

CAYMAN ISLANDS



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THE CHILDREN LAW, 2003

**THE REPRESENTATION PROCEDURE (CHILDREN)
REGULATIONS, 2012**

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The Governor in Cabinet, in exercise of the powers conferred by section 29(3) and (4) of and paragraph 6(2) of Schedule 7 to, the Children Law, 2003, hereby makes the following Regulations -

1. These Regulations may be cited as the Representation Procedure (Children) Regulations, 2012. Citation

2. In these Regulations, unless the context otherwise requires- Definitions

“complainant” means a person making representations to the Department under section 29(1) of the Law;

“independent person” means a person who is not an officer of the Department;

“Law” means the Children Law, 2003;

“panel” means the review panel; and

“representations” means representations about the discharge by the Department of its functions.

3. (1) A complainant may make representations to the Department orally or in writing. Form of representations

(2) Where oral representations are made, the Department shall immediately cause them to be recorded in writing and sent to the complainant, who shall be given the opportunity to confirm the accuracy of the representations.

(3) For all other purposes of these Regulations, the written record to which paragraph (2) refers shall be deemed to be the representations.

Time limit on making representations

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

(2) The Department may consider any representations which have been made outside the time limit specified in paragraph (1) if, having regard to all the circumstances, the Department concludes 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.

Representations not to be considered

5. (1) The Department shall not consider, or further consider, representations under these Regulations if the representations concern any matter in which-

- (a) the complainant has stated in writing to the Department that he is taking, or intends to take, proceedings in any court or tribunal;
- (b) the Department is taking or proposing to take disciplinary proceedings against the person whom the complainant has identified in the representations;
- (c) the Department has been notified that an investigation, in contemplation of criminal proceedings, is being conducted against the person whom the complainant has identified in the representation;
- (d) the Department has been notified that criminal proceedings are pending against the person identified in the representations; or
- (e) the Department decides 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 the Department decides that it should not consider, or further consider, representations in accordance with paragraph (1), the Department shall as soon as possible give notice in writing to the complainant explaining the reasons for its 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 Department, the representations to which the notice relates and subject to paragraph (5), the Department shall consider them.

(5) Where a complainant intends to resubmit representations in accordance with paragraph (4) he shall do so no later than one year after the concurrent consideration is discontinued or completed.

6. (1) Where the Department has received representations from a complainant the Department shall consider and try to resolve the representations as soon as is practicable unless the complainant and the Department agree that the representations should not be considered in accordance with regulation 5.

Department action on receipt of representations

(2) On receiving representations, the Department shall-

- (a) appoint one of its officers as a complaints manager to assist the Department in the co-ordination of all aspects of its consideration of representations;
- (b) determine whether the complainant has a sufficient interest in making the representations;
- (c) if it is considered that the complainant does not have a sufficient interest, notify him in writing, and inform him that no further action will be taken;
- (d) take all reasonable steps to ensure that everyone involved in the handling and consideration of representations including independent persons, are familiar with the procedure set out in these Regulations;
- (e) offer to the complainant assistance and guidance on following the representations procedure or advice on where he may obtain such assistance and guidance; and
- (f) deal expeditiously with the handling and consideration of representations under these Regulations.

(3) Where paragraph (2)(b) applies, the date at which the Department concludes that the person has a sufficient interest shall be treated for the purpose of these Regulations as the date of receipt of the representations.

7. (1) Where the Department receives representations under regulation 6, it shall appoint an independent person to take part in the consideration process.

Appointment of independent person and consideration of representations

(2) The independent person shall take part in any discussions which are held by the Department about the action to be taken in relation to the child in the light of the consideration of the representations.

(3) After the Department considers the representations with the independent person, it shall formulate a decision within twenty-eight days of the conclusion of the consideration process.

Notification of decision 8. (1) Where a decision has been formulated, the Department shall as soon as is practicable notify-

- (a) the complainant;
- (b) if different, the person on whose behalf the representations were made, unless the Department consider that he is not of sufficient understanding or it would be likely to cause serious harm to his health or emotional conditions;
- (c) the independent person; and
- (d) any other person whom the Department considers has sufficient interest in the case,

of the proposed result of their consideration of the representations and the complainant's right to have the matter referred to a panel under regulation 10.

(2) If the complainant informs the Department in writing within twenty-eight days of the date on which notice is given under paragraph (1) that he is dissatisfied with the proposed result and wishes the matter to be referred to a panel for consideration of the representations, a panel shall be appointed by the Department for that purpose.

Withdrawal of representations

9. (1) A complainant may withdraw a representation orally or in writing at any stage before conclusion of the consideration process.

(2) The Department shall write to the complainant to confirm the withdrawal of the representations.

Meeting of review panel

10. (1) The panel shall include at least one independent person.

(2) The panel shall meet within twenty-eight days of the receipt by the Department of the complainant's request that the matter be referred to a panel.

(3) At that meeting, the panel shall consider-

- (a) any oral or written submissions that the complainant or the Department wishes to make; and
- (b) if the independent person appointed under regulation 7 is different from the independent person on the panel, any oral or written submissions which the independent person appointed under regulation 7 wishes to make.

(4) If the complainant wishes to attend the meeting of the panel he may be accompanied throughout the meeting by another person of his choice and may nominate that other person to speak on his behalf.

11. (1) When the panel meets under regulation 10, it shall make recommendations and state reasons for such recommendations, in writing, within forty-eight hours of the ending of the meeting. Recommendations of review panel

- (2) The panel shall give notice of its recommendations to-
- (a) the Department;
 - (b) the complainant;
 - (c) the independent person appointed under regulation 7 if different from the independent person on the panel;
 - (d) any other person whom the Department considers has sufficient interest in the case; and
 - (e) the child, if the panel considers it appropriate to do so having regard to his understanding.

(3) The Department, together with the independent person appointed to the panel under regulation 10(1), shall consider what action, if any, should be taken in relation to the child in the light of the representation, and that independent person shall take part in any decisions about such action.

12. (1) The Department shall monitor the arrangements that it has made with a view to ensuring compliance 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 these Regulations. Monitoring of operation and procedure

(2) For the purposes of monitoring, the Department shall, 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) shall be compiled within twelve months of the date of coming into force of these Regulations.

13. These Regulations shall apply to the consideration by the Department of any representations, including any complaint, made to it by any person exempted or seeking to be exempted under paragraph 4 of Schedule 7 to the Law, about the discharge of its functions under that paragraph as if- Application of Regulations to exempt foster parents

- (a) for the definition in regulation 2 of “complainant” there were substituted: “a person exempted or seeking to be exempted under paragraph 4 of Schedule 7 to the Law making any representations;” and
- (b) for the definition in regulation 2 of “representations” there were substituted: “representations referred to in paragraph 6 of Schedule 7 to the Law.”

Made in Cabinet on the 28th day of August, 2012.

Kim Bullings

Clerk of the Cabinet.

Laid in the Legislative Assembly on the 5th day of November, 2012,
in accordance with section 95(2) of the Children Law, 2003.

Zena Merren-Chin

Clerk of the Legislative Assembly.