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**2000 No. 2619**

**CHILDREN AND YOUNG PERSONS,  
ENGLAND AND WALES**

**Protection of Children Act Tribunal Regulations 2000**

<i>Made</i> - - - - -	<i>25th September 2000</i>
<i>Laid before Parliament</i>	<i>25th September 2000</i>
<i>Coming into force</i> - -	<i>2nd October 2000</i>

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The Secretary of State, in exercise of the powers conferred upon him by section 9(1) to (4) of, and paragraph 2(4) of the Schedule to, the Protection of Children Act 1999<sup>(a)</sup>, and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992<sup>(b)</sup>, hereby makes the following Regulations:—

## PART I

### *Introductory*

#### **Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Protection of Children Act Tribunal Regulations 2000 and shall come into force on 2nd October 2000.

(2) In these Regulations—

“the Act” means the Protection of Children Act 1999;

“application” means, unless the context otherwise requires, an application under regulation 2 or 3;

“the clerk” means, in relation to a hearing before the Tribunal, the person appointed by the Secretary to act as clerk to the Tribunal;

“costs order” shall be construed in accordance with regulation 32;

“county court” has the same meaning as in the County Courts Act 1984<sup>(c)</sup>;

“the court” has the same meaning as in section 66(1) of the Arbitration Act 1996<sup>(d)</sup>;

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

“the Education Regulations” means the Education (Restriction of Employment) Regulations 2000<sup>(e)</sup>;

“an institution within the further education sector” shall be construed in accordance with section 4(3) of the Education Act 1996<sup>(f)</sup>;

“the list” means the list kept under section 1 of the Act;

“local authority” has the same meaning as in the Children Act 1989<sup>(g)</sup>;

“local education authority” shall be construed in accordance with section 12 of the Education Act 1996;

“nursery school” has the same meaning as in section 6 of the Education Act 1996;

“a party” means either the applicant or the respondent;

“parties” means the applicant and the respondent;

“records” means the records of the Tribunal;

“relevant programme” means a programme included in a programme service within the meaning of the Broadcasting Act 1990<sup>(h)</sup>;

“relevant social work” has the same meaning as in section 10 of the Health and Social Services and Social Security Adjudications Act 1983<sup>(i)</sup>;

“the respondent” means—

(a) in relation to an appeal or application under section 4 of the Act, the Secretary of State for Health; and

(b) in relation to an appeal under the Education Regulations, the Secretary of State for Education and Employment or the National Assembly for Wales;

“school” has the same meaning as in section 4 of the Education Act 1996;

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(a) 1999 c. 14.

(b) 1992 c. 53.

(c) 1984 c. 28.

(d) 1996 c. 23.

(e) S.I. 2000/2419.

(f) 1996 c. 56.

(g) 1989 c. 41.

(h) 1990 c. 42.

(i) 1983 c. 41.

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

“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(a).

- (3) In these Regulations, a reference—
- (a) to a numbered regulation is to the regulation in these Regulations bearing that number;
  - (b) in a regulation to a numbered paragraph is to the paragraph of that regulation bearing that number;
  - (c) in a paragraph to a numbered or lettered sub-paragraph is to the sub-paragraph of that paragraph bearing that number or letter.

## PART II

### *Appeals and applications for leave*

#### **Initiating an appeal**

- 2.—(1) A person who wishes to appeal to the Tribunal—
- (a) under section 4(1)(a) of the Act, against a decision to include him in the list;
  - (b) under regulation 13 of the Education Regulations, against a decision to give a direction under regulation 5 of those Regulations; or
  - (c) under regulation 13 of the Education Regulations, against a decision not to revoke or vary such a direction,

must do so by application in writing to the Secretary.

- (2) An application under this regulation 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 clear whether it falls within paragraph (1)(a), (1)(b) or (1)(c);
  - (c) give the reasons why the applicant believes he should not be included in the list, or why he believes the direction should not have been given, or 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) state whether the Secretary should send documents concerning the application to the applicant’s address or to the representative’s address, if either is in the United Kingdom;
  - (f) otherwise, give an address within the United Kingdom to which documents concerning the application intended for the applicant may be sent; and
  - (g) be signed by the applicant.

