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WELSH STATUTORY INSTRUMENTS

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**2016 No. 1100**

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

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

“parties” (“*partiion*”) 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(3) 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—

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- (1) 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..
- (2) See Chapter 4 of Part 6 of 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).
- (3) See section 164 of the Act for the meaning of “registered person” in Part 6 of the Act.

- (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;
  - (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<sup>(4)</sup>, a decision by the fitness to practise panel to agree with the person that the undertakings remain in effect with no variations,

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(4) 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.

- (b) in the case of a review of the fitness to practise of a registered person who is subject to a conditional registration order<sup>(5)</sup>, 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<sup>(6)</sup>, 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;
  - (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.

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<sup>(5)</sup> 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.

<sup>(6)</sup> See section 151(5) of the Act.

- (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(7).

(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.