

REGULATION AND INSPECTION OF SOCIAL CARE (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Social Care Workers

Section 79 - Meaning of “social care worker” etc.

126. **Section 79** sets out those persons who are “social care workers” for the purposes of the Act. The social care workers listed in subsection (1)(b) - (d) manage, or provide care and support in connection with regulated services; therefore this section needs to be read in conjunction with section 2. Persons not involved with the provision of care and support but employed at places where care and support is provided will not be captured by the definition; so persons who are employed as gardeners or electricians at a care home, for example, would not be “social care workers”.
127. Subsection (2) of section 79 enables the Welsh Ministers by regulations to treat other categories of person as social care workers for the purposes of this Act, and subsection (3) lists those categories. These include persons such as responsible individuals designated by service providers, student social workers, inspectors of care services and persons who provide care and support in connection with care and support services which are not “regulated services”. The regulations enable the Welsh Ministers to designate categories within a particular description of persons listed in subsection (3) to be treated as social care workers.

Sections 80 – 91 - The register, Registration in the social worker part or an added part of the register, “Appropriately qualified,” Dealing with applications for registration or renewal, Visiting social workers and Information to be contained on the register

128. This Part sets out the framework in relation to the register. Section 80 requires SCW to keep a register of relevant social workers, visiting social workers from relevant European States and social care workers of any other description specified by the Welsh Ministers in regulations. Regulations can therefore require SCW to keep a register of managers of regulated services or those employed in a regulated service. The requirement for social care workers to register does not arise by virtue of section 80. This is simply a requirement for SCW to keep a register of certain social care workers. See paragraphs 137 and 138 for an explanation of how the requirement to register is imposed on social workers and social care workers. If for example the Welsh Ministers require managers of regulated services to register with SCW, regulations would have to be made under section 80 to require SCW to keep a register of those managers.
129. The register will comprise of parts; a part for relevant social workers; a part for each description of social care workers specified by the Welsh Ministers in regulations; and a part for visiting social workers. If the Welsh Ministers require SCW to keep a register of managers of regulated services and those employed in a regulated service for example,

there must be a separate part of the register for managers and then a separate part for those employed in a regulated service.

130. By virtue of section 111 social workers who wish to call themselves social workers or hold themselves out as registered social workers must be registered with SCW or an equivalent regulator in the UK (further explanation is provided below).
131. The 2000 Act did not require social care workers of other descriptions to register. Under the 2000 Act certain categories of social care workers were required to register by virtue of requirements set out in regulations made pursuant to section 22 of the 2000 Act. For example regulation 9(6) of the [Care Homes \(Wales\) Regulations 2002 \(SI 2002/324\)](#) stated that a person is not fit to manage a care home unless the person is registered as a manager of a care home with the Council. Regulations made under section 27 of the Act could set out similar requirements in relation to regulated services under Part 1. See the explanatory note for section 27 for further details. The criteria for the fitness of managers of regulated services and staff at regulated services could include that they must be registered with SCW.
132. Regulations made under section 27 could require further categories of social care workers to register. Regulations under section 111(2) could also impose a requirement to register on other categories of social care workers by extending the protection of title afforded to social workers by virtue of that section. Regulations under subsection (2) may provide that it is an offence for a category of social care worker, such as managers of a regulated service, to call themselves or hold themselves out as a registered manager without being registered with SCW or an equivalent regulator. If such regulations are made to require categories of social care workers to register, regulations will also have to be made under section 80 to require SCW to keep a register of those social care workers. The provisions of the Act which relate to registration will only apply to those social workers who are required to register by virtue of regulations made under section 27 or 111. They will not apply to the broad descriptions of persons in section 79(3) who may be treated as social care workers.
133. The duty to keep the register is imposed on SCW which must appoint a registrar (see section 81). The registrar must be a member of SCW's staff (it could be an existing member including the Chief Executive) and various responsibilities in relation to registration are conferred on that person. Most of these are set out in the Act, but additional responsibilities may be specified in rules made by SCW (see for example section 88). The registrar, being a member of SCW's staff is accountable to SCW for the way in which the various responsibilities of that office are exercised.