(3) An application under this regulation 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.

#### **Applying for leave**

- 3.—(1) An application for leave—
- (a) to appeal to the Tribunal under section 4(1)(b) of the Act against a decision not to remove him from the list, or
  - (b) to have the issue of his inclusion in the list determined under section 4(2) of the Act by the Tribunal,

must be made in writing to the Secretary.

- (2) An application under this regulation must—
- (a) give the applicant’s name, date of birth and full postal address;

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(a) 1971 c. 80.

- (b) give sufficient information making clear whether his application is for leave to appeal, or for leave to have the issue of inclusion in the list determined;
- (c) give the reasons why the applicant believes the decision was wrong or why he believes he should not be included in the list, as the case may be;
- (d) give the dates of any previous applications he has made to the Tribunal;
- (e) give details of any new evidence or material change of circumstances since that application was determined which might lead the Tribunal to a different decision;
- (f) in the case of an application to have the issue of his inclusion in the list determined by the 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) state whether the Secretary should send documents concerning the application to the applicant's address or to the representative's address, if either is in the United Kingdom;
- (i) otherwise, give an address within the United Kingdom to which documents concerning the application intended for the applicant may be sent; and
- (j) be signed by the applicant.

(3) An application under 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.

#### **Acknowledgement and notification of application**

- 4.—(1) On receiving an application, the Secretary shall—
- (a) send an acknowledgement of its receipt to the applicant;
  - (b) subject to the following provisions of this regulation, enter particulars of it 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) The Secretary may—
- (a) send the proposed respondent brief particulars relating to the application, and
  - (b) allow him five working days in which to make any comment on it.
- (3) If the Secretary is of the opinion that the applicant is asking the Tribunal to do something which it cannot do, she may notify the applicant in writing—
- (a) of the reasons for her opinion, and
  - (b) that the application will not be entered in the records unless within five working days the applicant notifies the Secretary in writing that he wishes to proceed with it.
- (4) If in the Secretary's opinion there is an obvious error in the application—
- (a) she may correct it;
  - (b) she shall notify the applicant accordingly; and
  - (c) unless within five working days of receipt of notification under sub-paragraph (b) the applicant notifies her in writing that he objects to the correction, the application shall be amended accordingly.

#### **Response to application**

5.—(1) The Secretary may direct the respondent to respond to the application within 15 working days after the date he receives the direction.

(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 information and documents required under paragraph (4).

- (4) The following information and documents are required under this paragraph—
- (a) the name, address and profession of the person (if any) representing the respondent and whether the Secretary should send documents concerning the application to the representative rather than to the respondent;
  - (b) copies of any letter informing the applicant of a decision which is the subject of the application;
  - (c) copies of any information submitted with a reference under section 2 of the Act and of any observations submitted on it by the applicant;
  - (d) copies of any material relied on by the respondent in making a decision under the Education Regulations.

(5) 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 (4)(d), to any direction of the President under regulation 21).

#### **Misconceived applications etc.**

- 6.—(1) The President may at any time strike out the application on the grounds that—
- (a) it is made otherwise than in accordance with regulation 2 or 3 (whichever is applicable);
  - (b) it is outside the jurisdiction of the Tribunal or is otherwise misconceived; or
  - (c) it is scandalous, frivolous or vexatious.
- (2) Before striking out an application under this regulation, the President 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.

#### **Grant or refusal of leave**

7.—(1) The President may grant or refuse leave in relation to an application under regulation 3 as he sees fit.

(2) Subject to regulation 8, if the President refuses leave the application shall be dismissed.

(3) The Secretary shall without delay notify the parties in writing of the President's decision, and if he has refused leave—

- (a) shall notify them of his reasons for doing so, and
- (b) shall inform the applicant of his right to request a reconsideration of the decision under regulation 8.

#### **Reconsideration of leave**

8.—(1) The President must reconsider a decision to refuse leave if within ten working days after receipt of a notice under regulation 7(3) the Secretary receives a written request to do so from the applicant.

