

2006 No. 1738

CHILDREN AND YOUNG PEOPLE, ENGLAND

**The Children Act 1989 Representations Procedure (England)
Regulations 2006**

<i>Made</i> - - - -	<i>29th June 2006</i>
<i>Laid before Parliament</i>	<i>7th July 2006</i>
<i>Coming into force</i> - -	<i>1st September 2006</i>

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The Secretary of State for Education and Skills, in exercise of the powers conferred by sections 24D(1A), 24D(2), 26(3A), 26(3B), 26(3C), 26(4A), 26(5), 26(5A), 26(6), 26A(3)(b), 59(4), (5) and (6), and 104(4) of, and paragraph 6(2) of Schedule 7 to, the Children Act 1989(a) makes the following Regulations:

PART 1

Introductory

Citation, commencement and application

1.—(1) These Regulations may be cited as the Children Act 1989 Representations Procedure (England) Regulations 2006 and come into force on 1st September 2006.

(2) These Regulations apply to England only.

Interpretation

2. In these Regulations—

“the Act” means the Children Act 1989;

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

(a) 1989 c.41. Section 24D was inserted by section 5 of the Children (Leaving Care) Act 2000 (c.35), and subsection (1A) was inserted by section 117(1) of the Adoption and Children Act 2002 (c.38). Subsections (3A), (3B), (4A) and (5A) of section 26 were inserted by section 117(4), (6) and (7) of the Adoption and Children Act 2002 and subsection (3C) by section 117(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43). Section 26A was inserted by section 119 of the Adoption and Children Act 2002.

(b) 2002 c.38.

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

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

“complainant” means a person making representations to a local authority under section 24D or 26 of the Act;

“independent person” means a person who is neither a member nor an officer of the local authority to which the representations have been made, nor the spouse or civil partner of such a person;

“working day” means a day which is not a Saturday, Sunday, Christmas Day, Boxing Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971(a).

PART 2

Representations – specified functions

Specified functions under Parts 4 and 5 of the Act

3.—(1) For the purposes of section 26(3A)(b) of the Act, the functions under Parts 4 and 5 of the Act listed in paragraph (2) are specified functions.

(2) The functions are—

- (a) functions under section 31(1) (care and supervision orders);
- (b) functions under section 33(3), (4) and (6) to (9) (effect of care order);
- (c) functions under section 34(6) and (8) (parental contact etc. with child in care);
- (d) functions under section 35(1) and (2) (supervision orders);
- (e) functions under section 43(1) (child assessment orders); and
- (f) functions under section 44(1), (10) and (11) (orders for emergency protection of children).

Specified functions under the 2002 Act

4. For the purposes of section 26(3B) of the Act, specified functions under the 2002 Act are—

- (a) the provision of adoption support services as prescribed in regulation 3 of the Adoption Support Services Regulations 2005(b) (for the purposes of this regulation, “the 2005 Regulations”). But the provision of services prescribed in regulation 3(1)(b) of the 2005 Regulations is only a specified function under this regulation in so far as it is to enable groups of adoptive children to discuss matters relating to adoption and in this subparagraph “adoptive child” has the same meaning given in regulation 2 of the 2005 Regulations;
- (b) functions under Parts 4 and 5 of the 2005 Regulations in so far as they relate to the adoption support services referred to in sub-paragraph (a);
- (c) functions under sections 18 to 29 (placement of children by adoption agency for adoption) of the 2002 Act;
- (d) functions under sections 30 to 35 (removal of children who are or may be placed by adoption agencies) of the 2002 Act;
- (e) functions under sections 36 to 40 (removal of children in non-agency cases) of the 2002 Act;

(a) 1971 c.80.

(b) S.I. 2005/691.

