

NATIONAL ASSEMBLY FOR WALES

S T A T U T O R Y I N S T R U M E N T S

2005 No. (W.)

SOCIAL CARE, WALES

**CHILDREN AND YOUNG
PERSONS, WALES**

**The Representations Procedure
(Children) (Wales) Regulations
2005**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the 1991 Representations Procedure (Children) Regulations to reflect the changes made by the Adoption and Children Act 2002 and the Health and Social Care (Community Health and Standards) Act 2003 to the provisions for the procedures under the Children Act 1989 (the Act) for considering representations, including complaints.

The major differences between the procedures established under the 1991 Regulations and those established under these Regulations are: extension of local authority functions about which representations can be made under section 26 (they are previously limited to functions under Part 3 of the Act)(regulation 7); introduction of a requirement on local authorities to attempt informal resolution of all representations under the Act procedure (presently local resolution only applies to representations made under section 24D) (regulation 15); and removal of the panel stage of the procedure (complainants may instead have their representations further considered by an independent panel established under separate regulations made under section 26ZB of the Act).

Regulation 4 requires the local authority to designate a senior officer with responsibilities in relation to representations and regulation 5 requires the local authority to appoint a complaints officer.

Regulation 6 imposes requirements as to training of local authority staff.

Regulation 8 establishes a procedure for consideration of how representations shall be dealt with where there is a concurrent consideration by another person or body. This allows for the local authority to suspend consideration temporarily where to continue would compromise or prejudice the other consideration. Regulation 9 provides for determination of which local authority will consider representations where more than one is involved.

Representations may be made orally or in writing (regulation 11) and may be withdrawn orally or in writing (regulation 14).

One of the categories of people who may make representations under section 26 of the 1989 Act are, by section 26(3)(e) such other persons (not being the child, parent, foster parent or person with parental responsibility for the child) as the local authority consider has a sufficient interest in the child's welfare to warrant that person's representation being considered by the authority. Regulation 13 requires the local authority to decide whether the complainant has such sufficient interest and to notify that decision to the complainant and to the child if appropriate.

Regulation 16 establishes the procedure for formal consideration of the representations where there has been no local resolution achieved under regulation 15. The procedure under regulation 16 must involve an independent person appointed under regulation 17; the procedure under regulation 15 need not involve the independent person.

Regulation 18 sets out requirements in relation to the response to be sent by the local authority including as to the complainant's right to request further consideration of the representations by an independent panel under the procedure established under section 26ZB of the Act.

Regulation 19 sets out how local authorities are to monitor the arrangements they have made with a view to ensuring that they comply with the Regulations.

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**The Representations Procedure
(Children) (Wales) Regulations
2005**

Made

2005

Coming into force

1 April 2006

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The National Assembly for Wales in exercise of the powers conferred upon it by sections 24D(1A), 24D(2), 26(3A)(b), 26(4A), 26(5), 26(5A), 26(6), 26A(3), 59(5) and 104(4) of, and Schedule 7,

paragraph 6 to the Children Act 1989⁽¹⁾ hereby makes the following Regulations:-

PART I

GENERAL

Title, commencement and application

1.—(1) The title of these Regulations is the Representations Procedure (Children) (Wales) Regulations 2005 and they come into force on 1 April 2006.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations —

“the Act” (“*y Ddeddf*”) means the Children Act 1989;

“the 2002 Act” (“*Deddf 2002*”) means the Adoption and Children Act 2002⁽²⁾;

“the 1991 Regulations” (“*Rheoliadau 1991*”) means the Representations Procedure (Children) Regulations 1991⁽³⁾;

“advocate” (“*eiriolwr*”) means a person who provides assistance under arrangements made by a local authority under section 26A(1) of the Act;

“the Advocacy Services Regulations” (“*y Rheoliadau Gwasanaethau Eirioli*”) means the Representations Procedure and Advocacy Services (Children) (Wales) Regulations 2004⁽⁴⁾;

“appropriate office” (“*swyddfa briodol*”) means in relation to an establishment or agency —

(a) if an office has been specified under regulation 10(3) for the area in which the establishment or agency is situated, that office;

(b) in any other case, any other office of the National Assembly;

“complainant” (“*achwynydd*”) means a person making representations under section 24D of the

⁽¹⁾ 1989 c.41. These powers are exercisable by the Secretary of State in relation to England. Their exercise in relation to Wales has been transferred to the National Assembly for Wales by virtue of article 2 of, and the entry for the Children Act 1989 in Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

⁽²⁾ 2002 c.38.

