

2009 No. 1107

DEFENCE

**The Armed Forces (Protection of Children of Service Families)
Regulations 2009**

<i>Made</i> - - - -	<i>24th April 2009</i>
<i>Laid before Parliament</i>	<i>1st May 2009</i>
<i>Coming into force</i> - -	<i>31st October 2009</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by sections 17(3) and (6), 18(7), 19(6), 20(11) and 22(5), (5A) and (6) of the Armed Forces Act 1991(a).

PART 1

General Provisions

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Armed Forces (Protection of Children of Service Families) Regulations 2009 and shall come into force on 31st October 2009.

(2) In these Regulations—

“court administration officer” means the court administration officer appointed under section 363 of the Armed Forces Act 2006(b);

“representations” means written and oral representations;

“the Act” means the Armed Forces Act 1991, and all references to sections are references to sections of the Act unless otherwise stated;

“the 1996 Regulations” means the Armed Forces (Protection of Children of Service Families) Regulations 1996(c).

Revocation of regulations

2. The 1996 Regulations are revoked.

(a) 1991 c. 62; Part 3 was amended by the Armed Forces Act 2006 (c.52), section 353 and Schedule 13
(b) 2006 c. 52
(c) S.I. 1996/1174

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

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

- (a) a registered social worker qualified to practise in child protection; and
- (b) a registered medical practitioner.

(2) In paragraph (1) “registered social worker” has the meaning given by section 257(3) of the Armed Forces Act 2006, and “registered medical practitioner” means a person registered as a medical practitioner under the Medical Act 1983(a).

Making assessment orders

4.—(1) An application for an assessment order shall be made in writing and shall specify the grounds on which it is made, the name of the child with respect to whom the application is made and the address at which the child is residing or staying for the purposes of section 17(1).

(2) On receipt of an application for an assessment order, the court administration officer shall—

- (a) set a date, time and place for a hearing of the application by a judge advocate, and
- (b) give the applicant notice in writing of the date, time and place of the hearing,

allowing reasonable time for the applicant to comply with the requirements of paragraph (3).

(3) An applicant for an assessment order shall take such steps as are reasonably practicable to give the persons listed in section 17(4) not less than seven clear days’ notice in writing of the date, time and place of the hearing.

(4) Before deciding whether or not to make an assessment order, the judge advocate shall consider any representations made by the applicant or by the persons listed in section 17(4).

(5) If the judge advocate adjourns the hearing of an application for an assessment order, he shall—

- (a) set 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 listed in section 17(4) who was not present at the adjourned hearing is notified of the date, time and place set under sub-paragraph (a).

(6) In relation to an application for an assessment order, the judge advocate shall ensure that—

- (a) a written record is made of the substance of the oral representations (if any) made at the hearing of the application by each person listed in section 17(4); and
- (b) notice is given in writing of any decision he makes and the reasons for it, and a copy of the assessment order if he has made one, to the applicant and to the persons who have been given notice of the application in accordance with section 17(4).

(7) In calculating seven clear days’ notice under this regulation, the day of receipt of the notice and the day of the hearing shall be excluded from the calculation.

Variation and discharge of assessment orders

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

(2) A judge advocate shall not vary or discharge an assessment order without first affording an opportunity to make representations to him to such of those persons listed in paragraph (3) as he decides should be afforded that opportunity.

(3) The persons referred to in paragraph (2) are—

- (a) the person who applied for the order;

(a) 1983 c. 54

- (b) the child to whom the order relates;
- (c) his parents;
- (d) any other person who has parental responsibility for him;
- (e) any other person caring for the child or with whom the child was residing immediately before the making of the application;
- (f) any person in whose favour a contact order is in force with respect to the child; and
- (g) any person who is allowed to have contact with the child by virtue of an order—
 - (i) under section 34 of the Children Act 1989^(a) or article 53 of the Children (Northern Ireland) Order 1995^(b); or
 - (ii) under section 88 of the Children (Scotland) Act 1995^(c).

(4) Where a judge advocate varies or discharges an assessment order, he shall ensure that notice is given in writing of his decision, and the reasons for it, and a copy of the assessment order if he has amended it, to the applicant and to those persons to whom he afforded an opportunity to make representations under paragraph (2).

Making protection orders

6.—(1) An application for a protection order shall be made in writing and shall specify the grounds on which it is made, the address at which the child with respect to whom the application is made is residing or staying for the purposes of section 17(1), and sufficient information to enable the child to be identified.

