



# Children and Social Work Act 2017

## 2017 CHAPTER 16

### PART 2

#### SOCIAL WORKERS ETC IN ENGLAND

##### *Social Work England*

#### **36 Social Work England**

- (1) A body corporate called Social Work England is established.
- (2) Social Work England is referred to in this Part as “the regulator”.
- (3) Schedule 3 makes further provision about the regulator.
- (4) The Secretary of State may by regulations rename Social Work England.
- (5) Regulations under subsection (4) may include consequential amendments to any provision contained in or made under this or any other Act.

#### **37 Over-arching objective**

- (1) The over-arching objective of the regulator in exercising its functions is the protection of the public.
- (2) The pursuit by the regulator of its over-arching objective involves the pursuit of the following objectives—
  - (a) to protect, promote and maintain the health, safety and well-being of the public;
  - (b) to promote and maintain public confidence in social workers in England;
  - (c) to promote and maintain proper professional standards for social workers in England.

### **38 Advisers**

- (1) The Secretary of State may by regulations—
  - (a) permit or require the regulator to appoint one or more people or panels of people to advise the regulator on matters relating to its functions, and
  - (b) make provision about the functions of people or panels so appointed.
- (2) The regulations may make further provision in connection with the appointment of a person or panel.
- (3) For example, the regulations may make provision about—
  - (a) payments to be made to those appointed;
  - (b) staff, facilities or other assistance.

#### *Regulation and improvement*

### **39 Registration**

- (1) The regulator must keep a register of social workers in England.
- (2) The Secretary of State may by regulations require the regulator to keep a register of people who are undertaking education or training in England to become social workers.
- (3) The Secretary of State may by regulations—
  - (a) authorise the regulator to appoint a member of staff as a registrar;
  - (b) make provision about the functions of the registrar;
  - (c) make other provision in connection with the keeping of a register.
- (4) For example, the regulations may make provision about—
  - (a) eligibility for registration or continued registration;
  - (b) the combination of the registers mentioned in subsections (1) and (2);
  - (c) categories of registration;
  - (d) the procedure for dealing with registration applications;
  - (e) expiry and renewal of entries;
  - (f) the content of the register;
  - (g) duties to provide information to the regulator;
  - (h) suspension or removal from the register;
  - (i) restoration of entries;
  - (j) appeals against decisions in connection with registration;
  - (k) publication of, or access to, the register or information contained in it;
  - (l) the procedure for considering, investigating or determining any matter in connection with the register or registration (including standards of proof);
  - (m) evidence in legal proceedings of matters contained in the register (including provision for a certificate to be conclusive proof).

### **40 Restrictions on practice and protected titles**

The Secretary of State may by regulations impose prohibitions or restrictions in connection with—

- (a) the carrying out of social work in England;
- (b) the use, in relation to social work in England, of titles or descriptions specified in the regulations;
- (c) the holding out of a person as qualified to carry out social work in England.

#### **41 Professional standards**

- (1) The regulator must determine and publish professional standards for social workers in England.
- (2) If the regulator is required to keep a register of students, it must determine and publish standards of conduct or ethics for registered students.
- (3) Before determining a standard under this section the regulator must—
  - (a) consult such persons as the regulator considers appropriate, and
  - (b) obtain the Secretary of State’s approval of the standard.
- (4) The Secretary of State may by regulations make provision about arrangements for assessing whether a person meets a professional standard under subsection (1) relating to proficiency.
- (5) If the Secretary of State has made regulations under section 48(1)(a) (transfer to the regulator of functions in connection with approved mental health professionals), the reference in subsection (1) to professional standards for social workers in England includes professional standards relating to their work as approved mental health professionals.

#### **42 Improvement standards**

- (1) The Secretary of State may—
  - (a) determine and publish improvement standards for social workers in England;
  - (b) carry out assessments of whether people meet improvement standards under paragraph (a).
- (2) The Secretary of State may make arrangements for another person to do any or all of those things (and may make payments to that person).
- (3) The Secretary of State must consult such persons as the Secretary of State considers appropriate before determining a standard under subsection (1)(a).
- (4) In this section “improvement standard” means a professional standard the attainment of which demonstrates particular expertise or specialisation.
- (5) Nothing in this section limits anything in section 41.