- (f) functions under Part 3 (duties of adoption agency where the agency is considering adoption for a child), Part 5 (duties of adoption agency in respect of a proposed placement of child with prospective adopter), Part 6 (placement and reviews), Part 7 (case records) in so far as those functions relate to a child's case record as defined in regulation 12 of the Adoption Agencies Regulations 2005(a), and regulations 46 and 47 (contact) of the Adoption Agencies Regulations 2005;
- (g) functions under regulation 10 (requirements applicable in respect of giving parental responsibility prior to adoption abroad) and Chapter 3 (miscellaneous provisions) of Part 3 (adoptions under the Convention) of the Adoptions with a Foreign Element Regulations 2005(b).

Specified functions under section 14F of the Act

5. For the purposes of section 26(3C) of the Act, specified functions under section 14F of the Act are—

- (a) the provision of special guardianship support services under regulations 3(1)(a), (b)(i) and (c) to (e) of the Special Guardianship Regulations 2005(c); and
- (b) functions under Chapter 2 of Part 2 of the Special Guardianship Regulations 2005 in so far as they relate to the special guardianship support services referred to in sub-paragraph (a).

PART 3

Representations – general

Form of representations

6. Representations may be made in writing or orally.

Withdrawal of representations

7.—(1) Representations may be withdrawn orally or in writing at any time by the complainant or, where one has been appointed, by his advocate.

(2) The local authority must write to the complainant and, where one has been appointed, to his advocate to confirm the withdrawal of the representations.

Representations not to be considered

8.—(1) A local authority shall not consider, or further consider, representations under these Regulations to the extent that the representations concern any matter in relation to which—

- (a) the complainant has stated in writing to the local authority that he is taking, or intends to take, proceedings in any court or tribunal;
- (b) the local authority are taking or proposing to take disciplinary proceedings against any person;
- (c) the local authority have been notified that any person is conducting an investigation in contemplation of criminal proceedings; or
- (d) the local authority have been notified that criminal proceedings are pending,

(a) S.I. 2005/389.
 (b) S.I. 2005/392.
 (c) S.I. 2005/1109.

and the local authority decide that consideration, or further consideration, of the representations under these Regulations would prejudice the conduct of any proceedings or investigation falling under this paragraph.

(2) Any proceedings or investigation falling under paragraph (1) shall be referred to for the purposes of this regulation as a “concurrent consideration”.

(3) Where a local authority decide that they should not consider, or further consider, representations in accordance with paragraph (1) the local authority shall as soon as possible give notice in writing to the complainant explaining the reasons for their decision and specifying the relevant concurrent consideration.

(4) Where the concurrent consideration specified in a notice under paragraph (3) has been discontinued or completed the complainant to whom the notice was given may resubmit to the local authority the representations to which the notice relates and, subject to paragraph (5), the local authority shall consider them in accordance with regulations 9 to 20.

(5) Where a complainant resubmits representations in accordance with paragraph (4) he must do so no later than one year after the concurrent consideration is discontinued or completed and accordingly regulation 9(1) shall not apply.

Time limit on making representations

9.—(1) A complainant must make his representations about a matter no later than one year after the grounds to make the representations arose.

(2) But a local authority may consider any representations which have been made outside the time limit specified in paragraph (1) if, having regard to all the circumstances, they conclude that—

- (a) it would not be reasonable to expect the complainant to have made the representations within the time limit; and
- (b) notwithstanding the time that has passed it is still possible to consider the representations effectively and fairly.

Local authority action – general

10. Every local authority must—

- (a) appoint one of their officers as a complaints manager to assist the authority in the co-ordination of all aspects of their consideration of representations;
- (b) take all reasonable steps to see that everyone involved in the handling and consideration of representations is familiar with the procedure set out in these Regulations; and
- (c) deal expeditiously in the handling and consideration of representations under these Regulations.

Local authority action – on receipt of representations

11.—(1) As soon as possible after having received representations a local authority must—

- (a) provide the complainant with—
 - (i) details of its procedure for considering representations; and
 - (ii) where relevant, information about advocacy services; and
- (b) offer to the complainant—
 - (i) assistance and guidance on following the representations procedure or advice on where he may obtain such assistance and guidance; and
 - (ii) where relevant, help in obtaining an advocate.