- (2) In relation to an application for a protection order, the judge advocate shall ensure that—
- (a) a written record is made of the substance of the oral representations (if any) made at any hearing before him by each person listed in section 19(4) ; and
 - (b) notice is given in writing of his decision, and the reasons for it, and a copy of the protection order if he has made one, to the applicant and to the persons listed in section 19(4).

Further provision as to protection orders

- 7.—(1) This regulation applies to—
- (a) the variation or revocation of a direction given under section 20(4);
 - (b) the variation under section 22(5A) of an exclusion requirement included in a protection order; and
 - (c) the discharge under section 22(5A) of a protection order so far as it imposes an exclusion requirement.
- (2) A judge advocate may, on the application of any person, vary or revoke a direction given under section 20(4).
- (3) An application for a variation, revocation or discharge referred to in paragraph (1) shall be made in writing and specify the grounds on which it is made.
- (4) A judge advocate shall not make a variation, revocation or discharge referred to in paragraph (1) 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

(a) 1989 c. 41
 (b) S.I. 1995/755 (NI 2)
 (c) 1995 c. 36

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

an opportunity to make representations to him, except where it appears to the judge advocate that in the interests of the child it would be undesirable to do so, or that it would be impracticable, or would cause any unnecessary delay, to communicate with any of those persons.

(5) Where on an application under this regulation a judge advocate varies or revokes a direction given under section 20(4), he shall make a record on the original order accordingly, and he shall ensure that—

- (a) a copy of the order as amended by the variation or revocation, and
- (b) notice in writing of the decision and the reasons for it,

are sent to the persons listed in paragraph (4).

(6) Where a judge advocate varies an exclusion requirement included in a protection order or discharges a protection order so far as it imposes an exclusion requirement, he shall make a record on the original order accordingly, and he shall ensure that—

- (a) a copy of the order as amended or discharged, and
- (b) notice in writing of the decision and the reasons for it,

are sent to the persons listed in paragraph (4) and to the person to whom the exclusion order relates.

Review of protection orders

8.—(1) Before conducting a review under section 22 of a protection order, the judge advocate—

- (a) shall afford the persons listed in regulation 7(4) an opportunity to make representations to him, except where it appears to the judge advocate that it would be undesirable to do so in the interests of the child, or that it would be impracticable, or would cause any unnecessary delay, to communicate with any of those persons; and
- (b) may by written notice require any of those persons to provide him with specified information relating to the protection order.

(2) Following a review of a protection order, the judge advocate carrying out the review shall ensure that notice is given in writing of his decision, and the reasons for it, and a copy of the protection order if he has amended it, to the persons listed in regulation 7(4).

(3) Where the judge advocate carrying out a review gives a direction under section 20(4), or varies or revokes any direction previously given under that subsection, he shall make a record on the original order accordingly, and he shall ensure that a copy of the order as so amended is sent to the persons listed in regulation 7(4).

Discharge of protection orders

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

- (a) where an extension order under section 21(2) 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, the completion of the review; or
- (c) in any other case, the making of the protection order.

(2) An application for the discharge of a protection order shall be made in writing and shall specify the grounds on which it is made.

(3) Subject to paragraph (4), a judge advocate shall not discharge a protection order without first affording the persons listed in regulation 7(4) an opportunity to make representations to him.

(4) The judge advocate shall not be under a duty to afford a person referred to in paragraph (3) an opportunity to make representations to him, where it appears to the judge advocate that—

- (a) in the interests of the child it would be undesirable to do so, or
- (b) it would be impracticable, or would cause unnecessary delay, to communicate with that person,

except that the judge advocate shall always afford the responsible person such an opportunity.

(5) Where a judge advocate discharges a protection order, he shall ensure that notice is given in writing of that decision, and the reasons for it, to the persons listed in regulation 7(4).

Live television link

10.—(1) Any hearing of an application under Part 3 of the Act, or any review of a protection order under section 22, may be conducted by live television link if the judge advocate who is to hear the application or conduct the review so directs.

- (2) A judge advocate may only make a direction under paragraph (1) if he is satisfied—
 - (a) that it is desirable to do so in the interests of the child; or
 - (b) that without a live television link, his consideration of the application or conduct of the review will be delayed or made impracticable.

Retention of records

11.—(1) The Judge Advocate General shall retain assessment orders and protection orders made after the coming into force of these Regulations for the period for which they have effect.

(2) The Judge Advocate General shall retain all records made under these Regulations by a judge advocate, for the period for which the orders in relation to which they were made have effect.

(3) In paragraph (2), “records” includes notes of any decisions made on a review of a protection order, notes of reasons, and any directions given by a judge advocate under section 20(4).