(2) If in his request under 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 President again refuses leave after reconsideration,
- (a) he must give his reasons for doing so in writing, and
  - (b) the Secretary shall without delay notify the parties of the decision and provide them with a copy of the reasons.

(5) The Secretary shall without delay notify the parties in writing—

- (a) of the President's decision, and
- (b) if he has refused leave, of his reasons for doing so.

**Further information to be sent by the applicant**

9.—(1) The Secretary shall direct the applicant to send to the Secretary the information required by this regulation within 20 working days after he receives notification of the direction.

(2) The information required under this regulation is—

- (a) the name of any witness whose evidence the applicant wishes the Tribunal to consider, and the nature and substance of that evidence, and
- (b) whether the applicant wishes the President to give any directions or exercise any of his powers under Part IV of these Regulations.

(3) On receiving the information, the Secretary must without delay send a copy to the respondent.

**Further information to be sent by the respondent**

10.—(1) The Secretary shall direct the respondent to send to the Secretary the information required by this regulation within 20 working days after he receives notification of the direction.

(2) The information required under this regulation is—

- (a) the reasons (if he has not already sent them) why the applicant should be included in the list, or why the decision was correct, as the case may be;
- (b) the name of any witness whose evidence the respondent wishes the Tribunal to consider, and the nature and substance of that evidence;
- (c) whether the respondent wishes the President to give any directions or exercise any of his powers under Part IV of these Regulations.

(3) On receiving the information, the Secretary must without delay send a copy to the applicant.

**Amendment of application or response**

11.—(1) The applicant may amend the reasons he gives in support of the application, but only with the leave of the President (or at the hearing, with the leave of the Tribunal).

(2) The respondent may amend the reasons he gives for opposing the application, but only with the leave of the President (or at the hearing, with the leave of the Tribunal).

(3) Where the President or 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 32(2), the making of a costs order).

**Withdrawal of application or opposition**

12.—(1) If the applicant at any time notifies the Secretary in writing, or states at a hearing, that he no longer wishes to pursue his application, the President (or at the hearing, the Tribunal) must without delay dismiss it, and may, subject to regulation 32(2), make a costs order.

(2) If the respondent notifies the Secretary in writing, or states at a hearing, that he does not or no longer opposes the application, the President (or at the hearing, the Tribunal)—

- (a) must without delay determine the application in the applicant's favour;
- (b) subject to regulation 32(2), may make a costs order; and
- (c) must consider making one.

**PART III***Case management***Costs warnings and deposits**

13.—(1) If the President believes that a party has no reasonable prospect of success in his case, or on any issue—

- (a) he may warn him (a 'costs warning') that if he continues to take part in the proceedings, or, as the case may be, to continue to dispute that issue, a costs order may be made against him; and

- (b) he may, in addition, order him to pay a deposit of a sum not exceeding £150 as a condition of being permitted to continue to take part in the proceedings, or, as the case may be, to continue to dispute that issue.

(2) The President may not order the applicant to pay a deposit unless he has considered whether he is able to comply with such an order, and has considered any relevant written information he has provided.

(3) If he has given a costs warning, the President must not allow the case to continue or, as the case may be, the issue to continue to be disputed, unless the warned party—

- (a) has written to the Secretary saying that despite the warning, he wishes to continue with the case, or to dispute the issue, and
- (b) has paid any deposit which he has been ordered to pay.

### **Unless orders**

**14.**—(1) The President 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 a period specified in the order, the application 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 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 President may determine the case in favour of the other party.

### **Appointment of Tribunal**

**15.**—(1) The President shall nominate a chairman (who may be himself) and two members of the lay panel to determine the application.

(2) The President may at any time before the hearing (or, if there will be no hearing, before the application is determined) nominate from the appropriate panel another person in substitution for the chairman or other member previously nominated.

### **Fixing and notification of hearing**

**16.**—(1) The Secretary must fix a date for a hearing to determine the application unless the applicant has requested in writing that his application be determined without a hearing.

