

Health and Social Services Committee

HSS(2)-10-05(p.7)

Date: Wednesday 5 October 2005

Venue: Committee Rooms 3&4, National Assembly for Wales

Title: The Representations Procedure (Children) (Wales) Regulations 2005

Purpose

1. This paper provides the promised opportunity for the Committee to scrutinise the draft regulations on complaints procedures in local authority social services for children and young people, before they are taken forward for consideration in accordance with standing order 24.

Summary

2. The Committee confirmed at its meeting on 25 May 2005 that it wished to scrutinise these Regulations if the legislative timetable allowed. They form part of a wider reform of complaints procedures in local authority social services and the matching regulations on services for adults (The Social Services Complaints Procedures (Wales) Regulations 2005) appeared as Paper 6 on today's agenda. Subject to approval in Plenary – scheduled for 29 November 2005 – it is hoped to bring the new arrangements into force on 1 April 2006.

Background

3. In 2001, the Assembly consulted widely on complaints and representations procedures in social services under the title "Listening to People". Since then, the Adoption and Children Act 2002 and the Health and Social Care (Community Health and Standards) Act 2003 have given the Assembly new powers and the opportunity to overhaul the arrangements last visited in 1991.

4. The new arrangements have been developed with the help of a Complaints and Representations Advisory and Implementation Group (CRAIG). This brought together a range of key interests to consider the main policy options, the drafting instructions for the regulations and the associated guidance. A formal 12 week consultation finished in August. Some amendments have been made and the draft regulations, explanatory memorandum and regulatory appraisal are ready for consideration by the Committee.

Consideration

5. Compared with current arrangements - established on an England and Wales basis nearly 15 years ago - the main changes are as follows:

- Overall, the separate children's and community care procedures have been brought more closely together into a common framework. There are – for legal reasons – two sets of regulations, but there is now one body of guidance. Unnecessary differences between two sets of regulations have been eliminated wherever possible, although of course the differences required by the primary legislation have been maintained.
- The new regulations extend the duties on local authorities to safeguard and promote the welfare of the service user in the way they handle complaints.
- Both procedures now have the same three-stage process. This has been achieved by introducing into the children's procedure a clear, time limited first stage giving a chance for informal local resolution;
- The scope of the Children Act 1989 procedure has been extended to services under Part IV (care and supervision) and Part V (protection of children) of that Act;
- These Regulations provide arrangements for managing complex situations where there are concurrent investigations by for instance the police, the Care Standards Inspectorate for Wales (CSIW) or the Care Council; and
- The automatic right to take an unresolved complaint to a Panel hearing has been retained and, in perhaps the biggest single change, an independent panel has been introduced. Both the membership of the Panel and the administrative arrangements will be wholly separate from the authority against which the complaint has been made. (While the independent panel arrangements apply to both children and adults, they are - under the provisions of the 2003 Act - set out in the matching regulations on services for adults.)

6. Through the guidance, the clearer links have been established with the NHS and education complaints procedures and the corporate complaints procedures of local authorities. Together, these changes will represent a major step towards a seamless complaints service for users of public services in Wales.

7. Before the regulations were drafted, there was widespread informal consultation with children and other service users, local authority complaints officers and advocacy providers. In particular, extensive work involving 600 children and young people was completed during 2004-05 which informed the development of the draft regulations and guidance on services for children.

8. The formal consultation on the draft regulations, draft regulatory appraisal and draft guidance was held between 16 May and 5 August 2005. 52 responses were received from relevant organisations, including bodies representing services users, local authorities and local health boards, and the Public Services Ombudsman, the Children's Commissioner and the Care

Council for Wales. There was overwhelming endorsement for most of the Assembly Government's proposals.

9. In the light of the consultations, a number of small amendments have been made to the draft of the Regulations. These amendments:

- adjust some of the time-scales for individual stages of the procedure,
- strengthen the requirements on authorities to keep complainants informed about their rights under the procedures,
- strengthen the requirements on authorities to keep complainants informed about the progress of their complaint, and
- make provision for cases where the Care Councils in either Wales or England may also be investigating the matter raised in a complaint

Timetable for implementation

10. Following the Committee's consideration of the regulations, I intend submitting them to Business Committee later in October, with the aim of seeking approval at plenary on 29 November 2005. Subject to the National Assembly's approval, the Regulations will be commenced on 1 April 2006 to allow local authorities four months to prepare for implementation.

Action

11. The Committee is invited to:

- i) consider this paper, the draft regulations, the draft Explanatory Memorandum and the draft Regulatory Appraisal;
- ii) note the intention to proceed with the draft regulations in accordance with standing order 24. On current plans, the intention is to seek the Assembly's agreement to making the regulations in plenary on 29 November 2005.

