1992(10);
 - (c) experience in carrying out inspections under the 1995 Order;
 - (d) experience in managing an establishment or agency under Part III of the 2003 Order;
 - (e) experience in managing a children’s home under the 1995 Order;
 - (f) experience in managing the provision of health and personal social services;
 - (g) that the person is a nurse or medical practitioner who has experience of the provision of health services;

PART III

APPEALS, DETERMINATIONS AND APPLICATIONS FOR LEAVE

Procedure for appeals, determinations and applications for leave

4.—(1) In the case of an appeal under Article 22 of the Order, the procedure set out in Schedule 1 shall apply.

(2) In the case of an appeal under Article 78A and Article 94A of the 1995 Order, the procedure set out in Schedule 2 shall apply.

(3) In the case of –

- (a) an appeal under Article 11(1)(a) of the 2003 Order against a decision to include an individual in the DWC (NI) list;
- (b) an application for leave under Article 11(1)(b) or (2) of the 2003 Order;
- (c) an appeal under Article 11(1)(b) of the 2003 Order against a decision not to remove an individual from the DWC (NI) list under Article 3(3) of that Order;
- (d) a determination under Article 11(2) of the 2003 Order as to whether an individual should be included in the DWC (NI) list;
- (e) an appeal under regulations made in accordance with Article 70(2) or Article 88A(2)(b) of the 1986 Order,

the procedure set out in Schedule 3 shall apply.

(4) In the case of an application for review or an application for leave to seek review of disqualification from working with children under Article 27 or 28 of that Order, the procedure set out in Schedule 4 shall apply.

(5) In the case of –

- (a) an application for leave to the Care Tribunal under Article 42(1)(b) or (2) of the 2003 Order;
- (b) an appeal under Article 42 (1)(a) of the 2003 Order against a decision to include an individual in the DWVA (NI) list;
- (c) an appeal under Article 42(1)(b) of the 2003 Order against a decision not to remove an individual from the DWVA (NI) list; or
- (d) a determination under Article 42(2) of the 2003 Order as to whether an individual should be included in the DWVA (NI) list,

the procedure set out in Schedule 5 shall apply.

(6) In the case of an appeal under section 15 of the 2001 Act against a decision of the Council in respect of registration under the Part I of that Act, the procedure set out in Schedule 6 shall apply.

PART IV

CASE MANAGEMENT

Appointment of Care Tribunal

5.—(1) The Department shall nominate members of the lay panel who appear to have experience and qualifications relevant to the subject matter of the case.

(2) The Department may at any time before the hearing (or if the case is to be determined without oral hearing, before the case is determined) nominate from the appropriate panel another person or other persons in substitution for one or both of the lay panel members.

(3) The Department shall appoint a person to act as Secretary to the Tribunal for purposes of the appeal.

Directions

6.—(1) If either party has requested that there shall be a preliminary hearing, or if the Chairman considers that a preliminary hearing is necessary, the Chairman shall fix a date for the preliminary hearing, as soon as possible after the expiry of the 5 working days referred to in paragraph 6 of Schedule 1, 2, 4, or 6 or paragraph 9 of Schedule 3, or 5, as the case may be.

(2) At the preliminary hearing, or if a preliminary hearing is not to be held, as soon as possible after, and in any event not later than 10 working days after, the expiry of the 5 working days referred to in paragraph (1) the Chairman –

- (a) shall 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 Care Tribunal, and, if the Chairman considers it appropriate, to the other party;
- (b) may give any other direction in exercise of his powers under this Part which he considers appropriate; and
- (c) shall, where the applicant has requested that the case be determined without an oral hearing, give a direction as to the date, which shall be not less than 10 working days after the last date on which he has directed that any document, witness statement or

other evidence be sent to the Care Tribunal, by which the parties shall send any written representations regarding their appeal to the Care Tribunal.

(3) If, at any time it appears to the Chairman that the appeal is of such a nature that it shall be determined at an oral hearing, he may (after considering any representations from the parties) direct that such a hearing shall be held but otherwise the case shall be determined without an oral hearing if the applicant has so requested.

(4) The Chairman may direct that exchange of witness statements or other material shall be simultaneous or sequential, as he considers appropriate.

(5) The Secretary shall notify the parties as soon as possible in writing of any directions the Chairman gives in writing under paragraphs (2) and (3) above.

(6) The Secretary shall notify the parties as soon as possible, and in any event not less than 5 working days before the hearing of the date, time and place of any preliminary hearing.

(7) The parties may be represented or assisted at any preliminary hearing by any person.

Fixing and notification of hearing

7.—(1) The Secretary in consultation with the Chairman must, fix a date for the hearing of the case unless the applicant has requested in writing that the case be determined without a hearing.

(2) The date fixed for the hearing shall be the earliest practicable date having regard to any directions which have been made by the Chairman with regard to the preparation of evidence but shall be no sooner than 15 working days after the latest date on which the Chairman has directed that the evidence of the parties (including the statements of any witnesses or experts) shall be filed or exchanged.

(3) The Secretary must inform the parties in writing of the date, time and place of the hearing no less than 20 working days before the date fixed for the hearing.

(4) The Secretary may, in consultation with the Chairman, alter the place of the hearing and, if he does, must without delay inform the parties in writing of the alteration.

(5) Subject to paragraph (6), the Chairman may adjourn the hearing, either on the application of either party or on his own initiative.

(6) The Chairman shall not adjourn the hearing unless satisfied that refusing the adjournment would prevent the just disposal of the case.

(7) If the Chairman adjourns the hearing, then the Secretary must, without delay, inform the parties in writing of the date, time and place at which the hearing will be resumed.

Appeal against secondary listing

- (i) Where a person (“the applicant”) has been included in the DWC (NI) list under Article 3 of the 2003 Order and by virtue of Article 36(4) to (7) of that Order has also been included in the DWVA (NI) list, and the applicant accepts his inclusion on the DWC (NI) list and wishes only to appeal against his inclusion on the DWVA (NI) list then, the appeal is an appeal against the DWVA (NI) listing only;
- (ii) Where a person (“the applicant”) has been included in the DWVA (NI) list under Article 35 of the 2003 Order and by virtue of Article 8(1) of that Order has also been included in the DWC (NI) list, and the applicant accepts his inclusion on the DWVA (NI) list and wishes only to appeal against his inclusion on the DWC (NI) list then, the appeal is an appeal against the DWC (NI) list only.

Multiple appeals

9.—(1) Subject to paragraphs (2) and (3), where two or more cases relate to the same person, establishment or agency, the Chairman may, on the application of either party or on his own initiative, direct that such cases shall be heard together if he considers it appropriate to do so.

(2) Where a person (“the applicant”) has by virtue of Article 40 of the 2003 Order, been included in the DWVA (NI) list pursuant to a reference under Articles 4, 5, or 6 of the 2003 Order or as a result of being named in a relevant inquiry under Article 7(2) of the 2003 Order then subject to paragraph (4) any appeal against inclusion in the DWVA (NI) list shall be joined with any appeal against inclusion in the DWC (NI) list and in that event the appeal against inclusion in the DWC (NI) list shall be heard first.

(3) Where a person (“the applicant”) has by virtue of Article 8 of the 2003 Order been included in the DWC (NI) list pursuant to a reference made under Articles 36, 37 or 38 of the 2003 Order, or as a result of being named in a relevant inquiry under Article 39 of that Order, then subject to paragraph (4) any appeal against inclusion in the DWC (NI) list shall be joined with any appeal against inclusion in the DWCA(NI) list and in that event the appeal against inclusion in the DWVA (NI) list shall be heard first.