⁽³⁾ S.I. 1991/894; relevant amending instruments are S.I. 1991/2033, 2001/2874.

⁽⁴⁾ S.I. 2004/1448 (W.148).

Act or a person falling within 26(a) to (e) of the Act, or a person making representations under paragraph 6 of Schedule 7 to the Act;

“complaints officer” (*“swyddog cwynion”*) means the person appointed under regulation 5;

“to consider representations” (*“ystyried sylwadau”*) means to consider representations under the procedure set out in these Regulations;

“disciplinary proceedings” (*“achos disgyblu”*) means any procedure for disciplining employees adopted by a local authority;

“independent person” (*“person annibynnol”*) means the person, being neither a member nor officer of the local authority, who takes part in the consideration of the representations and in any subsequent discussions, in accordance with section 26(4) of the Act;

“local authority” (*“awdurdod lleol”*) means a county council or county borough council;

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

“representations” (*“sylwadau”*) means representations under section 24D or section 26 of, or paragraph 6(2) of Schedule 7 to, the Act;

“working day” (*“diwenod gwaith”*) means a day except Saturday, Sunday, Christmas Day, Boxing Day, Good Friday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽⁵⁾.

(2) Any notice required under these Regulations is to be given in writing and may be sent by post.

General principles in handling representations

3.—(1) Any representations procedure set up under the Act must be operated in accordance with the principle that, where representations are made by a person to whom section 24D or 26(3)(a) applies, the welfare of the complainant should be safeguarded and promoted.

(2) Account should be taken of the ascertainable wishes and feelings of the complainant.

⁽⁵⁾ 1971 c.80.

PART II

SETTING UP THE REPRESENTATIONS PROCEDURE

Senior officer responsible for complaints

4. Each local authority must designate a senior officer to be responsible for seeking to ensure compliance with the arrangements made by the local authority under these Regulations.

Complaints officer

5.—(1) Each local authority must appoint a person, in the Regulations referred to as a complaints officer, to manage the procedures for handling and considering representations and in particular —

- (a) to perform the functions of the complaints officer under these Regulations;
- (b) to perform such other functions in relation to representations as the local authority may require; and
- (c) to co-operate with such other persons or bodies as may be necessary in order to investigate representations.

(2) The functions of the complaints officer may be performed by any person authorised by the local authority to act on behalf of the complaints officer.

(3) A complaints officer may be —

- (a) a person who is not an employee of the local authority; and
- (b) appointed as complaints officer for more than one body.

Information and training for staff

6. Each local authority must ensure that their staff are informed about and appropriately trained in the operation of the representations procedure.

PART III

NATURE AND SCOPE OF THE REPRESENTATIONS PROCEDURE

Scope of the representations procedure

7. The following functions of a local authority are qualifying functions for the purposes of section 26(3) of the Act —

- (a) functions under section 31;
- (b) functions under section 33;

- (c) functions under section 34;
- (d) functions under section 35;
- (e) functions under section 43;
- (f) functions under section 44; and
- (g) functions under section 47.

Representations subject to concurrent consideration

8.—(1) Where representations relate to any matter —

- (a) about which the complainant has stated in writing that he or she intends to take proceedings in any court or tribunal, or
- (b) about which the local authority are taking or are proposing to take disciplinary proceedings, or
- (c) about which the local authority have been notified that an investigation is being conducted by any person or body in contemplation of criminal proceedings, or
- (d) about which a meeting involving other bodies including the police has been convened to discuss issues relating to the protection of children or vulnerable adults, or
- (e) about which the local authority have been notified that there are current investigations in contemplation of proceedings under section 59 of the Care Standards Act 2000,

the local authority must consider, in consultation with the complainant and any other person or body which they consider appropriate to consult, how the representations should be handled. Such representations shall be referred to for the purposes of this regulation as “representations subject to concurrent consideration”.

