
WELSH STATUTORY INSTRUMENTS

2016 No. 1100 (W. 264)

SOCIAL CARE, WALES

The Social Care Wales (Proceedings
before Panels) Regulations 2016

<i>Made</i>	- - - -	<i>15 November 2016</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>22 November 2016</i>
<i>Coming into force</i>	- -	<i>3 April 2017</i>

The Welsh Ministers, in exercise of the powers conferred by sections 175(1) and (2) and 187(1) of the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾, make the following Regulations:

PART 1

General

Title, commencement and application

1.—(1) The title of these Regulations is the Social Care Wales (Proceedings before Panels) Regulations 2016.

(2) These Regulations come into force on 3 April 2017.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Regulation and Inspection of Social Care (Wales) Act 2016;

“extract conviction” (“*euogfarn gryno*”) has the meaning given in section 307 of the Criminal Procedure (Scotland) Act 1995⁽²⁾;

“fitness to practise panels” (“*paneli addasrwydd i ymarfer*”) has the meaning given in section 174(1)(b) of the Act;

(1) 2016 anaw 2.
(2) 1995 c. 46.

“interim orders panels” (“*paneli gorchmyinion interim*”) has the meaning given in section 174(1)(c) of the Act;

“parental responsibility” (“*cyfrifoldeb rhiant*”) has the meaning given in section 105 of the Children Act 1989(3);

“registration appeals panels” (“*paneli apelau cofrestru*”) has the meaning given in section 174(1)(a) of the Act.

PART 2

Registration Appeals Panels

Interpretation of Part 2

3. In this Part—

“appellant” (“*apelydd*”) means a person who brings a registration appeal;

“case” (“*achos*”) means proceedings relating to a registration appeal before a registration appeals panel;

“fitness to practise proceedings” (“*achos addasrwydd i ymarfer*”) means proceedings before a fitness to practise panel to which Chapter 3(4) or Chapter 5(5) of Part 6 of the Act applies;

“parties” (“*partïon*”) means the appellant and SCW(6) (or their representatives);

“registration appeal” (“*apêl gofrestru*”) means—

- (a) an appeal made in accordance with section 101 of the Act against a decision of the registrar;
- (b) an application made in accordance with section 97(5) of the Act for review of a direction under section 98(4) of the Act;
- (c) an application made in accordance with section 97(2) of the Act for restoration of a person’s entry in a part of the register following fitness to practise proceedings;

“registration appeals hearing” (“*gwrandawriad apelau cofrestru*”) means a hearing before a registration appeals panel in registration appeals proceedings;

“registration appeals proceedings” (“*achos apelau cofrestru*”) means proceedings before a registration appeals panel in respect of which section 98(1)(7), 99(2)(8) or 103(9) of the Act applies.

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- (3) 1989 c. 41 (“the 1989 Act”). The definition in section 105 of the 1989 Act refers to the meaning of “parental responsibility” set out in section 3 of that Act.
 - (4) See Chapter 3 of Part 6 of the Act (disposal of fitness to practise cases). Fitness to practise panels make decisions about whether a person’s fitness to practise is impaired and decide what sanctions are appropriate following consideration of a case.
 - (5) See Chapter 5 of Part 6 of the Act (review proceedings), in particular section 151 of the Act (review proceedings). The fitness to practise panel administers the system for the review of any conditions attached to a person’s ability to practise, suspension orders and undertakings which have been imposed or agreed (as the case may be) in respect of the person following fitness to practise proceedings.
 - (6) See section 67(3) of the Act for the definition of “SCW”.
 - (7) Restoration proceedings following fitness to practise proceedings which resulted in an order removing an entry relating to that person from the register (which is maintained under section 80 of the Act) under section 138(9) (disposal following a finding of impairment), section 152(8)(e) (decisions following review of undertakings), section 153(9)(d) (decisions on review of conditional registration orders) and section 154(8)(d) (decisions on review of suspension orders).
 - (8) See section 99 of the Act (review of the suspension of right to apply for restoration). Where, following fitness to practise proceedings, which resulted in an order removing an entry relating to a person from the register, and a direction under section 98(4) of the Act has been made by a registration appeals panel to suspend a person’s right to apply for restoration, a person may apply for a review of that suspension in the circumstances set out in section 99(1) of the Act.
 - (9) Consideration of appeals made under section 101 of the Act against a decision of the registrar (under section 83 (refusal of a person’s application for registration), section 86 (refusal of a person’s application for renewal of the person’s registration),

General objectives of registration appeals panels

4.—(1) The general objectives of a registration appeals panel in carrying out its functions in relation to registration appeals proceedings are—

- (a) to protect, promote and maintain the health, safety and well-being of the public;
- (b) to promote and maintain—
 - (i) public confidence in social care workers⁽¹⁰⁾, and
 - (ii) a high standard of conduct and practice among social care workers; and
- (c) to deal fairly and justly with the case.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the panel or SCW effectively;
- (e) avoiding delay, so far as that is compatible with a proper consideration of the issues.

