



SOCIAL SERVICES INDEPENDENT REVIEW BODY REGULATIONS 2014

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Statutory Document No. 2014/0305

*Social Services Act 2011*

SOCIAL SERVICES INDEPENDENT REVIEW BODY REGULATIONS 2014¹

Approved by Tynwald: 22 October 2014
Coming into Operation: 1 December 2014

The Department of Health and Social Care makes the following Regulations under section 26 and 30(1)¹ of the Social Services Act 2011².

Introduction

1 Title

These Regulations are the Social Services Independent Review Body Regulations 2014.

2 Commencement

If approved by Tynwald, these Regulations come into operation on 1 December 2014³.

3 Interpretation

In these Regulations —

“**the Act**” means the Social Services Act 2011 and a reference to a numbered Part or section is to the Part or section of the Act so numbered;

“**complainant**” means any person who makes or has made a complaint in accordance with regulation 7(2) (general complaints remit of the Review Body);

“**the Review Body**” means the Independent Review Body constituted under section 26 (complaints about social care functions); and

¹ Section 30(1) is cited because of the meaning it ascribes to “prescribed”.

² AT 22 of 2011.

³ Tynwald approval is required by section 29.

“**secretary**” means a person appointed by the Department⁴ to provide secretariat services to the Review Body.

Review Body – composition, procedure and functions

4 Membership and composition

- (1) The following are ineligible for membership of the Review Body –
 - (a) a member of Tynwald;
 - (b) a member of a Statutory Board;
 - (c) an employee of the Department.
- (2) A member of the Review Body shall hold office for a term of 5 years beginning with the date on which the member is appointed.
- (3) At least one of the two persons referred to in section 26(2)(b) must hold a professional social care qualification.
- (4) In paragraph (3), a “professional social care qualification” means a professionally recognised qualification that would enable a person to practice as –
 - (a) a nurse;
 - (b) an occupational therapist;
 - (c) a psychologist;
 - (d) a physiotherapist;
 - (e) a social care worker; or
 - (f) a social worker.

5 Resignation etc. of members of the Review Body

- (1) A member of the Review Body may resign his or her office by notice in writing to the Appointments Commission.
- (2) The Appointments Commission may terminate a member’s appointment by giving the member notice in writing to that effect if satisfied that the member –
 - (a) has been absent from the Island for a period longer than 6 consecutive months;
 - (b) has become bankrupt or made an arrangement with his creditors;
 - (c) is incapacitated by physical or mental illness; or
 - (d) is otherwise unable or unfit to discharge his or her functions as a member of the Review Body.

⁴ The Department referred to is the Department of Health and Social Care (see section 30(1)).

- (3) If a member of the Review Body (other than the Chairman) is, by reason of physical or mental illness or other reasonable cause, for the time being unable to perform the duties of his or her office, either generally or in relation to any particular proceedings, the Appointments Commission may appoint an alternative member for a period not exceeding 6 months at one time or in relation to those proceedings, as the case may be.
- (4) An alternative member appointed under paragraph (3) shall have the same powers and duties as the member in whose place he or she is appointed during the period of his or her appointment, or in relation to the proceedings in question, as the case may be.

6 Conflicts of interest or duty

- (1) Immediately a member of the Review Body becomes aware that he or she has or will have a material conflict of interest or duty in respect of any proceedings of the Review Body, the member –
 - (a) must declare to –
 - (i) the other parties; and
 - (ii) the other members of the Review Body involved in the proceedings,the nature or conflict of interest or duty; and
 - (b) must not take part in, or any further part in, the case in which the conflict of interest or duty arises.

This is subject to the following qualification.

- (2) If a member of the Review Body has declared the nature of his or her conflict of interest or duty as required by paragraph (1)(a) and all the parties to the proceedings consent, the member may, notwithstanding paragraph (1)(b), take part in those proceedings.

7 General complaints remit of the Review Body

- (1) In any case where –
 - (a) a person who has exhausted all internal complaints procedures established by the Department and is not satisfied with the result of the investigation; or
 - (b) for any reason the investigation mentioned in sub-paragraph (a) has not been completed within 6 months of the date on which the complaint giving rise to that investigation was made,the complainant may make a complaint to the secretary that the Review Body consider the complaint in accordance with these Regulations.
- (2) A complaint under paragraph (1) may be made either orally or in writing (including electronically) to the secretary and –

- (a) where it is made orally the secretary must make a written record of the complaint which includes the name of the complainant, the subject matter and substance of the complaint and the date on which it was made;
- (b) where it is made in writing the secretary must make a written record of the date on which it was received; and
- (c) must be made within 28 days of, or where that is not possible, as soon as reasonably practicable after, the date on which the investigation mentioned in paragraph (1)(a) was completed and the complainant notified of the outcome.