Removal and accommodation of children by service police in an emergency

12.—(1) Subject to paragraphs (2) and (3) below, for the purposes of section 22A(8), “an authorising service police officer” means a service policeman of or above the rank of naval lieutenant, military or marine captain or flight lieutenant who is superior by at least one rank to the relevant service policeman.

(2) Paragraph (3) applies where the relevant service policeman has reasonable cause to believe that a relevant child is likely to suffer significant harm if an authorisation for the purposes of section 22A(1) is not given before the earliest time at which a service policeman who meets the requirements of paragraph (1) will be available.

(3) Where this paragraph applies, “authorising service police officer” means a service policeman who—

- (a) is an officer; and
- (b) is of at least the same rank as the relevant service policeman.

(4) An authorising service police officer shall not authorise a service policeman for the purposes of section 22A(1) unless he has reasonable grounds for believing that if the service policeman does not take action within subsection (1)(a) or (b) of section 22A, a relevant child will be likely to suffer significant harm.

(5) Where an authorising service police officer authorises a service policeman to take action within subsection (1)(a) or (b) of section 22A, he shall record in writing either at the time or as soon as practicable afterwards—

- (a) the time and date of the authorisation;
- (b) the name and rank of the relevant service policeman;

- (c) a summary of the information provided by the relevant service policeman on the basis of which he gave his authorisation; and
- (d) the address at which the child is residing or staying for the purposes of section 17(1), and sufficient information to enable the child to be identified.

(6) For the purposes of this regulation, “relevant service policeman” means the service policeman referred to in section 22A(1).

(7) For the purposes of section 22A(8), “the appropriate service police officer” means the service policeman who is the officer with responsibility for child protection in his unit.

PART 2

Applications and reviews before the coming into force of these Regulations

Applications for assessment orders

13.—(1) Where, before the coming into force of these Regulations—

- (a) an application for an assessment order has been made in accordance with regulation 5(1) of the 1996 Regulations by a person authorised by those Regulations to make it, and
- (b) it has not been decided whether to make an assessment order,

the application is to be treated, subject to paragraphs (2) to (5), as if it were an application made in accordance with regulation 4(1) by a person authorised under regulation 3 to make it.

(2) The applicant shall provide the court administration officer with a copy of the application.

(3) Where an officer has complied with regulation 5(2) of the 1996 Regulations and no hearing of the application under those Regulations has begun before the coming into force of these Regulations—

- (a) regulation 4(2) shall not apply;
- (b) the court administration officer shall—
 - (i) set a date, time and place for a hearing of the application by a judge advocate, allowing reasonable time for the applicant to comply with the requirements of sub-paragraph (c);
 - (ii) give the applicant notice in writing of the date, time and place set, allowing reasonable time for the applicant to comply with the requirements of sub-paragraph (c); and
- (c) the applicant shall take such steps as are reasonably practicable to give the persons listed in section 17(4) not less than seven clear days’ notice in writing of the date, time and place set for the hearing.

(4) Any person whose representations shall under regulation 4(4) be considered shall be entitled—

- (a) to attend the hearing of the application; and
- (b) to be represented at the hearing.

(5) Where the hearing of an application for an assessment order has begun but has not been concluded before the coming into force of these Regulations, regulation 4 shall apply as if receipt by the court administration officer of a copy of the application provided in accordance with paragraph (2) were receipt of an application under regulation 4(1).

(6) Where—

- (a) before the date on which these Regulations come into force, the officer having jurisdiction has decided, in relation to an application for an assessment order, whether to make such an order,

- (b) he has not, before that date, complied with regulation 5(9)(b) of the 1996 Regulations, and
- (c) on that date, any assessment order he has made in respect of that application remains in effect,

he shall ensure that notice is given in writing of his decision and the reasons for it, and a copy of the assessment order if he has made one, to the applicant and to the persons who have been given notice of the application in accordance with section 17(4).

Applications to vary or discharge assessment orders

14.—(1) Where, before the coming into force of these Regulations—

- (a) an application for the variation or discharge of an assessment order has been made in accordance with regulation 6(2) of the 1996 Regulations by a person authorised by section 18(7) to make it, and
- (b) it has not been decided whether to vary or discharge the order,

subject to paragraph (2), the application is to be treated as an application made in accordance with regulation 5(1).

(2) The applicant shall provide the court administration officer with a copy of the application.

Applications for protection orders

15.—(1) Where, before the coming into force of these Regulations—

- (a) an application for a protection order has been made, and
- (b) it has not been decided whether to make a protection order,

subject to paragraphs (2) to (6), the application is to be treated as if it were an application made in accordance with regulation 6(1).

(2) The applicant shall provide the court administration officer with a copy of the application.

