
WELSH STATUTORY INSTRUMENTS

2004 No. 1448 (W.148)

SOCIAL CARE, WALES
CHILDREN AND YOUNG PERSONS, WALES

The Advocacy Services and Representations
Procedure (Children) (Wales) Regulations 2004

Made - - - - 26 May 2004
Coming into force - - 1 June 2004

The National Assembly for Wales in exercise of the powers conferred upon it by sections 24D(2), 26(5) and (6), 26A(3) and (4) and 104(4) of the Children Act 1989(1) hereby makes the following Regulations:—

Citation, commencement and application

1.—(1) These Regulations may be cited as the Advocacy Services and Representations Procedure (Children) (Wales) Regulations 2004 and come into force on 1 June 2004.

(2) These Regulations apply to Wales only.

Interpretation

2.—(1) In these Regulations —

“the Act” (“*y Ddeddf*”) means the Children Act 1989;

“advocacy services” (“*gwasanaethau eirioli*”) means assistance provided under arrangements made by a local authority under section 26A(1) of the Act;

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

“complainant” (“*achwynydd*”) means a person making representations under section 24D of the Act or a child making representations under section 26 of 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). Section 24D was inserted by section 5 of the Children (Leaving Care) Act 2000 (c. 35), and section 26A was inserted by section 119 of the Adoption and Children Act 2002 (c. 38). By virtue of section 8(7) of the Children (Leaving Care) Act 2000 and section 145(1) of the Adoption and Children Act 2002, the reference to the Act in Schedule 1 to S.I. 1999/672 are to be treated as a reference to the Act as amended by those Acts.

“the Representations Regulations” (“*y Rheoliadau Sylwadau*”) means the Representations Procedure (Children) Regulations 1991(2).

Persons who may not provide assistance

3. A person may not provide assistance under section 26A(1) of the Act to persons who make or intend to make representations under section 24D of the Act or to a child who makes or intends to make representations under section 26 of the Act if that person—

- (a) is or may be the subject of the representations;
- (b) is responsible for the management of a person who is or may be the subject of the representations;
- (c) manages the service which is or may be the subject of the representations;
- (d) has control over the resources allocated to the service which is or may be the subject of the representations;
- (e) is or may become involved in the consideration of the representations on behalf of the local authority.

Information to be provided to a complainant etc.

4.—(1) Where a local authority becomes aware that a person or child intends to make representations under section 24D of the Act or, as the case may be, section 26 of the Act it must—

- (a) provide that person or that child with information about advocacy services; and
 - (b) offer that person or that child help in obtaining an advocate.
- (2) Where a local authority receives representations from a complainant it must—
- (a) provide the complainant with information about advocacy services; and
 - (b) offer the complainant help in obtaining an advocate.

Monitoring of compliance with the Regulations

5.—(1) Every local authority must monitor the arrangements that it has made with a view to ensuring that it complies with these Regulations by keeping a record of the following—

- (a) each case considered by the local authority in which the complainant used an advocate; and
- (b) what organisation (if any) the advocate came from; and
- (c) the complainant’s views (if any) of the assistance provided by the advocate.

(2) For the purposes of such monitoring, each local authority must, at least once in every period of twelve months, compile a report on the operation in that period of the procedure set out in these Regulations.

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

Amendment of the Representations Regulations

6.—(1) The Representations Regulations are amended in accordance with the following provisions of this regulation.

- (2) In regulation 2(1) (interpretation) after the definition of “representations” insert—

““section 26A advocate” means a person who is appointed to provide assistance to the complainant under arrangements made by a local authority under section 26A(1) of the Act.”.

(3) In regulation 4 (preliminaries), in paragraphs (2) and (2A) after the word “ complainant” insert “and any section 26A advocate”.

(4) In regulation 7 (withdrawal of representations) after the word “them” insert “or any section 26A advocate acting on behalf of that person”.

(5) In regulation 8(notification to complainant and reference to panel)—

(a) in paragraph (1)(a) after the word “complainant” insert “and any section 26A advocate”;

(b) in paragraph (2) after the word “complainant” insert “, or any section 26A advocate on behalf of that person”;

(c) in paragraph (5)(a) after the word “complainant” insert “(or any section 26A advocate on behalf of that person)”; and

(d) in paragraph (6) after the word “meeting” in the second place where it occurs insert “by any section 26A advocate or” and after the word “nominate” insert “the section 26A advocate or”.

(6) In regulation 9(2)(b) (recommendations) after the word “complainant” insert “and any section 26A advocate”.

Transitional provisions

7.—(1) Where at the time these Regulations come into force a complainant has made representations to the local authority and the procedure for considering the representations has not come to an end, then the local authority must provide the complainant with the information and assistance which the local authority is required to provide under regulation 4.

(2) For the purpose of paragraph (1) the procedure for considering the representations is to be treated as having come to an end once the panel has considered the representations in accordance with regulation 8 of the Representations Regulations even if the panel has not made a recommendation in accordance with regulation 9 of the Representations Regulations.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(3)

26 May 2004

D. Elis-Thomas
The Presiding Officer of the National Assembly

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Adoption and Children Act 2002 imposes a duty on local authorities to provide advocacy services for certain categories of complainant under the Children Act 1989 representations procedure. It inserts into the Children Act 1989 a new section i.e. section 26A which requires local authorities to make arrangements for the provision of assistance, including assistance by way of representation, to care leavers and children who make or intend to make representations using the procedures under sections 24D and 26(3) of the Children Act 1989.

These Regulations specify who may not provide assistance under these arrangements for a care leaver or a child making or intending to make such representations (regulation 3).

These Regulations also require local authorities to provide information about advocacy services and to offer help in finding an advocate to a child or young person who is making representations or, when they become aware of the fact, who is intending to make representations (regulation 4).

Regulation 5 requires local authorities to monitor the steps that they have taken with a view to ensuring that they comply with the Regulations.

Regulation 6 amends the regulations governing the representations procedure — the Representations Procedure (Children) Regulations 1991 — so as to ensure that an appointed advocate is involved throughout the process.