(4) The applicant may request the Chairman in writing to give a direction that the appeals referred to in paragraph (2) or (3) shall be heard separately.

(5) Before making any direction under paragraph (1) the Chairman shall –

- (a) where the direction which he proposes to give is at the request of either party, give the other party the opportunity to make written representations; or
- (b) where the direction which he proposes to give is on his own initiative, give both parties the opportunity to make written representations.

(6) In considering whether to give a direction under paragraph (1), the Chairman shall take into account the following matters –

- (a) any written representations made by either party;
- (b) the increased cost of hearing the cases together or separately; and
- (c) any unreasonable delay in hearing any case which would be caused by hearing the appeals together or separately.

(7) In considering whether to give a direction under paragraph (4) the Chairman shall take into account the following matters –

- (a) any representations from the applicant which show he would be significantly disadvantaged if the appeals were to be heard together;
- (b) the increased cost of hearing the appeals together or separately; and
- (c) any unreasonable delay in hearing either appeal which would be caused by hearing the appeals together or separately,

and shall give a direction that the appeals be heard separately where he is satisfied that it would be unfair in all the circumstances to hear the appeals together.

Further directions

10.—(1) The Chairman may at any time on the application of either party or on his own initiative, vary any direction which he has given or give any further direction in exercise of any of his powers under this Part as he considers appropriate.

(2) Before making any further direction, or varying any direction under paragraph (1) –

- (a) the Chairman shall, where the variation or further direction which he proposes to give –

- (i) is at the request of either party, give the other party the opportunity to make written representations; or
 - (ii) is on his own initiative, give both parties the opportunity to make written representations;
- (b) the Chairman may direct that there shall be a preliminary hearing in relation to any proposed variation or further direction if he considers it appropriate or if a preliminary hearing has been requested by either party.

Unless orders

11.—(1) The Chairman may at any time make an order to the effect that, unless the party to whom the order is addressed takes a step specified in the order within the period specified in the order, the case may be determined in favour of the other party.

(2) The Secretary shall give written notification of the order to the party to whom it is addressed and to the other party and shall inform him of the effect of paragraph (3).

(3) If a party fails to comply with an order addressed to him under this regulation, the Chairman may determine the case in favour of the other party.

(4) If, in the opinion of the Chairman, the party to whom an order referred to in paragraph (1) is addressed has acted unreasonably in failing to comply with an order addressed to him under this regulation, the Chairman may make an order for costs (“a costs order”) pursuant to regulation 25 requiring that party (“the paying party”) to make a payment to the other party (“the receiving party”) to cover costs incurred by the receiving party and, in such a case, the references in regulation 25 to “the Care Tribunal” shall have effect as if they were references to “the Chairman”.

(5) Where, in accordance with paragraph (3), the Chairman has determined the case in favour of the other party, the party to whom the order was addressed may apply to the Chairman (as the case may be), for that determination to be set aside.

(6) An application under paragraph (5) must –

- (a) be made not later than 10 working days after the date upon which the notice of determination was sent to the party to whom the order was addressed; and
- (b) must be in writing stating the grounds in full.

(7) In the case of an application under paragraph (5), the Chairman, may, if he considers that it is appropriate to do so, direct that the determination, and any costs order made pursuant to paragraph (4), be set aside and may give such directions in exercise of his powers under this Part as he considers appropriate.

(8) Before making a direction setting aside the determination, or any costs order, the Chairman may invite the parties to make representations on the matter within such period as he may direct.

(9) Where the determination, or any costs order, is set aside, the Secretary shall alter the relevant entry in the records.

Copies of documents

12.—(1) The Chairman may give a direction as to the number of copies of relevant material, which each party must send to the Care Tribunal and relevant material means, all documents, witness statements and other material on which the parties intend to rely or which they have been ordered by the Chairman to send to the Care Tribunal under this Part.

(2) The Chairman may, if he considers it appropriate to do so, direct the form and order in which relevant material shall be supplied to the Care Tribunal.

Disclosure of information and documents

13.—(1) Subject to paragraphs (3) to (5), the Chairman may give directions –

- (a) requiring a party to send to the Care Tribunal any document or other material which he considers may assist the Care Tribunal in determining the case and which that party is able to send, and the Care Tribunal shall take such steps as the Chairman may direct, to supply copies of any information or document obtained under this paragraph to the other party;
- (b) granting to a party the right to inspect and take copies of any document or other material which it is in the power of the other party to disclose, and appointing the date, time and place at which any such inspection and copying is to be done.

(2) Subject to paragraphs (3) to (5), the Chairman may give a direction on the application of either party, requiring a person who is not a party to the proceedings to disclose any document or other material to the party making the application, if he is satisfied that –

- (a) the documents or other material sought are likely to support the applicant's case or adversely affect the case of the other party;
- (b) it is within the power of the person subject to the direction to disclose any document or other material; and
- (c) disclosure is necessary for the fair determination of the case.

(3) It shall be a condition of the supply of any document or material under paragraph (1) or (2) that a party shall use it only for the purpose of the proceedings.

(4) Paragraphs (1) and (2) do not apply in relation to any document or material which the party could not be compelled to produce in legal proceedings in a county court.

(5) Before making a direction under paragraph (1) or (2), the Chairman shall take into account the need to protect any matter which relates to intimate personal or financial circumstances, is commercially sensitive, or was communicated or obtained in confidence.

Expert evidence

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

(2) The Secretary must supply the parties 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).

(3) If the Chairman sees fit, he may direct that the expert shall attend the hearing, and give evidence.

(4) The Care Tribunal shall pay such reasonable fees as the Chairman may determine to any person appointed under this regulation.

Evidence of witnesses

15.—(1) The Chairman may direct that the parties send to each other by the date specified in the direction a copy of a witness statement in respect of each witness on whose evidence he wishes to rely.

(2) A witness statement must contain the words "I believe that the facts stated in this witness statement are true", and be signed by the person who makes it.

(3) The Chairman (before the hearing or, if the case is to be determined without an oral hearing, before the case is determined) or the Care Tribunal may direct that a document or the evidence of any witness other than the applicant shall be excluded from consideration because –

- (a) it would be unfair in all the circumstances to consider it;
 - (b) the party wishing to rely on the document or evidence has failed to submit the document, or witness statement containing it, in compliance with any direction; or
 - (c) it would not assist the Care Tribunal in determining the case.
- (4) Instead of excluding evidence under this regulation the Chairman or the Care Tribunal may permit it to be considered on such terms as he or it thinks fit, including, subject to regulation 25, the making of a costs order.
- (5) The Chairman may direct that a witness (other than the applicant) shall not give oral evidence.

Withholding medical report from disclosure in exceptional circumstances

- 16.**—(1) This regulation applies where the respondent wishes the Care Tribunal, in determining the case, to consider a medical report and the Chairman is satisfied –
- (a) that disclosure to the applicant of all or any part of the contents of the report would be so harmful to his health or welfare that it would be wrong to disclose it to him; and
 - (b) that in all the circumstances it would not be unfair if the report or that part of it is considered by the Care Tribunal.
- (2) The Chairman may appoint a person having appropriate skills or experience to –
- (a) assess whether disclosure of the report to the applicant would be harmful to the applicant's health or welfare; and
 - (b) report on the matter to the Chairman.
- (3) The Chairman may direct that –
- (a) the report may be considered by the Care Tribunal; and
 - (b) all or any part of its contents must not be disclosed to the applicant.

