STATUTORY RULES OF NORTHERN IRELAND

2005 No. 178

HEALTH AND PERSONAL SOCIAL SERVICES

The Care Tribunal Regulations (Northern Ireland) 2005

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

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

PART I

INTRODUCTORY

Citation, commencement and interpretation

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

(2) In these Regulations –

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

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

"the 1995 Order" means the Children (Northern Ireland) Order 1995(**3**);

"the 1986 Order" means the Education and Libraries (Northern Ireland) Order 1986(**4**);

"the 2001 Act" means the Health and Personal Social Services Act (Northern Ireland) 2001(**5**);

"case" in Parts IV and VI means –

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

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

(b) an appeal under Articles 78(A) and Article 94A of the 1995 Order;

(c) an appeal under Article 11(1)(a) or (b) of the 2003 Order;

(d) a determination under Article 11(2) of the 2003 Order;

(e) an appeal under Article 27 of the 2003 Order;

(f) appeals, determinations and applications for leave to appeal under Article 42 of the 2003 Order;

(g) appeals under section 15 of the 2001 Act;

(h) an appeal under Article 70(2) or Article 88A(2) of the 1986 Order;

"application for leave" means an application to the Care Tribunal –

(a) for leave to appeal under Article 11(1)(b) or Article 42(1)(b) of the 2003 Order;

(b) for leave for a determination by the Care Tribunal under Article 11 (2) or Article 42(2) of the 2003 Order;

"costs order" means an order under regulation 25;

"the Council" is the Northern Ireland Social Care Council established under Section 1 of the 2001 Act;

"the Department" means the Department of Health Social Services and Public Safety;

"document" means information recorded in writing or in any other form;

"the Education and Library Board" shall be construed in accordance with Article 3 of the 1986 Order;

" HSS Board" means a Health and Services Board under the Health and Social Services (Northern Ireland) Order 1991(**6**);

" HSS Trust" has the same meaning as in the Health and Personal Social Services (Northern Ireland) Order 1991;

"an institution of further education" shall be construed in accordance with Article 2(2) of the further Education (Northern Ireland) Order 1997(**7**);

"nurse" means a person registered in the register maintained under Article 5 of the Nursing and Midwifery Order (Northern Ireland) 2001, by virtue of qualification in nursing or midwifery as the case may be;

"medical practitioner" means a registered medical practitioner;

"a party" means either the applicant or the respondent;

"the DWC (NI) list" means the list of individuals who are considered unsuitable to work with children under Article 3 of the 2003 Order;

"the DWVA (NI) list" means the list of individuals who are considered unsuitable to work with vulnerable adults under Article 35 of the 2003 Order

"records" means the records of the Care Tribunal;

"relevant programme" means a programme included in a programme service within the meaning of the Broadcasting Act 1996(**8**);

"relevant social work" has the same meaning as in section 2(4) of the 2001 Act;

"the respondent" means –

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

(a) in relation to an appeal under Article 22 of the 2003 Order, the Regulation and Improvement Authority;

(b) in relation to an appeal under Article 78(A) or 94A of the 1995 Order the Regulation and Improvement Authority;

(c) in relation to an appeal or an application for leave to appeal under Article 11 and 12 of the 2003 Order, the Department;

(d) in relation to an appeal, an application for leave or a determination under Article 42 of the 2003 Order, the Department;

(e) in relation to an appeal under regulations made in accordance with Article 70(2)(e) or 88(2)(b) of the 1986 Order the Department of Education;

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

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

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

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

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

PART II

CONSTITUTION

Powers and functions exercisable by the Care Tribunal

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

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

Requirements for membership of lay panel

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

(a) paragraph (2);

(b) paragraphs (3) and (4); or

(c) paragraph (5).

(2) The requirements of this paragraph are –

(a) experience in the provision of services –

(i) which must or may be provided by HSS Trusts under the 1995 Order or which are similar to such services;

(ii) for vulnerable adults;

(b) experience in relevant social work.

(3) The requirements of this paragraph are –

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

(**9**) 1971 c. 80

(b) experience in the provision of education in a school or in an institution within the further education sector; or

(c) experience of being employed by an Education and Library Board in connection with the exercise of its functions under the 1986 Order.

(4) The requirements of this paragraph are –

(a) experience in the conduct of disciplinary investigations;

(b) experience as a member of an Area Child Protection Committee, or similar experience;

(c) experience of taking part in child protection conferences or in child protection review conferences, or similar experience; or

(d) experience in negotiating the conditions of service of employees.

(5) The requirements of this paragraph are –

(a) experience in carrying out inspections under Part VI of the Order;

(b) experience in carrying out inspections under the Registered Homes (Northern Ireland) Order 1992(**10**);

(c) experience in carrying out inspections under the 1995 Order;

(d) experience in managing an establishment or agency under Part III of the 2003 Order;

(e) experience in managing a children's home under the 1995 Order;

(f) experience in managing the provision of health and personal social services;

(g) that the person is a nurse or medical practitioner who has experience of the provision of health services;

PART III

APPEALS, DETERMINATIONS AND APPLICATIONS FOR LEAVE

Procedure for appeals, determinations and applications for leave

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

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

(3) In the case of –

(a) an appeal under Article 11(1)(a) of the 2003 Order against a decision to include an individual in the DWC (NI) list;

(b) an application for leave under Article 11(1)(b) or (2) of the 2003 Order;

(c) an appeal under Article 11(1)(b) of the 2003 Order against a decision not to remove an individual from the DWC (NI) list under Article 3(3) of that Order;

(d) a determination under Article 11(2) of the 2003 Order as to whether an individual should be included in the DWC (NI) list;

(e) an appeal under regulations made in accordance with Article 70(2) or Article 88A(2)(b) of the 1986 Order,

the procedure set out in Schedule 3 shall apply.

(**10**) S.I. 1992/3204 (N.I. 20) (revoked by S.I. 2003 No. 43 (N.I. 9)

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

(5) In the case of –

(a) an application for leave to the Care Tribunal under Article 42(1)(b) or (2) of the 2003 Order;

(b) an appeal under Article 42 (1)(a) of the 2003 Order against a decision to include an individual in the DWVA (NI) list;

(c) an appeal under Article 42(1)(b) of the 2003 Order against a decision not to remove an individual from the DWVA (NI) list; or

(d) a determination under Article 42(2) of the 2003 Order as to whether an individual should be included in the DWVA (NI) list,

the procedure set out in Schedule 5 shall apply.

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

PART IV

CASE MANAGEMENT

Appointment of Care Tribunal

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

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

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

Directions

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

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

(a) shall give directions as to the dates by which any document, witness statement or other material upon which any party is intending to rely shall be sent to the Care Tribunal, and, if the Chairman considers it appropriate, to the other party;

(b) may give any other direction in exercise of his powers under this Part which he considers appropriate; and

(c) shall, where the applicant has requested that the case be determined without an oral hearing, give a direction as to the date, which shall be not less than 10 working days after the last date on which he has directed that any document, witness statement or