(2) The consideration of representations subject to concurrent consideration may be discontinued if at any time it appears to the local authority that to continue would compromise or prejudice the other consideration.

(3) Where the local authority decide to discontinue the consideration of a complaint under paragraph (2) the local authority must give notice of that decision to the complainant.

(4) Where the local authority discontinue the consideration of any representations under paragraph (2), they may at any time resume their consideration.

(5) Where the consideration of a complaint has been discontinued under paragraph (2) the local authority must ascertain the progress of the concurrent

consideration and notify the complainant when it has been concluded.

(6) The local authority must resume consideration of any representations where the concurrent consideration is discontinued or completed and the complainant requests that the representations be considered under these Regulations.

Representations falling to be considered by more than one local authority

9. Where representations would fall to be considered by more than one local authority, they shall be considered by —

- (a) the authority which is or was looking after the child or former child concerned in the representations; or
- (b) where no authority has or had that responsibility, by the authority within whose area the child is or was last ordinarily resident.

Handling of care standards representations

10.—(1) Except where paragraph (2) applies, in any case where representations relate wholly or partly to services provided by an establishment or agency in respect of which a person is registered by the National Assembly under the Care Standards Act 2000⁽⁶⁾ or Children Act 1989, the local authority receiving such representations must, within 2 working days of receipt —

- (a) send details of the whole of the representations or that part of any representation which relates to the registered service to the person registered as provider in respect of that establishment or agency;
- (b) request the person to whom details are sent under sub-paragraph (a) to notify the authority within 10 working days of receipt of the outcome of their consideration of the representations; and
- (c) inform the complainant of the action taken under sub-paragraphs (a) and (b).

(2) This paragraph applies where —

- (a) representations have already been considered by the registered person; or
- (b) the local authority are of the opinion that to proceed under paragraph (1) would be likely to compromise or prejudice the investigation of the representations under Part IV of the Regulations or might compromise or

⁽⁶⁾ 2000 c.14.

prejudice an investigation by the National Assembly.

(3) In any case where representations relate wholly or partly to services provided by an establishment or agency in respect of which a person is registered by the National Assembly, the local authority must notify the appropriate office (“*swyddfa briodol*”) of the National Assembly if it has not been possible to resolve the representations under regulation 15.

PART IV

HANDLING AND CONSIDERATION OF REPRESENTATIONS

Making representations

11. Representations may be made orally or in writing (including electronically).

Duty of the local authority to provide information and assistance for complainants

12.—(1) As soon as possible after receiving the representations the local authority must —

- (a) provide the complainant with —
 - (i) details of the procedure set out in these Regulations; and
 - (ii) where appropriate, information about advocacy services; and
- (b) offer the complainant —
 - (i) assistance and guidance on following the procedure or advice on where he or she may obtain it; and
 - (ii) where appropriate, help in obtaining an advocate.

Representations made by “other persons” under section 26(3)(e) of the Act

13.—(1) Where a local authority receive representations from a complainant falling within section 26(3)(e) of the Act, they must as soon as possible decide whether that person has a sufficient interest in the welfare of the child concerned to warrant the representations being considered by the local authority.

(2) In reaching a decision under paragraph (1) the local authority must take into account the ascertainable views of the child concerned.

(3) If the local authority decide that the complainant does have sufficient interest then they shall consider the representations.

(4) If the local authority decide that the complainant does not have sufficient interest then they must notify the complainant of the decision and that no further action will be taken to consider the representations.

(5) The local authority must notify the child concerned of the decision made under paragraph (1) if they consider it appropriate to do so having regard to the understanding of the child.