Local authority action – where representations made under section 26(3)(e), (3B)(b) or (3C)(c) of the Act

12.—(1) Where a local authority have received representations from a person falling within section 26(3)(e), (3B)(b) or (3C)(c) 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 his representations being considered by them.

(2) In reaching their decision under paragraph (1) the local authority must take into account the views of the child if they consider it appropriate to do so.

(3) If the local authority decide that the person does have sufficient interest then they shall consider the representations.

(4) If they decide that the person does not have sufficient interest then they must notify him of their decision and tell him that no further action will be taken in respect of his representations.

(5) The local authority must tell the child concerned of their decision if they consider it appropriate to do so.

Monitoring of operation of procedure under section 26

13.—(1) Every local authority must monitor the arrangements that they have made with a view to ensuring that they comply with these Regulations in so far as they regulate the procedure for the consideration of representations under section 26 of the Act.

(2) Local authorities must monitor those arrangements by keeping a record of—

- (a) each representation under section 26 received;
- (b) the outcome of each such representation; and
- (c) whether there was compliance with the time limits specified in these Regulations.

(3) For the purposes of such monitoring every local authority must as soon as possible after the end of each financial year compile a report on the operation in that year of the procedure set out in these Regulations.

(4) In this paragraph “financial year” means—

- (a) the period beginning with the 1st September 2006 and ending with 31st March 2007; and
- (b) each successive period of 12 months ending with 31st March.

PART 4

Representations - consideration

Local resolution - consideration

14.—(1) Where a local authority have received representations from a complainant then unless the complainant and the local authority agree that the representations should not be considered in accordance with this regulation, the local authority must consider and try to resolve the representations as soon as is reasonably practicable and in any event within 10 working days of the start date as defined in paragraphs (3) and (4).

(2) The procedure followed by the local authority in considering representations under paragraph (1) need not involve an independent person.

(3) For the purposes of this regulation the “start date” means—

- (a) in the case where representations are received from a person falling within section 26(3)(e), (3B)(b) or (3C)(c) of the Act, the date on which the local authority decide that the person making the representations has a sufficient interest to warrant his representations being considered by them;

- (b) in the case where the complainant has asked for an advocate but as at the date on which the representations were received by the local authority an advocate had not been appointed for him, the date on which an advocate is appointed;
- (c) in any other case, the date on which the representations were received by the local authority.

(4) But the start date may, at the request of the complainant, be a date after that defined in paragraph (3) that the complainant agrees with the local authority.

(5) The local authority may extend the period for considering representations under this regulation by a maximum of 10 working days where they consider the representations to be complex.

Local resolution - conclusion

15.—(1) Where the local authority and the complainant have resolved matters under regulation 14 then the local authority must as soon as possible provide the complainant and, where one has been appointed, his advocate with written details of the terms of the resolution.

(2) Where the local authority and the complainant have not resolved matters under regulation 14 then the complainant or, where one has been appointed, his advocate may request orally or in writing that the representations be considered under regulation 17.

Preparation of written record of representations

16.—(1) This regulation applies where the complainant has made his representations orally and he has—

- (a) agreed with the local authority that his representations should not be considered in accordance with regulation 14; or
- (b) made a request in accordance with regulation 15(2).

(2) Where this regulation applies then the local authority must as soon as possible after reaching an agreement with the complainant or receiving a request from him—

- (a) prepare a written record of the representations;
- (b) invite the complainant's comments on it; and
- (c) amend it as they consider necessary in light of the complainant's comments on its accuracy.

(3) The final written record prepared under paragraph (2) shall be treated for the purposes of the following regulations as the representations.

Investigation of representations

17.—(1) Where—

- (a) the complainant and the local authority have agreed that the representations should not be considered in accordance with regulation 14; or
- (b) the complainant has made a request under regulation 15(2),

then the local authority must consider the representations in accordance with this regulation.

(2) The procedure followed by the local authority in considering representations under paragraph (1) must include the appointment of an independent person.

(3) The local authority must consider the representations under this regulation with the independent person and send notice of their response to the complainant and, where one has been appointed, to his advocate within 25 working days of the start date as defined in paragraphs (4) and (5).