(2) The Secretary must notify the parties in writing informing them of the time and place of the hearing no less than 15 working days before the date fixed for the hearing.

(3) The Secretary may alter the time and place of the hearing—

- (a) where both the applicant and the respondent agree, or
- (b) in any other case, provided that the altered date for the hearing is not earlier than the original date,

but if she does she must without delay inform the parties in writing of the alteration.

(4) If the Tribunal adjourns the hearing, then—

- (a) if the time and place of the resumed hearing were announced by the chairman before the adjournment, no further notice to the parties is required, but
- (b) otherwise, the Secretary must without delay inform the parties in writing of the time and place of the resumed hearing.



## PART IV

### *Further case management powers of the Tribunal*

#### **Directions**

17.—(1) The President may no earlier than five, and (subject to the following provisions of this regulation) no later than ten, working days after the parties have complied with directions under regulations 9 and 10, exercise on his own initiative any of his powers under this Part, or give any other direction he sees fit.

(2) The Secretary shall notify the parties in writing of any directions the President gives under paragraph (1).

(3) A party may within five working days after he receives notification under paragraph (2) apply in writing to the Secretary—

(a) for any direction the President has given to be varied or set aside, or

(b) for a further direction to be given,

and the applicant may in addition request an opportunity to make representations at a preliminary hearing.

(4) Before varying or setting aside any direction he has made, or giving any other direction, at the request of either party, the President must—

(a) if the applicant has requested one, afford the parties an opportunity to make representations at a preliminary hearing; and

(b) in any event, give the other party an opportunity to make written representations on the matter.

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

(6) The President may postpone a decision whether to give, vary or set aside any direction on such terms as he may determine, and the Secretary shall notify the parties in writing accordingly.

#### **Disclosure of information and documents**

18.—(1) Subject to paragraphs (2) to (4) the President may give directions—

(a) requiring a party to send to the Secretary any document or other material which he considers may assist the Tribunal in determining the application and which that party is able to send, and the Secretary shall take such steps as the President 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 time at or within which and the place at which any such inspection and copying is to be done.

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

(3) Paragraph (1) does not apply in relation to any document or other material which the party could not be compelled to produce in legal proceedings in a county court.

(4) Before making a direction under paragraph (1) the President 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**

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

(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 there will be no hearing, before the application is determined).

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

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

#### **Evidence of witnesses**

**20.**—(1) The President may direct that the parties send to each other by a 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 President (before the hearing or, if there will be no hearing, before the application is determined) or the 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 Tribunal in determining the application.

(4) Instead of excluding evidence under this regulation the President or Tribunal may permit it to be considered on such terms as he or it thinks fit, including, subject to regulation 32(2), the making of a costs order.

(5) The President may direct that a witness (other than the applicant) shall not give oral evidence.

#### **Withholding medical report from disclosure in exceptional circumstances**

**21.**—(1) This regulation applies where the respondent wishes the Tribunal, in determining the application, to consider a medical report and the President 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 Tribunal.

(2) The President may direct that—

- (a) the report may be considered by the Tribunal, and
- (b) all or any part of its contents must not be disclosed to the applicant, but such a direction shall not prevent the disclosure of any of the report’s contents to the applicant’s legal representative.

#### **Child witnesses**

**22.**—(1) No child shall give evidence in person unless—

- (a) the President has given the parties an opportunity to make written representations; and
- (b) having regard to all the available evidence, and the need to safeguard the welfare of the child, he believes the Tribunal will be unable to determine the case fairly unless the child gives evidence in person.

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

- (a) shall 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) shall appoint for the purpose of the hearing a person with appropriate skills or experience in facilitating the giving of evidence by children.

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

**Summoning of witnesses**

**23.—**(1) If it appears necessary to do so, the President may issue a summons requiring any person—

- (a) to attend as a witness at the hearing, at the 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 appeal.

(2) The summons must—

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

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

- (a) the President 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 five working days' notice of the hearing; and
- (b) the necessary expenses of his attendance are paid or tendered to him.

(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.