Summoning of witnesses

- 17.**—(1) The Chairman may, on the application of either party 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 Article 44(5) of the Order 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 Care Tribunal for the summons to be varied or set aside by the Chairman, and –
- (a) the Chairman may do so if he sees fit; and
 - (b) the Secretary must notify him and the parties 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 or has consented to a shorter period of notice; and

(b) the necessary expenses of his attendance are paid or tendered to him by the party who requested his attendance or by the Care Tribunal, as the 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

18.—(1) A child shall only give evidence in person where –

- (a) the Chairman has given the parties an opportunity to make written representations before the hearing or representations at the hearing; and
- (b) having regard to all the available evidence, and the representations of the parties, the Chairman considers that the welfare of the child will not be prejudiced by so doing.

(2) If he directs that a child shall give evidence in person, the 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.

(3) Where the 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 Care Tribunal, the Chairman shall –

- (a) give the parties the opportunity to make written representations before the hearing or representations at the hearing; and
- (b) having regard to all the available evidence, including any written representations made by the parties consider whether it would prejudice the vulnerable adult's welfare to give oral evidence to the Care Tribunal –
 - (i) in any circumstances; or
 - (ii) otherwise than in accordance with paragraph (5).

(4) If the Chairman considers that –

- (a) it would prejudice the vulnerable adult's welfare to give oral evidence to the Care 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 Care Tribunal otherwise than in accordance with paragraph (5) he shall direct that paragraph (5) shall apply in relation to the vulnerable adult.

(5) If he directs that this paragraph shall apply in relation to the vulnerable adult, the 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.

(6) The Chairman shall pay such fees as he may determine to any person appointed under this regulation.

Restricted reporting orders

19.—(1) If it appears appropriate to do so, the Chairman (or, at the hearing, the Care Tribunal) may make a restricted reporting order.

(2) A restricted reporting order is an order prohibiting the publication (including by electronic means) in a written publication available to the public, or the inclusion in a relevant programme for reception in Northern Ireland, of any matter likely to lead members of the public to identify the applicant, any child, any vulnerable adult or any other person who the Chairman or the Care Tribunal considers should not be identified.

(3) An order that may be made under this regulation may be made in respect of a limited period and may be varied or revoked by the Chairman before the hearing (or by the Care Tribunal at the hearing).

Exclusion of press and public

20.—(1) Where paragraph (2) applies, the Chairman (or, at the hearing, the Care Tribunal) may on his (or its) own initiative, or on a written request by either party 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 Chairman (or, at the hearing, the Care 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 V

HEARING

Procedure at the hearing

21.—(1) The Care Tribunal may regulate its own procedure.

(2) At the beginning of the hearing the Chairman must explain the order of proceedings which the Care Tribunal proposes to adopt.

(3) The parties may be represented or assisted at the hearing by any person.

(4) If either party fails to attend or be represented at the hearing, the Care Tribunal may hear and determine the case in that party’s absence.

Hearing to be in public

22.—(1) The hearing must be in public except in so far as any person is excluded under regulation 20.

(2) Whether or not the hearing is held in public any person whom the Chairman permits to be present in order to assist the Care Tribunal is entitled to attend the hearing.

(3) Whether or not the hearing is held in public, any person whom the Chairman permits to be present in order to assist the Care Tribunal may remain present during the Care Tribunal’s deliberations, but must not take part in the deliberations.

Evidence

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

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

(3) No child may be asked any question except by the Care Tribunal or a person appointed under regulation 18(2)(b).

(4) Where a direction has been made under regulation 18 that paragraph (5) of that regulation shall apply to any vulnerable adult, the vulnerable adult may not be asked any question except by the Care Tribunal or a person appointed under regulation 18(5).

(5) The Care Tribunal may require any witness to give evidence on oath or affirmation which may be administered for the purpose by the Chairman or the Secretary.

(6) The provisions of Sections 38(5) and 43 of the Arbitration Act 1996⁽¹¹⁾ (administration of oaths, securing the attendance of witnesses) shall apply to the proceedings before the Care Tribunal and the Chairman of the Care Tribunal shall have the same powers under those provisions as if he were an arbitrator or a party to a reference under an arbitration agreement.

PART VI DECISION

The decision

24.—(1) The Care Tribunal's decision may be taken by a majority and the decision shall record whether it was unanimous or taken by a majority.

(2) The decision may be made and announced at the end of the hearing or reserved, and in any event, whether there has been a hearing or not, the decision must be recorded without delay in a document signed and dated by the 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 chairman's panel, by another member of the Care Tribunal).

(3) The document mentioned in paragraph (2) must also state –

(a) the reasons for the decision; and

(b) what, if any, order the Care Tribunal has made as a result of its decision.

(4) The Secretary must, as soon as reasonably possible, send to each party a copy of the document mentioned in paragraph (2) and a notice explaining to the parties any right of appeal which they may have against the Care Tribunal's decision and the right to apply for a review of the Care Tribunal's decision.

(5) Where the appeal was against an order made by a Justice of the Peace under Article 21 of the Order, the Secretary must, as soon as reasonably practicable, send a copy of the document mentioned in paragraph (2) to the Justice of the Peace who made the order.

(6) 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.

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

⁽¹¹⁾ 1996 Chapter 3

Costs

25.—(1) Subject to regulation 32 and to paragraph (2), if in the opinion of the Care Tribunal a party has acted unreasonably in bringing or conducting the proceedings, it may make an order (a “costs order”) requiring that party (“the paying party”) to make a payment to the other party (“the receiving party”) to cover costs incurred by the receiving party.

(2) Before making a costs order against a party, the Care Tribunal must –

- (a) invite the receiving party to provide to the Care Tribunal a schedule of costs incurred by him in respect of the proceedings; and
- (b) invite representations from the paying party and consider any representations he makes, consider whether he is able to comply with such an order and consider any relevant written information which he has provided.

(3) When making a costs order, the Care Tribunal must –

- (a) order the payment of any sum which the parties have agreed should be paid;
- (b) order the payment of any sum which it considers appropriate having considered any representations the parties may make; or
- (c) order the payment of the whole or part of the costs incurred by the receiving party in connection with the proceedings as assessed.

(4) Any costs required by an order under this regulation to be assessed may be assessed in a county court according to such rules applicable to proceedings in a county court as shall be directed in the order.

(5) A costs order may, by leave of a county court, be enforced in the same manner as a judgment or order of that court to the same effect.

Review of the Care Tribunal’s decision

26.—(1) A party may apply to the Chairman for the Care 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 Care Tribunal staff;
- (b) a party, who was entitled to be heard at a 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 date on which the decision was sent to the party applying for the Care Tribunal’s decision to be reviewed; and
- (b) must be in writing stating the grounds in full.

(3) An application under this regulation may be refused by the Chairman of the Care 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 parties have had an opportunity to be heard, by the Care Tribunal which decided the case or, where that is not practicable, by another Care Tribunal.

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

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

(6) If, on the application of a party or on its own initiative, the Care Tribunal is satisfied as to any of the grounds referred to in paragraph (1) –

- (a) it shall order that the whole or a specified part of 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 a party to provide such particulars, evidence or statements as may reasonably be required for the determination of the review.

