

**2004 No.2073**

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

**PUBLIC HEALTH, ENGLAND AND WALES**

**SOCIAL CARE, ENGLAND AND WALES**

**The Protection of Children and Vulnerable Adults and Care Standards  
Tribunal (Amendment) Regulations 2004**

<i>Made</i> - - - -	<i>3<sup>rd</sup> August 2004</i>
<i>Laid before Parliament</i>	<i>10<sup>th</sup> August 2004</i>
<i>Coming into force</i> - -	<i>31<sup>st</sup> August 2004</i>

The Secretary of State, in exercise of the powers conferred upon him by section 9(2)(a), (c), (ca), (d) and (f)(a), (3) and (3B) of the Protection of Children Act 1999(b) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(c), 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:—

**Citation and commencement**

1.—(1) These Regulations may be cited as the Protection of Children and Vulnerable Adults and Care Standards Tribunal (Amendment) Regulations 2004 and shall come into force on 31<sup>st</sup> August 2004.

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

**Amendment of regulation 1 of the Tribunal Regulations**

2. In regulation 1(2) of the Tribunal Regulations (citation, commencement and interpretation), in the definition of “the respondent”, in sub-paragraph (e), for the words “the Secretary of State for Health” substitute “the Secretary of State for Education and Skills”.

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(a) These Regulations make provision for appeals under Part XA of the Children Act 1989.

(b) 1999 c.14. Section 9(2) of the Protection of Children Act 1999 was amended by the Education Act 2002 (c. 32), section 215(1) and Schedule 21, paragraph 122.

(c) 1992 c.53. Schedule 1, paragraph 36A of the Tribunals and Inquiries Act 1992 (“the 1992 Act”) was inserted by the Schedule to the Protection of Children Act 1999, paragraph 8. Schedule 1, paragraph 36A of the 1992 Act was renumbered as paragraph 36B and amended by the Care Standards Act 2000, Schedule 4, paragraph 21.

(d) S.I. 2002/816 as amended by S.I. 2003/626, 1060 and 2043.

### **Amendment of the Tribunal Regulations**

3. After regulation 4 (procedure for appeals, determinations and applications for leave), insert—

#### **“Misconceived appeals or applications etc.**

**4A.**—(1) The President or the nominated chairman may at any time strike out an appeal or application for leave mentioned in regulation 4 on the grounds that—

- (a) it is made otherwise than in accordance with the provision in these Regulations for—
  - (i) initiating that appeal; or
  - (ii) applying for leave;
- (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 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.

(3) Where the President or the nominated chairman strikes out an appeal or an application for leave under paragraph (1), regulation 24 (costs) shall apply as if the references to “the Tribunal” were instead references to “the President or the nominated chairman”.

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

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

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

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

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

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

### **Amendment of regulation 6 of the Tribunal Regulations**

4. In regulation 6 of the Tribunal Regulations (directions)—

- (a) in paragraph (2)(c), after “shall”, insert “subject to paragraph (3A),”;
- (b) after paragraph (3), insert—

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

### **Amendment of regulation 7 of the Tribunal Regulations**

5. In regulation 7(1) of the Tribunal Regulations (fixing and notification of hearing), at the end, add “, and the President or nominated chairman has not directed that there be a hearing pursuant to regulation 6(3A).”.

### **Amendment of regulation 10 of the Tribunal Regulations**

6. In regulation 10 of the Tribunal Regulations (unless orders), at the end, add—

“(4) If, in the opinion of the President or the nominated chairman, the party to whom an order referred to in paragraph (1) is addressed has acted unreasonably in failing to comply with an order addressed to him under this regulation, the President or the nominated chairman may make an order for costs (“a costs order”) pursuant to regulation 24 requiring that party (“the paying party”) to make a payment to the other party (“the receiving party”) to cover costs incurred by the receiving party and, in such a case, the references in regulation 24 to “the Tribunal” shall have effect as if they were references to “the President or the nominated chairman”.

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

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

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

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

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

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

### **Amendment of regulation 33 of the Tribunal Regulations**

7. In regulation 33 of the Tribunal Regulations (withdrawal of proceedings or opposition to proceedings)—

- (a) for the words “24(2) and (3)”, in both places where they occur, substitute “24”; and
- (b) after paragraph (2), add—

“(3) Where the President or the nominated chairman dismisses the proceedings under paragraph (1) or determines the case, or the application for leave in the applicant’s favour under paragraph (2), the references to “the Tribunal” in regulation 24 shall be read as if they were references to “the President or the nominated chairman.”.

### **Amendment of regulation 35 of the Tribunal Regulations**

8. In regulation 35 of the Tribunal Regulations (time)—

- (a) in paragraph (1), after the words “the nominated chairman may” insert “, having consulted the parties in the case,”; and
- (b) after paragraph (1), insert—

“(1A) The President or the nominated chairman may reduce any time limit mentioned in these Regulations if he considers it reasonable to do so and the parties in the case agree to the reduction.”.

### **Amendment of Schedule 1 to the Tribunal Regulations**

9. Schedule 1 to the Tribunal Regulations (appeal under section 21 of the 2000 Act against a decision of the registration authority or an order of a justice of the peace) is amended as follows—

- (a) in sub-paragraph (3)(e)(i) of paragraph 1, for the words “or a cancellation of registration” substitute “a cancellation of registration pursuant to sections 14 or 20 of the 2000 Act, or a refusal to grant an application for cancellation of registration pursuant to section 15(1)(b) of that Act”; and

- (b) paragraph 4 (misconceived appeals etc.) is omitted.