#### **43 Education and training**

- (1) The regulator must, in relation to people who are or who wish to become social workers in England, determine and publish standards of education or training.
- (2) Before determining a standard under this section the regulator must—
  - (a) consult such persons as the regulator considers appropriate, and
  - (b) obtain the Secretary of State’s approval of the standard.

- (3) The Secretary of State may by regulations make provision for the regulator to operate a scheme for the approval of—
  - (a) courses of education or training for people who are or who wish to become social workers in England;
  - (b) qualifications for people who are or who wish to become social workers in England.
- (4) The regulations may make provision in connection with the approval scheme.
- (5) For example, the regulations may make provision about—
  - (a) the criteria for approval or continued approval;
  - (b) the procedure for approval or renewal of approval;
  - (c) duties to provide information to the regulator;
  - (d) inspections in connection with the approval or continued approval of courses or qualifications (including provision for the appointment of people to carry out inspections);
  - (e) appeals against decisions in connection with approval;
  - (f) the publication of the scheme.
- (6) The provision that may be made under the regulations about the appointment of people to carry out inspections includes provision about—
  - (a) payments to be made to those appointed;
  - (b) staff, facilities or other assistance.

#### **44 Discipline and fitness to practise**

- (1) The regulator must—
  - (a) make arrangements for protecting the public from social workers in England whose fitness to practise is impaired, and
  - (b) make arrangements for taking other disciplinary action against social workers in England.
- (2) The Secretary of State may by regulations require the regulator to make arrangements for taking disciplinary action against registered students.
- (3) The Secretary of State may by regulations make further provision about—
  - (a) fitness to practise as a social worker in England,
  - (b) discipline of social workers in England or registered students, and
  - (c) the arrangements to be made under subsection (1) or (2).
- (4) For example, the regulations may make provision about—
  - (a) the person by whom decisions about discipline or fitness to practise are to be taken on behalf of the regulator;
  - (b) the appointment of assessors, examiners or legal or other advisers;
  - (c) the circumstances in which disciplinary action may be taken or the circumstances in which a person's fitness to practise is impaired;
  - (d) the procedure for considering, investigating or determining disciplinary matters or fitness to practise (including standard of proof);
  - (e) powers to obtain information;

- (f) temporary measures that may be taken against a person pending the outcome of an investigation;
  - (g) sanctions;
  - (h) appeals against decisions;
  - (i) publication of decisions.
- (5) The provision that may be made about persons appointed under the regulations includes provision about—
  - (a) payments to those persons;
  - (b) staff, facilities or other assistance.

## **45 Offences**

- (1) The Secretary of State may by regulations create offences in connection with—
  - (a) registration in a register mentioned in section 39;
  - (b) prohibitions or restrictions imposed under section 40 (restrictions on practice and protected titles);
  - (c) failing to comply with a requirement to provide documents or other information or to attend and give evidence under regulations under section 39 or 44;
  - (d) providing false or misleading information or evidence in response to a requirement under regulations under section 39 or 44.
- (2) The regulations—
  - (a) must provide for the offences to be triable summarily only, and
  - (b) may not provide for the offences to be punishable with imprisonment.

### *Provision of training*

## **46 Ensuring adequate provision of social work training**

- (1) The Secretary of State may take such steps as the Secretary of State considers appropriate—
  - (a) to ensure that adequate provision is made for social work training, and
  - (b) to encourage individuals resident in England to undertake social work training.
- (2) The power under subsection (1) may, in particular, be used to provide financial or other assistance (subject to any conditions the Secretary of State thinks are appropriate)—
  - (a) for individuals resident in England to undertake social work training;
  - (b) for organisations providing social work training.
- (3) Functions of the Secretary of State under this section may be exercised by any person, or by employees of any person, authorised to do so by the Secretary of State.
- (4) For the purpose of determining—
  - (a) the terms and effect of an authorisation under subsection (3), and
  - (b) the effect of so much of any contract made between the Secretary of State and the authorised person as relates to the exercise of the function,

Part 2 of the Deregulation and Contracting Out Act 1994 has effect as if the authorisation were given by virtue of an order under section 69 of that Act; and in subsection (3) “employee” has the same meaning as in that Part.