(4) For the purposes of this regulation the “start date” means the date on which—

- (a) the local authority and the complainant agreed in accordance with regulation 14(1) that the representations should not be considered under that regulation; or
- (b) the local authority received the complainant's request under regulation 15(2).

(5) But where the complainant made his representations orally then the "start date" means the date on which the local authority produce the final written record of the representations in accordance with regulation 16.

(6) If the local authority are not able to comply with the time limit provided for in paragraph (3) then they must, before that time limit has passed, tell the complainant in writing—

- (a) the reason for their failure to comply with the time limit; and
- (b) the date, being no later than 65 working days from the start date, by which they will have concluded their consideration and sent notice of their response.

(7) The independent person appointed in accordance with paragraph (2) must take part in any discussions which are held by the local authority about—

- (a) the action that the local authority will take in light of the matters which have been found in the consideration of the representations; and
- (b) the conclusions that the local authority draw from them.

(8) The notice of the local authority's response sent in accordance with paragraph (3) must include information about—

- (a) the complainant's right under regulation 18 to request that the representations be further considered by a panel in accordance with regulation 19; and
- (b) the procedure for making such a request.

Request for review panel

18.—(1) Where the complainant is dissatisfied with the outcome of the investigation of his representations under regulation 17 the complainant or, where one has been appointed, his advocate may request that the representations be further considered by a panel in accordance with regulation 19.

(2) A request under paragraph (1) must be made within 20 working days of the date on which the complainant received the notice of the local authority's response and must set out the reasons for the complainant's dissatisfaction with the outcome of the investigations.

Review panel

19.—(1) Where the local authority have received a request in accordance with regulation 18 they must appoint a panel to consider the representations.

(2) The panel shall consist of three independent persons, one of whom will chair the panel.

(3) The independent person appointed in accordance with regulation 17(2) may not be a member of the panel.

(4) The panel shall meet within 30 working days of the local authority receiving a request in accordance with regulation 18.

(5) At its meeting the panel shall consider—

- (a) any oral or written submissions made by—
 - (i) the complainant or, where one has been appointed, by his advocate on his behalf;
 - (ii) the local authority; and
 - (iii) such other person as the panel consider has sufficient interest in the representations to warrant his submissions being considered by them; and
- (b) any oral or written submissions which the independent person appointed in accordance with regulation 17(2) wishes to make.

(6) If the complainant attends the meeting of the panel he may be accompanied throughout the meeting by his advocate, where one has been appointed, and by another person of his choice, and may nominate the advocate or that other person to speak on his behalf.

Recommendations

20.—(1) After the meeting referred to in regulation 19 the panel shall decide on their recommendations and compile a written report which must set out—

- (a) a brief summary of the representations; and
- (b) the panel’s recommendations for the resolution of the issues raised in the representations.

(2) Within 5 working days of the meeting the panel must send its report to—

- (a) the local authority;
- (b) the complainant and, where one has been appointed, his advocate;
- (c) the independent person appointed under regulation 17(2); and
- (d) any other person whom the panel consider has sufficient interest in the case to warrant their receiving such a notice.

(3) Within 15 working days of receiving the panel’s recommendations the local authority must, together with the independent person appointed under regulation 17(2), consider the recommendations and determine—

- (a) how the authority will respond to them; and
- (b) what they propose to do in the light of them,

and send to the complainant its response and proposals, along with information about making a complaint to a Local Commissioner^(a).

PART 5

Representations to voluntary organisations and about fostering limits

Requirement on voluntary organisations to consider representations

21. Every voluntary organisation who are providing accommodation for a child are required to consider in accordance with regulation 22 any representations (including any complaint) made to them by—

- (a) any child, other than one who is looked after by a local authority, who is being provided with accommodation by them;
- (b) any parent of his;
- (c) any person who is not a parent of his but who has parental responsibility for him; or
- (d) such other person as they consider has a sufficient interest in the child’s welfare to warrant his representations being considered by them.