(3) If the applicant was a person designated under the 1996 Regulations for the purposes of section 19, he shall be treated as a person designated for that purpose under regulation 3.

(4) Subject to paragraph (5), a judge advocate shall not give a direction under section 20(4) 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.

(5) A judge advocate shall not be required to afford such an opportunity to a person in respect of whom it appears to the judge advocate that—

- (a) it would be undesirable to do so in the interests of the child, or
- (b) it would be impracticable, or would cause unnecessary delay, to communicate with that person.

(6) If, in accordance with paragraphs (4) and (5), a person shall be afforded the opportunity to make representations, he shall be entitled—

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

(7) Where—

- (a) before the date on which these Regulations come into force, the officer having jurisdiction has decided, in relation to an application for a protection order, whether to make such an order,
- (b) he has not, before that date, complied with regulation 7(b) of the 1996 Regulations, and
- (c) on that date, any protection order he has made in respect of that application remains in effect,

he shall ensure that notice is given in writing of his decision and the reasons for it to the applicant and to the persons mentioned in section 19(4).

Applications for the variation or revocation of directions in protection orders

16.—(1) Where, before the coming into force of these Regulations—

- (a) an application for the variation or revocation of a direction given under section 20(4) has been made in accordance with regulation 8(2) of the 1996 Regulations, and
- (b) it has not been decided whether to vary or revoke the direction,

subject to paragraphs (2) and (3), the application is to be treated as an application to which regulation 7(1)(a) applies and which has been made in accordance with regulation 7(3).

(2) The applicant shall provide the court administration officer with a copy of the application.

(3) Any person having the right under regulation 7(4) to make representations shall be entitled—

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

(4) Where —

- (a) before the date on which these Regulations come into force, the officer having jurisdiction has varied or revoked a direction given under section 20(4),
- (b) he has not, before that date, complied with regulation 8(6) of the 1996 Regulations, and
- (c) in a case where he has varied the direction, it remains in effect on that date,

he shall, as soon as is reasonably practicable, give notice in writing of the revocation or, as the case may be, the variation to the persons mentioned in regulation 15(4).

Review of protection orders

17.—(1) Where —

- (a) before the date on which these Regulations come into force, an officer has carried out a review of a protection order,
- (b) he has not, before that date, complied with regulations 9(4) of the 1996 Regulations, and
- (c) on that date, the protection order in relation to which he carried out the review remains in effect,

he shall ensure that he communicates in writing the reasons for any decision he reached on carrying out the review to the persons mentioned in regulation 15(4).

(2) Where—

- (a) on carrying out a review which falls within paragraph (1)(a), the officer has given a direction under section 20(4) of the Act, or has varied or revoked any direction previously given under that subsection,
- (b) he has not, before the date on which these Regulations came into force, complied with regulation 9(5) of the 1996 Regulations, and

(c) on that date, the protection order in relation to which he has carried out the review remains in effect,

he shall make a record of the direction, variation or revocation (as the case may be) on the original order, and a copy of the order as so amended shall be sent to the persons mentioned in regulation 15(4).

24th April 2009

Kevan Jones
Parliamentary Under Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under Part 3 of the Armed Forces Act 1991 (“the Act”), which makes provision for orders for the protection of children of service families outside the United Kingdom.

Regulation 2 revokes the Armed Forces (Protection of Children of Service Families) Regulations 1996.

Regulation 3 lists the persons authorised to apply for an assessment order, and designated for the purposes of section 19 of the Act.

Regulations 4 and 5 set out the procedure for applying for an assessment order and to vary or discharge an assessment order already in place.

Regulation 6 makes provision relating to applications for a protection order. Regulation 7 sets out the procedure for varying and revoking directions under section 20(4) of the Act (which may be given in connection with a protection order) and for varying and discharging exclusion requirements included in protection orders.

Regulation 8 makes provision relating to the review of protection orders. Regulation 9 sets out the procedure for applying for the discharge of a protection order.

Regulation 10 provides that hearings of applications under Part 3 of the Act, and of reviews of protection orders, may be conducted by live television link if the judge advocate so directs. Regulation 11 provides for the retention of orders and records by the Judge Advocate General.

Regulation 12 defines “an authorising service police officer” and “the appropriate service police officer” for the purposes of section 22A of the Act, and makes provision with respect to the authorising of a service policeman to take emergency action within section 22A(1) of the Act.

Regulations 13 to 17 make transitional provision.

© Crown copyright 2009

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2009 No. 1107

DEFENCE

The Armed Forces (Protection of Children of Service Families)
Regulations 2009

£5.50