- (5) In this section “social work training” means education or training that is suitable for people who are or wish to become social workers in England.

**47 Exercise by Special Health Authority of functions under section 46(1)(b)**

- (1) The Secretary of State may direct a Special Health Authority to exercise functions under section 46(1)(b) so far as relating to the provision of financial or other assistance.
- (2) The National Health Service Act 2006 has effect as if—
  - (a) any direction under subsection (1) were a direction under section 7 of that Act, and
  - (b) any functions exercisable by the Special Health Authority by virtue of a direction under subsection (1) were exercisable under that section.
- (3) Directions under subsection (1)—
  - (a) must be given by an instrument in writing, and
  - (b) may be varied or revoked by subsequent directions.

*Approval of courses in relation to mental health professionals*

**48 Approval of courses for approved mental health professionals**

- (1) The Secretary of State may by regulations amend section 114ZA of the Mental Health Act 1983 (approval of courses for approved mental health professionals in England) for the purposes of—
  - (a) transferring the functions of the Health and Care Professions Council under that section to the regulator;
  - (b) giving the regulator power to charge fees for approving courses under that section.
- (2) The regulations may include further provision in connection with the approval of courses or charging of fees by the regulator under that section.
- (3) For example, the regulations may—
  - (a) authorise the regulator to arrange for another person to exercise functions on the regulator’s behalf;
  - (b) make provision about the setting of criteria for the approval or continued approval of courses;
  - (c) make provision about inspections in connection with the approval or continued approval of courses (including provision for the appointment of people to carry out inspections);
  - (d) make provision about the procedure for approval or renewal of approval;
  - (e) make provision about duties to provide information;
  - (f) make provision about appeals against decisions in connection with approval;
  - (g) make provision limiting the regulator’s power to approve courses run outside the United Kingdom to those run by institutions approved by the regulator or approved by a person with whom the regulator has made arrangements.

- (4) The provision that may be made under the regulations about the appointment of people to carry out inspections includes provision about—
  - (a) payments to be made to those appointed;
  - (b) staff, facilities or other assistance.
- (5) If the regulations give the regulator power to charge fees, section 50(2) to (7) apply for the purposes of this section as they apply for the purposes of that section.

#### **49 Approval of courses for best interests assessors**

- (1) Paragraph 130 of Schedule A1 to the Mental Capacity Act 2005 (assessments in connection with deprivation of liberty: regulations about selection, and eligibility, of persons to carry out assessments) is amended as follows.
- (2) After sub-paragraph (2) insert—
  - “(2A) In relation to England—
    - (a) the provision that the regulations may make in relation to a person’s training in connection with best interests assessments includes provision for particular training to be specified by Social Work England or the Secretary of State otherwise than in the regulations;
    - (b) the provision that the regulations may make in relation to a person’s training in connection with other assessments includes provision for particular training to be specified by the Secretary of State otherwise than in the regulations.
  - (2B) The regulations may give Social Work England power to charge fees for specifying any training as mentioned in sub-paragraph (2A)(a).
  - (2C) If the regulations give Social Work England power to charge fees, section 50(2) to (7) of the Children and Social Work Act 2017 apply for the purposes of sub-paragraph (2B) as they apply for the purposes of that section.”
- (3) In sub-paragraph (3)—
  - (a) at the beginning insert “In relation to Wales”;
  - (b) for “the appropriate authority” substitute “the Welsh Ministers”.
- (4) Omit sub-paragraph (4).

#### *Fees and grants*

#### **50 Fees**

- (1) The Secretary of State may by regulations confer power on the regulator to charge fees in connection with—
  - (a) registration or continued registration in a register mentioned in section 39;
  - (b) assessing whether a person meets a professional standard relating to proficiency as mentioned in section 41(4);
  - (c) approval or continued approval in accordance with a scheme mentioned in section 43.