**Restricted reporting orders**

**24.—**(1) If it appears appropriate to do so, the President (or, at the hearing, the 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 England and Wales, of any matter likely to lead members of the public to identify the applicant or any child.

(3) A restricted reporting order may be made in respect of a limited period and may be varied or revoked by the President before the hearing (or by the Tribunal at the hearing).

**Exclusion of press and public**

**25.—**(1) The President (or, at the hearing, the Tribunal) may direct that members of the press and public be excluded from all or part of the hearing—

- (a) where the applicant has requested in writing that the hearing or any part of it should be conducted in private, or
- (b) on the grounds referred to in paragraph (2).

(2) The grounds on which the press and public may be excluded from the hearing are that it is necessary in order to—

- (a) safeguard the welfare of any child;
- (b) protect someone's privacy; or
- (c) avoid the risk of injustice in any legal proceedings.

**PART V***Hearing***Hearing to be in public**

**26.—**(1) The hearing must be in public except where a direction has been made under regulation 25 that the press and public shall be excluded.

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

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

(b) the President; and  
(c) the clerk,  
are entitled to attend the hearing.

- (3) Whether or not the hearing is held in public—  
(a) a member of the Council on Tribunals, and  
(b) the President,

may remain present during the Tribunal's deliberations, but must not take part in the deliberations.

#### **Procedure at the hearing**

- 27.—(1) The Tribunal may regulate its own procedure.
- (2) At the beginning of the hearing the chairman must explain the order of proceedings which the 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 Tribunal may hear and determine the case in that party's absence.
- (5) The Tribunal may from time to time adjourn the hearing.

#### **Evidence**

- 28.—(1) The Tribunal may consider any evidence, whether or not it 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 President has directed otherwise.
- (3) No child may be asked any question except by a person appointed under regulation 22.
- (4) The Tribunal may require any witness to give evidence on oath or affirmation which may be administered for the purpose by the chairman or the clerk.

## **PART VI**

### *Decision*

#### **The decision**

- 29.—(1) The Tribunal's decision may be taken by majority.
- (2) The decision may be made and announced at the end of the hearing, but, 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 chairmen's panel, by another member of the Tribunal).
- (3) The document mentioned in paragraph (2) must also state—  
(a) the reasons for the decision (in summary form); and  
(b) what if any order the 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).
- (5) 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.
- (6) The decision shall be entered in the records.

#### **Review of the Tribunal's decision**

- 30.—(1) A party may apply to the Secretary for the Tribunal's decision to be reviewed on the grounds that—  
(a) it was wrongly made as a result of an error on the part of the Tribunal staff;  
(b) a 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;

- (c) there was an obvious error in the decision; or
  - (d) the interests of justice so require.
- (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 parties, and
  - (b) must be in writing stating the grounds in full.
- (3) An application under this regulation may be refused by the President, or by the chairman of the Tribunal which decided the case, if in his opinion it has no reasonable prospect of success.
- (4) Unless an application under this regulation is refused under paragraph (3), it shall be determined, after the parties have had an opportunity to be heard, by the Tribunal which decided the case or, where that is not practicable, by another Tribunal appointed by the President.
- (5) The Tribunal may on its own initiative propose to review its decision on any of the grounds referred to in paragraph (1) above, in which case—
- (a) the Secretary shall serve notice on the 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 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 Tribunal on review, etc.**

- 31.—(1) The 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 Tribunal), and substitute such other decision as it thinks fit; or
  - (b) order a rehearing before the same or a differently constituted 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 alter the relevant entry in the records to conform to the chairman's certificate and shall notify the parties accordingly.

#### **Costs**

- 32.—(1) Subject to regulation 37, if in the opinion of the Tribunal a party has acted unreasonably in bringing or conducting the proceedings, it may make an order (a 'costs order') requiring that party to make a payment to the other party to cover costs incurred by that party.
- (2) A party may not be ordered to pay more than a total of £500 in respect of costs in relation to an application.
- (3) Before making a costs order against a party, the Tribunal must invite representations from that party and consider any representations he makes.
- (4) When making a costs order, the Tribunal must (subject to paragraph (2))—
- (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 other party in connection with the proceedings as assessed.
- (5) Any costs required by an order under this regulation to be assessed may be assessed in the county court according to such rules applicable to proceedings in the county court as shall be directed in the order.