Duty of parties in registration appeals proceedings

5.—(1) It is the duty of the parties—

- (a) to co-operate with the registration appeals panel, and
- (b) to assist it in achieving its objective under regulation 4(1)(c).

(2) If the registration appeals panel is satisfied that a person is in breach of the duty in paragraph (1), it may draw any inference that it considers appropriate.

Registration appeals proceedings: when a hearing is not necessary

6.—(1) A registration appeal before a registration appeals panel may be determined without a hearing if—

- (a) the parties agree in writing that the proceedings may be determined without a hearing, and
- (b) the registration appeals panel decides that it is not necessary to hold a hearing.

(2) Where in accordance with paragraph (1) proceedings are determined without a hearing—

- (a) the registration appeals panel's final decision may be made by the chair of the panel;
- (b) at any stage during the proceedings the registration appeals panel or the chair of the panel may require a registration appeals hearing to be held.

(3) SCW may by rules make provision about the steps which may or must be taken by the parties or a registration appeals panel to enable the panel to reach a decision as to whether it is necessary to hold a hearing.

Case management in registration appeals proceedings

7.—(1) SCW may by rules make provision about preliminary case management in relation to registration appeals proceedings.

section 94 (refusal to remove an entry in respect of a person from the register) and section 96 (refusal to grant a person's application for restoration of the person's entry to the register)).

(10) See section 79 of the Act for the meaning of "social care worker".

- (2) The rules may in particular make provision—
 - (a) for preliminary case management to be carried out by a registration appeals panel or by a person appointed under the rules;
 - (b) about qualifications for such an appointment;
 - (c) about case reviews;
 - (d) about directions that may be given;
 - (e) about records of directions;
 - (f) about consequences of failure to comply with directions (which may include the power of a registration appeals panel to draw such inference as it considers appropriate).
- (3) Where the rules provide for preliminary case management to be carried out by a person other than the registration appeals panel, they must provide for that person—
 - (a) to act independently of the parties, and
 - (b) to exercise any power to give directions only for the purpose of securing the just, expeditious and effective running of the appeal.
- (4) The general objective of a registration appeals panel under regulation 4(1)(c) (to deal fairly and justly with cases) also applies to such a person.
- (5) Rules made under this regulation may not provide for the award of costs.

Evidence in registration appeals proceedings

- 8.—(1)** A finding of fact by a registration appeals panel must be made on the balance of probabilities.
- (2) In registration appeals proceedings evidence is not admissible unless—
 - (a) it would be admissible in civil proceedings in England and Wales, or
 - (b) the registration appeals panel considers that the evidence is relevant, and that it is fair to admit it.
 - (3) A certificate signed by a competent officer of a court of any jurisdiction that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, is conclusive evidence of the offence.
 - (4) A certificate that a person is included in a barred list(**11**) (for the purposes of section 117(1)(c) of the Act), issued by the person responsible for maintaining the list, is conclusive evidence of that fact.
 - (5) A certificate issued by a relevant body(**12**) (for the purposes of section 117(1)(d) of the Act) that it has determined that a person’s fitness to practise is impaired is conclusive evidence of that determination.

Exclusion of the public from registration appeals hearings

- 9.—(1)** A hearing before a registration appeals panel must be held in public, with the following exceptions.
- (2) The registration appeals panel must exclude the public from any part of a hearing involving consideration of the physical or mental health of the appellant, unless—
 - (a) the appellant requests that part of the hearing to be held in public, and

(11) See section 117(3) for the definition of “barred list”.

(12) See section 117(4) for the definition of “relevant body”.

(b) the registration appeals panel considers that doing so would not be against the public interest.

(3) The registration appeals panel may exclude the public from all or part of a hearing if it considers that the circumstances of the case outweigh the public interest in holding the hearing in public.

(4) The registration appeals panel may exclude a person from a hearing if it considers that the person's conduct is likely to disrupt the hearing.

Registration appeals proceedings: witness summons

10.—(1) For the purposes of registration appeals proceedings—

(a) a registration appeals panel may administer oaths,

(b) SCW may of its own motion issue a witness summons requiring a person to attend a hearing to supply information or to produce any document, and any other party may request SCW to issue such a summons.

(2) No person is to be compelled by a summons issued under paragraph (1)(b) to produce any document which that person could not be compelled to produce in civil proceedings in England and Wales.

Special measures for witnesses etc. in registration appeals hearings

11.—(1) A person giving evidence in a registration appeals hearing, including the appellant, is entitled to special measures if—

(a) the person is under 18, or

(b) the registration appeals panel considers that the quality of evidence given by the person is likely to be diminished by reason of—

(i) physical disability, learning disability, mental health problems, an illness or health condition or a dependence on drugs or alcohol, or

(ii) fear or distress in connection with giving evidence.

