

**EXPLANATORY MEMORANDUM TO
THE CHILDREN ACT 1989 REPRESENTATIONS PROCEDURE (ENGLAND)
REGULATIONS 2006**

2006 No.1738

1. This explanatory memorandum has been prepared by Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. This instrument sets out the procedures that local authorities and voluntary organisations should follow when considering representations (including complaints) made about particular care services provided under the Children Act 1989. They will revoke the Representations Procedure (Children) Regulations 1991. The new regulations will bring about greater consistency in complaints handling.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None

4. Legislative Background

4.1. The Children Act 1989 gives the Secretary of State powers to make regulations about handling representations (including complaints) relating to services for the support, care and protection of children. Regulations relating to the handling of representations have been in force since 1991. However, the Children Act has since been amended, in particular by section 117 of the Adoption and Children Act 2002 which amends sections 24D and 26 of the Children Act 1989 by giving power to make regulations which:

- 4.1.1. allow for an initial resolution stage without involving an independent person;
- 4.1.2. extend the scope or application of the Children Act 1989 procedure to services provided under Part IV (Care and Supervision) and Part V (Protection of Children) of that Act, as may be specified in regulations;
- 4.1.3. impose time limits for the making of regulations.

4.2. This instrument uses these new provisions to the Children Act 1989 to introduce a more detailed procedure for the handling of representations than is provided for currently.

5. Extent

5.1. This instrument applies to England.

6. European Convention on Human Rights

6.1. As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. The objectives of the Children Act 1989 relate primarily to the provision of services for children in need both by local authorities and by voluntary organisations. The Act includes a requirement for local authorities and voluntary organisations to put in place procedures for considering representations (including complaints) relating to the provision of such services by those bodies. The procedures must comply with regulations made by the secretary of State. Representations may be made by service users whether they are children or young people or those with responsibility for them.

7.2. This instrument sets out a procedure for local authorities and voluntary organisations which is more detailed than that in place since 1991 and which will reduce variation in handling of representations across the country. In particular the new procedure:

- 7.2.1. imposes time limits on the making of representations so that local authorities and voluntary organisations do not have to consider representations that arise from incidents several years ago;
- 7.2.2. imposes time scales for the handling of representations including a local resolution phase upfront so that issues may be resolved quickly and efficiently;
- 7.2.3. requires the involvement of independent persons in the consideration of representations so that the process is fair and transparent for the complainant; and
- 7.2.4. requires monitoring of the procedure and the outcome of each representation so that local authorities can learn and improve services as a result.

7.3. A public consultation was held on the draft instrument which was prepared in November 2004 entitled *Getting the Best From Complaints*¹. 160 responses were received from a range of stakeholders including complaints officers in local authorities, the Local Government Ombudsman, voluntary organisations and directors of children's social services. A separate consultation was held with children and young people.

7.4. The draft regulations have changed as a result of the consultation in the following ways:

- 7.4.1. More realistic timescales for different stages of the procedure;
- 7.4.2. Clarity around handling representations that might be subject to concurrent investigations such as Court, disciplinary or criminal proceedings; and,
- 7.4.3. Clarity around the roles of individuals involved in the process.

7.5. In addition, the draft instrument gave effect to the provisions in the Health and Social Care Act for the further consideration of representations by CSCI – in effect replacing the Review Panels that local authorities and voluntary organisations currently operate. However, since the consultation, the Government announced plans to merge the children's services function of CSCI with Ofsted and as a result decided not to commence the function for CSCI proposed in the further consideration of representations as it was not deemed an appropriate function for a new, more strategic inspectorate.

7.6. Owing to the decision not to commence the function provided for CSCI, this instrument provides for local authorities and voluntary organisations to continue operating Review Panels for the further consideration of representations. The panels are required to be fully independent so that the representation is considered as fairly and transparently as possible.

8. Impact

¹ *Getting the Best from Complaints*. Consultation on the Changes to the Social Services Complaints Procedures for Children, Young People and Other People Making a Complaint. Department for Education and Skills, November 2004.

8.1. A Regulatory Impact Assessment is attached to this memorandum at Annex 1.

8.2. The reformed procedure builds on existing good practice across the majority of local authority social services departments, and with the lengthy lead-in time to the reforms they have had opportunity to plan for the intended changes.

9. Contact

9.1. Lucy Andrew at the Department for Education and Skills (Telephone 0207 9255080 or e-mail lucy.andrew@dfes.gsi.gov.uk) can answer any queries regarding the instrument.

Regulatory Impact Assessment
The Children Act 1989 Representations (Complaints) Procedure (England)
Regulations 2006

1. Purpose and intended effect

a. Objectives

- i)** To extend the local authority functions about which representations can be made under the procedure;
- ii)** To place a duty on local authorities to seek informal resolution of all representations and complaints so that the process is more child-friendly;
- iii)** To bring greater consistency to the procedure;
- iv)** To introduce greater independence in the review panel stage;
- v)** To introduce more realistic time-frames for local authorities to handle complaints and representations; and,
- vi)** To introduce a 12 month ‘time-limit’ to make representations.

b. Background

- i)** Under the Children Act 1989, local authorities are required to establish a procedure for considering representations (hereafter referred to as complaints) about children’s social care. The Secretary of State is able to regulate this procedure and the current regulations for considering complaints were made in 1991.
- ii)** Section 117 of the Adoption and Children Act 2002 amends sections 24D and 26 of the Children Act 1989 by giving a power to make regulations which
 - a)** allow for an initial resolution stage without involving an Independent Person;
 - b)** extend the scope or application of the Children Act 1989 procedure to services provided under Part IV (Care and Supervision) and Part V (Protection of Children) of that Act, as may be specified in regulations; and,
 - c)** impose time-limits for the making of representations.
- iii)** The Health and Social Care Act gives powers to the Commission for Social Care Inspection (CSCI) for the further consideration of complaints with the intention of replacing the review panel stage which is currently operated by local authorities. However, Ministers have decided not to commence this function owing to changes arising from the merging of the inspectorates.

c. Rationale for government intervention

- i)** Children and young people can be especially vulnerable when they have a problem and want to make a complaint. A complaints procedure is needed that enables

concerns or problems around local authority services to be resolved quickly and effectively. Children and young people themselves have said this is what is important to them.