Brian Gibbons AM
Minister for Health and Social Services

Contact: Colin Vyvyan, Older People and Long Term Care Policy Division
(ext.: 3259)

NATIONAL ASSEMBLY FOR WALES

STATUTORY
INSTRUMENTS

2005 No. (W.)

SOCIAL CARE, WALES

**CHILDREN AND YOUNG
PERSONS, WALES**

**The Representations Procedure
(Children) (Wales) Regulations 2005
EXPLANATORY NOTE**

(This note is not part of the Regulations)

These Regulations revoke and replace the 1991 Representations Procedure (Children) Regulations to reflect the changes made by the Adoption and Children Act 2002 and the Health and Social Care (Community Health and Standards) Act 2003 to the provisions for the procedures under the Children Act 1989 (the Act) for considering representations, including complaints.

The major differences between the procedures established under the 1991 Regulations and those established under these Regulations are: extension of local authority functions about which representations can be made under section 26 (they are previously limited to functions under Part 3 of the Act)(regulation 7); introduction of a requirement on local authorities to attempt informal resolution of all representations under the Act procedure (presently local resolution only applies to representations made under section 24D) (regulation 15); and removal of the panel stage of the procedure (complainants may instead have their representations further considered by an independent panel established under separate regulations made under section 26ZB of the Act).

Regulation 4 requires the local authority to designate a senior officer with responsibilities in relation to representations and regulation 5 requires the local authority to appoint a complaints officer.

Regulation 6 imposes requirements as to training of local authority staff.

Regulation 8 establishes a procedure for consideration of how representations shall be dealt with where there is a concurrent consideration by

another person or body. This allows for the local authority to suspend consideration temporarily where to continue would compromise or prejudice the other consideration. Regulation 9 provides for determination of which local authority will consider representations where more than one is involved.

Representations may be made orally or in writing (regulation 11) and may be withdrawn orally or in writing (regulation 14).

One of the categories of people who may make representations under section 26 of the 1989 Act are, by section 26(3)(e) such other persons (not being the child, parent, foster parent or person with parental responsibility for the child) as the local authority consider has a sufficient interest in the child's welfare to warrant that person's representation being considered by the authority. Regulation 13 requires the local authority to decide whether the complainant has such sufficient interest and to notify that decision to the complainant and to the child if appropriate.

Regulation 16 establishes the procedure for formal consideration of the representations where there has been no local resolution achieved under regulation 15. The procedure under regulation 16 must involve an independent person appointed under regulation 17; the procedure under regulation 15 need not involve the independent person.

Regulation 18 sets out requirements in relation to the response to be sent by the local authority including as to the complainant's right to request further consideration of the representations by an independent panel under the procedure established under section 26ZB of the Act.

Regulation 19 sets out how local authorities are to monitor the arrangements they have made with a view to ensuring that they comply with the Regulations.

2005 No. (W.)

SOCIAL CARE, WALES

**CHILDREN AND YOUNG
PERSONS, WALES**

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

Made 2005

Coming into force 1 April
2006

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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” means the Children Act 1989;

“the 2002 Act” means the Adoption and Children Act 2002(2);

“the 1991 Regulations” means the Representations Procedure (Children) Regulations 1991(3);

“advocate” means a person who provides assistance under arrangements made by a local authority under section 26A(1) of the Act;

“the Advocacy Services Regulations” 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” 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;

(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.

(4) S.I. 2004/1448 (W.148).

“complaints officer” means the person appointed under regulation 5;

“to consider representations” means to consider representations under the procedure set out in these Regulations;

“disciplinary proceedings” means any procedure for disciplining employees adopted by a local authority;

“independent person” 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” means a county council or county borough council;

“National Assembly” (“Cynulliad Cenedlaethol”) means the National Assembly for Wales;

“representations” means representations under section 24D or section 26 of, or paragraph 6(2) of Schedule 7 to, the Act;

“working day” 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.

⁽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,

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⁽⁶⁾ 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.

(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.

⁽⁶⁾ 2000 c.14.

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.

Local Resolution

15.—(1) The local authority must take all reasonable steps to resolve the representations as soon as is reasonably practicable and subject to paragraphs (2) and (4), within 10 working days beginning —

- (a) in the case of representations falling within section 26(3)(e), on the date on which the local authority decide the complainant has a sufficient interest to warrant the representations being considered;
- (b) in any other case, on the date on which the representations were received by the local authority.

- (2) The period referred to in paragraph (1) may be extended upon request by the complainant or with the complainant's agreement by up to a further 10 working days.

- (3) The procedure followed by the local authority in trying to resolve matters under paragraph (1) need not involve an independent person.

