

**2002 No. 816**

**SOCIAL CARE, ENGLAND AND WALES  
CHILDREN AND YOUNG PERSONS,  
ENGLAND AND WALES  
PUBLIC HEALTH, ENGLAND AND WALES**

**The Protection of Children and Vulnerable Adults and Care  
Standards Tribunal Regulations 2002**

*Made* - - - - - *25th March 2002*

*Laid before Parliament* *25th March 2002*

*Coming into force in accordance with regulation 1(1)*

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The Secretary of State, in exercise of the powers conferred upon him by section 9(2) to (4) of, and paragraph 2(4) of the Schedule to, the Protection of Children Act 1999(a) 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(b), and with the National Assembly for Wales in accordance with section 9(3C) of the Protection of Children Act 1999, hereby makes the following Regulations:—

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- (a) 1999 c.14. Section 9(2) of the 1999 Act was amended by the Care Standards Act 2000 (c.14) (“the 2000 Act”), section 116 and Schedule 4, paragraph 26(1), (3)(a). Section 9(3A) to (3C) of the 1999 Act was inserted by the 2000 Act, section 116 and Schedule 4, paragraph 26(1), (3)(b), in the case of section 9(3A) on a date to be appointed.
- (b) 1992 c.53. Schedule 1, paragraph 36A of the Tribunals and Inquiries Act 1992 was inserted by the Schedule to the Protection of Children Act 1999 (c.14), paragraph 8. Schedule 1, paragraph 36A of the Tribunals and Inquiries Act 1992 was renumbered as paragraph 36B and amended by the 2000 Act, Schedule 4, paragraph 21.

PART I  
INTRODUCTORY

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 and shall come into force—

- (a) for the purposes of—
  - (i) an appeal under section 86(1)(a) or (b) of the 2000 Act;
  - (ii) an application for leave to appeal under section 86(1)(b) of the 2000 Act;
  - (iii) a determination, or an application for leave for a determination, under section 86(2) of the 2000 Act,

on the first day on which sections 80 to 93 of the 2000 Act are in force;

- (b) for all other purposes, on 1st April 2002.

(2) In these Regulations—

“the 1989 Act” means the Children Act 1989**(a)**;

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

“the 2000 Act” means the Care Standards Act 2000**(b)**;

“case” in Parts IV and VI means—

- (a) an appeal under section 21 of the 2000 Act;
- (b) an appeal under section 79M of the 1989 Act**(c)**;
- (c) an appeal under section 65A of the 1989 Act**(d)**;
- (d) an appeal under section 4(1)(a) or (b) of the 1999 Act;
- (e) a determination under section 4(2) of the 1999 Act;
- (f) an appeal under the Education Regulations**(e)**;
- (g) an appeal under section 86(1)(a) or (b) of the 2000 Act; or
- (h) a determination under section 86(2) of the 2000 Act;

“application for leave” means an application to the Tribunal—

- (a) for leave to appeal under section 4(1)(b) of the 1999 Act or section 86(1)(b) of the 2000 Act;
- (b) for leave for a determination by the Tribunal under section 4(2) of the 1999 Act or section 86(2) of the 2000 Act;

“appropriate authority” means in relation to an appeal under section 65A of the 1989 Act the Commission or the Assembly;

“the Assembly” means the National Assembly for Wales**(f)**;

“the Chief Inspector” means Her Majesty’s Chief Inspector of Schools in England**(g)**;

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

“the Commission” means the National Care Standards Commission**(h)**;

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**(a)** 1989 c.41.

**(b)** 2000 c.14.

**(c)** Section 79M was inserted into the 1989 Act by section 79 of the 2000 Act.

**(d)** Section 65A was inserted into the 1989 Act by paragraph 14(14) of Schedule 4 to the 2000 Act.

**(e)** The Education (Restriction of Employment) Regulations 2000 (S.I. 2000/2419) amended by the Education (Restriction of Employment) (Amendment) Regulations 2001 (S.I. 2001/1269).

**(f)** The National Assembly for Wales was established by section 1 of the Government of Wales Act 1998 (c.38).

**(g)** The Chief Inspector of Schools was established under section 1 of the Education (Schools) Act 1992 (c.38). Section 1 was repealed by Schedule 7 to the Schools Inspectors Act 1996 (c.57) and re-enacted by section 1 of that Act.