(2) In deciding whether the quality of evidence given by a person is likely to be diminished by reason of a matter specified in paragraph (1)(b), the registration appeals panel must take into account the views of the person concerned.

(3) A registration appeals panel may offer special measures to a person not entitled to them under paragraph (1) if it thinks that it would be in the public interest to do so.

(4) In this regulation “special measures” (“*mesurau arbennig*”) means such special measures as the registration appeals panel considers appropriate for the purpose of improving the quality of evidence given by a person at the hearing.

(5) In considering which particular special measure may be appropriate, the registration appeals panel must take into account the views of the person concerned.

(6) A person who is 18 or over and who has the capacity to do so may decline to accept special measures or any particular special measure.

(7) Whether a person has capacity for the purposes of paragraph (6) is determined in accordance with the Mental Capacity Act 2005(13).

(8) A person who is under 18 (a “child”) (“*plentyn*”) may decline to accept special measures only if the registration appeals panel is satisfied that the quality of the child's evidence is not likely to be diminished by the absence of the special measure or measures which the child wishes to decline.

- (9) In reaching a view as required by paragraph (8), the registration appeals panel must consider—
- (a) the child’s age and maturity,
 - (b) the child’s ability to understand the consequences of giving evidence without the special measure or measures,
 - (c) the child’s best interests,
 - (d) the views of the child’s parents or any person with parental responsibility for the child,
 - (e) the relationship (if any) between the child and any party to the proceedings,
 - (f) the nature and alleged circumstances of the matter to which the proceedings relate, and
 - (g) any other factor that the panel thinks is relevant.

(10) A registration appeals panel must give a direction requiring the implementation or provision of any special measure which it has offered, except where the person concerned is entitled to decline the special measure and has done so.

Registration appeals hearings: procedure

- 12.**—(1) An appellant is entitled to be represented in a registration appeals hearing by—
- (a) a solicitor or counsel,
 - (b) a representative from any professional organisation, or
 - (c) if the registration appeals panel agrees, any other person.

(2) The parties are entitled to give evidence.

(3) A person representing or advising the appellant may not give evidence.

(4) A registration appeals hearing may proceed even if the appellant is not present and not represented, if the registration appeals panel is satisfied that all reasonable efforts have been made to give notice of the hearing to the appellant.

Registration appeals hearings rules

13.—(1) SCW must make rules about the procedure to be followed in a registration appeals hearing (“registration appeals hearings rules”) (“*rheolau gwrandawiaidau apelau cofrestru*”).

(2) The Welsh Ministers—

- (a) may give guidance to SCW about the contents of registration appeals hearings rules, including guidance in the form of model rules, and
- (b) must publish any guidance given under sub-paragraph (a).

(3) SCW must, when making registration appeals hearings rules, have regard to any guidance given by the Welsh Ministers under paragraph (2)(a).

(4) Where guidance has been given in the form of model rules SCW must, after making any registration appeals hearings rules, publish a document explaining any significant departures from or additions to the model rules.

(5) The power of SCW to make registration appeals hearings rules is subject to the provision made by these Regulations.

PART 3

Fitness to Practise Panels

Interpretation of Part 3

14. In this Part—

“case” (“*achos*”) means proceedings relating to fitness to practise proceedings or interim orders proceedings (as the case may be) before a fitness to practise panel;

“fitness to practise hearing” (“*gwrandawriad addasrwydd i ymarfer*”) means a hearing before a fitness to practise panel in fitness to practise proceedings;

“fitness to practise proceedings” (“*achos addasrwydd i ymarfer*”) means proceedings before a fitness to practise panel to which Chapter 3 or Chapter 5(14) of Part 6 of the Act applies;

“interim orders hearing” (“*gwrandawriad gorchmynion interim*”) means a hearing before a fitness to practise panel in interim orders proceedings;

“interim orders proceedings” (“*achos gorchmynion interim*”) means proceedings before a fitness to practise panel to which Chapter 4(15) of Part 6 of the Act applies;

“parties” (“*partïon*”) means the registered person to whom the fitness to practise proceedings or interim orders proceedings relate and SCW (or their representatives);

“registered person” (“*person cofrestredig*”) means the registered person(16) in respect of whom the referral to the fitness to practise panel has been made.

General objectives of fitness to practise panels

15.—(1) The general objectives of a fitness to practise panel in carrying out its functions in relation to fitness to practise proceedings and interim orders proceedings are—

(a) to protect, promote and maintain the health, safety and well-being of the public;

(b) to promote and maintain—

(i) public confidence in social care workers, and

(ii) a high standard of conduct and practise among social care workers; and

(c) to deal fairly and justly with the case.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the panel or SCW effectively;

(14) See Chapter 5 of Part 6 of the Act (review proceedings), in particular section 151 of the Act (review proceedings). The fitness to practise panel administers the system for the review of any conditions attached to a person’s ability to practise, suspension orders and undertakings which have been imposed or agreed (as the case may be) in respect of the person following fitness to practise proceedings..