Applications for registration - sections 82 - 85

134. The register is a list of social care workers who have satisfied the registrar that they meet the registration requirements (section 83(1)). The registrar must make that judgment by reference to three criteria; to be registered a person must satisfy the registrar that he or she: a) is appropriately qualified ("condition 1")(section 83((2)(a) and section 84); b) is fit to practise ("condition 2") (section 83(2)(b) and section 117(1)) and, c) intends to practise work to which the entry relates ("condition 3") (section 83(2)(c)). More about these criteria appears below. In order to be registered in the social worker part or an added part of the register applicants must satisfy the three conditions. The conditions do not apply to those who wish to be registered in the part for visiting social worker; details of how they are registered appear below.

Condition 1: appropriately qualified

135. [Section 84](#) sets out how applicants can demonstrate that they are appropriately qualified for the purpose of registration. This will depend on whether the applicant is a social worker or a social care worker.

Social workers

136. Paragraph (a)(i) provides that social workers are considered appropriately qualified if they have undergone a course which has been approved by SCW under section 114. Courses will be approved by SCW if it is satisfied that the course will enable persons completing it to attain the required standard of proficiency in social work (a standard that will be specified in rules made by SCW)(see section 114).
137. Paragraph (a)(ii) provides that social workers are also considered appropriately qualified if they satisfy the requirements of section 85. Section 85 deals with the recognition of qualifications in social work gained in other parts of the UK and other parts of the world. This section is therefore relevant for social workers with a qualification from England for example. If SCW considers that a qualification gained from outside Wales is of equivalent standard to a qualification it approves, then an applicant who holds that qualification is considered appropriately qualified. A graduate from a social work degree course in England would therefore satisfy condition 1 if that qualification meets SCW's standard of proficiency. If SCW is of the view that the training involved in obtaining the professional qualification outside Wales is not of a sufficient standard it can require the applicant to undergo additional training in order to satisfy condition 1 (section 85(2)(b)(ii)).
138. For applicants from a country within the European Economic Area ("EEA States") and Switzerland, SCW can require the applicant to complete an adaptation period or pass an aptitude test (section 85(1)). EEA States include all European Union Member States plus Iceland, Liechtenstein and Norway. SCW could therefore require an applicant from Germany or from France to pass an aptitude test to demonstrate their skills and ability to practise social work. For example, applicants may be required to complete an adaptation period or pass an aptitude test if the applicant's training was significantly shorter than training in Wales or did not cover the range of activities that are covered by courses approved by SCW. Applicants can appeal SCW's decision to require them to complete an adaptation period or pass an aptitude test to the First-Tier Tribunal (see section 105).
139. If a social worker has not completed an approved course and does not satisfy the requirements of section 85 they can demonstrate that they are appropriately qualified if they satisfy any training requirements set out by SCW in rules (section 84(a)(iii)). For example, this power could be used by SCW to recognise applicants who hold qualifications that are no longer offered by universities or colleges.

Social Care workers

140. Paragraph (b)(i) of section 84 provides that social care workers are considered appropriately qualified if they have undergone a course which has been approved by SCW under section 114. Completion of an approved course will satisfy SCW that a social care worker is appropriately qualified.
141. **Section 84(b)(ii)** enables social care workers to demonstrate that they are appropriately qualified if they satisfy any training requirements set out by SCW in rules. For example, this could cover social care workers who have been in post prior to SCW obtaining the power to approve courses in relation to social care workers.

Condition 2: "fit to practise"

142. Assessments of a person's fitness to practise must be made by reference to the grounds of impairment set out in section 117. The statutory grounds are categories of conduct or underlying reasons for impairment. The registrar must be satisfied under section 83(2) (b) that an applicant's fitness to practise is not impaired on any of those grounds.

Condition 3: intention to practise

143. In order to be eligible to become registered an applicant must also satisfy the registrar that he or she intends to practise the social care work to which his or her entry relates. One way of doing this in practice might be to require the applicant to sign a declaration confirming that they intend to practise as a social worker.