- (4) Where a complainant has requested an advocate the local authority may extend the period specified in paragraph (1) by up to a further 10 working days to enable an advocate to be appointed provided that —

- (a) the local authority notify the complainant of the extension;
- (b) the local authority notify the complainant of —
 - (i) the steps taken to date to arrange an advocate;

- (ii) the complainant's right to have the representations considered without involvement of an advocate.
- (5) For the purposes of paragraph (1), the local authority may in any case where it would be 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 representation.
- (6) Where the representation is resolved under paragraph (1), the local authority must confirm in writing to the complainant the agreed resolution.
- (7) Where the representations have not been resolved within 20 working days, the local authority must, as soon as practicable, notify the complainant in writing of:
 - (a) the complainant's right to request that the representations be formally considered;
 - (b) the procedure for requesting such further consideration; and
 - (c) the date by which such a request must be made having regard to the provisions of paragraph (8).
- (8) The complainant may request orally or in writing that the representations be formally considered under regulation 16 at any time within 30 working days of the date on which the representations were first made.

Formal Consideration

16.—(1) Where the complainant has requested formal consideration of the representations, subject to regulations 8, 9 and 10, the local authority must investigate the representations to the extent necessary and in the manner which appears to the authority most appropriate to resolve the representations speedily and efficiently.

- (2) The local authority must compile a formal written record of the representations as soon as is reasonably practicable and send it to the complainant with an invitation to the complainant to comment on its accuracy.
- (3) The local authority must consider any comments made by the complainant under paragraph (2) and in the light of those comments make any amendments to the record which are necessary to ensure it is,

in the opinion of the authority, an accurate record of the representations.

(4) Except where arrangements have been made under regulation 15(5) the local authority may in any case where it would be 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 representations.

(5) The local authority must —

- (a) explain to the complainant how the representations will be investigated; and
- (b) send a copy of the representations to any person who is the subject of the representations unless —
 - (i) this has already been done; or
 - (ii) notification at that time would prejudice the consideration of the representations.

(6) The local authority may —

- (a) invite the complainant and any other person whom the authority considers may be able to assist with the resolution of the representations to be interviewed; and
- (b) take such advice as appears to the complaints officer to be required.

(7) Where any person is interviewed in accordance with paragraph 6(a) the local authority must —

- (a) send a copy of the draft record of the interview to the person interviewed;
- (b) invite that person to comment on the accuracy of the draft record;
- (c) consider any comments made by the person; and
- (d) in the light of those comments make any amendments to the record which, in the opinion of the authority, are necessary to ensure that the record is accurate.

(8) The local authority must take all reasonable steps to keep the complainant informed about the progress of its formal consideration of the representations.

Appointment of independent person

17.—(1) The arrangements made under regulation 16 must include the appointment of an independent person.

- (2) The independent person shall take part in any consideration of the representations by the local authority under regulation 16.
- (3) The independent person shall take part in any discussions which are held by the local authority about the action to be taken in light of their findings in relation to the representations and conclusions they draw from them.

Response

18. —(1) The local authority must prepare a written response to the representations which —

- (a) summarises the nature and substance of the representations;
- (b) describes the investigation under regulation 16 and summarises the conclusions;
- (c) explains what action will be taken to resolve the representations,
- (d) where appropriate, contains an apology to the complainant; and
- (e) identifies what other action, if any will be taken in the light of the representations.

(2) Subject to paragraph (3) and to regulation 13, the response must be sent to the complainant within 25 working days beginning on the date on which the local authority received the request from the complainant for formal consideration.

(3) If, in the case of —

- (a) any representations where there has been difficulty in the determination of their nature or substance;
- (b) representations which have been treated as subject to concurrent consideration under regulation 8; or
- (c) any other representations where the complainant has agreed to a later response,

it is not possible for the response to be sent within 25 working days the local authority must notify the complainant of the reason for the delay, the date by which it expects to send the response and must send that response as soon as reasonably practicable.

(4) The response must include information about —

- (a) the complainant's right to request that the representations be further considered by an independent panel in accordance with provisions

in regulations made by the National Assembly under section 26ZB of the Act;

(b) the procedure for requesting such further consideration; and

(c) the time within which such request must be made.

(5) Copies of the response prepared in accordance with paragraph (1) must be sent to —

(a) the complainant's advocate;

(b) the independent person appointed under regulation 17;

(c) any person who was the subject of the representations;

(d) where the representations are care standards representations mentioned in regulation 10, to the person registered under the Care Standards Act 2000 or Children Act 1989 as provider in respect of the establishment or agency.

PART V

LEARNING FROM REPRESENTATIONS

Monitoring the operation of the representations procedure

19. Each local authority must monitor the arrangements that they have made with a view to ensuring that the local authority complies with these Regulations by keeping a record of each representation received, the outcome of each representation, and whether there was compliance with the time limits specified in regulations 15 and 18.