(15) See Chapter 4 of Part 6 to the Act (interim orders and review of interim orders). Interim order proceedings are undertaken to enable temporary restrictions to be imposed in respect of a registered person while investigations are undertaken into allegations made against the person about their fitness to practise. If the making of an interim order is considered to be necessary, a matter may be referred either to a fitness to practise panel or to an interim orders panel (see Part 4 for provision about the procedure of interim orders panels). If a matter is referred to a fitness to practise panel, any interim order must be made before the matter is disposed of by the fitness to practise panel in accordance with any of sections 135 to 138 of the Act (see section 144(3) of the Act).

(16) See section 164 of the Act for the meaning of “registered person” in Part 6 of the Act.

- (e) avoiding delay, so far as that is compatible with a proper consideration of the issues.

Duty of parties in fitness to practise proceedings and in interim orders proceedings

16.—(1) It is the duty of the parties to—

- (a) co-operate with the fitness to practise panel, and
- (b) assist it in achieving its objective under regulation 15(1)(c).

(2) If the fitness to practise panel is satisfied that a person is in breach of the duty in paragraph (1), it may draw any inference that it considers appropriate.

Fitness to practise proceedings: when a hearing is not necessary

17.—(1) Fitness to practise proceedings, except proceedings under section 151 of the Act (“review proceedings”), may be determined by a fitness to practise panel without a hearing if—

- (a) the parties agree in writing that the proceedings may be determined without a hearing,
- (b) the parties agree in writing to the final decision which is to be made by the panel (including details of that decision such as the period for which an order is to have effect or any conditions to be imposed on the registered person’s registration),
- (c) a statement of agreed facts is made in writing by—
 - (i) SCW,
 - (ii) the registered person, and
 - (iii) the panel, and
- (d) the panel decides that it is not necessary to hold a hearing.

(2) Review proceedings under section 151 of the Act may determined by a fitness to practise panel without a hearing if—

- (a) the parties agree in writing that the proceedings may be determined without a hearing,
- (b) the parties agree in writing to the final decision to be made by the panel, which must be one specified in paragraph (3), and
- (c) the panel decides that it is not necessary to hold hearing.

(3) The decisions referred to in paragraph (2)(b) are—

- (a) in the case of a review of the fitness to practise of a registered person who has agreed undertakings(17), a decision by the fitness to practise panel to agree with the person that the undertakings remain in effect with no variations,
- (b) in the case of a review of the fitness to practise of a registered person who is subject to a conditional registration order(18), a decision by the panel to confirm the conditional registration order with no variations,
- (c) in the case of a review of the fitness to practise of a registered person who is subject to a suspension order(19), a decision by the panel to confirm the suspension order with no variations.

(4) Where in accordance with paragraph (1) or (2) proceedings are to be determined without a hearing—

- (a) the panel’s final decision may be made by the chair of the panel;

(17) See section 151(1) of the Act. Undertakings may be agreed under section 136(1), 152(5) or (6), 153(4), 154(4) or 155(7) of the Act.

(18) See section 151(3) of the Act. Conditional registration orders may be made, confirmed or varied under section 138(7), 152(8)(c), 153(6) or (7), 154(8)(c) or 155(10)(c) of the Act.

(19) See section 151(5) of the Act.

- (b) at any stage during the proceedings the panel or the chair of the panel may require a hearing to be held.

(5) SCW may by rules make provision about the steps which may or must be taken by the parties or a fitness to practise panel to enable the panel to reach a decision as to whether it is necessary to hold a fitness to practise hearing.

Interim orders proceedings: when a hearing is not necessary

18.—(1) Interim orders proceedings may be determined by a fitness to practise panel without a hearing if—

- (a) the parties agree in writing that the proceedings may be determined without a hearing,
- (b) the parties agree in writing to the interim order which is to be made by the panel, or (in a case where the panel is considering the review of an interim order) to the decision specified in section 147(1)(b) to (e) of the Act which is to be made by the panel, including—
 - (i) the period for which the interim order is to have effect, and
 - (ii) in the case of an interim conditional registration order, the conditions to be imposed on the registered person’s registration with SCW,
- (c) a statement of agreed facts is made in writing by—
 - (i) SCW,
 - (ii) the registered person, and
 - (iii) the panel, and
- (d) the panel decides that it is not necessary to hold a hearing.

(2) Where in accordance with paragraph (1) proceedings are to be determined without a hearing—

- (a) an interim order may be made or confirmed by the chair of the panel;
- (b) at any stage during the proceedings the panel or the chair of the panel may require a hearing to be held.

(3) SCW may by rules make provision about the steps which may or must be taken by the parties or a fitness to practise panel to enable the panel to reach a decision as to whether it is necessary to hold an interim orders hearing.

Case management in fitness to practise proceedings and in interim orders proceedings

19.—(1) SCW may by rules make provision about preliminary case management in relation to fitness to practice proceedings and interim orders proceedings.