### **Amendment of Schedule 2 to the Tribunal Regulations**

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

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

- (a) for sub-paragraph (1), substitute—

“(1) A person who wishes to appeal to the Tribunal under section 79M of the 1989 Act against—

- (a) the taking of any step mentioned in section 79L(1) of that Act(b);  
(b) an order under section 79K of that Act(c); or  
(c) a determination in relation to the disqualification of a person for registration for child minding or providing day care under paragraph 4 of Schedule 9A to that Act(d),

must do so by application in writing to the Secretary.”;

- (b) in sub-paragraph (4)(e), for sub-paragraph (i), substitute—

“(i) whether the appeal is against—

- (aa) the refusal or cancellation of registration;  
(bb) the imposition, removal or variation of any condition of registration;  
(cc) the refusal to remove or vary any such condition; or  
(dd) a determination in relation to disqualification from registration.”.

- (3) In paragraph 3(3)(c) (response to application)—

- (a) at the end of head (ii), the word “or” is omitted; and  
(b) at the end, add the following—

“or

(iv) where an appeal is against a determination in relation to disqualification from registration, a copy of the written notice of the determination and the reasons for it.”.

- (4) Paragraph 4 (misconceived appeals etc.) is omitted.

### **Amendment of Schedule 3 to the Tribunal Regulations**

**11.** In Schedule 3 to the Tribunal Regulations (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) paragraph 4 (misconceived appeals etc.) is omitted.

### **Amendment of Schedule 4 to the Tribunal Regulations**

**12.** In Schedule 4 to the Tribunal Regulations (appeals and applications for leave to appeal under section 4 of the 1999 Act and appeals under regulation 13 of the Education Regulations), paragraph 5 (misconceived applications etc.) is omitted.

### **Amendment of Schedule 5 to the Tribunal Regulations**

**13.** In Schedule 5 to the Tribunal Regulations (appeals and applications for leave under section 86 of the 2000 Act), paragraph 5 (misconceived applications etc.) is omitted.

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(a) Section 79M was amended by paragraph 3 of Schedule 13 to the Education Act 2002 (c. 32) to include a right of appeal against a prescribed determination made by the registration authority under Part XA of the 1989 Act (*see*: section 79M(1)(c)).

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

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

(d) Schedule 9A to the 1989 Act was inserted by section 79B of, and Schedule 3 to, the 2000 Act.

### **Amendment of Schedule 6 to the Tribunal Regulations**

14. In Schedule 6 to the Tribunal Regulations (appeal under section 68 of the 2000 Act against a decision of a council in respect of registration under Part IV of that Act)(a), paragraph 4 (misconceived appeals etc.) is omitted.

### **Amendment of Schedule 7 to the Tribunal Regulations**

15. In Schedule 7 to the Tribunal Regulations (appeals under the suspension regulations)(b), paragraph 5 (misconceived appeals etc.) is omitted.

### **Amendment of Schedule 8 to the Tribunal Regulations**

16. In Schedule 8 to the Tribunal Regulations (appeal under paragraph 10(1A) of Schedule 26 to the 1998 Act against a decision of the chief inspector)(c), paragraph 4 (misconceived appeals etc.) is omitted.

### **Amendment of Schedule 9 to the Tribunal Regulations**

17. In Schedule 9 to the Tribunal Regulations (appeals against refusals, determinations or orders of the registration authority under the 2002 Act)(d), paragraph 4 (misconceived appeals etc.) is omitted.

Signed by authority of the Secretary of State for Health

3<sup>rd</sup> August 2004

*Stephen Ladyman*  
Parliamentary Under Secretary of State,  
Department of Health

### **EXPLANATORY NOTE**

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

These Regulations amend the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (“the Tribunal Regulations”) and make provision in relation to the proceedings of the Tribunal established by section 9 of the Protection of Children Act 1999 to hear appeals against determinations in relation to the disqualification of a person for registration for childminding or providing day care under paragraph 4 of Schedule 9A to the Children Act 1989.

Further, an amendment is made to make general provision for the striking out of misconceived appeals and applications for leave, and to enable the President or the nominated chairman to set aside a determination to strike out an appeal or application, and also to enable the President or the nominated chairman to make an award of costs consequent upon a decision to strike out in certain circumstances (regulation 3). Regulations 9 to 17 contain provisions which are consequential upon this amendment.

An amendment is also made to regulation 10 of the Tribunal Regulations (unless orders) enabling the President or the nominated chairman to set aside such an order, and to make an award of costs in certain circumstances (regulation 6).

Additional amendments are made as follows—

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(a) Schedule 6 was inserted by S.I. 2003/626.  
(b) Schedule 7 was inserted by S.I. 2003/626.  
(c) Schedule 8 was inserted by S.I. 2003/1060.  
(d) Schedule 9 was inserted by S.I. 2003/2043.

- to regulation 6 (directions) to enable the President or the nominated chairman to direct that an oral hearing shall be held in order to determine an appeal (regulation 4). The amendment to regulation 7 (fixing and notification of hearing) is consequential on this amendment (regulation 5);
- to regulation 33 (withdrawal of proceedings or opposition to proceedings) to ensure that any costs order made under the regulation is subject to regulation 24 (costs) as a whole (regulation 7);
- to regulation 35 (time) to enable the President or the nominated chairman to reduce certain time limits mentioned in the Tribunal Regulations where the parties to an appeal or application have been consulted and agree, and to provide that the parties in a case are consulted before the extension of any time limit pursuant to regulation 35(1) (regulation 8).

Regulations 2 and 9 contain minor amendments.



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STATUTORY INSTRUMENTS

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£3.00

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Printed and published in the UK by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's  
Stationery Office and Queen's Printer of Acts of Parliament.

E1112 8/2004 141112T 19585

ISBN 0-11-049676-0



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