
WELSH STATUTORY INSTRUMENTS

2016 No. 1100

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

PART 3

Fitness to Practise Panels

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⁽¹⁾.

(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.

⁽¹⁾ 1999 c. 23.