Procedure for considering representations made to voluntary organisations

22.—(1) Regulations 2, 6 to 12, and 14 to 20 will apply in relation to representations made to voluntary organisations under regulation 21 with the modifications listed in paragraph (2).

(2) The modifications are—

- (a) for any reference in those regulations to “local authority” there is substituted a reference to “voluntary organisation”;
- (b) all references in those regulations to advocates are omitted;

(a) For the powers of the Local Commissioners for England see Part 3 of the Local Government Act 1974 as amended.

- (c) in regulation 2—
 - (i) for the definition of “complainant” there are substituted the words “a person making representations to a voluntary organisation which stand to be considered by them under a procedure established under section 59 of the Act”;
 - (ii) for the definition of “independent person” there are substituted the words—
 - “in relation to representations made to a voluntary organisation a person who is not—
 - (a) an officer of that organisation;
 - (b) engaged in any way in furthering the objects of that organisation; or
 - (c) the spouse or civil partner of a person mentioned in sub-paragraphs (a) or (b)”; and
- (d) in regulations 12 and 14 for the words “section 26(3)(e), (3B)(b) or (3C)(c)” there are substituted the words “regulation 21(d)”.

Consideration of representations under paragraph 6 of Schedule 7 to the Act

23.—(1) Regulations 2, 6 to 11 and 13 to 20 will apply in relation to a local authority’s consideration of representations under paragraph 6(1) of Schedule 7 to the Act (which is concerned with limits on the number of children a person may foster) with the modification set out in paragraph (2).

(2) The modification is that in regulation 2 for the definition of “complainant” there are substituted the words “a person making representations to a local authority which stand to be considered by them under a procedure established under paragraph 6 of Schedule 7 to the Act”.

PART 6

Revocation, transitional provision and amendments

Revocation and transitional provision

24.—(1) The Representations Procedure (Children) Regulations 1991(a) (for the purposes of this regulation, “the 1991 Regulations”) are revoked save to the extent necessary for the purposes of this regulation.

(2) Where, at the time that these Regulations come into force, a local authority are considering representations made under the 1991 Regulations, then the local authority must continue to consider the representations under those Regulations subject to paragraphs (3) and (4) of this regulation.

(3) Where a local authority have given notice in accordance with regulation 3A(1)(c) of the 1991 Regulations the notice shall be treated as if it were a request made by the complainant under regulation 15(2) of these Regulations.

(4) Where in accordance with regulation 8(2) of the 1991 Regulations the complainant or his advocate have given notice to the local authority informing them that the complainant wishes the matter to be referred to a panel, but the local authority have not appointed a panel under that regulation, then the notice shall be treated as if it were a request made under regulation 18 of these Regulations.

(5) Regulation 13 of the Children (Leaving Care) (England) Regulations 2001(b) is revoked.

(6) Regulation 5 of the Children Act (Miscellaneous Amendments) (England) Regulations 2002(c) is revoked.

(a) S.I. 1991/894.
 (b) S.I. 2001/2874.
 (c) S.I. 2002/546.

(7) Regulations 4(1) and 6 of the Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004(a) are revoked.

(8) Regulation 2 of the Adoption and Children (Miscellaneous Amendments) Regulations 2005(b) is revoked.

Amendments

25.—(1) In regulation 15(2)(d) and 24(8) of the Children’s Homes Regulations 2001(c) substitute “The Children Act 1989 Representations Procedure (England) Regulations 2006” for “the Representations Procedure (Children) Regulations 1991”.

(2) In regulation 18(8) of the Fostering Services Regulations 2002(d) substitute “The Children Act 1989 Representations Procedure (England) Regulations 2006” for “the Representations Procedure (Children) Regulations 1991”.

29th June 2006

Parmjit Dhandra
Parliamentary Under Secretary of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace, in relation to England, the Representations Procedure (Children) Regulations 1991 (“the 1991 Regulations”), S.I. 1991/894 and regulate the procedure which local authorities are to follow in the consideration of representations made to them about the discharge of certain functions under the Children Act 1989 (“the Act”) and under the Adoption and Children Act 2002 (“the 2002 Act”). The Regulations specify some of the matters about which a person may make representations using this procedure. They also apply the procedure, with modifications, to representations made to voluntary organisations providing accommodation for children and about fostering limits.