Withdrawal of representations

14.—(1) Representations may be withdrawn orally or in writing at any time by the complainant or by an advocate.

(2) The local authority must as soon as possible write to the complainant and any advocate to confirm the withdrawal of the representations.

Local Resolution

15.—(1) The local authority must take all reasonable steps to resolve the representations as soon as is reasonably practicable and subject to paragraphs (2) and (4), within 10 working days beginning —

- (a) in the case of representations falling within section 26(3)(e), on the date on which the local authority decide the complainant has a sufficient interest to warrant the representations being considered;
- (b) in any other case, on the date on which the representations were received by the local authority.

(2) The period referred to in paragraph (1) may be extended upon request by the complainant or with the complaint's agreement by up to a further 10 working days.

(3) The procedure followed by the local authority in trying to resolve matters under paragraph (1) need not involve an independent person.

(4) Where a complainant has requested an advocate the local authority may extend the period specified in paragraph (1) by up to a further 10 working days to enable an advocate to be appointed provided that —

- (a) the local authority notify the complainant of the extension;
- (b) the local authority notify the complainant of —
 - (i) the steps taken to date to arrange an advocate;
 - (ii) the complainant's right to have the representations considered without involvement of an advocate.

(5) For the purposes of paragraph (1), the local authority may in any case where it would be appropriate to do so, and with the agreement of the complainant, make arrangements for conciliation, mediation or other assistance for the purposes of resolving the representation.

(6) Where the representation is resolved under paragraph (1), the local authority must confirm in writing to the complainant the agreed resolution.

(7) Where the representations have not been resolved within 20 working days, the local authority must, as soon as practicable, notify the complainant in writing of:

- (a) the complaint's right to request that the representations be formally considered;
- (b) the procedure for requesting such further consideration; and
- (c) the date by which such a request must be made having regard to the provisions of paragraph (8).

(8) The complainant may request orally or in writing that the representations be formally considered under regulation 16 at any time within 30 working days of the date on which the representations were first made.

Formal Consideration

16.—(1) Where the complainant has requested formal consideration of the representations, subject to regulations 8, 9 and 10, the local authority must investigate the representations to the extent necessary and in the manner which appears to the authority most appropriate to resolve the representations speedily and efficiently.

(2) The local authority must compile a formal written record of the representations as soon as is reasonably practicable and send it to the complainant with an invitation to the complainant to comment on its accuracy.

(3) The local authority must consider any comments made by the complainant under paragraph (2) and in the light of those comments make any amendments to the record which are necessary to ensure it is, in the opinion of the authority, an accurate record of the representations.

(4) Except where arrangements have been made under regulation 15(5) the local authority may in any case where it would be appropriate to do so, and with the agreement of the complainant, make arrangements for conciliation, mediation or other assistance for the purposes of resolving the representations.

(5) The local authority must —

- (a) explain to the complainant how the representations will be investigated; and
- (b) send a copy of the representations to any person who is the subject of the representations unless —
 - (i) this has already been done; or
 - (ii) notification at that time would prejudice the consideration of the representations.
- (6) The local authority may —
 - (a) invite the complainant and any other person whom the authority considers may be able to assist with the resolution of the representations to be interviewed; and
 - (b) take such advice as appears to the complaints officer to be required.
- (7) Where any person is interviewed in accordance with paragraph 6(a) the local authority must —
 - (a) send a copy of the draft record of the interview to the person interviewed;
 - (b) invite that person to comment on the accuracy of the draft record;
 - (c) consider any comments made by the person; and
 - (d) in the light of those comments make any amendments to the record which, in the opinion of the authority, are necessary to ensure that the record is accurate.
- (8) The local authority must take all reasonable steps to keep the complainant informed about the progress of its formal consideration of the representations.

Appointment of independent person

17.—(1) The arrangements made under regulation 16 must include the appointment of an independent person.

(2) The independent person shall take part in any consideration of the representations by the local authority under regulation 16.

(3) The independent person shall take part in any discussions which are held by the local authority about the action to be taken in light of their findings in relation to the representations and conclusions they draw from them.

