



# Regulation and Inspection of Social Care (Wales) Act 2016

2016 anaw 2

## PART 7

### ORDERS PROHIBITING WORK IN SOCIAL CARE: UNREGISTERED PERSONS

#### 165 Designation of regulated activity

- (1) The Welsh Ministers may by regulations—
  - (a) designate an activity to which subsection (2) applies as a regulated activity for the purposes of this Part, and
  - (b) authorise the making of prohibition orders in respect of the regulated activity.
- (2) The activities to which this subsection applies are—
  - (a) practising as a social care worker of a prescribed description;
  - (b) carrying out a prescribed activity as a social care worker;
  - (c) the use by an individual of a prescribed title relating to an activity within paragraph (a) or (b).
- (3) In subsection (2) references to “social care worker” do not include a reference to—
  - (a) a social worker, or
  - (b) a social care worker of a description specified for the time being by regulations under section 80(1)(b) (descriptions of social care worker in respect of whom SCW keeps an added part of the register).
- (4) In this Part “prohibition order” means an order made by a fitness to practise panel prohibiting a person from carrying out a regulated activity.
- (5) Before making regulations under this section the Welsh Ministers must consult any persons they think appropriate.
- (6) But the requirement to consult does not apply to regulations which—
  - (a) amend other regulations made under this section, and

- (b) do not, in the opinion of the Welsh Ministers, effect any substantial change in the provision made by the regulations to be amended.

### **166 Conditions for making a prohibition order**

- (1) Regulations made under section 165 must prescribe the circumstances in which a fitness to practise panel may make a prohibition order.
- (2) The regulations may, in particular, provide that a panel may not make a prohibition order in respect of a person unless one or more of the following conditions is met—
  - (a) the person has been convicted of an offence of a prescribed kind;
  - (b) the person has been given a caution in respect of an offence of a prescribed kind;
  - (c) the person is included in a barred list;
  - (d) a relevant body has made a determination to the effect that the person’s fitness to practise is impaired;
  - (e) the panel is satisfied that the person has failed to meet any standard of conduct specified under section 173;
  - (f) the panel thinks that it is necessary for the protection of the public, or that it is otherwise in the public interest, to make the order.
- (3) In subsection (2) “barred list” and “relevant body” have the same meaning as in section 117 (grounds of impairment of fitness to practise).

### **167 Interim prohibition orders**

- (1) Regulations under section 165 must authorise the making of interim prohibition orders.
- (2) An interim prohibition order is an order made by a fitness to practise panel prohibiting a person from carrying out a regulated activity pending a decision as to whether or not to make a prohibition order.
- (3) The regulations must provide that a panel may not make an interim prohibition order unless it thinks that it is necessary for the protection of the public, or is otherwise in the public interest, to make the order as a matter of urgency.

### **168 Prohibition orders: supplementary provision**

The Welsh Ministers may by regulations—

- (a) make provision as to the time when a prohibition order takes effect;
- (b) make provision about the review of a prohibition order by a fitness to practise panel, including—
  - (i) the circumstances in which a prohibition order may be reviewed,
  - (ii) the procedure for applying for a review,
  - (iii) the timing of a review, and
  - (iv) the powers of the panel on a review (including power to set aside the prohibition order);
- (c) require SCW to publish prescribed information about determinations made by fitness to practise panels in respect of prohibition orders and interim prohibition orders;

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*Status: This is the original version (as it was originally enacted).*

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- (d) require SCW to make such prescribed information available—
  - (i) to persons of a specified description, or
  - (ii) for public inspection.

### **169 Interim prohibition orders: review**

- (1) A fitness to practise panel must review an interim prohibition order as soon as practicable if—
  - (a) the person in respect of whom the order is made requests a review, and
  - (b) the request is made no earlier than 3 months after the date on which the order was made.
- (2) If an interim prohibition order is reviewed under subsection (1), a fitness to practise panel must review the order within each subsequent period of 3 months beginning with the date of the review under that subsection.
- (3) A fitness to practise panel may review an interim prohibition order at any time if new evidence becomes available which is relevant to the case.
- (4) Following a review, the panel may set aside an interim prohibition order.

### **170 Appeals**

- (1) Regulations under section 165 must provide for a right of appeal to the tribunal against—
  - (a) a prohibition order;
  - (b) a decision not to set aside a prohibition order on a review;
  - (c) a decision not to set aside an interim prohibition order on a review.
- (2) Regulations under this section may include provision as to—
  - (a) the period within which an appeal may be made;
  - (b) the grounds on which an appeal may be made;
  - (c) the procedure for making an appeal;
  - (d) the powers of the tribunal on appeal.

### **171 Offences**

- (1) It is an offence for a person to fail to comply with—
  - (a) a prohibition order, or
  - (b) an interim prohibition order.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine.
- (3) The Welsh Ministers may by regulations create summary offences relating to the employment or appointment of a person to do anything that the person is prohibited from doing by—
  - (a) a prohibition order, or
  - (b) an interim prohibition order.

- (4) Regulations creating an offence may not provide for the offence to be punishable otherwise than by a fine (whether an unlimited fine or a fine not exceeding a specified level on the standard scale).

*Supplementary provision*

**172 List of prohibited persons**

- (1) SCW must establish and maintain a list of persons in respect of whom a prohibition order or an interim prohibition order is in effect.
- (2) The Welsh Ministers may by regulations make provision about—
- (a) the form and content of the list;
  - (b) whether or not the list, or specified information from the list, is to be published;
  - (c) making the list available—
    - (i) to persons of a specified description, or
    - (ii) for public inspection.

**173 Standards of conduct**

- (1) The Welsh Ministers may by regulations require SCW to determine the standards of conduct expected of a person carrying out a regulated activity.
- (2) SCW—
- (a) must keep the standards under review, and
  - (b) may alter or replace the standards.
- (3) SCW must publish—
- (a) the standards, and
  - (b) if the standards are altered or replaced, the altered or replaced standards.
- (4) SCW must by rules make provision about the procedure to be followed in determining the standards.
- (5) Rules made under subsection (4) may, in particular—
- (a) make provision about the criteria by reference to which the standards are to be determined;
  - (b) make provision about the arrangements for keeping the standards under review.