Annual Report

20.—(1) Each local authority must prepare an annual report on their performance in handling and consideration of representations for the purposes of —

(a) monitoring compliance with these Regulations, and

(b) improving the handling and consideration of representations.

(2) The first report referred to in paragraph (1) must be compiled within 12 months of the date of the coming into force of these Regulations.

PART VI

TRANSITIONAL PROVISIONS AND REVOCATION

Transitional Provisions and Savings

21.—(1) Where the consideration of representations in accordance with the 1991 Regulations has not been concluded at the time that these Regulations come into force then the following paragraphs will apply to the procedure.

- (2) Subject to paragraphs (3) and (4) the representations will be considered in accordance with the 1991 Regulations the relevant provisions of which have been saved only for that purpose.
- (3) If, in accordance with regulation 8(2) of the 1991 Regulations the complainant has given notice to the local authority of his or her wish that the matter be referred to a panel but no panel has been appointed in accordance with that regulation, then the local authority must treat the complainant's notice as a request for the further consideration of the representations in accordance with provisions in regulations made by the National Assembly under section 26ZB of the Act.
- (4) If the local authority have given notice in accordance with regulation 8(1) of the 1991 Regulations and the complainant has not given notice to the local authority of his or her wish that the matter be referred to a panel and the time for giving such notice has not expired then any notice that the complainant does give in accordance with regulation 8(2) must be or must be treated as being a request for the further consideration of the representations in accordance with provisions in regulations made by the National Assembly under section 26ZB of the Act.

Revocation

22.—(1) The Representations Procedure (Children) Regulations 1991⁽⁷⁾ are revoked save to the extent necessary for the purposes of regulation 21.

- (2) Regulation 4(2) of the Advocacy Services and Representations Procedure (Children) (Wales) Regulations 2004⁽⁸⁾ is revoked.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽⁹⁾.

Date

⁽⁷⁾ S.I. 1991/894.

⁽⁸⁾ S.I. 2004/1448 (W.148).

⁽⁹⁾ 1998 c.38.

The Presiding Officer of the National Assembly

DRAFT

To: Business Committee
From: Dr Brian Gibbons AM
Minister for Health and Social Services

EXPLANATORY MEMORANDUM

THE REPRESENTATIONS PROCEDURE (CHILDREN) (WALES) REGULATIONS 2005

Summary

These Regulations, together with a matching set on services for adults (The Social Services Complaints Procedure (Wales) Regulations 2005) and the associated guidance, will have the effect of putting into place a new framework for handling complaints in local authority social services.

This Memorandum is submitted to the Assembly's Business Committee in connection with The Representations Procedure (Children) (Wales) Regulations 2005, in accordance with standing Order 24.6.

1. A copy of the draft Instrument is submitted with this Memorandum.

Enabling Powers

2. The power enabling these Regulations to be made are contained in section 26 of the Children Act 1989. This power has been transferred to the National Assembly for Wales and delegated to my portfolio as Minister for Health and Social Services.

Background

3. The immediate background to the development of these Regulations is the new powers for the Assembly in the Adoption and Children Act 2002 and the Health and Social Care (Community Health and Standards) Act 2003. The Assembly's new powers enable it to reform the complaints procedures in local authority social services, which have been in place since 1991.

Effect

4. These Regulations will, with the matching set on services for adults (The Social Services Complaints Procedure (Wales) Regulations 2005) and the associated guidance, have the effect of putting into place a new framework for handling complaints in local authority social services.

5. In summary, the key changes are:

- Overall, the separate children's and community care procedures have been brought more closely together into a common framework. There is a

single volume of guidance covering all complaints about social services. In the Regulations, unnecessary differences have been eliminated wherever possible, although of course the differences required by the two pieces of primary legislation have been retained;

- Both sets of Regulations strengthen the duties on local authorities to operate their complaints procedures in a way which will safeguard and promote the welfare of the service user concerned;
- Both procedures now have the same three-stage process. This has been achieved by introducing into the children's procedure a clear, time limited first stage giving a chance for informal local resolution;
- The scope of the Children Act 1989 procedure has been extended to services under Part IV (care and supervision) and Part V (protection of children) of that Act;
- These Regulations provide arrangements for managing complex situations where there are concurrent investigations by for instance the police, the Care Standards Inspectorate for Wales (CSIW) or the Care Council; and
- The automatic right to take an unresolved complaint to a Panel hearing has been retained and, in perhaps the biggest single change, an independent panel has been introduced. Both the membership of the Panel and the administrative arrangements will be wholly separate from the authority against which the complaint has been made. (While the independent panel arrangements apply to both children and adults, they are - under the provisions of the 2003 Act - set out in the matching regulations on services for adults.)

6. The Regulations and guidance set out new arrangements for links between local authorities and the CSIW and, through the guidance, the same principles have been extended to cover links with other complaints procedures in the NHS, education and other local authority services. Together, these changes will represent a major step towards a seamless complaints service for users of public services in Wales.