Part 2 is concerned with the subject matter of representations. As well as providing a procedure for making representations about the discharge by a local authority of its functions under Part 3 of the Act, the Regulations provide a procedure for considering representations about specified local authority functions under Parts 4 and 5 of the Act (regulation 3), functions under the 2002 Act (regulation 4), and functions to do with special guardianship support services (regulation 5).

Part 3 makes general provision about representations. Regulation 8 allows a local authority not to consider representations, in whole or in part, if the local authority decide that to do so might prejudice any of the proceedings falling within paragraph (1). By regulation 9 a complainant may make his representations to the local authority no later than one year after the grounds to make the representations arose. But if the representations are made outside that time limit the local authority may still consider them if they think that it would not be reasonable to expect the complainant to have made the representations within a year, and that it is still possible to consider the representations effectively and fairly.

Local authorities have to give complainants information about the representations procedure when they first make representations and they must also give information about advocacy services (regulation 11) where relevant, that is where the complainant is a looked after child or a child in need and so is entitled to an advocate under section 26A of the Act.

(a) S.I. 2004/719.
(b) S.I. 2005/3482.
(c) S.I. 2001/3967.
(d) S.I. 2002/57.

Regulation 12 sets out how local authorities are to deal with representations which are made by persons falling within section 26(3)(e), (3B)(b) or (3C)(c) of the Act. Each of those sections requires local authorities to consider representations from persons whom the local authority consider to have sufficient interest in the child concerned to warrant their representations being considered. Local authorities must decide whether to consider the representations and are required to take into account the views of the child if they think it appropriate to do so.

Part 4 sets out the procedure for considering representations. Unless the complainant and the local authority agree otherwise, the first stage will involve an informal attempt at resolving the problem (regulations 14 and 15). This stage usually begins when the local authority receive the representations, when they decide to consider representations from someone falling within section 26(3)(e), (3B)(b) or (3C)(c) of the Act, or when, in appropriate cases, an advocate has been appointed for a child. The complainant may ask for the start date to be a later date as agreed with the local authority. This stage should be concluded within 10 working days of the start date but that period can be extended where the local authority consider that the representations are complex.

Before going to the second stage, whether the representations have been considered under stage one or not, they must be set down in writing where they have only been made orally. Regulation 16 makes provision for this.

The second stage of the procedure is governed by regulation 17 and involves consideration of the representations with an independent person. The local authority must consider the representations and send a notice of response within time limits set out in paragraphs (3) to (5).

The third stage of the procedure involves consideration of the representations by a panel of three (regulation 19), which can be requested by the complainant or his advocate in accordance with regulation 18. All three members of the panel must be independent. The panel has to make recommendations within 5 working days of considering the representations and the local authority have 15 working days to consider the recommendations and decide what to do (regulation 20).

Part 5 is concerned with representations to voluntary organisations and about fostering limits. Regulation 21 requires voluntary organisations who are providing accommodation for a child to have a procedure (set out in regulation 22) for considering representations made to them by the persons specified in paragraphs (a) to (d).

Under paragraph 6 of Schedule 7 to the Act, every local authority are required to establish a procedure for considering any representations made to them about the discharge of their functions under paragraph 4 of that Schedule which allows a local authority to exempt people from the limit on the number of children they may foster. Regulation 23 sets out the procedure local authorities must follow in carrying out consideration of such representations.

Part 6 revokes the 1991 Regulations saving them only for the purpose of the transitional provisions. These provide that where a representation is being considered under the 1991 Regulations at the time these Regulations come into force then the representation will continue to be considered under the 1991 Regulations. If they can be resolved under that procedure then the matter is concluded; if they cannot and there are further stages for consideration under the 1991 Regulations, then they should be considered under the equivalent stage in the procedure established under these Regulations.

£3.00

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E0882 7/2006 160882T 19585