(2) The rules may in particular make provision—

- (a) for preliminary case management to be carried out by a fitness to practise panel or by a person appointed under the rules;
- (b) about qualifications for such an appointment;
- (c) about case reviews;
- (d) about directions that may be given;
- (e) about records of directions;
- (f) about consequences of failure to comply with directions (which may include the power of a fitness to practise panel to draw such inference as it considers appropriate).

(3) Where the rules provide for preliminary case management to be carried out by a person other than the fitness to practise panel, they must provide for that person—

- (a) to act independently of the parties, and
 - (b) to exercise any power to give directions only for the purpose of securing the just, expeditious and effective running of the appeal.
- (4) The general objective of a fitness to practise panel under regulation 15(1)(c) (to deal fairly and justly with cases) also applies to such a person.
- (5) Rules made under this regulation may not provide for the award of costs.

Evidence in fitness to practise proceedings and in interim orders proceedings

20.—(1) A finding of fact by a fitness to practise panel in fitness to practise proceedings must be made on the balance of probabilities.

(2) In fitness to practice proceedings and interim orders proceedings evidence is not admissible unless—

- (a) it would be admissible in civil proceedings in England and Wales, or
- (b) the fitness to practise panel considers that the evidence is relevant, and that it is fair to admit it.

(3) A certificate signed by a competent officer of a court of any jurisdiction that a person has been convicted of a criminal offence, or in Scotland, an extract conviction, is conclusive evidence of the offence.

(4) A certificate that a person is included in a barred list (for the purposes of section 117(1)(c) of the Act), issued by the person responsible for maintaining the list, is conclusive evidence of that fact.

(5) A certificate issued by a relevant body (for the purposes of section 117(1)(d) of the Act) that it has determined that a person's fitness to practise is impaired is conclusive evidence of that determination.

Exclusion of the public from fitness to practise hearings

21.—(1) A fitness to practise hearing must be held in public, with the following exceptions.

(2) The fitness to practise panel must exclude the public from any part of a hearing involving consideration of the physical or mental health of the registered person, unless—

- (a) the registered person requests that part of the hearing to be held in public, and
- (b) the fitness to practise panel considers that doing so would not be against the public interest.

(3) The fitness to practise panel may exclude the public from all or part of a hearing if it considers that the circumstances of the case outweigh the public interest in holding the hearing in public.

(4) The fitness to practise panel may exclude a person from a hearing if it considers that the person's conduct is likely to disrupt the hearing.

Exclusion of the public from interim orders hearings

22.—(1) The public must be excluded from an interim orders hearing unless—

- (a) the registered person requests that the hearing should be held in public, and
- (b) the fitness to practise panel considers that doing so would not be against the public interest.

(2) In the case of a hearing held in public, the fitness to practise panel may exclude a person from the hearing if it thinks that the person's conduct is likely to disrupt the hearing.

Fitness to practise proceedings and interim orders proceedings: witness summons

23.—(1) For the purposes of fitness to practise proceedings and interim orders proceedings—

- (a) a fitness to practise panel may administer oaths,
- (b) SCW may of its own motion issue a witness summons requiring a person to attend a hearing to supply information or to produce any document, and any other party may request SCW to issue such a summons.

(2) No person is to be compelled by a summons issued under paragraph (1)(b) to produce any document which that person could not be compelled to produce in civil proceedings in England and Wales.

Special measures for witnesses etc. in fitness to practise hearings and in interim orders hearings

24.—(1) A person giving evidence in a fitness to practice hearing or an interim orders hearing, including the registered person, is entitled to special measures if—

- (a) the person is under 18, or
- (b) the fitness to practise panel considers that the quality of evidence given by the person is likely to be diminished by reason of—
 - (i) physical disability, learning disability, mental health problems, an illness or health condition or a dependency on drugs or alcohol, or
 - (ii) fear or distress in connection with giving evidence.

(2) A person giving evidence in a fitness to practise hearing or in an interim orders hearing is also entitled to special measures if the matter to which the proceedings relate is of a sexual nature and the person is an alleged victim.

(3) In deciding whether the quality of evidence given by a person is likely to be diminished by reason of a matter specified in paragraph (1)(b), the fitness to practise panel must take into account the views of the person concerned.

(4) A fitness to practise panel may offer special measures to a person not entitled to them under paragraph (1) or (2), if it thinks that this is in the public interest.

(5) “Special measures” (*“mesurau arbennig”*) means such special measures as the fitness to practise panel considers appropriate for the purpose of improving the quality of evidence given by a person at the hearing.

(6) In considering which particular special measures may be appropriate, the fitness to practise panel must take into account the views of the person concerned.

(7) A person who is 18 or over and who has the capacity to do so may decline to accept special measures or any particular special measure.

(8) Whether a person has capacity for the purposes of paragraph (7) is determined in accordance with the Mental Capacity Act 2005.

