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STATUTORY INSTRUMENTS

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**1996 No. 1174**

**DEFENCE**

**The Armed Forces (Protection of Children  
of Service Families) Regulations 1996**

<i>Made</i>	- - - -	<i>24th April 1996</i>
<i>Laid before Parliament</i>		<i>26th April 1996</i>
<i>Coming into force</i>	- -	<i>1st June 1996</i>

The Secretary of State, in exercise of the powers conferred on him by sections 17(3) and (6), 18(7), 19(6), 20(11), 22(5) and (6) and 23(1), (2) and (4) of the Armed Forces Act 1991<sup>(1)</sup>, hereby makes the following Regulations:—

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Armed Forces (Protection of Children of Service Families) Regulations 1996 and shall come into force on 1st June 1996.

(2) In these Regulations—

“the Act” means the Armed Forces Act 1991;

“assessment order” means an assessment order made under section 17(3) of the Act;

“commanding officer”, in relation to any person, means—

- (a) where the person concerned is subject to Part II of the Army Act 1955<sup>(2)</sup> or Part II of the Air Force Act 1955<sup>(3)</sup>, the officer who is that person’s commanding officer for the purposes of section 82 of the Army Act 1955 or (as the case may be) of the Air Force Act 1955; and
- (b) where the person concerned is subject to Parts I and II of the Naval Discipline Act 1957<sup>(4)</sup>—
  - (i) the officer who is for the time being in immediate command of the ship or naval establishment to which that person belongs; or

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(1) 1991 c. 62.  
(2) 1955 c. 18.  
(3) 1955 c. 19.  
(4) 1957 c. 53.

- (ii) if the person is absent from the ship or establishment on detached service either on shore or elsewhere, the officer who is for the time being in immediate command of that person; and

“protection order” means a protection order made under section 19(3) of the Act.

### **Officer having jurisdiction**

2.—(1) Subject to paragraphs (2) to (4) below, for the purposes of any provision of Part III of the Act the officer having jurisdiction shall be—

- (a) in the case of a child falling within section 17(1) or 19(1) of the Act, the commanding officer for the time being of the person of whose family the child forms a part; and
- (b) in the case of a child falling within section 17(2) or 19(2) of the Act, the commanding officer for the time being of the person with whom the child is staying.

(2) Where the person applying for a protection order states in his application that in his opinion it is necessary for the protection order to have effect for a period exceeding the period of eight days beginning with the date of the order, the officer having jurisdiction shall be—

- (a) in the case of a child falling within section 19(1) of the Act, the officer who is for the time being immediately superior in command to the commanding officer for the time being of the person of whose family the child forms a part; and
- (b) in the case of a child falling within section 19(2) of the Act, the officer who is for the time being immediately superior in command to the commanding officer for the time being of the person with whom the child is staying.

(3) Subject to paragraph (4) below, where a protection order was made by a superior officer or continues to have effect by virtue of an extension order made by a superior officer, that officer shall be the officer having jurisdiction for the purposes of section 22(5) of the Act.

(4) If it is not reasonably practicable for the person who is the officer having jurisdiction in accordance with paragraph (3) above to act in that capacity, then the officer having jurisdiction shall be the officer closest in seniority to him from amongst those officers who are superior in command to him and for whom it is reasonably practicable to act in that capacity.

(5) In this regulation, “superior officer” shall be construed in accordance with sections 21 and 22 of the Act.

### **Superior officer**

3. For the purposes of sections 21 and 22 of the Act, a person is a superior officer if—

- (a) in the case of a child falling within section 19(1) of the Act, he is superior in command to the commanding officer for the time being of the person of whose family the child forms a part; and
- (b) in the case of a child falling within section 19(2) of the Act, he is superior in command to the commanding officer for the time being of the person with whom the child is staying.

### **Persons authorised to apply for an assessment order and designated for the purposes of section 19 of the Act**

4.—(1) The persons who are authorised to make an application for an assessment order under section 17(3) of the Act, and are designated persons for the purposes of section 19 of the Act, shall be—

- (a) The Soldiers', Sailors' and Airmen's Families Association and any of its officers;

- (b) the Naval Personal and Family Service and any of its Chief Petty Officers (Family Service);
  - (c) a registered medical practitioner serving as a member of the medical branch of any of Her Majesty's armed forces; and
  - (d) a civilian registered medical practitioner to whom—
    - (i) Part II of the Army Act 1955 applies by virtue of section 209 of that Act;
    - (ii) Part II of the Air Force Act 1955 applies by virtue of section 209 of that Act; or
    - (iii) Part II of the Naval Discipline Act 1957 applies by virtue of section 118 of that Act.
- (2) In paragraph (1) above, "registered medical practitioner" means a person registered as a medical practitioner under the Medical Act 1983(5).