**(h)** The National Care Standards Commission was established under section 6 of the Care Standards Act 2000.

“costs order” shall be construed in accordance with regulation 24;

“county court” has the same meaning as in the County Courts Act 1984**(a)**;

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

“the Education Regulations” means the Education (Restriction of Employment) Regulations 2000;

“an institution within the further education sector” shall be construed in accordance with section 4(3) of the Education Act 1996**(b)**;

“local authority” has the same meaning as in section 105 of the 1989 Act;

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

“nominated chairman” means the chairman appointed by the President in accordance with regulation 5 to determine a case or an application for leave;

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

“parties” means the applicant and the respondent;

“the POCA list” means the list kept under section 1 of the 1999 Act;

“the POVA list” means the list kept under section 81 of the 2000 Act;

“records” means the records of the Tribunal;

“registration authority” means—

- (a) in relation to an appeal under section 21 of the 2000 Act, the Commission or the Assembly**(c)**; and
- (b) in relation to an appeal under section 79M of the 1989 Act, the Chief Inspector or the Assembly**(d)**;

“relevant programme” means a programme included in a programme service within the meaning of the Broadcasting Act 1990**(e)**;

“relevant social work” has the same meaning as in section 55(4) of the 2000 Act;

“the respondent” means—

- (a) in relation to an appeal under section 21 of the 2000 Act, the registration authority;
- (b) in relation to an appeal under section 79M of the 1989 Act, the registration authority;
- (c) in relation to an appeal under section 65A of the 1989 Act**(f)**, the appropriate authority**(g)**;
- (e) in relation to an appeal, an application for leave or a determination under section 4 of the 1999 Act, the Secretary of State for Health;
- (f) in relation to an appeal under the Education Regulations, the Secretary of State for Education and Skills or the National Assembly for Wales**(h)**;
- (g) in relation to an appeal, an application for leave or a determination under section 86 of the 2000 Act, the Secretary of State for Health;

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**(a)** 1984 c.28.

**(b)** 1996 c.56.

**(c)** Under the 2000 Act the registration authority in relation to England, is the National Care Standards Commission and in relation to Wales, is the National Assembly for Wales.

**(d)** Part XA was inserted into the 1989 Act by section 79 of the 2000 Act. Part XA of the 1989 Act provides a requirement to register under that Part in relation to England with the Chief Inspector of Schools in England and in relation to Wales with the National Assembly for Wales.

**(e)** 1990 c.42.

**(f)** Section 65A was inserted into the 1989 Act by the 2000 Act, section 116 and paragraph 14(4) of Schedule 4.

**(g)** Under section 65 of the 1989 Act as amended by Schedule 4, paragraph 14(13)(d) of the 2000 Act, the appropriate authority in relation to England is the National Care Standards Commission and in relation to Wales is the National Assembly for Wales.

**(h)** The functions of the Secretary of State for Education and Skills under section 218(6) of the Education Reform Act 1988 (c.40) were transferred to the National Assembly for Wales to be exercised concurrently with the Secretary of State for Education and Skills by Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as amended by S.I. 2000/1829 which inserted the reference to section 218(6) of the Education Reform Act 1988 into that Order.

“residential family centre” has the same meaning as in section 4(2) of the 2000 Act;  
“school” has the same meaning as in section 4 of the Education Act 1996;  
“the Secretary” means the person for the time being acting as the Secretary to the Tribunal;  
“vulnerable adult” means a person who is not a child and who—

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

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

“working day” means any day other 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(b).

(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) to a numbered Schedule, is to a Schedule in these Regulations bearing that number;

(d) 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

### CONSTITUTION

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

**2.—**(1) Anything which must or may be done by the President (except under regulation 5(1), (2), (4) or (5) or 25(4)), may be done by a member of the chairmen’s panel authorised by the President(c).

(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.

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

**3.—**(1) A person may be appointed a member of the lay panel(d) 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 local authorities under the 1989 Act or which are similar to such services;

(ii) for vulnerable adults; or

(iii) in a residential family centre; and

(b) experience in relevant social work.

(3) The requirements of this paragraph are—

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(a) 1983 c.20.

(b) 1971 c.80.