Powers of Care Tribunal on review

27.—(1) The Care Tribunal may, having reviewed all or part of a decision –

- (a) set aside or vary the decision by certificate signed by the 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 Care Tribunal); and
- (b) substitute such other decision as it thinks fit or order a rehearing before the same or a differently constituted Care Tribunal.

(2) If any decision is set aside or varied (whether as a result of a review or by order of the High Court), the Secretary shall arrange to 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 parties accordingly.

(3) Any decision of the Care 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

28.—(1) The Chairman must make such arrangements as he considers appropriate for the publication of Care Tribunal decisions.

(2) Decisions may be published electronically.

(3) The decision may be published in an edited form, or subject to any deletions, if the Chairman considers it appears 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 either party has provided in writing;
- (d) the effect of any subsisting restricted reporting order; and
- (e) the effect of any direction under regulation 16.

PART VII

SUPPLEMENTARY

Method of sending documents

29.—(1) Any document may be sent to the Care Tribunal by post, by fax, electronically or through a document exchange, unless the Chairman directs otherwise.

(2) Any notice or document which these regulations authorise or require the Care Tribunal to send to a party shall be sent –

- (a) by first-class post to the address given for the purpose by that party in accordance with these Regulations;

- (b) by fax or electronically to a number or address given by that party for the purpose; or
- (c) where the party 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.

(3) If a notice or document cannot be sent to a party in accordance with paragraph (2), the Chairman may dispense with service of it or direct that it be served on that party in such manner as he thinks appropriate.

(4) Any notice or document sent by the Secretary to a party 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), 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

30.—(1) An irregularity resulting from failure to comply with any provision of these Regulations or any direction given in accordance with them before the Care Tribunal has reached its decision shall not of itself render the proceedings void.

(2) Where any irregularity comes to the attention of the Chairman (before the hearing) or the Care 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.

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

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

Application on behalf of person under a disability

31.—(1) A person may, by writing to the Secretary, request authorisation by the Chairman to make any application to the Care Tribunal on behalf of any person who is prevented by mental or physical infirmity from acting on his own behalf.

(2) A person acting in accordance with an authorisation under this regulation may on behalf of the other person take any step or do anything which that person is required or permitted to do under these Regulations, subject to any conditions which the Chairman may impose.

Death of applicant

32. If the applicant dies, before the case or application for leave is determined, the Chairman may –

- (a) strike out the case or application for leave in so far as it relates to that individual without making a costs order;

- (b) appoint such person as he thinks fit to proceed with the appeal in the place of the deceased applicant.

Amendment of appeal, application for leave or response

33.—(1) The applicant may amend the reasons he gives in support of the case or application for leave as the case may be, but only with the leave of the Chairman (or at the hearing, with the leave of the Care Tribunal).

(2) The respondent may amend the reasons he gives for opposing the applicant’s case or application for leave, as the case may be, but only with the leave of the Chairman (or at the hearing, with the leave of the Care Tribunal).

(3) Where the Chairman dismisses the proceedings under paragraph (1) or determines the case, or the application for leave in the applicant’s favour under paragraph (2), the references to the Care Tribunal in regulation 26 shall be read as if they were references to “the Chairman”.

(4) Where the Chairman or Care Tribunal gives leave to either party to amend the reasons given in support of his case, he may do so on such terms as he thinks fit (including, subject to regulation 25, the making of a costs order).

Withdrawal of proceedings or opposition to proceedings

34.—(1) If the applicant at any time notifies the Care Tribunal in writing, or states at a hearing, that he no longer wishes to pursue the proceedings, the Chairman (or at the hearing, the Care Tribunal) must dismiss the proceedings, and may, subject to regulation 25(2) and (3) make a costs order.

(2) If the respondent notifies the Care Tribunal in writing, or states at a hearing, that he does not oppose or no longer opposes the proceedings, the Chairman (or at the hearing, the Care Tribunal) –

- (a) must without delay determine the case or, as the case may be, the application for leave in the applicant’s favour;
- (b) subject to regulation 25 may make a costs order; and
- (c) must consider making one.

Proof of documents and certification of decisions

35.—(1) A document purporting to be issued by the Secretary shall be taken to have been so issued, unless the contrary is proved.

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

- (a) a decision of the Care Tribunal; or
- (b) an order of the Chairman or of the Care Tribunal,

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

Time

36.—(1) The Chairman may having consulted the parties in the case 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 Chairman may reduce any time limit in these Regulations if he considers it reasonable to do so and the parties in the case agree to the reduction.

(3) Where the time prescribed by these Regulations, or specified in any direction given by the 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.

(4) This regulation does not apply to the time limits provided for initiating an appeal in paragraph 1 of Schedule 1 and paragraph 1 of Schedule 2.

PART VIII MISCELLANEOUS

Revocation

37.—(1) The Social Care Tribunal Rules (Northern Ireland) 2003(12) are hereby revoked.

(2) Any application or appeal which –

(a) was made to the Social Care Tribunal under the Social Care Tribunal Rules (Northern Ireland) 2003, before 1st April 2005 and

(b) the Social Care Tribunal has not determined before that date,

shall for the purposes of these Regulations be treated as having been made to the Care Tribunal under these regulations.

(3) Any direction or notice given, or thing done, by the Social Care Tribunal before 1st April 2005 shall for the purposes of these Regulations be treated as having been given or done by the Care Tribunal under these Regulations.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 21st March 2005.

L.S.

James F. Livingstone
A senior officer of the
Department of Health, Social Services and
Public Safety

SCHEDULE 1

Regulation 4(1)

APPEAL UNDER ARTICLE 22 OF THE HEALTH AND PERSONAL SOCIAL SERVICES (QUALITY, IMPROVEMENT AND REGULATION) (NORTHERN IRELAND) ORDER 2003 AGAINST A DECISION OF THE REGULATION AND IMPROVEMENT AUTHORITY OR AN ORDER OF A JUSTICE OF THE PEACE

Initiating an appeal

1.—(1) A person who wishes to appeal to the Care Tribunal under Article 22 of the 2003 Order against a decision of the Regulation and Improvement Authority under Part III of the 2003 Order, or an order made by a Justice of the Peace under Article 21 of the Order, must do so by application in writing to the Care Tribunal.

(2) An application under this paragraph must be received by the Secretary to the Care Tribunal no more than 28 days after service of notice of the decision on the applicant.

(3) An application under this paragraph may be made on the application form available from the Secretary to Care Tribunal.

(4) An application under this paragraph must –

- (a) give the applicant's name and full postal address, if the applicant is an individual his date of birth and, if 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 Care Tribunal 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 or order against which the appeal is brought and give particulars of –
 - (i) whether the appeal is against a refusal of registration, an imposition or variation of conditions of registration, a refusal to remove or vary any condition, or a cancellation of registration;
 - (ii) whether the appeal is against a decision of the Regulation and Improvement Authority or an order made by a Justice of the Peace;
 - (iii) where the appeal is in respect of a cancellation of registration, whether the establishment or agency in respect of which the appeal is made remains open and, in the case of an establishment, the number of residents in that establishment;
- (f) give a short statement of the grounds of appeal; and
- (g) be signed and dated by the applicant.

Acknowledgement and notification of application

2.—(1) On receiving an application, made within the period for bringing an appeal specified in Article 22 of the 2003 Order, 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 must notify the applicant in writing that he has done so; and

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- (c) unless, within five working days of receipt of notification under head (b) the applicant notifies the Secretary 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 it respond to the application within 20 working days of receiving it.