Target Implementation

7. It is intended that the proposed Regulations be made on 29 November 2005 and come into force on 1 April 2006. The equivalent Regulations in England are due to come into force on the same day. Therefore, any delay in making would give local authorities less time to prepare for a successful implementation. Further delay in the come into force date would mean that the additional opportunities and safeguards enshrined in the Regulations would be unavailable to users of social services in Wales.

Financial Implications

8. The Regulations will, in line with the Children and Adoption Act 2002, broaden the scope of the complaints procedure and this could give rise to additional local authority expenditure. Any additional costs will be met from

within the resources provided for local authorities within the 'Children First grant' and in the revenue settlement. Additional resources have recently been made available to local authorities to help them develop their advocacy provision, with advocacy involvement in complaints work one of the highest priorities.

9. Otherwise, it is not anticipated that local authorities will need additional resources to meet their duties under the new Regulations and guidance. The overall intention is to secure improvements in practice within existing resources. Local authorities have had duties to establish and operate complaints procedures for children since 1991. They have had duties to publicise the procedures among service users and the public - and they have had duties to train their own staff to use the procedures.

10. Under the new arrangements, authorities will no longer be responsible for operating the third or panel stage of the procedure. Local authorities will be able to re-deploy any modest savings they make to developing the quality of their practice in the two earlier stages.

11. This change creates limited financial implications for the Assembly. The existing Independent Review Secretariat for the NHS will undertake this role on behalf of the Assembly – albeit with a much simpler procedure than the NHS one. This will have a recurrent cost from 2006-07 of £100k for the children's and adults procedures combined. This will pay for the administrative cost of running the panel, as well as 'day fees' for the panel members. This funding will be found from existing budgets and savings made within the Health and Social Care Main Expenditure Group.

Regulatory Appraisal

12. A Regulatory Appraisal has been carried out in relation to this Instrument and is attached.

Consultation

With Stakeholders

13. The draft Regulations – together with the guidance - implement most of the main proposals to come out of the Assembly's wide-ranging consultation on the social services complaints procedures in 2001. The main findings of which were:

- There was "particular support" for the proposal to bring the separate children's and community care procedures into a common three-stage framework;
- There was support for elements of the procedure to be more independent of the authority complained against;
- Respondents generally supported a greater emphasis on local resolution;
- Those who responded wanted stronger guidance on the need to defer or freeze decisions while complaints about them are considered;

- Those who responded wanted better follow-up of the undertakings given by authorities in response to complaints; and
- Respondents wanted to see clearer links between social services procedures and other processes in, for example, health, education and housing.

14. The present draft Regulations and the associated guidance were developed through the work of a Complaints and Representations Advisory and Implementation Group (CRAIG). This brought together a range of key interests to consider the policy options, the drafting instructions for the Regulations and the draft guidance.

15. There has been extensive consultation, over the last 18 months, with children and other service users, local authority complaint officers and advocacy providers on how we can improve the arrangements for handling complaints and move towards a more seamless response across different services. Extensive work with children and young people was completed during 2004-05 and informed the development of the draft Regulations and guidance.

16. In addition, a public consultation was carried out on the draft Regulations, draft Regulatory Appraisal and draft guidance between 16 May 2005 and 5 August 2005. 52 responses were received from relevant organisations, including bodies representing services users, local authorities and local health boards and Public Services Ombudsman, the Children's Commissioner and the Care Council. (A list of consultees is attached as Annex 1 to the Regulatory Appraisal.) While a number of helpful suggestions were made, especially for the guidance, there was overwhelming endorsement for most of the Welsh Assembly Government's proposals for the Regulations. Just one proposal was rejected - a suggestion that the Regulations should be amended to require all complaints officers to have a social work qualification. Respondents felt that in selecting the best people to be complaints officers, local authority should be able to draw on a wider pool than social workers.

17. In the light of the consultations, a number of amendments were made to the consultation drafts of the two sets of Regulations. These amendments will:

- adjust some of the time-scales for individual stages of the procedure;
- strengthen the requirements on authorities to keep complainants informed about their rights under the procedures;
- strengthen the requirements on authorities to keep complainants informed about the progress of their complaint; and
- make provision for cases where the Care Council may also be investigating the matter raised in a complaint.

With Subject Committee

18. These Regulations were notified to the Health and Social Services Committee via the list of forthcoming legislation on 25 May 2005 (HSS(2)-07-

07 Paper 1) and were identified for detailed scrutiny. This took place on 5 October 2005.

19. (to be completed after 5 October)

Recommended procedure

20. Subject to the views of the Business Committee, I recommend that these Regulations proceed to Plenary under the Accelerated procedure.