(9) A person who is under 18 (a “child”) (*“plentyn”*) may decline to accept special measures or any particular special measure only if the fitness to practise panel is satisfied that the quality of the child’s evidence is not likely to be diminished by the absence of the special measure or measures which the child wishes to decline.

(10) In reaching a view as required by paragraph (9), the fitness to practise panel must consider—

- (a) the child’s age and maturity,
- (b) the child’s ability to understand the consequences of giving evidence without the special measure or measures,
- (c) the child’s best interests,
- (d) the views of the child’s parents or any person with parental responsibility for the child,

- (e) the relationship (if any) between the child and any party to the proceedings ,
- (f) the nature and alleged circumstances of the matter to which the proceedings relate, and
- (g) any other factor that the panel thinks is relevant.

(11) A fitness to practise panel must give a direction requiring the implementation or provision of any special measure which it has offered, except where the person concerned is entitled to decline the special measure and has done so.

(12) If the matter to which the proceedings relate is of a sexual nature, the registered person may not personally cross-examine an alleged victim, unless—

- (a) the alleged victim has consented to this, and
- (b) the fitness to practise panel does not consider that the alleged facts of the matter amount to, or are likely to amount to, a sexual offence under section 62 of the Youth Justice and Criminal Evidence Act 1999⁽²⁰⁾.

(13) If paragraph (12) means that the registered person is not permitted personally to cross-examine a person, the fitness to practise panel must give the registered person adequate opportunity to appoint a representative to do so.

(14) If the registered person does not appoint a representative under paragraph (13), but wishes an alleged victim to be cross-examined, SCW must appoint a representative to cross-examine the person on behalf of the registered person.

Fitness to practise hearings and interim orders hearings: procedure

25.—(1) A registered person is entitled to be represented in a fitness to practise hearing or an interim orders hearing by—

- (a) a solicitor or counsel,
 - (b) a representative from any professional organisation, or
 - (c) if the fitness to practise panel agrees, any other person.
- (2) The parties are entitled to give evidence.
- (3) A person representing or advising the registered person may not give evidence.

(4) A fitness to practise hearing or an interim orders hearing may proceed even if the registered person is not present and not represented, if the fitness to practise panel is satisfied that all reasonable efforts have been made to give notice of the hearing to the person.

Fitness to practise hearings and interim orders hearings rules

26.—(1) SCW must make rules about the procedure to be followed in—

- (a) a fitness to practise hearing (“fitness to practise hearings rules”) (“*rheolau gwrandawiadau addasrwydd i ymarfer*”), and
 - (b) an interim orders hearing (“fitness to practise: interim orders hearings rules”) (“*addasrwydd i ymarfer: rheolau gwrandawiadau gorchmynion interim*”).
- (2) The Welsh Ministers—
- (a) may give guidance (including guidance in the form of model rules) to SCW about the contents of—
 - (i) fitness to practise hearings rules, and
 - (ii) fitness to practise: interim orders hearings rules, and

(b) must publish any guidance given under sub-paragraph (a).

(3) SCW must, when making any rules in accordance with paragraph (1), have regard to any guidance given by the Welsh Ministers under paragraph (2)(a).

(4) Where guidance has been given in the form of model rules SCW must, after making any rules in accordance in paragraph (1), publish a document explaining any significant departures from or additions to the model rules.

(5) The power of SCW to make rules under paragraph (1) is subject to the provision made by these Regulations.

PART 4

Interim orders panels

Interpretation of Part 4

27. In this Part—

“case” (“*achos*”) means proceedings relating to interim proceedings before an interim orders panel;

“interim orders hearing” (“*gwrandawriad gorchmynion interim*”) means a hearing before an interim orders panel in interim orders proceedings;

“interim orders proceedings” (“*achos gorchmynion interim*”) means proceedings before an interim orders panel to which Chapter 4(21) of Part 6 of the Act applies;

“parties” (“*partïon*”) means the registered person to whom interim orders proceedings relate and SCW (or their representatives);

“registered person” (“*person cofrestredig*”) means the registered person(22) in respect of whom the referral to the interim orders panel has been made.

General objectives of interim orders panels

28.—(1) The general objectives of an interim orders panel in carrying out its functions in relation to interim orders proceedings are—

(a) to protect, promote and maintain the health, safety and well-being of the public;

(b) to promote and maintain—

(i) public confidence in social care workers, and

(ii) a high standard of conduct and practise among social care workers; and

(c) to deal fairly and justly with the case.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(21) See Chapter 4 of Part 6 to the Act (interim orders and review of interim orders). Interim order proceedings are undertaken to enable temporary restrictions to be imposed in respect of a registered person while investigations are undertaken into allegations made against the person about their fitness to practise. If the making of an interim order is considered to be necessary, a matter may be referred to a fitness to practise panel or an interim orders panel (see Part 3 for provision about the procedure of fitness to practise panels).

(22) See section 164 of the Act for the meaning of “registered person” in Part 6 of the Act.