(2) If the respondent fails to respond as requested, it 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 the respondent opposes it, and if it does, give the reasons why it opposes the application;
- (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; and
 - (ii) in the case of an appeal under Article 22(1)(a) of the 2003 Order, a copy of the written notice of the decision (which is the subject of the appeal) served under Article 20(3) of that Order, and the reasons for the decision; or
 - (iii) in the case of an appeal under Article 22(1)(b) of the Order, a copy of the order made by the Justice of the Peace.

(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 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 Care Tribunal or is otherwise misconceived; or
- (c) it is frivolous or vexatious.

(2) Before striking out an appeal under this paragraph, the 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;
- (c) consider any representations the parties may make.

(3) Where the Chairman strikes out an appeal made under paragraph (1), regulation 25 (costs) shall apply as if the references to “the Care Tribunal” were instead references to “the Chairman”.

(4) Where, under paragraph (1), the Chairman has made a determination to strike out an appeal (“the determination”), the applicant may apply to the Chairman, for the determination to be set aside.

(5) An application under paragraph (4) must –

- (a) be made not later than 10 working days after the date upon which notice of determination was sent to the applicant; and
- (b) must be in writing stating the grounds in full.

(6) In the case of an application under paragraph (4), the Chairman, may, if he considers that it is appropriate to do so, set aside the determination (including, where applicable, a costs order made pursuant to paragraph (3)), and may give such directions in exercise of his powers under Part IV of these Regulations as he considers appropriate.

(7) Before setting aside the determination, the Chairman may invite the parties to make representations on the matter within such period as he may direct.

(8) Where the determination is set aside, the Secretary shall alter the relevant entry in the records.

Further information to be sent by the applicant and 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 Care Tribunal to consider (and whether the party may wish the Care 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 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 Care 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 Care Tribunal 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 2

Regulation 4(2)

APPEAL UNDER ARTICLE 78A OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995 AGAINST A DECISION OF THE REGULATION AND IMPROVEMENT AUTHORITY REFUSING TO GIVE CONSENT UNDER ARTICLE 78(3) AND 94(3) OF THAT ORDER

Initiating an appeal

1.—(1) A person who wishes to appeal to the Care Tribunal under Article 78A or 94A of the 1995 Order against a decision of the Regulation and Improvement Authority must do so by application in writing to the Care Tribunal.

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(2) An application under this paragraph must be received by the Secretary no later than 28 days after service of notice of the decision on the applicant.

(3) An application under this paragraph may be made on the application form available from the Care Tribunal.

(4) An application under this paragraph must –

- (a) give the applicant’s name and full postal address, if the applicant is an individual his date of birth and, if 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) give sufficient information concerning the decision appealed against to make it clear whether it falls within Article 78(3) or Article 94(3) of the Children (Northern Ireland) Order 1995;
- (f) give a short statement of the grounds of appeal; and
- (g) be signed and dated by the applicant.

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) subject to the following provisions of this paragraph, 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 the Chairman is of the opinion that the applicant is asking the Care 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 appeal will not be entered in the records unless within five working days the applicant notifies the Chairman 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 must notify the applicant accordingly; and
- (c) unless within five working days of receipt of notification under head (b) the applicant notifies the Secretary 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 it respond to the application within 20 working days of receiving it.

(2) If the respondent fails to respond as requested it 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 it opposes it, and if it 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 Care Tribunal should send documents concerning the appeal to the representative rather than to the respondent; and
 - (ii) a copy of the written notice of the decision which is the subject of the appeal and the reasons for the decision.
- (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 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 Care Tribunal or is otherwise misconceived; or
 - (c) it is frivolous or vexatious.
- (2) Before striking out an appeal under this paragraph, the 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.
- (3) Where the Chairman strikes out an appeal under paragraph (1), regulation 25 (costs) shall apply as if the references to “the Care Tribunal” were instead references to “the Chairman”.
- (4) Where, under paragraph (1), the Chairman has made a determination to strike out an appeal (“the determination”), the applicant may apply to the Chairman, for the determination to be set aside.
- (5) An application under paragraph (4) must –
- (a) be made not later than 10 working days after the date on which notice of the determination was sent to the applicant; and
 - (b) must be in writing stating the grounds in full.
- (6) In the case of an application under paragraph (4), the Chairman, may, if he considers that it is appropriate to do so, set aside the determination (including, where applicable, a costs order made pursuant to paragraph (3)), and may give such directions in exercise of his powers under Part IV of these Regulations as he considers appropriate.
- (7) Before setting aside the determination, the Chairman may invite the parties to make representations on the matter within such period as he may direct.
- (8) Where the determination is set aside, the Secretary shall alter the relevant entry in the records.

Further information to be sent by the applicant and 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 Care Tribunal to consider (and whether the party may wish the Care Tribunal to consider additional witness evidence from a witness whose name is not yet known) and the nature of that evidence;

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- (b) whether the party wishes the 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 Care 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 3

Regulation 4(3)

APPEALS AND APPLICATIONS FOR LEAVE TO APPEAL UNDER ARTICLE 11 OF THE PROTECTION OF CHILDREN AND VULNERABLE ADULTS (NORTHERN IRELAND) ORDER 2003 AND APPEALS UNDER ARTICLE 70(2) OR 88A(2) OF THE EDUCATION AND LIBRARIES (NORTHERN IRELAND) ORDER 1986 AGAINST A DECISION TO PROHIBIT OR RESTRICT THE PERSON'S EMPLOYMENT OR FURTHER EMPLOYMENT OR A DECISION NOT TO REVOKE OR VARY SUCH A DECISION AND APPLICATION FOR LEAVE FOR A REVIEW OF PROHIBITION OR RESTRICTION

Initiating an appeal

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

- (a) under Article 11(1)(a) of the 2003 Order against a decision to include him in the DWC (NI) list;
- (b) under Article 70(2) or 88A(2) of the Education and Libraries (Northern Ireland) Order 1986, against a decision to prohibit or restrict the persons employment or further employment; or against a decision not to revoke or vary such a decision,

must do so by application in writing to the Secretary.

(2) An application under this paragraph must be received by the Care Tribunal no later than the first working day after the expiry of three months from the date of the letter informing the applicant of the decision.

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

(4) An application under this paragraph must –

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

- (b) give sufficient information concerning the decision appealed against to make it clear whether it falls within sub-paragraph (1)(a) or (1)(b);
- (c) give the reasons why the applicant believes he should not be included in the DWC (NI) list, or why he believes the decision should not have been made, or why that decision should be revoked or varied, as the case may be;
- (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 appeal;
- (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.

Applying for leave

2.—(1) An application for leave –

- (a) to appeal to the Care Tribunal under Article 11(1)(b) of the 2003 Order against a decision not to remove the applicant from the DWC (NI) list; or
- (b) to have the issue of the applicant's inclusion in the DWC (NI) list determined under Article 11(2) of the 2003 Order by the Care Tribunal,

must be made in writing to the Secretary.

(2) An application under sub-paragraph (1)(a) must be received by the Care Tribunal no later than the first working day after the expiry of three months from the date of the letter informing the applicant of the decision.