(c) See paragraphs 1 and 2 of the Schedule to the 1999 Act.

(d) See paragraphs 1 and 2 of the Schedule to the 1999 Act.

- (a) experience in the provision of services by a Health Authority<sup>(a)</sup>, a Special Health Authority<sup>(b)</sup>, a National Health Service trust<sup>(c)</sup> or a Primary Care Trust<sup>(d)</sup>;
  - (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 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 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 II of the 2000 Act;
  - (b) experience in carrying out inspections under the Registered Homes Act 1984<sup>(e)</sup>;
  - (c) experience in carrying out inspections under the 1989 Act;
  - (d) experience in managing an establishment or agency under Part II of the 2000 Act;
  - (e) experience in managing a children’s home under the 1989 Act;
  - (f) experience in managing a nursing home, mental nursing home or residential care home under the Registered Homes Act 1984;
  - (g) experience in managing the provision of local authority social services;
  - (h) that the person is a registered nurse<sup>(f)</sup> or registered medical practitioner who has experience of the provision of health care services;
  - (i) experience in managing or inspecting child minding and day care provision for children under 8 years of age; or
  - (j) experience in a professional, managerial or supervisory position in the provision of early childhood education or child development.

### 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 section 21 of the 2000 Act, the procedure set out in Schedule 1 shall apply.

(2) In the case of an appeal under section 79M of the 1989 Act, the procedure set out in Schedule 2 shall apply.

(3) In the case of an appeal under section 65A of the 1989 Act, the procedure set out in Schedule 3 shall apply.

(4) In the case of—

- (a) an application for leave under section 4(1)(b) or (2) of the 1999 Act;
- (b) an appeal under section 4(1)(a) of the 1999 Act against a decision to include an individual in the POCA list;

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(a) See section 8 of the National Health Service Act 1977 (c.49) as amended by section 1(1) of the Health Authorities Act 1995 (c.17) and paragraph 5 of Schedule 4 to the Health Act 1999 (c.8).

(b) See section 11 of the National Health Service Act 1977. Section 11(1) was substituted by section 65 of, and paragraphs 4 and 6 of Schedule 4 to, the Health Act 1999 (c.8); the words “Special Health Authority” were substituted in section 11(3) by section 2(1) of, and paragraph 2(b) of Schedule 1 to, the Health Authorities Act 1995 (c.17).

(c) See section 5 of the National Health Service and Community Care Act 1990 (c.19) as amended by paragraph 69 of Schedule 1 to the Health Authorities Act 1995 and section 13(1) of the Health Act 1999.

(d) See section 16A of the National Health Service Act 1977 inserted by section 2(1) of the Health Act 1999.

(e) 1984 c.23.

(f) See Schedule 1 to the Interpretation Act 1978 for the definition of “registered” in relation to nurses.

- (c) an appeal under section 4(1)(b) of the 1999 Act against a decision not to remove an individual from the POCA list under section 1(3) of that Act;
- (d) a determination under section 4(2) of the 1999 Act as to whether an individual should be included in the POCA list;
- (e) an appeal under regulation 13 of the Education Regulations against a decision to give a direction under regulation 5 of those Regulations; or
- (f) an appeal under regulation 13 of the Education Regulations against a decision not to revoke or vary such a direction,

the procedure set out in Schedule 4 shall apply.

(5) In the case of—

- (a) an application for leave to the Tribunal under section 86(1)(b) or (2) of the 2000 Act;
- (b) an appeal under section 86(1)(a) of the 2000 Act against a decision to include an individual in the POVA list;
- (c) an appeal under section 86(1)(b) of the 2000 Act against a decision not to remove an individual from the POVA list; or
- (d) a determination under section 86(2) of the 2000 Act as to whether an individual should be included in the POVA list,

the procedure set out in Schedule 5 shall apply.

## PART IV

### CASE MANAGEMENT

#### **Appointment of Tribunal**

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

(2) The President shall, at such time as he considers it appropriate to do so, nominate a chairman (who may be himself) to determine an application for leave.

(3) The President or the nominated chairman may determine any application made in relation to the case or any application for leave.

