2003 No. 1060

CHILDREN AND YOUNG PERSONS, ENGLAND AND WALES

SOCIAL CARE, ENGLAND AND WALES

The Protection of Children and Vulnerable Adults and Care Standards Tribunal (Amendment No. 2) Regulations 2003

Made - - - - -	*8th April 2003*
Laid before Parliament	*9th April 2003*
Coming into force - -	*30th April 2003*

The Secretary of State, in exercise of the powers conferred upon him by section 9(2)(ca), (3) and (3B) 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**), hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Protection of Children and Vulnerable Adults and Care Standards Tribunal (Amendment No. 2) Regulations 2003 and shall come into force on 30th April 2003.

(2) In these Regulations "the Tribunal Regulations" means the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002(**c**).

Amendment of regulation 1 of the Tribunal Regulations

2. In regulation 1(2) of the Tribunal Regulations (citation, commencement and interpretation)—

(a) in the appropriate place there shall be inserted the following definition—

""the 1998 Act" means the School Standards and Framework Act 1998(**d**);";

(b) in the definition of "case"—

(i) at the end of paragraph (i) the word "or" shall be omitted; and

(ii) there shall be added at the end the following—

(**a**) 1999 c. 14. Section 9(2)(ca) of the Protection of Children Act 1999 ("the 1999 Act") was substituted by paragraph 6 of Schedule 14 to the Education Act 2002 (c. 32).

(**b**) 1992 c. 53. Schedule 1, paragraph 36A of the Tribunals and Inquiries Act 1992 ("the 1992 Act") was inserted by the Schedule to the 1999 Act, paragraph 8. Schedule 1, paragraph 36A of the 1992 Act was renumbered as paragraph 36B and amended by the Care Standards Act 2000 (c. 18) ("the 2000 Act"), Schedule 4, paragraph 21.

(**c**) S.I. 2002/816, amended by S.I. 2003/626.

(**d**) 1998 c. 31.

"or

(k) an appeal under paragraph 10(1A) of Schedule 26 to the 1998 Act(**a**);";

(c) at the end of the definition of "the respondent" there shall be added the following—

"(j) in relation to an appeal under paragraph 10(1A) of Schedule 26 to the 1998 Act, the Chief Inspector;".

Amendment of regulation 3 of the Tribunal Regulations

3. In regulation 3 of the Tribunal Regulations (requirements for membership of lay panel)—

(a) in paragraph (2)(a) after the words "the 1989 Act" there shall be inserted the words "or the Adoption Act 1976";

(b) in paragraph (5)(c) after the words "the 1989 Act" there shall be inserted the words "or the Adoption Act 1976";

(c) after paragraph (5)(e) there shall be inserted the following sub-paragraph—

"(ee) experience in managing an adoption society approved under the Adoption Act 1976;";

(d) in paragraph (5)(j) after the word "education" there shall be inserted the words ", child minding or day care".

Amendment of regulation 4 of the Tribunal Regulations

4. In regulation 4 of the Tribunal Regulations (procedure for appeals, determinations and applications for leave) there shall be added at the end the following paragraph—

"(8) In the case of an appeal under paragraph 10(1A) of Schedule 26 to the 1998 Act against a decision of the Chief Inspector, the procedure set out in Schedule 8 shall apply.".

Amendment of regulation 6 of the Tribunal Regulations

5. In regulation 6 of the Tribunal Regulations (directions) in paragraph (1), for the words "in paragraph 6 of Schedule 1, 2, 3 or 6", there shall be substituted "in paragraph 6 of Schedule 1, 2, 3, 6 or 8".

Amendment of regulation 35 of the Tribunal Regulations

6. In regulation 35 of the Tribunal Regulations (time) in paragraph (3), for the words "Schedule 2, 6 or 7", there shall be substituted the words "Schedule 2, 6, 7 or 8".

Amendment of Schedules 2, 4 and 5 to the Tribunal Regulations

7. In paragraph 5(1)(b) of Schedule 2, and paragraph 8(1)(b) of each of the Schedules 4 and 5, to the Tribunal Regulations after the word "President" there shall be inserted the words "or nominated chairman".

(**a**) Paragraph 8(1) of Schedule 26 to the School Standards and Framework Act 1998 ("the Schedule") provides for the establishment of a register of nursery education inspectors for England and for Wales. Paragraph 10(1) of the Schedule provides for an appeal against certain decisions of the Chief Inspector of Schools in England and the Chief Inspector of Education and Training in Wales in relation to the registration of nursery education inspectors. Section 79P(1) of the Children Act 1989 (c. 41) provides for the establishment of a register of early years child care inspectors for England and subsection (3) provides that paragraph 10 of the Schedule (including the right to appeal) applies in relation to that register as it applies in relation to the register of nursery education inspectors maintained for England. Section 79P is in Schedule XA to the Children Act 1989 substituted by Part VI of the 2000 Act. By virtue of paragraph 10(1A) of the Schedule inserted by paragraph 5(2) of Schedule 14 to the Education Act 2002 appeals in relation to the registers maintained for England are to the Tribunal established under the 1999 Act.

