WELSH STATUTORY INSTRUMENTS

2006 No. 3251 (W.295)

SOCIAL CARE, WALES

CHILDREN AND YOUNG PERSONS, WALES

The Care Standards Act 2000 and the Children Act 1989 (Regulatory Reform and Complaints) (Wales) Regulations 2006

Made - - - - 5 December 2006

Coming into force - - 1 January 2007

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred upon it by sections 23(2)(a) and (9), 59(2), 79C and 104(4) of and paragraph 12 of Schedule 2 to the Children Act 1989(**1**); sections 14(1)(d), 16, 22, 25, 33, 42(1), 48(1), 50 and 118(1) and (5) to (7) of the Care Standards Act 2000(**2**); and sections 2(6)(b), 9(1) and (3), 10 and 140(1) of the Adoption and Children Act 2002(**3**):

Title, commencement and application

1.—(1) The title of these Regulations is the Care Standards Act 2000 and the Children Act 1989 (Regulatory Reform and Complaints) (Wales) Regulations 2006 and will come into force on 1 January 2007.

(2) These Regulations apply in relation to Wales.

Amendment of the Care Homes (Wales) Regulations 2002

2. The Care Homes (Wales) Regulations 2002(**4**) are amended as follows —

(a) In regulation 3(3) substitute "paragraph (1)(d)" with "paragraph (1)(f)"

(b) Substitute regulation 25 (Review of Quality of Care) with —

(**1**) 1989 c. 41: section 79C was inserted by section 79 of the Care Standards Act 2000 (c. 14). These powers are exercisable by the National Assembly for Wales by virtue of article 2 of, and schedule to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672.

(**2**) 2000 c. 14.

(**3**) 2002 c. 38.

(**4**) S.I. 2002/324 (W.37).

"**Review of Quality of Care**

25.—(1) The registered person must make suitable arrangements to establish and maintain a system for monitoring, reviewing and improving the quality of care given to service users.

(2) The system established under paragraph (1) must make provision for —

(a) the quality of care to be reviewed at least annually; and

(b) the registered person to obtain the views of —

(i) service users;

(ii) representatives of service users;

(iii) any local authority which has arranged for the accommodation of a service user at the care home; and

(iv) staff employed at the care home

on the quality of care provided, as part of any review undertaken.

(3) Following a review of the quality of care, the registered person must within 28 days prepare a report of that review and make a copy of the available report in an appropriate format when requested by —

(a) service users;

(b) representatives of service users;

(c) any local authority which has arranged for the accommodation of a service user at the care home;

(d) staff employed at the care home;

(e) the National Assembly.

Assessment of Service

25A.—(1) The National Assembly can at any time request the registered person to undertake an assessment of the service provided to service users at the care home.

(2) Within 28 days of receiving a request under paragraph (1) the registered person must supply to the appropriate office of the National Assembly the assessment in the form required by the National Assembly.

(3) The registered person must take reasonable steps to ensure that the assessment is not misleading nor inaccurate.

Compliance Notification

25B.—(1) The National Assembly can at any time notify the registered person of the action that in the National Assembly's view the registered person must take to ensure compliance with the Act and any regulations made under it.

(2) The National Assembly can specify the timescale within which the registered person must take the action required under paragraph (1).

(3) The registered person must advise the appropriate office of the National Assembly of the completion of any action required under paragraph (1).".

(c) Substitute regulation 23 (Complaints) with —

"**Complaints**

23.—(1) The registered person must prepare and follow a written procedure ("the complaints procedure") for considering complaints made to the registered person by a service user or person acting on the service user's behalf.

(2) The complaints procedure must be appropriate to the needs of service users.

(3) The complaints procedure must include provision for the consideration of complaints made about the registered person.

(4) The registered person must ensure that the following persons are aware of the existence of the complaints procedure and must take all reasonable steps to give a copy of the complaints procedure in an appropriate format or such format as may be requested to —

(a) service users;

(b) representatives of service users; and

(c) any authority which has arranged for the accommodation of a service user at the care home.

(5) The registered person must ensure that the staff employed at the care home are informed about, given a copy of and appropriately trained in the operation of the complaints procedure.

(6) The complaints procedure must include —

(a) the name, address and telephone number of the appropriate office of the National Assembly; and

(b) the procedure, if any, that has been notified to the registered person by the National Assembly for the making of complaints to the National Assembly.