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

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

#### **Directions**

6.—(1) If either party has requested that there shall be a preliminary hearing, or if the President or the nominated chairman considers that a preliminary hearing is necessary, the President or the nominated chairman, as the case may be, 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 or 3 or paragraph 9 of Schedule 4 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 President or the nominated 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 Tribunal, and, if the President or the nominated 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 Tribunal, by which the parties shall send any written representations regarding their appeal to the Tribunal.

(3) The President or the nominated chairman may direct that exchange of witness statements or other material shall be simultaneous or sequential, as he considers appropriate.

(4) The Secretary shall notify the parties as soon as possible in writing of any directions the President or the nominated chairman gives in writing under paragraphs (2) and (3) above.

(5) 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.

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

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

7.—(1) The Secretary must, in consultation with the President or the nominated chairman, 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 President or the nominated chairman with regard to the preparation of evidence but shall be no sooner than 15 working days after the latest date on which the President or the nominated 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 President or the nominated chairman, alter the place of the hearing and, if he does, he must without delay inform the parties in writing of the alteration.

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

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

(7) If the President or the nominated 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.

### **Multiple appeals**

8.—(1) Subject to paragraphs (2) and (3), where two or more cases relate to the same person, establishment or agency, the President or the nominated 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 section 92(1) and (2) of the 2000 Act been included in the POVA list pursuant to a reference under section 2, 2A, or 2D of the 1999 Act or as a result of being named in a relevant inquiry within the meaning of section 2B of that Act, then subject to paragraph (4) any appeal against inclusion in the POVA list shall be joined with any appeal against inclusion in the POCA list and in that event the appeal against inclusion in the POCA list shall be heard first.

(3) Where a person (“the applicant”) has by virtue of section 2C of the 1999 Act been included in the POCA list pursuant to a reference made under section 82, 83 or 84 of the 2000 Act or as a result of being named in a relevant inquiry within the meaning of section 85 of that Act, then subject to paragraph (4) any appeal against inclusion in the POCA list shall be joined with any appeal against inclusion in the POVA list and in that event the appeal against inclusion in the POVA list shall be heard first.

(4) The applicant may request the President or the nominated 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 President or the nominated 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 President or the nominated 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 President or the nominated 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**

**9.**—(1) The President or the nominated 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 President or the nominated 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 President or the nominated 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**

**10.**—(1) The President or the nominated 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 President or the nominated chairman may determine the case in favour of the other party.

#### **Copies of documents**

**11.**—(1) The President or the nominated chairman may give a direction as to the number of copies of relevant material, which each party must send to the 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 President or the nominated chairman to send to the Secretary under this Part.

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

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

**12.**—(1) Subject to paragraphs (3) to (5), the President or the nominated chairman 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 case and which that party is able to send, and the Secretary shall take such steps as the President or the nominated 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 President or the nominated 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 President or the nominated 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**

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

(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 President or the nominated chairman sees fit, he may direct that the expert shall attend the hearing, and give evidence.

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

### **Evidence of witnesses**

**14.**—(1) The President or the nominated 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 President or the nominated chairman (before the hearing or, if the case is to be determined without an oral hearing, before the case 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 case.

(4) Instead of excluding evidence under this regulation the President or the nominated chairman or the Tribunal may permit it to be considered on such terms as he or it thinks fit, including, subject to regulation 24, the making of a costs order.

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

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

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

(2) The President or the nominated 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 President or the nominated chairman.

(3) The President or the nominated chairman 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.

#### **Summoning of witnesses**

**16.—**(1) The President or the nominated 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 section 9(5)(c) of the 1999 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 or the nominated chairman, and—

- (a) the President or the nominated 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; and
- (b) the necessary expenses of his attendance are paid or tendered to him by the party who requested his attendance or by the Tribunal, as the President or the nominated chairman shall direct.

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

### **Child and vulnerable adult witnesses**

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

- (a) the President or the nominated 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 President or the nominated 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 President or the nominated chairman shall—

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

(3) Where the President or the nominated chairman believes that it might not be in the best interests of a vulnerable adult for the vulnerable adult to give oral evidence to the Tribunal, the President or the nominated 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 Tribunal—
  - (i) in any circumstances; or
  - (ii) otherwise than in accordance with paragraph (5).