- (2) The regulator is responsible for setting the level of fees in accordance with any provision made by the regulations.
- (3) Before determining the level of any fee the regulator must—
  - (a) consult any persons they consider appropriate, and
  - (b) obtain the approval of the Secretary of State.
- (4) The regulations may authorise fees to be set at a level that exceeds the cost of the things in respect of which they are charged.
- (5) But the regulations must require the level of any fees to be set with a view to ensuring that, so far as possible, the regulator's fee income does not exceed its expenses (taking one year with another).
- (6) Regulations under this section may include provision about the collection and recovery of fees.
- (7) The regulations must require the regulator to pay any fee income to the Secretary of State unless the Secretary of State, with the consent of the Treasury, directs otherwise.

## **51 Grants**

- (1) The Secretary of State may make grants to the regulator.
- (2) A grant under this section may be made subject to any conditions the Secretary of State thinks are appropriate.

### *Information and co-operation*

## **52 Information and advice**

- (1) The regulator may publish or disclose information about any matter relating to its functions or give advice about any matter relating to its functions.
- (2) The Secretary of State may by regulations —
  - (a) make provision requiring the regulator to publish or disclose information, or give advice, under subsection (1);
  - (b) make other provision supplementing subsection (1).

## **53 Duty to co-operate**

- (1) The regulator must where appropriate co-operate with the following in the exercise of its functions—
  - (a) Social Care Wales,
  - (b) the Scottish Social Services Council,
  - (c) the Northern Ireland Social Care Council, and
  - (d) any other person specified in regulations made by the Secretary of State.
- (2) Until section 67(3) of the [Regulation and Inspection of Social Care \(Wales\) Act 2016](#) (anaw 2) comes fully into force, the reference in subsection (1)(a) to Social Care Wales is to be read as a reference to the Care Council for Wales.



## *Oversight*

### **54 Information for Secretary of State**

The regulator must provide any information that the Secretary of State requests in relation to the exercise of the regulator's functions.

### **55 Default powers**

- (1) The Secretary of State may give the regulator a remedial direction if the regulator—
  - (a) has defaulted in performing any functions and has not remedied the default, or
  - (b) is likely to default in performing any function.
- (2) The Secretary of State may by regulations make further provision about remedial directions and their enforcement.
- (3) For example, the regulations may make provision about—
  - (a) the procedure for determining whether the regulator has defaulted or is likely to default;
  - (b) the procedure for giving remedial directions;
  - (c) the steps that the Secretary of State may take if the regulator fails to comply with a remedial direction (which may include doing anything that the regulator can do);
  - (d) the payment by the regulator of any expenses incurred by the Secretary of State (including expenses incurred in making payments to anyone acting on the Secretary of State's behalf).

### **56 Oversight by the Professional Standards Authority for Health and Social Care**

Schedule 4 contains amendments to give the Professional Standards Authority for Health and Social Care functions to oversee the regulator.

## *Regulations under Part 2*

### **57 Conferral of functions and sub-delegation**

- (1) Regulations under this Part may be used to confer functions on the regulator or a Minister of the Crown.
- (2) Regulations under this Part may confer discretions on the regulator or a Minister of the Crown.
- (3) Regulations under this Part may—
  - (a) confer power on the regulator to make rules;
  - (b) make provision in connection with the procedure for making those rules (including provision requiring the regulator to obtain the Secretary of State's approval before making rules of a specified description).
- (4) The provision that may be made in regulations under this Part by virtue of section 67 includes, in particular, provision amending, repealing or revoking any provision made by or under an Act or any other instrument or document (whenever passed or made).

**58 Consultation**

- (1) Before making regulations under this Part the Secretary of State must carry out a public consultation.
- (2) Where the Secretary of State lays a draft of an instrument containing regulations under this Part before Parliament, it must be accompanied by a report by the Secretary of State about the consultation.
- (3) The duties imposed by subsections (1) and (2) do not apply to regulations under section 36 (renaming of Social Work England).
- (4) The duties imposed by subsections (1) and (2) do not apply where the regulations amend other regulations and, in the opinion of the Secretary of State, they do not make any substantial change.