(7) The complaints procedure must include provision for the local resolution of complaints at an early stage where appropriate.

(8) Where the complaints procedure includes provision for a formal consideration, this provision must be approved by the National Assembly.

(9) The approval of the National Assembly under (8) will only be given where the complaints procedure includes provision for the formal consideration to be undertaken by a person who is independent of the management of the home.

Handling Complaints

23A.—(1) The complaints procedure prepared under regulation 23 must be operated in accordance with the principle that the welfare of the service user is safeguarded and promoted and account must be taken of the ascertainable wishes and feelings of the service user.

(2) When a complaint is made, the registered person must advise the complainant of their right to at any time complain to the National Assembly or, where relevant, to the authority which has arranged for the accommodation of the service user at the care home.

(3) The registered person must inform the complainant of the availability of any advocacy services which the registered person believes may be of assistance to the complainant. Where relevant and the complainant is a child, the registered person must advise the complainant that a local authority receiving a complaint

must provide information and assistance for complainants, and must in particular offer help in obtaining an advocate.

(4) The registered person can in any case where it is 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 complaint.

(5) The registered person must keep a written record of any complaint, the outcome of the investigation and any action taken in response.

(6) The registered person must supply to the appropriate office of the National Assembly at its request a statement containing a summary of the complaints made during the preceding twelve months and the action taken in response to each complaint.

Local Resolution

23B.—(1) Complaints that are dealt with locally must be resolved by the registered person as soon as reasonably practicable and in any event within 14 days.

(2) Where the complaint is resolved under paragraph (1), the registered person must confirm in writing to the complainant the agreed resolution.

(3) The registered person must, at the request of the National Assembly or any authority who has arranged for the accommodation of a service user at the care home, confirm the local resolution of a complaint.

(4) The time limit in paragraph (1) may be extended for up to a further 14 days with the agreement of the complainant.

Formal Consideration

23C.—(1) Complaints that are dealt with by way of formal consideration must be resolved as soon as reasonably practicable and in any event within 35 days of the request for formal consideration.

(2) The outcome of a formal consideration must be confirmed in writing by the registered person to the complainant and must summarise the nature and substance of the complaint, the conclusions and the action to be taken as a result.

(3) The registered person must send a copy of the written response to a complaint to the appropriate office of the National Assembly and any authority which has arranged for the accommodation of the service user at the care home.

(4) If the complaint has not been resolved within 35 days of the request for formal consideration, the registered person must notify the appropriate office of the National Assembly of the complaint and the reasons for the delay in resolution.

(5) The time limit in paragraph (1) may be extended with the agreement of the complainant.

(6) Where the complainant is a child the registered person must appoint an independent person who shall take part in any consideration of the complaint by the registered person.

Complaints subject to concurrent consideration

23D.—(1) Where a complaint relates 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 registered person is taking or is proposing to take disciplinary proceedings, or

(c) about which the registered person has 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 registered person has been notified that there are current investigations in contemplation of proceedings under section 59 of the Care Standards Act 2000, the registered person must consider, in consultation with the complainant and any other person or body which they consider appropriate to consult, how the complaint should be handled. Such complaints shall be referred to for the purposes of this regulation as "complaints subject to concurrent consideration".

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

(3) Where the registered person decides to discontinue the consideration of a complaint under paragraph (2) the registered person must give notice of that decision to the complainant.

(4) Where the registered person discontinues the consideration of any complaint under paragraph (2), consideration can be resumed at any time.

(5) Where the consideration of a complaint has been discontinued under paragraph (2) the registered person must ascertain the progress of the concurrent consideration and notify the complainant when it has been concluded.

(6) The registered person must resume consideration of any complaint where the concurrent consideration is discontinued or completed and the complainant requests that the complaint be considered under these Regulations.".

Amendment of the Children's Homes (Wales) Regulations 2002

3. The Children's Homes (Wales) Regulations 2002(**5**) are amended as follows —

(a) Substitute regulation 33 (Review of quality of care) with—

"**Review of Quality of Care**

33.—(1) The registered person must make suitable arrangements to establish and maintain a system for monitoring, reviewing and improving the quality of care given to children.

(2) The system established under paragraph (1) must make provision for —

(a) the quality of care to be reviewed at least annually;

(b) the matters set out in Schedule 6 to be monitored and reviewed; and

(c) the registered person to obtain the views of —

(**5**) S.I. 2002 No.327 (W.40).