(4) If the President or the nominated chairman considers that—

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

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

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

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

### **Restricted reporting orders**

18.—(1) If it appears appropriate to do so, the President or the nominated chairman (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, any child, any vulnerable adult or any other person who the President or the nominated chairman or the 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 President or the nominated chairman before the hearing (or by the Tribunal at the hearing).

#### **Exclusion of press and public**

**19.**—(1) Where paragraph (2) applies, the President or the nominated chairman (or, at the hearing, the 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 President or the nominated chairman (or, at the hearing, the Tribunal) is satisfied that a direction under paragraph (1) is necessary in order to—

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

### **PART V**

#### **HEARING**

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

**20.**—(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.

#### **Hearing to be in public**

**21.**—(1) The hearing must be in public except in so far as any person is excluded under regulation 19.

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

- (a) a member of the Council on Tribunals;
- (b) the President;
- (c) the clerk; and
- (d) any person whom the President or the nominated chairman permits to be present in order to assist the Tribunal,

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.

#### **Evidence**

**22.**—(1) The 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 President or the nominated chairman has directed otherwise.

(3) No child may be asked any question except by the Tribunal or a person appointed under regulation 17(2).

(4) Where a direction has been made under regulation 17 that paragraph (5) of that regulation shall apply to any vulnerable adult, the vulnerable adult may not be asked any question except by the Tribunal or a person appointed under regulation 17(5).

(5) 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**

**23.**—(1) The 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 Tribunal).

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

(a) the reasons for the decision; 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) and a notice explaining to the parties any right of appeal which they may have against the Tribunal’s decision and the right to apply for a review of the Tribunal’s decision.

(5) Where the appeal was against an order made by a justice of the peace under section 20 of the 2000 Act or section 79K of the 1989 Act<sup>(a)</sup>, 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.

### **Costs**

**24.**—(1) Subject to regulation 31 and to paragraph (2) below, 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 (“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 Tribunal must—

(a) invite the receiving party to provide to the 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 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

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<sup>(a)</sup> Section 79K was inserted into the 1989 Act by section 79 of the Care Standards Act 2000 (c.14).

(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 Tribunal's decision**

**25.**—(1) A party may apply to the President for the Tribunal's decision to be reviewed on the grounds that—

- (a) it was wrongly made as a result of an error on the part of the Tribunal staff;
- (b) a 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 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 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**

**26.**—(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
- (b) substitute such other decision as it thinks fit or 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 or the order of the High Court and shall notify the parties accordingly.



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

### **Publication**

**27.**—(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 President or the nominated 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 15.

## **PART VII**

### **SUPPLEMENTARY**

#### **Method of sending documents**

**28.**—(1) Any document may be sent to the Secretary by post, by fax, electronically or through a document exchange, unless the President or the nominated chairman 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 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 President or the nominated 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**

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

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

**30.**—(1) A person may, by writing to the Secretary, request authorisation by the President or the nominated chairman to make any application to the 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 President or the nominated chairman may impose.

#### **Death of applicant**

**31.** If the applicant dies, before the case or application for leave is determined, the President or the nominated 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**

**32.**—(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 President or the nominated chairman (or at the hearing, with the leave of the 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 President or the nominated chairman (or at the hearing, with the leave of the Tribunal).

(3) Where the President, the nominated chairman 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 24, the making of a costs order).

#### **Withdrawal of proceedings or opposition to proceedings**

**33.**—(1) If the applicant at any time notifies the Secretary in writing, or states at a hearing, that he no longer wishes to pursue the proceedings, the President or the nominated chairman (or at the hearing, the Tribunal) must dismiss the proceedings, and may, subject to regulation 24(2) and (3) make a costs order.

(2) If the respondent notifies the Secretary in writing, or states at a hearing, that he does not oppose or no longer opposes the proceedings, the President (or at the hearing, the 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 24(2) and (3) may make a costs order; and
- (c) must consider making one.

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

**34.**—(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 the nominated chairman or of the Tribunal,

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

### **Time**

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

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

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

(3) 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**

**36.**—(1) The Protection of Children Act Tribunal Regulations 2000<sup>(a)</sup> (“the 2000 Regulations”) are hereby revoked.

- (2) Any application or appeal which—
- (a) was made to the Tribunal under the 2000 Regulations before 1st April 2002; and
  - (b) the Tribunal has not determined before that date,

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

(3) Any direction or notice given, or thing done, by the Tribunal before 1st April 2002 shall for the purposes of these Regulations be treated as having been given or done by the Tribunal under these Regulations.