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

(4) An application under this paragraph must –

- (a) give the applicant's name, date of birth and full postal address;
- (b) give sufficient information to make it clear whether the application falls within sub-paragraph (1)(a) or (b);
- (c) give the reasons why the applicant believes the decision was wrong or, as the case may be, why he believes he should not be included in the DWC (NI) list;
- (d) give the dates of any previous appeal under the 2003 Order and (where applicable) application for leave which the applicant has made to the Care Tribunal;
- (e) give details of any new evidence or material change of circumstances since that appeal and (where applicable) application for leave was determined which might lead the Care Tribunal to a different decision;
- (f) in the case of an application to have the issue of his inclusion in the DWC (NI) list determined by the Care Tribunal, give details of any civil or criminal proceedings relating to the misconduct of which the applicant is alleged to have been guilty;
- (g) give the name, address and profession of the person (if any) representing the applicant;
- (h) give an address within the United Kingdom to which the Secretary should send documents concerning the appeal and application for leave;
- (i) give, where these are available, the applicant's telephone number, fax number and e-mail address and those of the applicant's representative; and
- (j) be signed and dated by the applicant.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Acknowledgement and notification of application

- 3.—(1) On receiving an application, the Secretary shall –
- (a) immediately send an acknowledgement of its receipt to the applicant;
 - (b) subject to the following provisions of this paragraph, enter particulars of the application 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 the Chairman is of the opinion that the applicant is asking the Care 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 Chairman 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 notification under head (b) of this sub-paragraph the applicant notifies the Care Tribunal in writing that he objects to the correction, the application shall be amended accordingly.

Response to application

- 4.—(1) The Secretary must send information provided by the applicant under paragraph 1 or 2, as the case may be, 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 Care Tribunal should send documents concerning the application to the representative rather than to the respondent;
 - (ii) copies of any letters informing the applicant of the decision which is the subject of the appeal or application for leave, as the case may be;
 - (iii) copies of any information submitted with a reference under Articles 4, 5 and 7 of the 2003 Order or as a result of being named in a relevant inquiry under Article 7 of that Order and of any observations submitted on it by the applicant;
 - (iv) copies of any evidence and expert evidence relied on by the respondent in making a decision under regulations made under Articles 70(2)(e) or 88A(2)(b) of the Education and Libraries (Northern Ireland) Order 1986
- (4) The Secretary must without delay send to the applicant a copy of the response and the information and documents provided with it (subject, in the case of any material provided in accordance with sub-paragraph (3)(c)(iv), to any direction of the Chairman under regulation 16).

Misconceived appeals, applications etc.

5.—(1) The Chairman may at any time strike out the appeal or, as the case may be application for leave, on the grounds that –

- (a) it is made otherwise than in accordance with paragraph 1 or 2 (as the case may be);
- (b) it is outside the jurisdiction of the Care Tribunal or is otherwise misconceived; or
- (c) it is frivolous or vexatious.

(2) Before striking out an appeal or, as the case may be, application for leave, under this paragraph, the 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.

(3) Where the Chairman strikes out an appeal or an application for leave under paragraph (1), regulation 25 (costs) shall apply as if the references to “the Care Tribunal” were instead references to “the Chairman”.

(4) Where, under paragraph (1), the Chairman has made a determination to strike out an appeal or application for leave (“the determination”), the applicant may apply to the Chairman, for the determination to be set aside.

(5) An application under paragraph (4) must –

- (a) be made not later than 10 working days after the date on which notice of the determination was sent to the applicant; and
- (b) must be in writing stating the grounds in full.

(6) In the case of an application under paragraph (4), the Chairman, may, if he considers that it is appropriate to do so, set aside the determination (including, where applicable, a costs order made pursuant to paragraph (3)), and may give such directions in exercise of his powers under Part IV of these Regulations as he considers appropriate.

(7) Before setting aside the determination, the Chairman may invite the parties to make representations on the matter within such period as he may direct.

(8) Where the determination is set aside, the Secretary shall alter the relevant entry in the records.

Grant or refusal of leave

6.—(1) The Chairman shall grant or refuse leave in relation to an application under paragraph 2 without a hearing, as he sees fit.

(2) Subject to paragraph 7, if the Chairman refuses leave the application shall be dismissed.

(3) The Secretary must without delay notify the parties in writing of the Chairman’s decision, and if he has refused leave –

- (a) must notify them of his reasons for doing so; and
- (b) must inform the applicant of his right to request a reconsideration of the decision under paragraph 7.

Reconsideration of leave

7.—(1) The Chairman must reconsider a decision to refuse leave if within ten working days after receipt of a notice under paragraph 6(3) the Care Tribunal receives a written request to do so from the applicant.

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(2) If in his request under sub-paragraph (1) the applicant has asked to make representations about leave at a hearing, the Secretary must fix a hearing for those representations to be heard.

(3) The Secretary must notify the respondent of any hearing fixed for the purpose of considering whether to grant leave, and the applicant and the respondent may appear or be represented by any person at that hearing.

(4) If the 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 parties a copy of the Chairman’s decision and if he has refused leave, of his reasons for doing so.

Further information to be sent by the applicant and respondent

8.—(1) As soon as the respondent has provided the information set out in paragraph 4, or as soon as leave has been granted under paragraph 6 or 7, the Secretary must write to each party requesting that he send to the Care Tribunal, within 20 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 Care Tribunal to consider (and whether the party may wish the Care 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 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 case 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 Care Tribunal

9.—(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 8(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.

UNDER ARTICLE 27 AND 28 OF THE PROTECTION OF CHILDREN
AND VULNERABLE ADULTS (NORTHERN IRELAND) ORDER 2003

Initiating an application

1.—(1) A person who wishes to apply to the Care Tribunal under Article 28 of the 2003 Order for leave to seek review of disqualification from working with children must do so by application in writing to the Care Tribunal.

(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 Care Tribunal no later than the first working day following expiry of 3 months from the date of the letter informing the applicant of the decision.

(4) An application under this paragraph must –

- (a) give the applicant's name, full postal address and his date of birth;
- (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 Care Tribunal 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) give sufficient information concerning the disqualification order;
- (f) give a short statement of the grounds for requesting leave to seek review under Article 28; and
- (g) be signed and dated by the applicant.

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) subject to the following provisions of this paragraph, 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 the Chairman is of the opinion that the applicant is asking the Care 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 Chairman 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 must notify the applicant accordingly; and
- (c) unless within five working days of receipt of notification under heading (b) of this subparagraph the applicant notifies the Secretary to the Care Tribunal in writing that he objects to the correction, the application shall be amended accordingly.

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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 it respond to the application within 20 working days of receiving it.

(2) If the respondent fails to respond as requested it 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 it opposes it, and if it 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 Care Tribunal should send documents concerning the appeal to the representative rather than to the respondent; and
 - (ii) a copy of the written notice of the decision which is the subject of the appeal and the reasons for the decision.

(4) The Secretary must without delay send to the applicant a copy of the response and the information and documents provided with it.

Misconceived applications etc.

4.—(1) The Chairman may at any time strike out the application on the grounds that –

- (a) it is made otherwise than in accordance with paragraph 1;
- (b) it is outside the jurisdiction of the Care Tribunal or is otherwise misconceived; or
- (c) it is frivolous or vexatious.

(2) Before striking out an application under this paragraph, the 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.

(3) Where the Chairman strikes out an appeal or application for leave made under paragraph (1), regulation 25 (costs) shall apply as if the references to “the Care Tribunal” were instead references to “the Chairman”.