Response

18.—(1) The local authority must prepare a written response to the representations which —

- (a) summarises the nature and substance of the representations;

- (b) describes the investigation under regulation 16 and summarises the conclusions;
- (c) explains what action will be taken to resolve the representations;
- (d) where appropriate, contains an apology to the complainant; and
- (e) identifies what other action, if any will be taken in the light of the representations.

(2) Subject to paragraph (3) and to regulation 13, the response must be sent to the complainant within 25 working days beginning on the date on which the local authority received the request from the complainant for formal consideration.

(3) If, in the case of —

- (a) any representations where there has been difficulty in the determination of their nature or substance;
- (b) representations which have been treated as subject to concurrent consideration under regulation 8; or
- (c) any other representations where the complainant has agreed to a later response,

it is not possible for the response to be sent within 25 working days the local authority must notify the complainant of the reason for the delay, the date by which it expects to send the response and must send that response as soon as reasonably practicable.

(4) The response must include information about —

- (a) the complainant's right to request that the representations be further considered by an independent panel in accordance with provisions in regulations made by the National Assembly under section 26ZB of the Act;
- (b) the procedure for requesting such further consideration; and
- (c) the time within which such request must be made.

(5) Copies of the response prepared in accordance with paragraph (1) must be sent to —

- (a) the complainant's advocate;
- (b) the independent person appointed under regulation 17;
- (c) any person who was the subject of the representations;
- (d) where the representations are care standards representations mentioned in regulation 10, to the person registered under the Care

Standards Act 2000 or Children Act 1989 as provider in respect of the establishment or agency.

PART V

LEARNING FROM REPRESENTATIONS

Monitoring the operation of the representations procedure

19. Each local authority must monitor the arrangements that they have made with a view to ensuring that the local authority complies with these Regulations by keeping a record of each representation received, the outcome of each representation, and whether there was compliance with the time limits specified in regulations 15 and 18.

Annual Report

20.—(1) Each local authority must prepare an annual report on their performance in handling and consideration of representations for the purposes of —

- (a) monitoring compliance with these Regulations, and
- (b) improving the handling and consideration of representations.

(2) The first report referred to in paragraph (1) must be compiled within 12 months of the date of the coming into force of these Regulations.

PART VI

TRANSITIONAL PROVISIONS AND REVOCATION

Transitional Provisions and Savings

21.—(1) Where the consideration of representations in accordance with the 1991 Regulations has not been concluded at the time that these Regulations come into force then the following paragraphs will apply to the procedure.

(2) Subject to paragraphs (3) and (4) the representations will be considered in accordance with the 1991 Regulations the relevant provisions of which have been saved only for that purpose.

(3) If, in accordance with regulation 8(2) of the 1991 Regulations the complainant has given notice to the local authority of his or her wish that the matter be referred to a panel but no panel has been appointed in accordance with that regulation, then the local authority must treat the complainant's notice as a

request for the further consideration of the representations in accordance with provisions in regulations made by the National Assembly under section 26ZB of the Act.

(4) If the local authority have given notice in accordance with regulation 8(1) of the 1991 Regulations and the complainant has not given notice to the local authority of his or her wish that the matter be referred to a panel and the time for giving such notice has not expired then any notice that the complainant does give in accordance with regulation 8(2) must be or must be treated as being a request for the further consideration of the representations in accordance with provisions in regulations made by the National Assembly under section 26ZB of the Act.

Revocation

22.—(1) The Representations Procedure (Children) Regulations 1991⁽⁷⁾ are revoked save to the extent necessary for the purposes of regulation 21.

(2) Regulation 4(2) of the Advocacy Services and Representations Procedure (Children) (Wales) Regulations 2004⁽⁸⁾ is revoked.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽⁹⁾.

Date

The Presiding Officer of the National Assembly

⁽⁷⁾ S.I. 1991/894.

⁽⁸⁾ S.I. 2004/1448 (W.148).

⁽⁹⁾ 1998 c.38.