Signed by authority of the Secretary of State for Health

25th March 2002

*Jacqui Smith*  
Minister of State,  
Department of Health

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<sup>(a)</sup> S.I. 2000/2619.

APPEAL UNDER SECTION 21 OF THE 2000 ACT AGAINST A DECISION OF THE  
REGISTRATION AUTHORITY OR AN ORDER OF A JUSTICE OF THE PEACE

**Initiating an appeal**

1.—(1) A person who wishes to appeal to the Tribunal under section 21 of the 2000 Act against a decision of the registration authority under Part II of the 2000 Act, or an order made by a justice of the peace under section 20 of that Act, must do so by application in writing to the Secretary.

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

(3) 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) 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 registration 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 section 21 of the 2000 Act, 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
  - (c) unless, within five working days of receipt of notification under head (b) of this subparagraph 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 section 21(1)(a) of the 2000 Act, a copy of the written notice of the decision (which is the subject of the appeal) served under section 19(3) of that Act, and the reasons for the decision; or
  - (iii) in the case of an appeal under section 21(1)(b) of the 2000 Act, 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 President or the nominated 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 Tribunal or is otherwise misconceived; or
- (c) it is frivolous or vexatious.

(2) Before striking out an appeal under this paragraph, the President or the nominated 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.

#### **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 Tribunal to consider (and whether the party may wish the 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 President or the nominated 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 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 2

Regulation 4(2)

### APPEAL UNDER SECTION 79M OF THE 1989 ACT AGAINST A DECISION OF THE REGISTRATION AUTHORITY OR AN ORDER OF A JUSTICE OF THE PEACE

#### **Initiating an appeal**

1.—(1) A person who wishes to appeal to the Tribunal under section 79M of the 1989 Act, against the taking of any step mentioned in section 79L(1)(a), or an order under section 79K(b), of that Act, must do so by application in writing to the Secretary.

(2) An application under this paragraph must be received by the Secretary no later than 28 days after service on the applicant of notice of the decision to take the step in question or the order.

(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 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) identify the decision against which the appeal is brought and give particulars of—
  - (i) whether the appeal is against the refusal or cancellation of registration, or the imposition, removal or variation of any condition of registration, or a refusal to remove or vary any condition;
  - (ii) whether the appeal is against a decision of the registration authority or a justice of the peace;
- (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;
- (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.

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(a) Section 79L of the 1989 Act was inserted by section 79 of the 2000 Act.

(b) Section 79K of the 1989 Act was inserted by section 79 of the 2000 Act.

- (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
  - (c) unless within five working days of receipt of notification under head (b) of this subparagraph 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 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 the respondent opposes it, and if he does, give the reasons why he 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) a copy of the written notice of the decision to take the step in question (which is the subject of the appeal) served under section 79L of the 1989 Act, and the reasons for the decision; or
  - (iii) where the appeal is against an order of a justice of the peace under section 79K of the 1989 Act, a copy of the order and a copy of the statement referred to in subsection (5)(b) of that section.

(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 President or the nominated 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 Tribunal or is otherwise misconceived; or
- (c) it is frivolous or vexatious.

(2) Before striking out an appeal under this paragraph, the President or the nominated 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.

### **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 Tribunal to consider (and whether the party may wish the Tribunal to consider additional witness evidence where the name of the party is not yet known) and the nature of that evidence;

- (b) whether the party wishes the President 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 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)

### APPEAL UNDER SECTION 65A OF THE 1989 ACT AGAINST A DECISION OF THE APPROPRIATE AUTHORITY REFUSING TO GIVE CONSENT UNDER SECTION 65 OF THAT ACT

#### **Initiating an appeal**

1.—(1) A person who wishes to appeal to the Tribunal under section 65A of the 1989 Act against a decision of the appropriate authority must do so by application in writing to the Secretary.

(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.