(4) Where, under paragraph (1), the Chairman has made a determination to strike out an application for review or leave (“the determination”), the applicant may apply to the Chairman, for the determination to be set aside.

(5) An application under paragraph (4) must –

- (a) be made not later than 10 working days after the date on which notice of determination was sent to the applicant; and
- (b) must be in writing stating the grounds in full.

(6) In the case of an application under paragraph (4), the Chairman, may, if he considers that it is appropriate to do so, set aside the determination (including, where applicable, a costs order made pursuant to paragraph (3)), and may give such directions in exercise of his powers under Part IV of these Regulations as he considers appropriate.

(7) Before setting aside the determination, the Chairman may invite the parties to make representations on the matter within such period as he may direct.

(8) Where the determination is set aside, the Secretary shall alter the relevant entry in the records.

Further information to be sent by the applicant and 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 Care Tribunal 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 Care Tribunal to consider (and whether the party may wish the Care 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 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 application 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 Care Tribunal

6.—(1) Either party, within 5 working days of receiving the further information in respect of the other party from the Care Tribunal, 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 5

Regulation 4(5)

APPEALS AND APPLICATIONS FOR LEAVE UNDER ARTICLE 42 (APPLICATIONS AGAINST INCLUSION IN THE LIST) OF THE PROTECTION OF CHILDREN AND VULNERABLE ADULTS (NORTHERN IRELAND) ORDER 2003

Initiating an appeal

1.—(1) A person who wishes to appeal to the Care Tribunal under Article 42(1)(a) of the 2003 Order, against a decision to include him in the DWVA (NI) list must do so by application in writing to the Care Tribunal.

(2) An application under this paragraph must be received by the Secretary no later than the first working day after the expiry of three months from the date of the letter informing the applicant of the decision.

(3) An application under this paragraph may be made on the application form available from the Secretary to the Care Tribunal.

(4) An application under this paragraph must –

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- (a) give the applicant's name, date of birth and full postal address;
- (b) give the reasons why the applicant believes he should not be included in the DWVA (NI) list;
- (c) give the name, address and profession of the person (if any) representing the applicant;
- (d) give the address within the United Kingdom to which the Secretary should send documents concerning the appeal;
- (e) give, where these are available, the applicant's telephone number, fax number and e-mail address and those of the applicant's representative; and
- (f) be signed and dated by the applicant.

Applying for leave to appeal

2.—(1) An application for leave –

- (a) to appeal to the Care Tribunal under Article 42(1)(b) of the 2003 Order against a decision not to remove the applicant from the DWVA (NI) list under Article 35 of that Order; or
- (b) to have the issue of the applicant's inclusion in the DWVA (NI) list determined under Article 42 (2) of the 2003 Order by the Care Tribunal,

must be made in writing to the Secretary.

(2) An application under sub-paragraph (1)(a) must be received by the Secretary no later than the first working day after the expiry of three months from the date of the letter informing the applicant of the decision.

(3) An application under this paragraph may be made on the application form available from the Secretary to the Care Tribunal.

(4) An application under this paragraph must –

- (a) give the applicant's name, date of birth and full postal address;
- (b) give sufficient information to make it clear whether the appeal falls within sub-paragraph (1)(a) or (b);
- (c) give the reasons why the applicant believes the decision was wrong or, as the case may be, why he believes he should not be included in the DWVA (NI) list;
- (d) give the dates of any previous appeal under Article 42 of the 2003 Order and (where applicable) application for leave, which the applicant has made to the Care Tribunal;
- (e) give details of any new evidence or material change of circumstances since that appeal and (where applicable) application for leave was determined which might lead the Care Tribunal to a different decision;
- (f) in the case of an application to have the issue of his inclusion in the DWVA (NI) list determined by the Care Tribunal, give details of any civil or criminal proceedings relating to the misconduct of which the applicant is alleged to have been guilty;
- (g) give the name, address and profession of the person (if any) representing the applicant;
- (h) give the address within the United Kingdom to which the Care Tribunal should send documents concerning the appeal and the application for leave;
- (i) give, where these are available, the applicant's telephone number, fax number and e-mail address and those of the applicant's representative; and
- (j) be signed and dated by the applicant.

Acknowledgement and notification of application

- 3.—(1) On receiving an application, the Secretary to the Care Tribunal must –
- (a) immediately send an acknowledgement of its receipt to the applicant; and
 - (b) subject to the following provisions of this paragraph, enter particulars of the application 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 the Chairman is of the opinion that the applicant is asking the Care 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 Chairman 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 notification under head (b) the applicant notifies the Secretary in writing that he objects to the correction, the application shall be amended accordingly.

Response to application

- 4.—(1) The Secretary must send the information provided by the applicant under paragraph 1 or 2, as the case may be, 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 directed, 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;
 - (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 or, as the case may be, application for leave, to the representative rather than to the respondent;
 - (ii) copies of any letters informing the applicant of the decision which is the subject of the appeal or, as the case may be, application for leave;
 - (iii) copies of any information submitted with a reference under Articles 36(1), 37(1), 38(1) and 39 of the 2003 Order and of any observations submitted on it by the applicant.
- (4) The Secretary must without delay send to the applicant a copy of the response and the information and documents provided with it.

Misconceived applications for leave, appeals etc.

- 5.—(1) The Chairman may at any time strike out the appeal or, as the case may be, application for leave, on the grounds that –
- (a) it is made otherwise than in accordance with paragraph 1 or 2 (as the case may be);
 - (b) it is outside the jurisdiction of the Care Tribunal or is otherwise misconceived; or

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- (c) it is frivolous or vexatious.
- (2) Before striking out an appeal or application for leave, as the case may be, under this paragraph, the 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.
- (3) Where the Chairman strikes out an appeal or application for leave made under paragraph (1), regulation 25 (costs) shall apply as if the references to “the Care Tribunal” were instead references to “the Chairman”.
- (4) Where, under paragraph (1), the Chairman has made a determination to strike out an appeal or application for leave (“the determination”), the applicant may apply to the Chairman, for the determination to be set aside.
- (5) An application under paragraph (4) must –
 - (a) be made not later than 10 working days after the date upon which notice of determination was sent to the applicant; and
 - (b) must be in writing stating the grounds in full.
- (6) In the case of an application under paragraph (4), the Chairman, may, if he considers that it is appropriate to do so, set aside the determination (including, where applicable, a costs order made pursuant to paragraph (3)), and may give such directions in exercise of his powers under Part IV of these Regulations as he considers appropriate.
- (7) Before setting aside the determination, the Chairman may invite the parties to make representations on the matter within such period as he may direct.
- (8) Where the determination is set aside, the Secretary shall alter the relevant entry in the records.

Grant or refusal of leave

- 6.—(1) The Chairman shall grant or refuse leave in relation to an application under paragraph 2 without a hearing, as he sees fit.
- (2) Subject to paragraph 7, if the Chairman refuses leave the application shall be dismissed.
- (3) The Secretary must without delay notify the parties in writing of the Chairman’s decision, and if he has refused leave –
 - (a) must notify them of his reasons for doing so; and
 - (b) must inform the applicant of his right to request a reconsideration of the decision under paragraph 7.