- (6) This paragraph applies where—
- (a) a party in any proceedings before the Tribunal has paid a deposit as a condition of being permitted to continue with his case or to continue to dispute any issue; and
  - (b) has been unsuccessful in his case or, as the case may be, as to that issue.
- (7) Where paragraph (6) applies,
- (a) the Tribunal must consider making a costs order;
  - (b) the deposit must be paid to the other party to meet (in full or in part, as the case may be) any costs order the Tribunal makes; and
  - (c) if the amount of the deposit is more than the amount of the costs order, the balance must be repaid to the party who paid it.
- (8) A costs order may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.

### **Publication**

**33.**—(1) The President must make such arrangements as he considers appropriate for the publication of 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;
  - (b) the need to protect the privacy of any person;
  - (c) any representations on the matter which the applicant has provided in writing;
  - (d) the effect of any subsisting restricted reporting order; and
  - (e) the effect of any direction under regulation 21.

## **PART VII**

### *Supplementary*

### **Method of sending documents**

**34.**—(1) Any document may be sent to the Secretary by post, by fax or electronically, unless the President directs otherwise.

(2) Any notice or document which these Regulations authorise or require the Secretary 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 regulation 2, 3 or 5, or
- (b) by fax or electronically to a number or address given by that party for the purpose.

(3) If a notice or document cannot be sent to a party in accordance with paragraph (2), the President 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; and
- (c) if served in accordance with a direction under paragraph (3), on the next working day after it was so served.

### **Irregularities**

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

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

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

(4) The Secretary shall as soon as may be send the parties a copy of any corrected document together with reasons for the decision.

#### **Application on behalf of a child or person under a disability**

**36.—**(1) A person may, by writing to the Secretary, request authorisation by the President to make application under regulation 2 or 3 on behalf of a child or an adult 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 President may impose.

#### **Death of applicant**

**37.** If the applicant dies before the application is determined, the President shall strike out the application without making a costs order against the applicant.

#### **Proof of documents and certification of decisions**

**38.—**(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 Tribunal; or
- (b) an order of the President or of the Tribunal,

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

#### **Powers and functions of the Tribunal exercisable by President and Secretary**

**39.—**(1) Anything which must or may be done by the President (except under regulation 15 or 30(4)) may be done by a member of the chairmen's panel authorised by the President.

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

#### **Time**

**40.—**(1) The President may extend any time limit mentioned in these Regulations if in the circumstances—

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

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

#### **Requirements for membership of lay panel**

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

- (a) paragraph (2), or
- (b) paragraphs (3) and (4).

- (2) The requirements of this paragraph are—
- (a) experience in the provision of services which must or may be provided by local authorities under the Children Act 1989 or which are similar to such services, and
  - (b) experience in relevant social work.
- (3) The requirements of this paragraph are—
- (a) experience in the provision of services by a Health Authority(a), a Special Health Authority(b), a National Health Service trust(c) or a Primary Care Trust(d);
  - (b) experience in the provision of education in a school (other than a nursery school) or in an institution within the further education sector; or
  - (c) experience of being employed by a local education authority in connection with the exercise of its functions under Part I of the Education Act 1996.
- (4) The requirements of this paragraph are—
- (a) experience in the conduct of disciplinary investigations;
  - (b) experience on 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 negotiation as to the conditions of service of employees.