Compliance

21. The proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121);
- be compatible with Community law (section 106);
- be compatible with the Assembly's human rights obligations (section 107);
- be compatible with any international obligations binding the UK Government and the Assembly (section 108).

22. This Memorandum has been cleared by the Directorate of Legal Services and by the Assembly Compliance Officer.

23. Drafting lawyer: Joy Seculer (ext. 5895)

24. Head of Directorate: Mike Shanahan (ext. 3060)

25. Policy Lead: Colin Vyvyan (ext. 3259)

**BRIAN GIBBONS AM
MINISTER FOR HEALTH AND SOCIAL SERVICES**

SEPTEMBER 2005

REGULATORY APPRAISAL

THE REPRESENTATIONS PROCEDURE (CHILDREN) (WALES) REGULATIONS 2005

Background

1. There are currently two separate procedures for handling local authority social services complaints:

- **Children Act representations and complaints procedure:** There is one procedure for representations, including complaints, about social services actions under Part III of the Children Act 1989. This is set out in the Representations Procedure (Children) Regulations 1991 and guidance; and
- **The Local Authority Social Services Act (LASS Act) complaints procedure:** The NHS and Community Care Act 1990 introduced a second complaints procedure. This covers all complaints about social services for adults and children's services apart from those under Part III of the Children Act 1989. The requirements are set out in the Complaints Procedure Directions 1990 and guidance.

2. In 2001, the Assembly consulted widely on complaints and representations procedures under the title "Listening to People". This proposed that the community care and children's services complaints procedures should be brought together to form a single complaints and representations procedure for social services. The respondents to the consultation gave "particular support" to this proposal - but the Assembly has had to wait on primary legislation for powers to regulate across social services complaints procedures as a whole.

3. The Assembly has powers under the Children Act 1989 to regulate on the handling of complaints in social services for children. The Adoption and Children Act 2002 and the Health and Social Care (Community Health and Standards) Act 2003 amended these powers and gave the Assembly the opportunity to overhaul the arrangements last revised in 1991.

Purpose and intended effect of the measure

4. These draft Regulations use the Assembly's new powers in the two Acts to reform the complaints arrangements set out in 1991. The main changes are:

- Overall, these Regulations bring the separate children's and community care procedures more closely together into a common framework. There is now one body of guidance, although on legal advice, there are still separate sets of Regulations for children and adults. The two sets of Regulations (these and The Social Services Complaints Procedure (Wales) Regulations 2005) mirror each other as closely as is possible, while retaining differences required by the primary legislation;

- Both sets of Regulations strengthen the duties on local authorities to operate their complaints procedures in a way which will safeguard and promote the welfare of the service user concerned;
- Both procedures now have the same three-stage procedure. This has been achieved by introducing into the children's procedure a clear, time limited first stage giving a chance for local resolution;
- The Regulations put all of the time-scales for handling complaints on a statutory footing. They require authorities to keep complainants informed about progress with their complaint;
- The scope of the Children Act 1989 procedure has been extended to services under Part IV (care and supervision) and Part V (protection of children) of that Act;
- The Regulations provide arrangements for managing complex situations where there are concurrent investigations by for instance the police, the Care Standards Inspectorate for Wales (CSIW) or the Care Council; and
- In perhaps the biggest single change, the Regulations introduce an independent stage where local consideration has failed to secure resolution of the matter. Under the old arrangements, the local authority convened a panel hearing with, typically, one of the three members being independent. Under the new arrangements, complainants will still have the same right to a panel hearing – but both the membership and the convening arrangements will be wholly separate from the complained against authority.

5. The Regulations and guidance set out new arrangements for links between local authorities and the CSIW and, through the guidance, the same principles have been extended to cover links with other complaints procedures in the NHS, education and other local authority services. Together, these changes will represent a major step towards a seamless complaints service for users of public services in Wales.

Risk Assessment

6. Recent research commissioned by the Assembly, the response to the 2001 consultation and representations from service users have suggested a number of problems with the present regime:

- People who use services see the arrangements as too complicated;
- Authorities have not always dealt with complaints promptly and sympathetically;
- Authorities have not always met the requirements on time-scales;
- Authorities have not always kept complainants informed about the handling of their complaint;
- The separate arrangements for children and adults have created confusion;

- There has been no framework for handling complaints that involve both social services and the NHS;
- The lack of any independent stage to the procedure has undermined confidence among some service users, especially children and young people; and
- And a small - but growing – number of people have felt the need to take their concerns to the Public Service Ombudsman for Wales and to the Children’s Commissioner.

Options

7. There are three options:

- Option 1: Do Nothing;
- Option 2: Wait for the planned NHS Regulations currently on hold; and
- Option 3: Make the Legislation

Option 1: Do Nothing

8. This would mean that the present arrangements would continue – with all of the risks and shortcomings outlined in paragraph 6. In particular, the vulnerable people children and young people who rely on social services would still have no access to an independent panel hearing when the local authority’s handling of the complaint has failed to resolve the issue.