- (d) using any special expertise of the panel or SCW effectively;
- (e) avoiding delay, so far as that is compatible with a proper consideration of the issues.

Duty of parties in interim orders proceedings

29.—(1) It is the duty of the parties to—

- (a) co-operate with the interim orders panel, and
- (b) assist it in achieving its objective under regulation 28(1)(c).

(2) If the interim orders panel is satisfied that a person is in breach of the duty in paragraph (1), it may draw any inference that it considers appropriate.

Interim orders proceedings: when a hearing is not necessary

30.—(1) Interim orders proceedings may be determined by an interim orders panel without a hearing if—

- (a) the parties agree in writing that the proceedings may be determined without a hearing,
- (b) the parties agree in writing to the interim order which is to be made by the panel, or (in a case where the panel is considering the review of an interim order) to the decision specified in section 147(1)(b) to (e) of the Act which is to be made by the panel, including—
 - (i) the period for which the interim order is to have effect, and
 - (ii) in the case of an interim conditional registration order, the conditions to be imposed on the registered person's registration with SCW,
- (c) a statement of agreed facts is made in writing by—
 - (i) SCW,
 - (ii) the registered person, and
 - (iii) the panel, and
- (d) the panel decides that it is not necessary to hold a hearing.

(2) Where in accordance with paragraph (1) proceedings are to be determined without a hearing—

- (a) an interim order may be made or confirmed by the chair of the panel;
- (b) at any stage during the proceedings the panel or the chair of the panel may require a hearing to be held.

(3) SCW may by rules make provision about the steps which may or must be taken by the parties or an interim orders panel to enable the panel to reach a decision as to whether it is necessary to hold an interim orders hearing.

Case management in interim order proceedings

31.—(1) SCW may by rules make provision about preliminary case management in relation to interim orders proceedings.

(2) The rules may in particular make provision—

- (a) for preliminary case management to be carried out by an interim orders panel or by a person appointed under the rules;
- (b) about qualifications for such an appointment;
- (c) about case reviews;
- (d) about directions that may be given;
- (e) about records of directions,

- (f) about consequences of failure to comply with directions (which may include the power of an interim orders panel to draw such inference as it considers appropriate).
- (3) Where the rules provide for preliminary case management to be carried out by a person other than the interim orders panel, they must provide for that person—
 - (a) to act independently of the parties, and
 - (b) to exercise any power to give directions only for the purpose of securing the just, expeditious and effective running of the appeal.
- (4) The general objective of an interim orders panel under regulation 28(1)(c) (to deal fairly and justly with cases) also applies to such a person.
- (5) Rules made under this regulation may not provide for the award of costs.

Evidence in interim orders proceedings

- 32.**—(1) In interim orders proceedings evidence is not admissible unless—
- (a) it would be admissible in civil proceedings in England and Wales, or
 - (b) the interim orders panel considers that the evidence is relevant, and that it is fair to admit it.
- (2) A certificate signed by a competent officer of a court of any jurisdiction that a person has been convicted of a criminal offence, or in Scotland, an extract conviction, is conclusive evidence of the offence.
- (3) A certificate that a person is included in a barred list (for the purposes of section 117(1)(c) of the Act), issued by the person responsible for maintaining the list, is conclusive evidence of that fact.
- (4) A certificate issued by a relevant body (for the purposes of section 117(1)(d) of the Act) that it has determined that a person’s fitness to practise is impaired is conclusive evidence of that determination.

Exclusion of the public from interim orders hearings

- 33.**—(1) The public must be excluded from an interim orders hearing unless—
- (a) the registered person requests that the hearing should be held in public, and
 - (b) the interim orders panel considers that doing so would not be against the public interest.
- (2) In the case of a hearing held in public, the interim orders panel may exclude a person from the hearing if it thinks that the person’s conduct is likely to disrupt the hearing.

Interim orders proceedings: witness summons

- 34.**—(1) For the purposes of interim orders proceedings—
- (a) an interim orders panel may administer oaths,
 - (b) SCW may of its own motion issue a witness summons requiring a person to attend a hearing to supply information or to produce any document, and any other party may request SCW to issue such a summons.
- (2) No person is to be compelled by a summons issued under paragraph (1)(b) to produce any document which that person could not be compelled to produce in civil proceedings in England and Wales.

