WELSH STATUTORY INSTRUMENTS

# 2005 No. 3365 (W.262)

# SOCIAL CARE, WALES
# CHILDREN AND YOUNG PERSONS, WALES

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

*Made - - - - 6 December 2005*

*Coming into force - - 1 April 2006*

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**);

(**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.

"advocate" ("*eiriolwr*") rmeans 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 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.

# 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.

(**4**) S.I. 2004/1448 (W.148).
(**5**) 1971 c. 80.

**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(**6**),

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 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 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 prejudice an investigation by the National Assembly.

(**6**) 2000 c. 14.

(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.