**59 Parliamentary procedure for regulations under Part 2**

- (1) Regulations under section 36 (renaming of Social Work England) are subject to the negative resolution procedure.
- (2) Any other regulations under this Part are subject to the affirmative resolution procedure.

*Transfer scheme and consequential amendments***60 Transfer scheme**

- (1) The Secretary of State may make a scheme for the transfer of property, rights and liabilities from the Health and Care Professions Council (the “old regulator”) to Social Work England.
- (2) The things that may be transferred under a transfer scheme include—
  - (a) property, rights and liabilities that could not otherwise be transferred;
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme.
- (3) A transfer scheme may make consequential, supplementary, incidental or transitional provision and may—
  - (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done by the old regulator in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the old regulator in respect of anything transferred;
  - (d) make provision for references to the old regulator in an instrument or other document in respect of anything transferred to be treated as references to the transferee;
  - (e) make provision for the shared ownership or use of property;
  - (f) if the TUPE regulations do not apply in relation to the transfer, make provision which is the same or similar.
- (4) A transfer scheme may provide—

- (a) for modification by agreement;
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (5) In subsection (3)(f), “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
- (6) In this section—
  - (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
  - (b) references to the transfer of property include the grant of a lease.

## **61 Repeal of existing powers to regulate social workers**

- (1) The Health Act 1999 is amended as follows.
- (2) In section 60 (regulation of health professions, social workers, other care workers etc) —
  - (a) in subsection (1), omit paragraphs (ba) and (bb);
  - (b) in subsection (2), in paragraphs (c) and (d), omit “(other than the social work profession in England)”;
  - (c) omit subsection (2ZA);
  - (d) in subsection (2ZC), omit paragraph (o);
  - (e) for subsection (2ZE) substitute—

“(2ZEA) In subsection (2ZC) “social work in England” means social work which is required in connection with any health, education or social services provided in England.”;
  - (f) in the heading, for “, social workers, other care” substitute “and social care”.
- (3) In section 60A (standards of proof in fitness to practise proceedings)—
  - (a) in subsection (2A), omit paragraph (b);
  - (b) in subsection (2A)(c), for “that section” substitute “section 60”;
  - (c) in subsection (3), omit “or the social work profession in England (within the meaning given in section 60(2ZA))”.
- (4) In Schedule 3 (regulation of health care and associated professions)—
  - (a) in paragraph 10, for the definitions of “social care work in England”, “social care workers in England” and “the social work profession in England” substitute—

““social care work in England” and “social care workers in England” have the meaning given by section 60.”;
  - (b) in paragraph 11(2A)(b), for “members of the social work profession in England” substitute “engaging in social work in England”.

## **62 Amendments to do with this Part**

Schedule 5 contains further minor and consequential amendments relating to this Part.

*Interpretation***63 Interpretation of Part 2**

## (1) In this Part—

“approved mental health professional” has the meaning given by section 114 of the Mental Health Act 1983;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“professional standards” includes standards relating to—

- (a) proficiency;
- (b) performance;
- (c) conduct and ethics;
- (d) continuing professional training and development;

“register” means a register mentioned in section 39(1) or (2) (and related expressions are to be read accordingly);

“register of students” means a register mentioned in section 39(2) (and related expressions are to be read accordingly);

“registered student” means a person registered as someone who is undertaking education or training in England to become a social worker;

“the regulator” has the meaning given by section 36;

“social work in England” means social work which is required in connection with any health, education, or social services provided in England;

“social worker in England” means a person who engages in social work in England (but see subsection (2)).

- (2) A person who is a member of a profession to which section 60(2) of the Health Act 1999 applies is not to be treated as a social worker in England by reason only of carrying out work as an approved mental health professional.

*Review***64 Review by independent person**

## (1) The Secretary of State must commission an independent person to—

- (a) review the operation of this Part during the review period, and
- (b) send a report to the Secretary of State on the findings of the review.

- (2) In carrying out the review the independent person must consult representatives of social workers in England and anyone else that the person considers appropriate.

- (3) On receiving the report the Secretary of State must lay it before Parliament.

- (4) The Secretary of State must also lay before Parliament a response to the report.

- (5) The review period is 5 years beginning with the day on which section 39(1) comes fully into force.