Signed by authority of the Secretary of State

25th September 2000

*John Hutton*  
Minister of State  
Department of Health

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- (a) See section 8 of the National Health Service Act 1977 (c. 49). Section 8 was amended by the Health Authorities Act 1995 (c. 17), section 1; the Government of Wales Act 1998 (c. 38), section 148; and the Health Act 1999 (c. 8), section 65, Schedule 4 paragraphs 4 and 5, and Schedule 5.
- (b) See section 11 of the National Health Service Act 1977 (c. 49). Section 11 was amended by the Health Services Act 1980 (c. 53), section 1 and 2 and Schedule 1, paragraph 31; the National Health Service and Community Care Act 1990 (c. 19), section 66(2) and Schedule 10; the Health Authorities Act 1995 (c. 17), section 2(1) and Schedule 1, Part I, paragraphs 1 and 2; and the Health Act 1999 (c. 8), section 65(1) and Schedule 4, paragraphs 4 and 6.
- (c) See section 5 of the National Health Service and Community Care Act 1990 (c. 19). Section 5 was amended by the Health Authorities Act 1995 (c. 17), sections 2(1) and Schedule 1, Part II, paragraphs 65 and 69; the National Health Service (Primary Care) Act 1997 (c. 46), section 41(10) and Schedule 2, Part I, paragraph 65(1) and (2); and by the Health Act 1999 (c. 8), sections 13(1) and (10), 14, and 65(2) and Schedule 5.
- (d) See section 16A of the National Health Service Act 1977 (c. 49), inserted by the Health Act 1999 (c. 8), section 2(1), and Schedule 1.



## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision about the proceedings of the Tribunal established by section 9 of the Protection of Children Act 1999 on an appeal or determination under section 4 of that Act or regulations made under section 6 of that Act. They come into force on 2nd October 2000.

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

Part II makes provision as to the initiation of appeals and applications for leave (regulations 2 and 3); as to the acknowledgement, notification and registration of applications (regulation 4); for a response by the respondent (regulation 5); and for dealing with misconceived applications (regulation 6). Provision is also made (regulations 7 and 8) in relation to the grant or refusal of leave in respect of applications under regulation 3. There is provision for further information to be sent by the parties (regulations 9 and 10) and for the amendment or withdrawal of the application and response (regulations 11 and 12).

Part III makes certain provision about case management. Provision is made for the President to issue “costs warnings” and “unless orders” (regulations 13 and 14), for the appointment of a Tribunal to determine an application (regulation 15) and for the fixing of a hearing (regulation 16).

Part IV provides for further case-management powers. Provision is made for the giving of directions and for applications to vary or set aside directions; for the parties to request further directions; and for preliminary hearings (regulation 17). Provision is also made for disclosure (regulation 18) and for the appointment of experts to assist the Tribunal (regulation 19). Regulation 20 makes provision in relation to the provision, and content, of witness statements, and the powers of the President and the Tribunal to determine whether the evidence of a witness will be considered or heard. There is provision for the withholding of medical reports from disclosure to the applicant in exceptional circumstances where this would not be unfair (regulation 21), and for restricting, and making special provision for, the giving of live evidence by children (regulation 22). Provision is made for the summoning of witnesses (regulation 23), for making restricted reporting orders (regulation 24) and for excluding the press and public from a hearing in certain circumstances (regulation 25).

Part V makes provision about hearings. Provision is made for hearings normally to take place in public, and for certain persons to be admitted in those cases where the press and public are excluded (regulation 26). Regulation 27 makes provision relating to procedure at the hearing. Provision is also made in relation to evidence before the Tribunal (regulation 28).

Part VI makes provision relating to the Tribunal’s decision. Regulation 29 makes provision in respect of the making, pronouncement and notification of the decision, and for the giving of reasons. Regulations 29 and 30 provide for review of the decision in certain circumstances. Provision is made in relation to costs (regulation 32) and the publication of decisions (regulation 33).

Part VII makes certain supplementary provision. Regulation 34 makes provision in connection with the method of sending documents. Regulation 35 provides for the curing of irregularities. Provision is made for applications on behalf of children and adults who are unable to act for themselves (regulation 36) and in case of the death of the applicant (regulation 37). Provision is also made for the proof and certification of documents and decisions (regulation 38), for the functions of the President and Secretary to be performed by others (regulation 39), for the extension of time-limits (regulation 40) and in respect of qualifications required for membership of the lay panel (regulation 41).





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**STATUTORY INSTRUMENTS**

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