(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 section 65(1) or (2) of the 1989 Act;



- (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 President is of the opinion that the applicant is asking the Tribunal to do something which it cannot do, he may notify the applicant in writing—
- (a) of the reasons for his opinion; and
  - (b) that the appeal will not be entered in the records unless within five working days the applicant notifies the President in writing that he wishes to proceed with it.
- (3) If in the Secretary's opinion there is an obvious error in the application—
- (a) he may correct it;
  - (b) he must notify the applicant accordingly; and
  - (c) unless within five working days of receipt of notification under heading (b) of this sub-paragraph 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 Secretary 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 President or the nominated 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 Tribunal or is otherwise misconceived; or
  - (c) it is frivolous or vexatious.
- (2) Before striking out an appeal under this paragraph, the President or the nominated 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.

**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 Tribunal to consider (and whether the party may wish the 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 President or the nominated 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 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 4

Regulation 4(4)

APPEALS AND APPLICATIONS FOR LEAVE TO APPEAL UNDER SECTION 4 OF THE 1999 ACT AND APPEALS UNDER REGULATION 13 OF THE EDUCATION REGULATIONS

**Initiating an appeal**

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

- (a) under section 4(1)(a) of the 1999 Act, against a decision to include him in the POCA 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 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.

(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), (1)(b) or (1)(c);
- (c) give the reasons why the applicant believes he should not be included in the POCA list, or why he believes the direction should not have been given, or why that direction 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 Tribunal under section 4(1)(b) of the 1999 Act against a decision not to remove the applicant from the POCA list; or
- (b) to have the issue of the applicant's inclusion in the POCA list determined under section 4(2) of the 1999 Act by the 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.

(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 POCA list;
- (d) give the dates of any previous appeal under the 1999 Act and (where applicable) application for leave the applicant has made to the 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 Tribunal to a different decision;
- (f) in the case of an application to have the issue of his inclusion in the POCA 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) 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.

### **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 President is of the opinion that the applicant is asking the Tribunal to do something which it cannot do, he may notify the applicant in writing—

- (a) of the reasons for his opinion; and
  - (b) that the application will not be entered in the records unless within five working days the applicant notifies the President in writing that he wishes to proceed with it.
- (3) If in the Secretary's opinion there is an obvious error in the application—
- (a) he may correct it;
  - (b) he shall notify the applicant accordingly; and
  - (c) unless within five working days of receipt of notification under head (b) of this sub-paragraph 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 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 Secretary 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 section 2, 2A, 2B or 2D of the 1999 Act<sup>(a)</sup> 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 the Education Regulations.

(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 President or the nominated chairman under regulation 15).

### **Misconceived applications etc.**

5.—(1) The President or the nominated 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 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 President or the nominated 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.

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(a) Sections 2A, 2B and 2D were inserted into the 1999 Act by sections 95(1), 96(1) and 98(1) respectively of the 2000 Act (c.14).

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

6.—(1) The President or the nominated 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 President or the nominated chairman refuses leave the application shall be dismissed.

(3) The Secretary must without delay notify the parties in writing of the President or the nominated 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 President or the nominated chairman must reconsider a decision to refuse leave if within ten working days after receipt of a notice under paragraph 6(3) the Secretary 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 President or the nominated chairman again refuses leave after reconsideration—

- (a) he must give his reasons for doing so in writing; and
- (b) the Secretary must without delay send to the parties a copy of the President or the nominated 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 Secretary, 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 Tribunal to consider (and whether the party may wish the 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 President 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 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.

## SCHEDULE 5

Regulation 4(5)

### APPEALS AND APPLICATIONS FOR LEAVE UNDER SECTION 86 OF THE 2000 ACT

#### **Initiating an appeal**

1.—(1) A person who wishes to appeal to the Tribunal under section 86(1)(a) of the 2000 Act, against a decision to include him in the POVA list must do so by application in writing to the Secretary.

(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.

(4) An application under this paragraph must—

- (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 POVA 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**

2.—(1) An application for leave—

- (a) to appeal to the Tribunal under section 86(1)(b) of the 2000 Act against a decision not to remove the applicant from the POVA list; or
- (b) to have the issue of the applicant's inclusion in the POVA list determined under section 86(2) of the 2000 Act by the 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.

