
WELSH STATUTORY INSTRUMENTS

2016 No. 1100

The Social Care Wales (Proceedings
before Panels) Regulations 2016

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” (“*gwrndawiad 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(1) 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(2) 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;

(1) 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).

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

- (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 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”) (*“plentyyn”*) 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.