Granting or refusing applications

144. Applications for registration which satisfy the requirements in section 83 must be granted by the registrar. Anyone whose application for registration has been refused has the right to appeal the registrar's decision to a registration appeals panel who will review the decision (see sections 101 to 103).
145. The registration conditions in sections 83 to 84 do not apply to visiting social workers. The expression "visiting social workers" refers to social workers from EEA States or Switzerland who are lawfully established to practise social work in their home country but are practising in the United Kingdom on a temporary or occasional basis (see section 90). For an explanation of EEA States see paragraph 143 above.
146. What constitutes temporary or occasional practice is a question of fact which will vary from case to case and it will be for SCW to determine although applicants can appeal SCW's decision to the First Tier Tribunal (see section 105). The relevant law on this is contained in Part 2 of the General Systems Regulations (see the definition in section 90(8)) The General System Regulations is the system for the recognition of professional qualifications introduced by Directive [89/48/EEC](#) and supplemented by Directive [92/51/EEC](#). It is to enable those who are qualified to practise a profession in an EEA country or Switzerland to have their qualifications recognised in another EEA country or Switzerland, in order to practise there. Visiting social workers are still established as social workers in their home country; for this reason there are different arrangements for checking their qualifications to determine whether they meet the standards of proficiency for practice in Wales. This is different to becoming established in Wales and being registered in the social worker part of the register. In order to register in the social worker part of the register, social workers who have qualified outside Wales are required to satisfy the registration conditions referred to above.
147. Visiting social workers are not required to demonstrate that they are appropriately qualified or fit to practise in accordance with sections 83 and 84 provided that they are lawfully allowed to practise in their own country and are only practising in the United Kingdom temporarily. If they have the benefit of regulation 8 of the General Systems Regulations they must be registered by the registrar and appear in the visiting European part of the register. Regulation 8 enables SCW to check the qualifications of visiting social workers for any substantial differences which are harmful to public health or safety and if there are any such difference SCW can require the visiting social worker to pass an aptitude test.
148. An entry for applicants whose applications for registration are granted will be included in the part of the register to which their employment relates. Section 91 sets out the information that will appear on the register. The Welsh Ministers can set out in regulations that the register must show additional qualifications or experience that the registered person has gained. For example, SCW could annotate an entry to show that the registered person has gained an additional qualification which has been quality assured by SCW or to show that a social worker has completed a senior social work programme. SCW can make rules requiring or authorising the registrar to include other information in an entry in the register (subsection (2)(a)). For example, rules made under this subsection could require the registrar to include information about the area where the registered person is employed. Rules made under this section could also require the registrar to include information in the register on the Welsh language skills of registered persons.
149. SCW will have the power by rules to specify that an entry in the register will lapse if not renewed (section 86). It is for SCW to specify the period after which a registration will lapse. SCW may specify different periods for different categories of social care worker. For renewals, registered persons do not have to demonstrate that they are appropriately qualified as they have already had to demonstrate this when they first applied to be registered. Rather they must demonstrate that they have complied with any continuing professional development requirements imposed by Social Care

Wales under section 113 (see subsection (3)). This could include work-based learning, seminars, teaching or other activities which aim to advance a registered person's professional development.

150. Entries in the register that are not renewed will automatically lapse (section 87). This will not be the case if the registered person is subject to fitness to practise proceedings or a fitness to practise panel has determined that his or her fitness to practise is impaired (see explanatory notes on Part 6 for explanation of the fitness to practise procedures). This is to avoid a situation where a registered person can let his or her registration lapse as a way of avoiding his or her case being subject to examination and possibly a sanction being imposed.

Sections 92 – 94 - Removal of entries from the register

151. The registrar is required to ensure that the register is accurate and up to date. Sections 92 to 94 set out the details of how the register is kept up to date; section 92, for example, allows SCW to make rules about removing an entry on a person's retirement from practising as a social care worker.