Reconsideration of leave

- 7.—(1) The Chairman must reconsider a decision to refuse leave if within ten working days after receipt of a notice under paragraph 6(3) the Care Tribunal receives a written request to do so from the applicant.
- (2) If in his request under sub-paragraph (1) the applicant has asked to make representations about leave at a hearing, the Secretary must fix a hearing for those representations to be heard.
- (3) The Secretary must notify the respondent of any hearing fixed for the purpose of considering whether to grant leave, and the applicant and the respondent may appear or be represented by any person at that hearing.
- (4) If the 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 parties a copy of the Chairman's decision and if he has refused leave his reasons for doing so.

Further information to be sent by the applicant and respondent

8.—(1) As soon as the respondent has provided the information set out in paragraph 4, or as soon as leave has been granted under paragraph 6 or 7, the Secretary must write to each party requesting that he send to the Care Tribunal, within 20 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 Care Tribunal to consider (and whether the party may wish the Care 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 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 case 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 Care Tribunal

9.—(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 8(1).

(2) If the Secretary to the Care Tribunal 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 6

Regulation 4(6)

APPEALS UNDER SECTION 15 OF THE HEALTH AND PERSONAL SOCIAL SERVICES ACT (NORTHERN IRELAND) 2001 AGAINST A DECISION OF THE COUNCIL IN RESPECT OF REGISTRATION UNDER PART I OF THAT ACT

Initiating an appeal

1.—(1) A person who wishes to appeal to the Care Tribunal under Section 15 of 2001 Act against a decision of the Council under Part I of that Act in respect of registration must do so by application in writing to the Care Tribunal.

(2) An application under this paragraph may be made on the application form available from the Secretary to the Care Tribunal.

(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.

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- (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 Care Tribunal 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 3(1) of the 2001 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 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 Care Tribunal or is otherwise misconceived; or
 - (c) it is frivolous or vexatious.
- (2) Before striking out an appeal under this paragraph, the 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.
- (3) Where the Chairman strikes out an appeal made under paragraph (1), regulation 25 (costs) shall apply as if the references to “the Care Tribunal” were instead references to “the Chairman”.
- (4) Where, under paragraph (1), the Chairman has made a determination to strike out an appeal (“the determination”), the applicant may apply to the Chairman, for the determination to be set aside.
- (5) An application under paragraph (4) must –
- (a) be made not later than 10 working days after the date upon which notice of determination was sent to the applicant; and
 - (b) must be in writing stating the grounds in full.
- (6) In the case of an application under paragraph (4), the Chairman, may, if he considers that it is appropriate to do so, set aside the determination (including, where applicable, a costs order made pursuant to paragraph (3)), and may give such directions in exercise of his powers under Part IV of these Regulations as he considers appropriate.
- (7) Before setting aside the determination, the Chairman may invite the parties to make representations on the matter within such period as he may direct.
- (8) Where the determination is set aside, the Secretary shall alter the relevant entry in the records.

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 Care Tribunal, within 15 working days after the date on which he receives the Secretary’s letter, the following information –

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- (a) the name of any witness whose evidence the party wishes the Care Tribunal to consider (and whether the party may wish the Care 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 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 Care 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations come into operation on 1st April 2005 and make provision about the proceedings of the Care Tribunal established by Article 44 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (“the Order”). The Regulations make provision for the conduct of proceedings of the Care Tribunal under Article 22 of the Order, Articles 78A and 94A of the Children (Northern Ireland) Order 1995 (as inserted by the Order), Articles 78(3) and 94(3) of the Children (Northern Ireland) Order 1995, Article 11 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, Articles 70 (2) and 88A(2) (as amended by the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003) of the Education and Libraries Order (Northern Ireland) 1986, Articles 28 and 42 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, and Article 15 of the Health and Personal Social Services Act (Northern Ireland) 2001. The Social Care Tribunal Rules (Northern Ireland) 2003 are revoked.

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

Part II makes provision as to the constitution of the Care Tribunal, in respect of the powers and functions which may be exercised by the Chairman (regulation 2) and Secretary and the requirements for membership of the lay panel (regulation 3).

Part III refers, for each type of appeal, determination and application for leave to the relevant Schedule to the Regulations which sets out the procedural steps to be followed by the parties (regulation 4).

Part IV makes provision about case management. These provisions deal with the appointment of the Tribunal (regulation 5), the giving of directions (regulation 6), the fixing and notification of the appeal hearing (regulation 7), appeals against secondary listing under the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (regulation 8), multiple appeals where the Chairman can direct that certain appeals are heard together (regulation 9) and further directions (regulation 10). Regulation 11 provides for the Tribunal to be able to make unless orders, whilst provision is made for copies of documents (regulation 12), disclosure of information and documents including the power to order persons who are not parties to the appeal to disclose documents to the Tribunal (regulation 13), the appointment of expert witnesses by the Tribunal (regulation 14), evidence of witnesses (regulation 15), withholding medical reports from disclosure in exceptional circumstances (regulation 16), the summoning of witnesses (regulation 17), the procedure for child and vulnerable adult witnesses (regulation 18), restricted reporting orders (regulation 19) and exclusion of the press or public from the appeal hearing (regulation 20).

Part V makes provision for the procedure at the hearing. Regulation 21 provides for the procedure at the hearing which is decided by the Care Tribunal in any particular case. Regulation 22 provides that the hearing must be in public subject to limited exceptions. Regulation 23 provides for the manner in which evidence is given at the hearing.

Part VI makes provision about the way in which decisions are given and communicated to the parties to the appeal (regulation 24), the award of costs (regulation 25), the right of the appellant to ask the Care Tribunal to review its own decision (regulation 26), the powers of the Tribunal on review (regulation 27) and the publication of the decision (regulation 28).

Part VII deals with supplementary matters. Regulation 28 provides for the method of sending documents, regulation 29 provides for dealing with any irregularities, regulation 30 makes provision for cases where the applications are made on behalf of a person under a disability, regulation 31 provides for cases where the applicant dies, regulation 32 provides for the amendment of the reasons for an appeal or application for leave or response to the appeal or application, regulation 33 provides for withdrawal of proceedings or opposition to proceedings, regulation 34 makes provision for the proof of documents and certification of decisions and regulation 35 provides for extending time limits in the Regulations.

Part VIII deals with revocation of the Care Tribunal Rules (Northern Ireland) 2003 and makes provision in respect of things done under those Regulations (regulation 37).

There are 6 Schedules to the Regulations which make provision in respect of the procedure to be followed on appeals, determinations and applications for leave (where they are required). The Schedules make provisions about the documents which the applicant must send to the Care Tribunal in order to initiate an appeal, the procedure for the Secretary to follow when an appeal is made, and information which the respondent must send to the Care Tribunal and further information to be supplied to the Care Tribunal by both parties to enable the Care Tribunal to give directions.

Schedule 1 deals with appeals under Part III of the Order.

Schedule 2 deals with appeals under Articles 78A and 94A of the Children (Northern Ireland) Order 1995.

Schedule 3 deals with appeals and applications for leave to appeal against a decision to prohibit or restrict the person's employment or further employment or a decision not to revoke or vary such a decision and application for leave for review of prohibition on restriction under the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 and the Education and Libraries Order (Northern Ireland) 1986.

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Schedule 4 makes provision for applications for review and applications for leave to review disqualification from working with children under Articles 27 and 28 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003.

Schedule 5 provides for appeals and applications for leave under Article 42 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003.

Schedule 6 provides for appeals under Section 15 of the Health and Personal Social Services Act (Northern Ireland) 2001 against a decision of the Council in respect of registration under Part I of that Act.