(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 POVA list;
- (d) give the dates of any previous appeal under section 86 of the 2000 Act and (where applicable) application for leave, he has made to the 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 Tribunal to a different decision;

- (f) in the case of an application to have the issue of his inclusion in the POVA 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) give the address within the United Kingdom to which the Secretary 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 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 President is of the opinion that the applicant is asking the Tribunal to do something which it cannot do, he may notify the applicant in writing—
- (a) of the reasons for his opinion; and
  - (b) that the application will not be entered in the records unless within five working days the applicant notifies the President in writing that he wishes to proceed with it.
- (3) If in the Secretary's opinion there is an obvious error in the application—
- (a) he may correct it;
  - (b) he shall notify the applicant accordingly; and
  - (c) unless within five working days of receipt of notification under head (b) of this subparagraph 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 section 82(1), 83(1), 84(1) or 85 of the 2000 Act 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 etc.**

5.—(1) The President or the nominated 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 Tribunal or is otherwise misconceived; or
- (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 President or the nominated 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.

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

6.—(1) The President or the nominated 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 President or the nominated chairman refuses leave the application shall be dismissed.

(3) The Secretary must without delay notify the parties in writing of the President or the nominated 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 President or the nominated chairman must reconsider a decision to refuse leave if within ten working days after receipt of a notice under paragraph 6(3) the Secretary 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 President or the nominated chairman again refuses leave after reconsideration—

- (a) he must give his reasons for doing so in writing; and
- (b) the Secretary must without delay send to the parties a copy of the President or the nominated chairman's decision and if he has refused leave his reasons for doing so.

#### **Further information to be sent by the applicant and the 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 Secretary, 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 Tribunal to consider (and whether the party may wish the 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 President 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 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.

## EXPLANATORY NOTE

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

These Regulations make provision about the proceedings of the Tribunal established by section 9 of the Protection of Children Act 1999 (“the 1999 Act”) (c.14). The jurisdiction of the Tribunal has been extended by the Care Standards Act 2000 (“the 2000 Act”) (c.14). These Regulations make provision for the conduct of proceedings of the Tribunal under Part II of the 2000 Act, section 79M of the Children Act 1989, section 65A of the Children Act 1989, section 4 of the 1999 Act, regulation 13 of the Education (Restriction of Employment) Regulations 2000 and section 86 of the 2000 Act. They come into force on 1st April 2002.

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

Part II makes provision as to the constitution of the Tribunal, in respect of the powers and functions which may be exercised by the President and the Secretary (regulation 2) 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), multiple appeals which enables the President to direct that certain appeals be heard together (regulation 8) and further directions (regulation 9). This Part also provides for the Tribunal to be able to make unless orders (regulation 10), copies of documents (regulation 11), 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 12), the appointment of expert witnesses by the Tribunal (regulation 13), evidence of witnesses (regulation 14), withholding medical reports from disclosure in exceptional circumstances (regulation 15), the summoning of witnesses (regulation 16), the procedure for child and vulnerable adult witnesses (regulation 17), restricted reporting orders (regulation 18) and exclusion of the press or public from the appeal hearing (regulation 19).

Part V makes provision for the procedure at the hearing. Regulation 20 provides for the procedure at the hearing which is decided by the Tribunal in any particular case. Regulation 21 provides that the hearing must be in public subject to limited exceptions. Regulation 22 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 23), the award of costs (regulation 24), the right of the appellant to ask the Tribunal to review its own decision (regulation 25), the powers of the Tribunal on review (regulation 26) and the publication of the decision (regulation 27).

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 Protection of Children Act Tribunal Regulations 2000 and makes provision in respect of things done under those Regulations (regulation 36).

There are 5 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 Tribunal in order to initiate an appeal, the procedure for the Secretary to follow when an appeal is made, information which the respondent must send to the Tribunal and further information to be supplied to the Tribunal by both parties to enable the Tribunal to give directions.

Schedule 1 deals with appeals under Part II of the 2000 Act. Schedule 2 deals with appeals against decisions made in respect of registration for child minding and day care. Schedule 3 deals with appeals against decisions made by the registration authority refusing consent under section 65 of the Children Act 1989 for a person to carry on, be concerned in the management of, or have a

financial interest in a children's home when disqualified or to employ a disqualified person. Schedule 4 makes provision for appeals, determinations and applications for leave under section 4 of the 1999 Act. Schedule 5 makes provision for appeals, determinations and applications for leave under Part VII of the 2000 Act.

These Regulations do not impose any cost on business.