WELSH STATUTORY INSTRUMENTS

2005 No. 3366 (W.263)

SOCIAL CARE, WALES
CHILDREN AND YOUNG PERSONS, WALES

The Social Services Complaints Procedure (Wales) Regulations 2005

Made - - - -	*6 December 2005*
Coming into force - -	*1 April 2006*

The National Assembly for Wales, in exercise of the powers conferred by sections 114(3), (4) and (5) and 115(1), (2), (4), (5) and (6) of the Health and Social Care (Community Health and Standards) Act 2003(**1**) and sections 26A and 26ZB of the Children Act 1989(**2**) hereby makes the following Regulations:—

PART I

GENERAL

Title, commencement and application

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

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

"the Act" ("*y Ddeddf*") means the Health and Social Care (Community Health and Standards) Act 2003(**3**);

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

(**1**) 2003 c. 43.
(**2**) 1989 c. 41. Section 26ZB of the Children Act 1989 was inserted by section 116 of the Act. The functions of the Secretary of State under the Children Act 1989 were transferred to the Assembly by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672).
(**3**) 2003 c. 43.

(a) if an office has been specified under regulation 14(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.

"child" ("*plentyn*") means a person under the age of 18;

"complaints officer" ("*swyddog cwynion*") means the person appointed under regulation 6;

"complaints procedure" ("*gweithdrefn gwynion*") means the arrangements made under regulation 4;

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

"former complaints procedure" ("*gweithdrefn gwynion flaenorol*") means the complaints procedure under section 7B of the Local Authority Social Services Act 1970(**4**);

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

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

"partnership agreement" ("*cytundeb partneriaeth*") means an agreement between a local authority and an NHS body made under the provisions of section 31 of the Health Act 1999(**5**) and the National Health Service Bodies and Local Authorities Partnership Arrangements (Wales) Regulations 2000(**6**);

"service user" ("*defynddiwr y gwasanaeth*") means any person who may make a complaint under regulation 9(1);

"social services functions" ("*swddogaethau gwasanaethau cymdeithasol*") means the list of functions set out in Schedule 1 to the Local Authority Social Services Act 1970;

"staff" ("*staff*") means any person who is employed by or engaged to provide services to a local authority; and

"working day" ("*diwrnod 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(**7**).

General principles in handling complaints

3.—(1) Any complaints procedure set up under these regulations must be operated in accordance with the principle that the welfare of the service user should be safeguarded and promoted.

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

PART II

SETTING UP THE COMPLAINTS PROCEDURE

Duty to establish a complaints procedure

4. Each local authority must make arrangements in accordance with these regulations for the handling and consideration of complaints and the arrangements must be in writing.

(**4**) 1970 c. 42. Section 7B was inserted by section 50 of the National Health Services and Community Care Act 1990 and amended by section 67(1) and Schedule 5 Part 2 paragraphs 15(1) and (2) of the Health and Social Care Act 2001.
(**5**) 1999 c. 52.
(**6**) S.I. 2000/2993 (W.193) as amended by S.I. 2004/1390.
(**7**) 1971 c. 80

Senior Officer responsible for complaints

5. 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

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

(a) to perform the functions of the complaints officer under these Regulations;

(b) to perform such other functions in relation to complaints 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 or resolve complaints.

(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.

Publicity

7.—(1) Each local authority must ensure that there is effective publicity of its complaints arrangements.

(2) Each local authority must take all reasonable steps to ensure that service users and their carers, if any, are informed of its arrangements, the name of its complaints officer and the address at which the complaints officer can be contacted.

(3) A copy of the arrangements made under regulation 3 must be given, free of charge, to any person who makes a request for one.

(4) Each local authority must take all reasonable steps to provide a copy of its arrangements in any form requested by the service user or other person making a complaint on the service user's behalf.

Information and training for staff

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

PART III

NATURE AND SCOPE OF THE COMPLAINTS PROCEDURE

Persons who may make complaints

9.—(1) A complaint may be made by any person to whom the local authority has a power or duty to provide, or secure the provision of, a service which, if provided, would be provided as a social service function and whose need, or possible need for such a service has (by whatever means) come to the attention of the local authority.

(2) A complaint may be made by a person (a "representative") acting on behalf of a person mentioned in paragraph (1) in any case where that person—

(a) is a child; or

(b) has requested the representative to act on his or her behalf; or

(c) is not capable of making the complaint personally.

(3) A complaint may be made by a person (a "representative") in respect of a person who has died.

(4) Any representative making a complaint under paragraph (2)(a) or (c) or under paragraph (3) must, in the opinion of the local authority have, or have had, an interest in the person's welfare and be a suitable person to act as representative.

(5) If in any case the local authority is of the opinion that any person making a complaint under paragraphs (2)(a) or (c) or (3) does not have sufficient interest in the person's welfare or is not a suitable person to act as a representative, the authority must notify the person in writing immediately, stating the reasons for that opinion.

(6) Where notification is given under paragraph (5) and the person referred to in paragraph (1) in respect of whom the complaint has been made is alive the local authority must, if it considers it appropriate to do so having regard to the understanding of the person referred to in paragraph (1), provide that person with a copy of the notification.

(7) In these Regulations any reference to a complainant includes a reference to his or her representative.

Matters about which complaints may be made

10.—(1) Subject to paragraph (2) a complaint to a local authority may be about the exercise of its social services functions including—

(a) the discharge by a local authority of any of its social services functions;

(b) the provision of services by another person pursuant to arrangements made by such an authority in the discharge of those functions;

(c) the provision of services by such an authority or any other person in pursuance of arrangements made by the authority under section 31 of the Health Act 1999(**8**) in relation to the functions of an NHS body (within the meaning of that section).

(2) A complaint may not be made under these regulations about the exercise of functions under sections 31, 33, 34, 35, 43, 44 and 47 of the Children Act 1989.

Matters excluded from consideration

11. These Regulations do not require arrangements to be made for the investigation of any complaint which has been investigated—

(a) under these Regulations,

(b) under any former complaints provisions, or

(c) by a Commissioner for Local Administration.

Complaints subject to concurrent consideration

12.—(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

(**8**) 1999 c. 8.

(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 the authority consider appropriate to consult, how the complaint should be handled. Such a complaint shall be referred to for the purposes of this regulation as a "complaint subject to concurrent consideration".

(2) The consideration of a complaint subject to concurrent consideration under this Part of the Regulations 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 authority must give notice of that decision to the complainant.

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

(5) Where 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 complaint where the concurrent consideration is discontinued or completed and the complainant requests that the complaint be considered under these Regulations.

PART IV

WORKING WITH OTHER AGENCIES

Complaints involving more than one body

13.—(1) In any case where it appears to the complaints officer that a complaint is or may be a complaint which relates to the exercise of functions by more than one local authority (a complaint involving more than one body) the complaints officer must, as soon as reasonably practicable—

(a) notify the other body or bodies involved and consider with the complaints officer of each of them which body should take the lead in handling the complaint; and

(b) notify the complainant of their decision.

(2) The complaints officer of a local authority which is the lead body must—

(a) ensure that any part of the complaint relating to the actions of the local authority is considered under this part of the Regulations;

(b) ensure that the complainant is kept informed about the progress of the investigation;

(c) ensure that the response required under regulation 20 so far as practicable includes a response on any matter which was within the responsibility or control of any other body mentioned in paragraph (1).

(3) The complaints officer of a local authority which is not the lead body must—