Option 2: Wait for the planned NHS Regulations currently on hold

9. This would mean that the health and social services Regulations could be considered together, as originally planned. However, the issues for the two services are rather different. While the Assembly overhauled the NHS complaints arrangements in April 2003, the social services arrangements are still in the form in which they were first introduced for England and Wales in the early 1990’s. The Assembly held its own major consultation on social services complaints in 2001 and has waited on Westminster legislation in 2002 and 2003 for the powers to make the changes proposed then. The Shipman recommendations – which have delayed the NHS Regulations - do not have a direct bearing on the social services arrangements. And it will still be possible to build more of a seamless service across the NHS and local authorities by through guidance. There is little justification for delay on these grounds.

Option 3: Make the Legislation

10. The Assembly has an opportunity through recently acquired powers to reform complaints arrangements in social services. Making the legislation now means that the reforms in Wales can come into force at the same time as the matching reforms in England.

Benefits

11. The main beneficiaries of the new framework will be the children and young people who use social services. It will also benefit the family members and advocates who might need to pursue complaints on their behalf.

- The Regulations create unified and more coherent arrangements;

- The Regulations create duties on authorities to place the well being of the person using the service at the heart of their work on handling complaints;
- The Regulations put the time-scales for handling complaints on a statutory footing;
- They place duties on authorities to keep complainants informed about the handling of their complaint;
- They provide arrangements for managing situations where for instance the police, the CSIW or the Care Council are also investigating the matters raised in the complaint;
- Most importantly, the Regulations give children and young people who use service the opportunity to have an independent review of their concerns when the local authority's handling of the complaint has failed to resolve the issue; and
- If implemented successfully, the new framework should mean that fewer people with concerns about social services would feel the need to take their concerns to the Public Service Ombudsman for Wales or the Children's Commissioner.

12. The Regulations and guidance will also be of benefit to local authorities and their staff. It will give them a single, comprehensive framework of Regulations and guidance on complaints for the first time.

Costs

13. The Regulations will, in line with the Children and Adoption Act 2002, broaden the scope of the complaints procedure and could give rise to additional local authority expenditure. Any additional costs that local authorities might incur as a result of the Representations Procedure (Children) (Wales) Regulations will be met from within the resources provided for local authorities within the 'Children First grant' and in the revenue settlement.

14. These changes apart, it is not anticipated that local authorities will need additional resources to meet their duties under the new regulations and guidance. The overall intention is to secure improvements in practice within existing resources. Local authorities have had statutory duties to establish and operate complaints procedures since 1991. They have had duties since then to publicise the procedures among service users and the public. And they have had duties to train their own staff to use the procedures properly.

15. Under the new arrangements, authorities will no longer be responsible for operating the third or panel stage of the procedure. Local authorities will be able to re-deploy any modest savings they make at this stage to developing the quality of their practice in the two earlier stages.

16. This change creates limited financial implications for the Assembly, which will have responsibility under the Regulations for running the new independent panel stage. The Assembly has concluded an agreement with the NHS Business Services Centre that the role will be performed on its behalf by the existing Independent Review Secretariat for the NHS – albeit with a radically simpler procedure than the NHS one. This will have a recurrent cost from 2006-07 of £100k for the children's and adults procedures combined. This will

pay for the administrative costs of running the panel, as well as 'day fees' for the panel members. These sums will be found within the Assembly's social care baselines.

Consultation

With Stakeholders

17. The draft Regulations – together with the guidance - implement most of the main proposals to come out of the Assembly's wide-ranging consultation on complaints in 2001. The main findings of which were:

- There was "particular support" for the proposal to bring the two separate procedures into a common three-stage framework;
- There was support for at least part of the procedure to be more independent of the authority complained against;
- Respondents generally supported a greater emphasis on local resolution;
- Those who responded wanted stronger guidance on the need to defer or freeze decisions while complaints about them are considered;
- Those who responded wanted better follow-up of the undertakings given by authorities in response to complaints; and
- Respondents wanted to see clearer links between social services procedures and other processes in, for example, health, education and housing.

18. The present draft Regulations and the associated guidance with the help of a Complaints and Representations Advisory and Implementation Group (CRAIG). This brought together a range of key interests to consider the main policy options, the drafting instructions for the Regulations and the draft guidance.

19. There has been extensive consultation, over the last 18 months, with children and other service users, local authority complaints officers and advocacy providers on how we can improve the arrangements for handling complaints and move towards a more seamless response across different services. Extensive work with children and young people was completed during 2004-05 and has informed the development of the draft Regulations and guidance on complaints under the 1989 Act.