Amendment of the Tribunal Regulations : Schedule 8

8. After Schedule 7 to the Tribunal Regulations (appeals under the Suspension Regulations) there shall be added the Schedule set out in the Schedule to these Regulations.

Signed by authority of the Secretary of State for Health

Jacqui Smith
Minister of State,
Department of Health

8th April 2003

SCHEDULE

Regulation 8

"SCHEDULE 8

Regulation 4(8)

APPEAL UNDER PARAGRAPH 10(1A) OF SCHEDULE 26 TO THE 1998 ACT AGAINST A DECISION OF THE CHIEF INSPECTOR

Initiating an appeal

1.—(1) A person who wishes to appeal to the Tribunal under paragraph 10(1A) of Schedule 26 to the 1998 Act against a decision of the Chief Inspector 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 be received by the Secretary no later than 28 days after the date of service on the applicant of notice of the decision of the Chief Inspector.

(4) An application under this paragraph must—

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

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

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

(d) give the applicant's telephone number, fax number and e-mail address and those of the applicant's representative where these are available;

(e) identify the decision against which the appeal is brought and give particulars of whether the appeal is against—

(i) the refusal of the Chief Inspector to renew the registration of the applicant as a nursery education inspector or an early years child care inspector;

(ii) the imposition or variation of any condition subject to which the applicant is registered; or

(iii) the removal of the name of the applicant from the register;

(f) give a short statement of grounds for the appeal; and

(g) be signed and dated by the applicant.

(5) In this Schedule, "register" means the register maintained by the Chief Inspector under paragraph 8(1) of Schedule 26 to the 1998 Act or section 79P(1) of the 1989 Act(**a**), and "registration" and "registered" shall be construed accordingly.

Acknowledgement and notification of application

2.—(1) On receiving an application, the Secretary must—

(a) immediately send an acknowledgement of its receipt to the applicant; and

(b) enter particulars of the appeal and the date of its receipt in the records and send a copy of it, together with any documents supplied by the applicant in support of it, to the respondent.

(2) If, in the Secretary's opinion, there is an obvious error in the application—

(a) he may correct it;

(b) he shall notify the applicant in writing accordingly; and

(c) unless within five working days of receipt of notification under head (b) the applicant notifies him in writing that he objects to the correction, the application shall be amended accordingly.

Response to application

3.—(1) The Secretary must send the information provided by the applicant under paragraph 1 to the respondent together with a request that he respond to the application within 20 working days of receiving it.

(2) If the respondent fails to respond as requested, he shall not be entitled to take any further part in the proceedings.

(3) The response must—

(a) acknowledge that the respondent has received a copy of the application;

(b) indicate whether or not he opposes it, and if he does, why; and

(c) provide the following information and documents—

(**a**) Under section 79P(2) the register of early years child care inspectors may be combined with the register of nursery education inspectors.

(i) the name, address and profession of the person (if any) representing the respondent and whether the Secretary should send documents concerning the appeal to the representative rather than to the respondent;

(ii) a copy of the decision which is the subject of the appeal and the reasons for the decision; and

(iii) a copy of the relevant entry in the register.

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

Misconceived appeals etc.

4.—(1) The 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 the respondent

5.—(1) As soon as the respondent has provided the information set out in paragraph 3, the Secretary must write to each party requesting that he send to the 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.".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 ("the Tribunal Regulations") which make provision about the proceedings of the Tribunal established by section 9 of the Protection of Children Act 1999. The jurisdiction of the Tribunal has been extended by the Care Standards Act 2000 ("the 2000 Act") and the Education Act 2002.

These Regulations amend the Tribunal Regulations so as to make provision for the conduct of appeals ("relevant appeals") to the Tribunal against the following decisions of the Chief Inspector of Schools in England—

(a) a decision not to renew a person's registration as a nursery education inspector or early years child care inspector;

(b) a decision to impose or vary any condition subject to which a person is registered; or

(c) a decision to remove a person from the register of nursery education inspectors or early years child care inspectors.

The new Schedule 8 inserted by regulation 8 makes provision in respect of the procedure to be followed on these appeals. In particular, the Schedule makes provision 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.

Regulation 3 also amends regulation 3 of the Tribunal Regulations to make minor changes to the requirements for the membership of the lay panel consequential upon the jurisdiction of the Tribunal being extended to include relevant appeals and appeals in relation to the registration of voluntary adoption agencies under Part II of the 2000 Act from 30th April 2003.

STATUTORY INSTRUMENTS

2003 No. 1060

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ISBN 0-11-045755-2

9 780110 457550

£2.00

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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.
E0621 4/2003 130621 19585