Sections 95 – 100 - Restoring an entry to the register

152. A person who has been removed from the register can apply to be restored to the register. An application for restoration could be made by a retired social worker, for example, who wishes to return to work. SCW must set out in rules the procedure for making such applications (see section 100). The rules could provide, for example, that all applications are treated as a first application for registration.
153. Where a person's entry in the register has been removed from the register by a fitness to practise panel because they were considered not fit to practise, the decision as to whether they should be allowed back on to the register must be made by a registration appeals panel. Section 174 provides that SCW must set up a panel adjudication system for the purpose of appeals relating to the register. Section 174 needs to be read in conjunction with section 175 which together make provision about the constitution, operation and procedure of the panel. Registration appeals panels are required to review the decisions made by the registrar in relation to registration and make decisions in relation to whether individuals should be restored to the register. Applications to be restored following removal by a fitness to practise panel cannot be made until 5 years after the applicant was removed and then only one application per year can be made. This minimum time period is intended to reflect the permanency and gravity of a decision to remove a person from the register. (See explanatory notes on Part 6 for an explanation of the fitness to practise procedures).
154. If a person has had two or more applications for restoration refused, a registration appeals panel can give a direction that the person is suspended from making further application for restoration of his or her entry to the register (see section 98(4)). That person is prevented therefore from making any further applications for restoration. However three years from the date of the direction, the applicant can apply to the registrar for that suspension to be reviewed by a registration appeals panel (see section 99(2)). If the registration appeal panel revokes the direction the applicant is free to apply for restoration once again. However if a registration appeal panel considers that the direction should remain in place the applicant remains unable to apply for restoration. The applicant can however request a further review after the expiry of another three year period.

Sections 101 – 105 - Appeals to a registration appeals panel and appeals to the tribunal

155. Registration appeal panels are required to review the decisions made by the registrar in relation to registration and are required to make decisions whether to restore individuals to the register following their removal by a fitness to practise panel.

156. **Section 104** introduces a further right of appeal against the decision of the panel to the First-Tier Tribunal. The Tribunal can hear appeals on matters of law and fact and it has a chamber that specialises in dealing with social care matters.

Sections 106 – 111 - Notifying the registrar of changes to information etc., duty to publish the register etc. and protection of title “social worker” etc.

157. It is important that the register is as up to date and as accurate as is possible. SCW is required therefore by rules to require registered persons to inform the registrar of any changes to the information recorded about him or her in the register. This could include informing the registrar of a change in employer for example if rules made by SCW require that such information must appear in the register.
158. **Section 107** enables SCW to take a pro-active approach in respect of registered persons’ fitness to practise; instead of waiting for an allegation to be made or information being brought to its attention in another way that a registered persons’ fitness to practise may be impaired, section 107 enables SCW to conduct periodic surveys of registered persons to satisfy itself that their fitness to practise remains unimpaired. If the registrar was made aware of any issues through this process it could notify SCW who could refer the matter for further investigations under Chapter 2 of Part 6 (see explanatory note which accompanies Part 6 for further information).
159. For reasons of public protection the register can reflect those sanctions imposed by a fitness to practise panel on a registered person (see section 91). However, the register will not reflect that a person’s entry has been removed. Therefore SCW is required to keep a list of those persons whose entries have been removed. If members of the public had concerns about a social worker and couldn’t find their name on the register, they could check the list of removed persons to see if they had in fact been removed on the basis of being unfit to practise.
160. **Section 111** provides protection of the title “social worker”. This was protected under section 61 of the 2000 Act. Subsection (2) provides a regulation-making power for the Welsh Ministers to be able to add other descriptions of social care workers whose title might require protection. Regulations could for example make it an offence for a person who is not registered as a manager of a regulated service to use that title or hold themselves out as being registered with an intention to deceive. SCW is required to set out its policy on prosecuting offences under section 111 (see section 72). This could for example set out that it will leave prosecutions to be brought by the Crown Prosecution Service, or that in certain cases it will bring private prosecutions.