20. In addition, a public consultation was carried out on the draft Regulations, draft Regulatory Appraisal and draft guidance between 16 May 2005 and 5 August 2005. 52 responses were received from relevant organisations, including bodies representing services users, local authorities and local health boards and Public Services Ombudsman, the Children's Commissioner and the Care Council. (A list of consultees is attached at Annex 1.) While a number of helpful suggestions were made, there was overwhelming endorsement for most of the Assembly Government's proposals. Just one proposal was rejected - a suggestion that the regulations should be amended to require all complaints officers to have a social work qualification. Respondents felt that in selecting the best people to be complaints officers, local authority should be able to draw on a wider pool than social workers.

21. In the light of the consultations, a number of amendments were made to the consultation drafts of both sets of Regulations. These amendments will:

- adjust some of the time-scales for individual stages of the procedure;
- strengthen the requirements on authorities to keep complainants informed about their rights under the procedures;
- strengthen the requirements on authorities to keep complainants informed about the progress of their complaint; and
- make provision for cases where the Care Council may also be investigating the matter raised in a complaint.

With Subject Committee

22. These Regulations were notified to the Health and Social Services Committee via the list of forthcoming legislation on 25 May 2005 and were identified for detailed scrutiny provided the legislative timetable allowed. This took place on 5 October 2005.

23. (to be completed after 5 October)

Review

24. The impact of the Regulations will be monitored systematically. The Regulations require each authority to produce an annual report on its work with complaints. The guidance associated with the Regulations (currently in preparation) specifies the scope of the report and it should include - at minimum - data on:

- the numbers of complaints resolved at each stage - local resolution, formal consideration and independent review panel;
- adherence to time-scales;
- who made the complaints;
- what they were about;
- how they were resolved; and
- confirmation that promises made as part of the resolution have been kept.

25. The 22 annual reports should provide a good basis for compiling a clear picture of performance across Wales.

26. The independent panel hearings will create new opportunities to look at how well the local arrangements are working.

27. The SSIW will be including new indicators of the handling of complaints within the developing framework for Performance Management. Beyond this, it would open to the Assembly to ask SSIW to inspect the handling of complaints. This could be done either as one of its regular thematic inspections - or as a one-off investigation if there was a local cause for concern.

Summary

28. Recent legislation has given the Assembly an important opportunity to overhaul the arrangements for handling complaints about social services. The present procedures have been in place since 1991.

29. The proposed Regulations will benefit people who use social services in Wales. They will bring together the separate arrangements for services to children and adults into a single framework. Most importantly, they will give children and young people who use services the chance to take their concerns to an independent panel hearing where the local authority's handling of the complaint has failed to resolve the issue. The costs involved will be very modest.

30. The Department for Education and Skills plans to commence its matching Regulations on representations in children's services in England on 1 April 2006.

Health and Social Care Department

September 2005

**COMPLAINTS AND REPRESENTATIONS PROCEDURES IN LOCAL
AUTHORITY SOCIAL SERVICES: LIST OF RESPONDENTS TO THE
CONSULTATION HELD MAY TO AUGUST 2005**

Local Authorities

Blaenau Gwent County Borough Council
Bridgend County Borough Council
City & County of Cardiff
Carmarthenshire County Council
Ceredigion County Council
Conway County Borough Council
Denbighshire County Council
Flintshire County Council
Merthyr Tydfil County Borough Council
Monmouthshire County Council
Neath Port Talbot County Borough Council
Newport City Council
Pembrokeshire County Council
Powys County Council (2)
Rhondda Cynon Taff County Borough Council (2)
City & County of Swansea
Torfaen County Borough Council
Wrexham County Borough Council
Cyngor Sir Ynys Môn

Organisations representing service users and other voluntary bodies

Age Concern Cymru
All Wales People First
Barnardos Cymru
Cartrefi Cymru
Crossroads Wales
CWMPAS
Mencap Cymru
Mind Cymru
NCH and NCH Cymru
NSPCC
Parkinson's Disease Society of the UK
TGWU Retired Members Association
Torfaen Voluntary Alliance
Vale of Glamorgan Older People's Forum

Continued

NHS bodies

Board of Community Health Councils in Wales
Bridgend Local Health Board
Cardiff Local Health Board
Conway and Denbighshire NHS Trust
Neath Port Talbot Community Health Council
Neath Port Talbot Local Health Board
North Glamorgan NHS Trust

Other bodies and individuals

All Wales Complaints Officer Group
Association of Directors of Social Services Cymru
Cardiff University – School of Social Science
Care Council for Wales
Children's Commissioner for Wales
An Independent Chair within the existing complaints procedure
An Independent Person within the existing complaints procedure
An Independent Person within the existing complaints procedure
Public Services Ombudsman for Wales