### **Making of assessment orders**

5.—(1) An application for an assessment order under section 17(3) of the Act shall be made by notice in writing, and shall specify the grounds on which it is made.

(2) On receipt of an application for an assessment order under section 17(3) of the Act, the officer having jurisdiction shall—

- (a) fix the date, time and place at which he will consider the application; and
- (b) give the person making the application notice in writing of the date, time and place fixed in accordance with sub-paragraph (a) above, allowing sufficient time for that person to comply with the requirements of paragraph (3) below.

(3) Any person making an application for an assessment order under section 17(3) of the Act shall—

- (a) take such steps as are reasonably practicable to give the persons mentioned in section 17(4) of the Act not less than seven clear days' notice in writing of the date, time and place at which the officer having jurisdiction will consider the application; and
- (b) include in that notice a statement explaining the effect of paragraphs (5) to (7) below.

(4) Before determining the application for an assessment order, the officer having jurisdiction shall satisfy himself that the person making the application has complied with paragraph (3) above; and where, it appears to him that the person making the application has failed to notify any person in accordance with that paragraph, he may adjourn the hearing of the application.

(5) Subject to paragraph (6) below, before deciding whether or not to make an assessment order, the officer having jurisdiction shall afford the person making the application and the persons mentioned in section 17(4) of the Act, the opportunity of making representations to him (including oral representations).

(6) Paragraph (5) above shall not oblige the officer having jurisdiction to afford any person the opportunity of making representations, where it appears to him that it would be impracticable, or would cause unnecessary delay, to communicate with that person.

(7) Any person having the right to make representations under paragraph (5) above shall be entitled—

- (a) to attend any hearing which is held for the purposes of determining whether the assessment order should be made; and
- (b) to be represented at any such hearing.

(8) Where the officer having jurisdiction adjourns the hearing of an application for an assessment order, he shall—

- (a) fix the date, time and place at which he will resume the hearing of the application; and
  - (b) take such steps as are reasonably practicable to ensure that any person mentioned in section 17(4) of the Act who was not present at the adjourned hearing is notified of the date, time and place fixed in accordance with sub-paragraph (a) above.
- (9) In relation to an application for an assessment order, the officer having jurisdiction shall ensure that—
- (a) a written record is kept of the substance of any oral evidence given at any hearing before him; and
  - (b) he gives notice in writing of any decision he makes, and the reasons for it, to the person making the application and the persons who have been given notice of the application in accordance with section 17(4) of the Act.

#### **Variation and discharge of assessment orders**

6.—(1) Only the officer having jurisdiction may vary or discharge an assessment order in accordance with section 18(7) of the Act.

(2) An application for the variation or discharge of an assessment order shall be made by notice in writing and shall specify the grounds on which it is made.

(3) Subject to paragraph (4) below, the officer having jurisdiction shall not vary or discharge an assessment order without first affording the persons mentioned in section 18(7) of the Act an opportunity to make representations to him (including oral representations).

(4) Paragraph (3) above shall not oblige the officer having jurisdiction to afford any person the opportunity of making representations, where it appears to him that it would be undesirable to do so in the interests of the child, or that it would be impracticable, or would cause unnecessary delay, to communicate with that person.

#### **Making of protection orders**

7. In relation to an application for a protection order, the officer having jurisdiction shall ensure that—

- (a) a written record is kept of the substance of any oral evidence given at any hearing before him; and
- (b) he gives notice in writing of his decision, and the reasons for it, to the person making the application and the persons mentioned in section 19(4) of the Act.

#### **Making, variation and revocation of directions in a protection order**

8.—(1) Without prejudice to section 22(7) of the Act, only the officer having jurisdiction may vary or revoke a direction given under section 20(4) of the Act.

(2) An application for the variation or discharge of a direction given under section 20(4) of the Act shall be made by notice in writing, and shall specify the grounds on which it is made.

(3) Subject to paragraph (4) below, an officer shall not give, vary or revoke a direction in accordance with section 20(4) or (11) of the Act without first affording—

- (a) the responsible person;
- (b) the child to whom the protection order relates;
- (c) his parents;
- (d) any other person who has parental responsibility for him; and

(e) any other person with whom he was residing immediately before the making of the application,

an opportunity to make representations to him (including oral representations).

(4) Paragraph (3) above shall not oblige an officer having power to give, vary or revoke a direction in accordance with section 20(4) or (11) of the Act to afford any person the opportunity of making representations, where it appears to him that it would be undesirable to do so in the interests of the child, or that it would be impracticable, or would cause unnecessary delay, to communicate with that person.

(5) Any person having the right to make representations under paragraphs (3) and (4) above shall be entitled—

- (a) to attend any hearing which is held for the purposes of determining whether any direction should be given, varied or revoked; and
- (b) to be represented at any such hearing.