Complaints

8 Who may complain

- (1) A complaint may be made by an affected person.
An affected person is a person affected, or likely to be affected, by a decision of the Department made under Part 2 (social care services) or Part 3 (carer support).
- (2) A complaint may also be made by a person (in this regulation referred to as “the representative”) if the affected person —
 - (a) has died;
 - (b) is a child;
 - (c) is unable by reason of a physical or mental incapacity to make the complaint; or
 - (d) has requested the representative to act on his or her behalf.
- (3) In the case of an affected person who has died or who is incapable, the representative must be a relative or other person who, in the opinion of the Review Body had or has a sufficient interest in the affected person’s welfare and is a suitable person to act as a representative.
- (4) If in any case the Review Body is of the opinion that a person does or did not have a sufficient interest in the person’s welfare or is unsuitable to act as a representative, the Review Body must notify that person in writing, stating its reasons.
- (5) In the case of a child, the representative must be —
 - (a) a parent, or other person who has parental responsibility for the child;
 - (b) a carer for the child; or
 - (c) any other person acting on behalf of the child who has an interest in the child’s welfare.

- (6) In the following provisions of these Regulations, if a representative is acting for the complainant, any reference to a complainant is to be read as a reference to the representative.

9 Acknowledgement and record of a complaint

- (1) The secretary must send to the complainant a written acknowledgement of a complaint within 3 working days of the date of its receipt by the Department.
- (2) If a complaint is made orally under regulation 7(2), the acknowledgement under paragraph (1) must be accompanied by the information specified in regulation 7(2)(a).
- (3) If a complainant disputes any information provided –
 - (a) in the written acknowledgement given under paragraph (1); or
 - (b) if applicable, the accompanying information in paragraph (2),then they must notify the secretary within 3 working days.
- (4) The secretary must send a copy of the complaint and the acknowledgment to the Department as soon as reasonably practicable.

10 Initial action following complaint

- (1) On receipt of a complaint under regulation 7(2) the Review Body must assess the nature and substance of the complaint and decide how it should be handled having regard to –
 - (a) the views of the complainant;
 - (b) the views of the Department;
 - (c) any previous investigation of the complaint; and
 - (d) any other relevant circumstances.
- (2) As soon as reasonably practicable the Review Body must notify the complainant whether it has decided –
 - (a) to take no further action; or
 - (b) to investigate the complaint to recommend what action may be taken to resolve the complaint.
- (3) The notice must –
 - (a) include the Review Body's reasons for its decision; and
 - (b) be sent to the complainant and the Department.
- (4) The secretary must record the decision of the Review Body in the minutes of the Review Body's meetings.

11 Complaint investigation

- (1) If the Review Body decides to investigate the complaint under regulation 10(2)(b) (initial action following complaint), it may request any person or body to produce such information and documents as it considers necessary to enable a complaint to be considered properly.
- (2) A request under paragraph (1) must –
 - (a) be in writing (which may be electronically);
 - (b) specify the information or documents requested; and
 - (c) state why the information or documents requested are relevant to the consideration of the complaint.
- (3) The Review Body must not make a request under paragraph (1) for information which –
 - (a) is confidential and relates to a living individual unless the individual to whom the information relates has consented to its disclosure and use for the purposes of the investigation of the complaint; or
 - (b) is the subject of legal professional privilege.
- (4) For the purposes of paragraph (3)(a), consent may be either express or implied.
- (5) The Review Body may convene a hearing to take oral evidence or advice from any person who wishes to give additional evidence or advice to it.
- (6) A complainant before a Review Body hearing may be accompanied by another person.
- (7) The Review Body must ensure that the complainant is kept informed generally and in particular about –
 - (a) the composition of the Review Body;
 - (b) the date and time of any hearing; and
 - (c) the names of any person whom the Review Body proposes to take evidence or advice, whether from written or oral statements.

12 Report following complaint investigation.

- (1) If the Review Body investigates a complaint under regulation 10(2)(b) (initial action following complaint) it must, within 28 days, prepare a written report of its investigation which –
 - (a) summarises the nature and substance of the complaint;
 - (b) describes the investigation and summarises its conclusions including any findings of fact, the Review Body's opinion of those findings and its reasons for that opinion;

- (c) recommends what action, if any, should be taken and by whom to resolve the complaint; and
 - (d) identifies what other action, if any, should be taken and by whom.
- (2) The report may include any other recommendations which the Review Body considers would in their opinion lead to any improvements, or which would otherwise be effective for the purpose of resolving the complaint.
- (3) The report must be signed by the Chairman and sent to –
 - (a) the complainant; and
 - (b) the Department.

This is subject to the following qualification.
- (4) The Review Body must redact the report to ensure that any confidential information from which the identity of a living individual can be ascertained is not disclosed without the express consent of the individual to whom it relates.

13 Annual report

The Review Body must submit an annual report to the Department in the month of May on the discharge of its functions in respect of the preceding 12 months ending on 31 March.

MADE 19 SEPTEMBER 2014

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.