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WELSH STATUTORY INSTRUMENTS

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**2016 No. 1100**

**The Social Care Wales (Proceedings  
before Panels) Regulations 2016**

**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(1) or Chapter 5(2) of Part 6 of the Act applies;

“parties” (“*partiön*”) means the appellant and SCW(3) (or their representatives);

“registration appeal” (“*apél 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)(4), 99(2)(5) or 103(6) of the Act applies.

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- (1) 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.
  - (2) 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.
  - (3) See section 67(3) of the Act for the definition of “SCW”.
  - (4) 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).
  - (5) 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.

### **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<sup>(7)</sup>, 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.

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(6) 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), 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)).

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

### **Case management in registration appeals proceedings**

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

(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<sup>(8)</sup> (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<sup>(9)</sup> (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.

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<sup>(8)</sup> See section 117(3) for the definition of “barred list”.

<sup>(9)</sup> See section 117(4) for the definition of “relevant body”.

(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
- (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(10).

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(10) 2005 c. 9.

(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 gwrandawriadau 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.