

EXPLANATORY MEMORANDUM TO

**THE PROTECTION OF CHILDREN AND VULNERABLE ADULTS AND
CARE STANDARDS TRIBUNAL (AMENDMENT) REGULATIONS 2008**

2008 No. 1802

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1. These Regulations, which come into force on 1st September 2008 make minor amendments to the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations to set out the procedure for childcare providers registered under the Childcare Act 2006 (the 2006 Act) to appeal to the CST against a decision by HM Chief Inspector of Education, Children's Services and Skills to suspend their registration. The Regulations reflect existing arrangements open to childcare providers registered under Part XA of the Children Act 1989 (the 1989 Act).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1. None.
4. **Legislative Background**
 - 4.1. The Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (SI 2002/ 816) ("the Tribunal Regulations") as amended, set out the procedural rules for the Tribunal (generally known as the Care Standards Tribunal) ("CST") in relation to appeals handled by it under its various jurisdictions. These include appeals relating to the registration, the imposition of conditions on registration, cancellation of registration, and disqualification from registration of childcare providers registered under Part XA of the 1989 Children Act (the 1989 Act).
 - 4.2. Part 3 of the 2006 Act replaces the 1989 Act in England with a new reformed regulation and inspection system. Section 32 of the 2006 Act creates two registers, the early years register ("EYR"), and the general childcare register ("GCR"). The general childcare register contains two parts, Part A for those subject to compulsory registration, and Part B for voluntary registration. Chapter 2 and Chapter 3 of Part 3 provide that childcare providers who offer childcare for children from birth until immediately before the September following their fifth birthday will be required to register in the EYR; or, if their provision is for children between the September after their fifth birthday and eight years old, they will be required to register in Part A of the GCR.

4.3. The Protection of Children and Vulnerable Adults and Care Standards Tribunal (Amendment) Regulations 2007(SI 2007/1684) amended the current procedural rules in respect of appeals from childcare providers to ensure that applicants to or registered providers on the new registers have a procedure to appeal to the Care Standards Tribunal (as providers currently registered under the 1989 Act are able to do) against the following decisions:-

- a) refusal of an application for registration;
- b) imposition of a new condition on registration;
- c) variation or removal of any condition imposed on registration;
- d) refusal of an application to vary or remove any such condition;
- e) cancellation of registration.
- f) an order made under section 72(2) of the Act – (protection of children in an emergency) - where HMCI may apply to a justice of the peace for an order; cancelling the person's registration; varying or removing a condition to which his registration is subject; and imposing a new condition on his registration.

4.4. These Regulations will further amend the current procedural rules in respect of appeals from childcare providers to ensure that persons registered on the new registers have a procedure to appeal against a suspension of that registration under section 69(1) of the 2006 Act to the Care Standards Tribunal.

5. Territorial Extent and Application

5.1. Regulations 2 and 4 apply to England, and regulations 3 and 5 apply to England and Wales. This is because regulations 4(7) and paragraph 1 of Schedule 7 to the Tribunal Regulations required amending to refer to the rights of appeal in England under the 2006 Act, and in order to make this clear, a consequential amendment was needed to clarify the continuing rights of people in Wales to appeal under the Children Act 1989.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. The Government's ten year strategy for childcare, Choice for parents, the best start for children, set out a commitment to rationalise and simplify the complex and confusing arrangements that exist for the regulation of childcare. Currently, the arrangements for regulation differ between education and

childcare, and providers who are not eligible to register under the 1989 Act seek quality assurance from over 50 different schemes. The arrangements are difficult to follow and involve the application of different sets of standards.

7.2. The 2006 Act reforms the regulation and inspection regime for childcare. The new regulatory framework brings together the existing separate registration and inspection arrangements for childcare and nursery education for under 8s in a coherent way. HMCI will administer two registers as described in paragraph 4.2 above. The registration regimes are designed to ensure that children are cared for in a safe and secure environment and are helped to learn and develop appropriately for their ages.

7.3. The amendments cited in 4.3 and 4.4 above to The Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations mirror the current rights of childcare providers to appeal to the Care Standards Tribunal in respect of decisions by HM Chief Inspector.

Consultation

7.4. Given the non-contentious and technical nature of the amendments, there was a limited six week consultation with people who may be affected by the amendments. The regulations were published in draft on 28th April 2008 and sent to the Administrative Justice and Tribunals Council (AJTC), the National Childminding Association; the Pre-School Learning Alliance; the Daycare Trust; the National Day Nurseries Association and the Professional Association of Nursery Nurses. The AJTC confirmed that they were content with the regulations. No other comments were received.

Guidance

7.5. The CST has produced guidance on how to appeal. This is available in hard copy from the CST, or online on their website www.carestandardtribunal.gov.uk .

8. Impact

8.1. No Impact Assessment has been completed as the regulations carry forward existing arrangements. There are no costs to business.

9. Contact

9.1. Any enquires about the contents of this memorandum should be address to: Barbara Erne, Care Standards Tribunal, Tribunal Service. Email: Barbara.Erne@tribunals.gsi.gov.uk. Telephone: 020 7 960 0664