



# 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.*

#### **118 Referral of allegations etc. of impaired fitness to practise**

- (1) This section applies where—
- (a) an allegation is made to SCW that a registered person's fitness to practise is impaired, or
  - (b) SCW otherwise has reason to believe that a registered person's fitness to practise may be impaired.
- (2) SCW—
- (a) must refer for preliminary consideration the matter which is the subject of the allegation or its reason to believe that the registered person's fitness to practise may be impaired, and
  - (b) may refer the matter to an interim orders panel (see Chapter 4).

#### **119 Preliminary consideration**

- (1) The person giving preliminary consideration to a matter referred by SCW must refer that matter for investigation under section 125 unless—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the person determines that the matter is not eligible for onward referral under section 120, or
  - (b) the person is required by section 121 to refer the matter directly to a fitness to practise panel.
- (2) The person giving preliminary consideration to a matter may, at any stage, refer the matter to an interim orders panel (in addition to making a referral or determination under subsection (1)).
- (3) SCW must by rules make provision about the procedure for preliminary consideration which may, in particular, provide for preliminary consideration to be carried out by—
- (a) one or more persons appointed for that purpose, on such terms and conditions (including remuneration) as SCW may determine;
  - (b) one or more members of SCW’s staff.
- (4) But rules made under subsection (3) may not provide for preliminary consideration to be carried out by—
- (a) a person who is a member of—
    - (i) SCW,
    - (ii) the Health and Care Professions Council,
    - (iii) the Scottish Social Services Council, or
    - (iv) the Northern Ireland Social Care Council;
  - (b) a person who is a member of a fitness to practise panel;
  - (c) a person who is a member of an interim orders panel;
  - (d) a prescribed person.
- (5) SCW must make such arrangements as it thinks appropriate to facilitate co-operation between—
- (a) a person who has made an allegation that a registered person’s fitness to practise is impaired, and
  - (b) the person giving preliminary consideration to the allegation.

## **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.

- (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 \(c.6\)](#).

## **121 Direct referral to a fitness to practise panel**

A person giving preliminary consideration to a matter must refer it directly to a fitness to practise panel—

- (a) if the matter relates to the conviction of a registered person for a relevant criminal offence (see section 120(5)), and
- (b) in such other circumstances as may be specified by SCW in rules.

## **122 Notice: ineligibility for onward referral**

- (1) This section applies where a person giving preliminary consideration to a matter determines that the matter is not eligible for onward referral under section 120(1).
- (2) SCW must give notice of the determination to the relevant persons, unless SCW thinks that it is not in the public interest to do so.
- (3) For the purposes of subsection (2) “the relevant persons” are—
- (a) the registered person to whom the matter relates, and
  - (b) where the matter was the subject of an allegation mentioned in section 118(1)(a), the person who made the allegation.
- (4) SCW may give notice to any other person that a matter is not eligible for onward referral where it is satisfied that it is in the public interest to do so.
- (5) SCW may by rules make provision about—
- (a) the content of a notice under this section, and
  - (b) the procedure for giving notice.

### **123 Notice: onward referral**

- (1) This section applies where, on conclusion of a preliminary consideration under section 119, a matter is referred—
  - (a) to a fitness to practise panel under section 121, or
  - (b) for investigation under section 125.
- (2) SCW must give notice to—
  - (a) the registered person to whom the matter relates;
  - (b) where the matter was the subject of an allegation mentioned in section 118(1)(a), the person who made the allegation;
  - (c) each person by whom, to the knowledge of SCW, the registered person is employed as a social care worker;
  - (d) each person who, to the knowledge of SCW, has an arrangement with the registered person for the registered person to provide services to a third party in his or her capacity as a social care worker;
  - (e) such other persons as may be prescribed.
- (3) SCW must by rules make provision about giving notice under subsection (2).
- (4) The rules may, in particular, make provision about—
  - (a) the content of a notice;
  - (b) the procedure for giving notice;
  - (c) the period within which notice must be given.

### **124 Notice: referral to an interim orders panel**

Where a person refers a matter to an interim orders panel under section 118(2)(b) or 119(2) SCW—

- (a) must give notice of the referral to—
  - (i) the registered person to whom the matter relates, and
  - (ii) where the matter was the subject of an allegation mentioned in section 118(1)(a), the person who made the allegation, and
- (b) may give notice of the referral to any other person if SCW thinks it is in the public interest to do so.