Special measures for witnesses etc. in interim orders hearings

- 35.**—(1) A person giving evidence in an interim orders hearing, including the registered person, is entitled to special measures if—

- (a) the person is under 18, or
 - (b) the interim orders panel considers that the quality of evidence given by the person is likely to be diminished by reason of—
 - (i) physical disability, learning disability, mental health problems, an illness or health condition or a dependency on drugs or alcohol, or
 - (ii) fear or distress in connection with giving evidence.
- (2) A person giving evidence in an interim orders hearing is also entitled to special measures if the matter to which the proceedings relate is of a sexual nature and the person is an alleged victim.
- (3) In deciding whether the quality of evidence given by a person is likely to be diminished by reason of a matter specified in paragraph (1)(b), the interim orders panel must take into account the views of the person concerned.
- (4) An interim orders panel may offer special measures to a person not entitled to them under paragraph (1) or (2), if it thinks that this is in the public interest.
- (5) “Special measures” (“*mesurau arbennig*”) means such special measures as the interim orders panel considers appropriate for the purpose of improving the quality of evidence given by a person at the hearing.
- (6) In considering which particular special measures may be appropriate, the interim orders panel must take into account the views of the person concerned.
- (7) A person who is 18 or over and who has the capacity to do so may decline to accept special measures or any particular special measure.
- (8) Whether a person has capacity for the purposes of paragraph (7) is determined in accordance with the Mental Capacity Act 2005.
- (9) A person who is under 18 (a “child”) (“*plentyn*”) may decline to accept special measures or any particular special measure only if the interim orders panel is satisfied that the quality of the child’s evidence is not likely to be diminished by the absence of the special measure or measures which the child wishes to decline.
- (10) In reaching a view as required by paragraph (9), the interim orders panel must consider—
- (a) the child’s age and maturity,
 - (b) the child’s ability to understand the consequences of giving evidence without the special measure or measures,
 - (c) the child’s best interests,
 - (d) the views of the child’s parents or any person with parental responsibility for the child,
 - (e) the relationship (if any) between the child and any party to the proceedings,
 - (f) the nature and alleged circumstances of the matter to which the proceedings relate, and
 - (g) any other factor that the panel thinks is relevant.
- (11) An interim orders panel must give a direction requiring the implementation or provision of any special measure which it has offered, except where the person concerned is entitled to decline the special measure and has done so.
- (12) If the matter to which the proceedings relate is of a sexual nature, the registered person may not personally cross-examine an alleged victim, unless—
- (a) the alleged victim has consented to this, and
 - (b) the interim orders panel does not consider that the alleged facts of the matter amount to, or are likely to amount to, a sexual offence under section 62 of the Youth Justice and Criminal Evidence Act 1999.

(13) If paragraph (12) means that the registered person is not permitted personally to cross-examine a person, the interim orders panel must give the registered person adequate opportunity to appoint a representative to do so.

(14) If the registered person does not appoint a representative under paragraph (13), but wishes an alleged victim to be cross-examined, SCW must appoint a representative to cross-examine the person on behalf of the registered person.

Interim orders hearings: procedure

36.—(1) A registered person is entitled to be represented in an interim orders hearing by—

- (a) a solicitor or counsel,
- (b) a representative from any professional organisation, or
- (c) if the interim orders panel agrees, any other person.

(2) The parties are entitled to give evidence.

(3) A person representing or advising the registered person may not give evidence.

(4) An interim orders hearing may proceed even if the registered person is not present and not represented, if the interim orders panel is satisfied that all reasonable efforts have been made to give notice of the hearing to the person.

Interim orders hearings rules

37.—(1) SCW must make rules about the procedure to be followed in interim orders hearings (“interim orders hearings rules”) (“*rheolau gwrandawriadau gorchmynion interim*”).

(2) The Welsh Ministers—

- (a) may give guidance (including guidance in the form of model rules) to SCW about the contents of interim orders hearings rules, and
- (b) must publish any guidance given under sub-paragraph (a).

(3) SCW must, when making interim orders hearings rules, have regard to any guidance given by the Welsh Ministers under paragraph (2)(a).

(4) Where guidance has been given in the form of model rules SCW must, after making any interim orders hearings rules, publish a document explaining any significant departures from or additions to the model rules.

(5) The power of SCW to make interim orders hearings rules is subject to the provision made by these Regulations.

Rebecca Evans
Minister for Social Services and Public Health,
under authority of the Cabinet Secretary for
Health, Well-being and Sport, one of the Welsh
Ministers

15 November 2016

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Care Council for Wales (“the Council”) was established by Part 4 of the Care Standards Act 2000 for the purposes of promoting high standards of conduct and practise among social care workers and promoting high standards in their training.

The Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) renames the Council as Social Care Wales (“SCW”), restates and modifies SCW’s original functions and confers additional functions.

Section 174(1) of the Act requires SCW to make rules to establish registration appeals panels, fitness to practise panels and interim orders panels (“the panels”). Section 174(6) and (7) of the Act requires SCW to make rules about, for example, the appointment of persons as panel members and the declaration and registration of the private interests of such members. Section 174(8) of the Act gives SCW the power to make rules about the constitution and operation of the panels and provides that such rules are subject to any provision made by the Welsh Ministers under section 175 of the Act (which gives the Welsh Ministers power to make regulations for and in connection with proceedings brought under the Act before the panels).

Part 2 of these Regulations makes provision about proceedings before registration appeals panels.

Part 3 of these Regulations makes provision about proceedings before fitness to practise panels.

Part 4 of these Regulations makes provision about proceedings before interim orders panels.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.