



Regulation and Inspection of Social Care (Wales) Act 2016

2016 anaw 2

PART 6

SOCIAL CARE WORKERS: FITNESS TO PRACTISE

CHAPTER 2

PRELIMINARY PROCEDURES

Preliminary consideration of allegations etc.

120 Eligibility for onward referral

- (1) A matter is eligible for onward referral unless—
 - (a) the matter relates to conduct or an incident which occurred 5 years or more before the relevant date and none of the exceptions in subsection (4) apply,
 - (b) the person appointed to give the matter preliminary consideration thinks the allegation is vexatious, or
 - (c) where an allegation has been made anonymously, or by a person who fails to co-operate with the preliminary consideration procedure, the person appointed to give the matter preliminary consideration is unable to verify it.
- (2) In subsection (1) the reference to onward referral is a reference to—
 - (a) referral to a fitness to practise panel under section 121, or
 - (b) referral for investigation under section 125.
- (3) In subsection (1)(a) “relevant date” means—
 - (a) the date of the allegation under section 118(1)(a), or
 - (b) where an allegation has not been made under that section, the date on which SCW first became aware of the matter.

Changes to legislation: *There are currently no known outstanding effects for the Regulation and Inspection of Social Care (Wales) Act 2016, Section 120. (See end of Document for details)*

- (4) For the purposes of subsection (1)(a) the exceptions are—
- (a) the matter relates to a registered person's conviction for a relevant criminal offence;
 - (b) the matter relates to the inclusion of the registered person in a barred list (as defined in section 117);
 - (c) the matter relates to a determination by a relevant body (as defined by section 117) to the effect that a registered person's fitness to practise is impaired;
 - (d) the person giving the matter preliminary consideration thinks that it is in the public interest for the matter to be referred for investigation.
- (5) For the purposes of subsection (4)(a) and section 121, a relevant criminal offence is—
- (a) in the case of a conviction by a court in the United Kingdom, an offence in respect of which a custodial sentence was, or could have been, imposed, or
 - (b) in the case of a conviction by a court elsewhere, an offence in respect of which, had the offence been committed in England and Wales a custodial sentence could have been imposed.
- (6) In subsection (5) “custodial sentence” has the meaning given by section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6) [^{F1}or section 222 of the Sentencing Code].

Textual Amendments

F1 Words in s. 120(6) inserted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), [Sch. 24 para. 309\(1\)](#) (with [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

Commencement Information

I1 S. 120 in force at 3.4.2017 by [S.I. 2017/309](#), [art. 2\(e\)](#) (with [arts. 3, 4, Sch.](#))

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