(6) Where an officer varies or revokes a direction given under section 20(4) of the Act, he shall as soon as is reasonably practicable give notice in writing of that fact to the persons mentioned in paragraph (3) above.

(7) In this regulation and in regulations 9 and 10 “the responsible person” shall be construed in accordance with section 20(1) of the Act.

### **Review of protection orders**

9.—(1) Subject to paragraph (2) below, before reaching any decision on a review of a protection order, the officer carrying out the review shall afford—

- (a) the responsible person;
- (b) the child to whom the protection order relates;
- (c) his parents;
- (d) any other person who has parental responsibility for him; and
- (e) any other person with whom he was residing immediately before the making of the application,

an opportunity to make representations to him (including oral representations).

(2) Paragraph (1) above shall not oblige the officer carrying out the review to afford any person the opportunity of making representations, where it appears to him that it would be undesirable to do so in the interests of the child, or that it would be impracticable, or would cause unnecessary delay, to communicate with that person; save that, where on a review of a protection order it appears to the officer carrying out the review that the order should be discharged, he shall in all cases afford the responsible person an opportunity to make representations before discharging the order.

(3) Any person having the right to make representations under paragraphs (1) and (2) above shall be entitled—

- (a) to attend any hearing which is held for the purposes of the review; and
- (b) to be represented at any such hearing.

(4) Following a review of a protection order, the officer carrying out the review shall ensure that he communicates in writing the reasons for any decision he reaches to the persons mentioned in paragraph (1) above.

(5) Where the officer carrying out a review gives a direction under section 20(4) of the Act, or varies or revokes any direction previously given under that subsection, he shall make a record on the original order accordingly; and a copy of the order as so amended shall be sent to the persons mentioned in paragraph (1) above.

### **Discharge of protection orders**

**10.**—(1) A protection order may not be discharged under section 22(5) of the Act until the expiry of the period of seventy two hours beginning with—

- (a) where an extension order under section 21(2) of the Act has effect in relation to the protection order, the making of the extension order;
- (b) where a review of the protection order has been carried out in accordance with section 22 of the Act, the completion of the review; or
- (c) in any other case, the making of the protection order.

(2) Subject to paragraph (3) below, a protection order may not be discharged under section 22(5) of the Act without affording the persons mentioned in that subsection an opportunity to make representations (including oral representations) to the officer having jurisdiction.

(3) Paragraph (2) above shall not oblige the officer having jurisdiction to afford any person the opportunity of making representations, where it appears to him that it would be undesirable to do so in the interests of the child, or that it would be impracticable, or would cause unnecessary delay, to communicate with that person; save that, where it appears to the officer having jurisdiction that the order should be discharged, he shall in all cases afford the responsible person an opportunity to make representations before discharging the order.

24th April 1996

*Michael Portillo*  
Secretary of State for Defence

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations contain provisions which supplement Part III of the Armed Forces Act 1991 (“the 1991 Act”). Part III of the 1991 Act enables the making of assessment orders and protection orders for the purpose of protecting children of service families.

Under Part III of the 1991 Act it is the function of the officer having jurisdiction to determine whether or not an assessment order or a protection order should be made in respect of a child. Regulation 2 provides for a person’s commanding officer to be the officer having jurisdiction, unless a person applying for a protection order states in his application that the order is required to have effect for a period longer than eight days, in which case the officer having jurisdiction is the officer immediately superior in command to the commanding officer. Regulation 3 makes provision as to who is a superior officer for the purposes of sections 21 and 22 of the 1991 Act (which relate to the making, review and discharge of protection orders). A superior officer for these purposes is any officer who is superior in command to the commanding officer of the person concerned. Regulation 4 specifies who may apply for an assessment order under section 17 of the 1991 Act, and which persons are designated persons for the purposes of section 19(3) of that Act.

Regulation 5 provides for the procedure to be followed in connection with the making of an assessment order. It specifies the manner in which an application for such an order is to be made. It also provides for the persons referred to in section 17(4) to have the right to make representations (including oral representations) to the officer having jurisdiction, and specifies the manner in which they are to be notified of any hearing. Regulation 6 makes provision as to the circumstances in which, and the conditions subject to which, an assessment order may be varied or discharged.

Regulation 7 specifies the procedure on the making of a protection order. Regulation 8 contains provisions relating to the making, variation and revocation of directions included in a protection order. Regulation 9 provides for the procedure to be followed in connection with a review of a protection order under section 22 of the 1991 Act, and includes the requirement that certain specified persons be allowed to make representations to the person carrying out the review. Regulation 10 specifies the circumstances in which, and the conditions subject to which, a protection order may be discharged. A protection order may not be discharged until the expiry of a period of 72 hours from the making of the protection order; or, where an extension order has been made under section 21(2) of the 1991 Act or where a review has been carried out under section 22 of that Act, until the expiry of the period of 72 hours from the making of the extension order or the completion of the review.