- ii) Effective complaints procedures can help the whole local authority improve the delivery of children's services by highlighting where change is needed. A lot of good practice has already been developed in complaints handling by local authorities - we will be taking the opportunity to capture this in the guidance that will accompany the regulations.
- iii) Evidence has suggested that local authorities interpret the current complaints regulations in widely different ways – greater consistency in the procedure will be beneficial in providing equity and clarity for children and their representatives who may need to use it.

2. Consultation

a. Within government

- i) The Department of Health are drafting new adults social services complaints procedure in parallel – where it has been possible (and necessary) we have worked closely to align the policies so that it is easy for local authorities (whose complaints functions are often housed together) to operate the procedures.
- ii) We have worked closely with colleagues in local government – in particular complaints managers who will be implementing the new procedures. This has been through a working group – attendees of which included representatives of complaints managers, CSCI complaints managers, voluntary sector organisations, the Local Government Ombudsman and the Association of Directors of Social Services.

b. Public consultation

- i) A public consultation was held on draft regulations in November 2004 for 12 weeks. Responses were received from a diverse range of stakeholders including complaints managers in local authorities, Directors of Social Services and voluntary sector organisations.
- ii) Consultations were also held with children and young people in receipt of social care via the Children's Rights Director in the Commission for Social Care Inspection.

3. Options for achieving the policy objective

a. There are 2 possible options for ensuring an effective complaints procedure in local authorities:

- i) producing new regulations and Section 7 guidance to accompany them; or,
- ii) producing non-statutory guidance to local authorities.

b. The provision of social care by local authorities is tightly regulated. Given the vulnerability of children and young people in receipt of these services, it is important that an effective process is established so that they can complain if something goes wrong. Legislation is in place to allow the Secretary of State to regulate the complaints procedure.

By regulating the procedure, we can be sure that;

- i) The procedure is clear and interpreted consistently by local authorities;
 - ii) we reduce the chance of any confusion for children and young people around the complaints process who may be moved from one local authority to another; and,
 - iii) that sufficient weight is given by the local authority to learn from and act upon complaints from its service users, in particular, children and young people.
- c. The procedure has been regulated since 1991; to remove regulation could be perceived as a diminution of the importance of provision of high quality social services.
 - d. Producing non-statutory guidance might be one option, but this would not ensure consistency across local authorities and could be seen as a diminution of the importance of providing effective social care.

4. Costs and benefits

a. Sectors and groups affected

- i) The new regulations will have impact on local authorities, voluntary organisations who are providing accommodation for a child, those in receipt of children's social services and their representatives.

b. Benefits

- i) The benefits to local authorities and relevant voluntary organisations will be:
 - a) Clarity to the procedure;
 - b) Revised and realistic timeframes for handling different stages of the complaint;
 - c) A procedure that focuses on getting problems resolved earlier and informally so that fewer end up at the panel review stage;
 - d) A focus on enabling the local authority to learn from complaints;
 - e) Better guidance for local authorities on handling complaints from children;
 - f) Clarity for local authorities around the roles and responsibilities of different individuals involved in complaints handling; and,
 - g) Discretion in handling historic complaints.
- ii) The benefits to those in receipt of children's social services will be:
 - a) A procedure that has a focus on getting problems resolved **quickly** and **efficiently** which we know is important to children;
 - b) A procedure that is consistent from one local authority to another;
 - c) Greater independence in the procedure if the complaint cannot be resolved straight-away;

d) A better, more customer focussed service from the local authority.

c. Costs

i) The costs to local authorities and relevant voluntary organisations as a result of the new regulations are minimal – they already operate a regulated complaints procedure and the new regulations will not confer dramatic changes to it. Whilst greater independence at later stages of the procedure may have greater costs owing to fees that will need to be paid, we expect fewer complaints to get to later stages, off-setting costs.

ii) Local authorities and relevant voluntary organisations will also have to revise the material that is used to publicise the complaints procedure to service users. We expect these costs to minimal and absorbed via administrative budgets.

iii) There is no cost to the service user.

5. Enforcement and monitoring

a. As with the existing regulations, compliance will be ensured by the regulator – CSCI.

b. Local authorities will be expected to monitor complaints within their authority. We will use data gathered by the regulator about complaints procedures in local authorities to monitor how the process has been implemented. We also anticipate talking further to children and young people about their views on how the new complaints procedure is working in practice once it is implemented.

c. We will seek feedback from complaints managers in local authorities and CSCI to find out how the new regulations and guidance are working in practice.

6. Implementation and delivery plan

a. Regulations will be made and laid before Parliament and will come into force from July 2006. Guidance to accompany the regulations will be published shortly afterwards.

b. Both the regulations and guidance will be sent to local authorities via the appropriate communications channels, published on the DfES and Every Child Matters websites and we will also send a targeted communication to complaints managers in local authorities.

c. The regulations provide transition arrangements so that local authorities may implement the new procedure at an appropriate time if they are already considering a complaint under the old procedure.

7. Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed ...*Parmjit Dhanda*.....

Date: 29th June 2006

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