
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Social Workers Regulations 2018

PART 5

Discipline and fitness to practise

Fitness to practise proceedings

25.—(1) Where a question arises as to a social worker’s fitness to practise by reason of any of the grounds in paragraph (2), and regulation 26(5) does not apply, the regulator must ensure that—

- (a) proceedings are carried out in accordance with this regulation and Schedule 2, and any rules made under paragraph (5) (“fitness to practise proceedings”),
- (b) any outcome of the fitness to practise proceedings which is mentioned in regulation 9(2) is recorded in the register in accordance with that regulation, and
- (c) the particulars of any orders and decisions made in fitness to practise proceedings, together with the reasons for them, and the particulars of any order made on review or appeal, are published as soon as reasonably practicable.

(2) The grounds referred to in paragraph (1) are—

- (a) misconduct,
- (b) lack of competence or capability,
- (c) a conviction or caution in the United Kingdom for a criminal offence,
- (d) a conviction not falling within sub-paragraph (c) for an offence which, if committed in England and Wales, would constitute a criminal offence,
- (e) adverse physical or mental health,
- (f) a determination by a regulatory body to the effect that the person’s fitness to practise is impaired,
- (g) being included—
 - (i) by the Disclosure and Barring Service in a barred list (within the meaning given in section 60(1) of the Safeguarding Vulnerable Groups Act 2006⁽¹⁾ or article 2(2A) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007⁽²⁾), or
 - (ii) by the Scottish Ministers in the children’s list or the adults’ list (within the meaning given in section 1(1) of the Protection of Vulnerable Groups (Scotland) Act 2007⁽³⁾),
or
- (h) not having the necessary knowledge of English,

⁽¹⁾ 2006 c. 47.

⁽²⁾ 2007 No. 1351 (N.I. 11). Article 2 was amended by paragraph 76 of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9).

⁽³⁾ 2007 asp 14.

provided that an alleged matter which occurred outside the United Kingdom, or at a time when the person was not registered, may only be grounds for the purposes of paragraph (1) where the regulator considers that to be in the public interest.

(3) For the purposes of paragraph (2), references to a conviction include references to a conviction by a Court Martial.

(4) The standard of proof applicable to fitness to practise proceedings is that applicable to civil proceedings.

(5) The regulator must make rules setting out—

- (a) the criteria by which it will determine, pursuant to paragraph 1(1) of Schedule 2, whether there are reasonable grounds for investigating whether a registered social worker's fitness to practise is impaired,
- (b) the timescales within which any steps in fitness to practise proceedings are to be taken,
- (c) any requirements and restrictions in relation to who may be appointed as an adjudicator, case examiner or investigator in fitness to practise proceedings,

and may make rules setting out the detail of any other aspect of fitness to practise proceedings.

(6) In any case where investigators, case examiners, or adjudicators consider that a registered social worker's fitness to practise may be impaired by reason of not having the necessary knowledge of English, they may—

- (a) direct the social worker to undergo an examination, or other assessment, of their knowledge of English, and regulation 11(4) and (5) and any rules made under regulation 11(6)(d) apply in relation to that examination or other assessment, and
- (b) draw such inferences as they deem appropriate if the social worker fails to undergo an examination or assessment, or fails to provide or disclose any evidence, as directed.

(7) Subject to paragraph (8), the regulator must appoint such advisers, or members of the regulator's staff, as the regulator thinks fit, as—

- (a) investigators,
- (b) case examiners, and
- (c) adjudicators,

for the purposes of each fitness to practise proceedings.

(8) A person may not be appointed—

- (a) under more than one sub-paragraph of paragraph (7) in fitness to practise proceedings relating to the same registered social worker, or
- (b) as an adjudicator, if they have been appointed as an investigator or a case examiner in relation to any fitness to practise proceedings in the preceding two years.

Automatic removal from the register

26.—(1) This paragraph applies where the regulator becomes aware that a registered social worker has been convicted of a listed offence which was committed on or after the date on which these Regulations (other than regulation 40) come into force, other than a conviction that has been quashed.

(2) Where paragraph (1) applies, the regulator must notify the social worker—

- (a) that the regulator proposes to remove the social worker's entry from the register,
- (b) of the reason for the proposed removal,
- (c) that, if they consider that the proposed removal is based on an error of fact, the social worker may—

- (i) make written submissions, within such time as the regulator may specify in the notice, and
 - (ii) attend before the regulator with or without representation, in order to make oral submissions, and
 - (d) of the social worker's right of appeal under regulation 27.
- (3) The regulator must consider any written and oral representations made in accordance with paragraph (2)(c), and determine whether the proposed removal is based on an error of fact.
- (4) Where the regulator determines that the proposed removal is based on an error of fact, or becomes aware that the person's conviction has been quashed, the entry is to remain on the register and the regulator must notify the following accordingly —
- (a) the social worker, and
 - (b) any person who notified the regulator that the social worker had been convicted of a listed offence.
- (5) Where paragraph (4) does not apply the regulator must—
- (a) remove the entry relating to that person ("P") from the register, subject to paragraph (7),
 - (b) notify the following of the removal, and of the date of the removal—
 - (i) P,
 - (ii) any person by whom P is employed, or with whom P has an arrangement, to provide services as a social worker or in relation to social work (where known),
 - (iii) any other regulatory body with which P is registered (where known),
 - (iv) any person who notified the regulator that P had been convicted of a listed offence, and
 - (v) any other person where, in the opinion of the regulator, it is in the public interest to do so, and
 - (c) terminate any ongoing fitness to practise proceedings in relation to P.
- (6) The regulator must make rules setting out the procedure for removing an entry from the register under this regulation including, in particular, the time within which any step must be taken.
- (7) P's entry may not be removed from the register until the period within which an appeal may be made under regulation 27 has expired or, if an appeal is made, the appeal has been withdrawn or otherwise finally disposed of.
- (8) In these Regulations "listed offence" means—
- (a) an offence listed in any of paragraphs 1 to 7 of Schedule 3, or
 - (b) an offence listed in any of paragraphs 8 to 13 of Schedule 3 in respect of which a custodial sentence has been imposed.

Appeals against automatic removal from the register

27.—(1) A person may appeal to the High Court against a determination by the regulator to remove their entry from the register under regulation 26(5), on the ground that the determination was based on an error of fact or of law.

(2) An appeal under paragraph (1) must be made within 28 days of the day on which the person is notified that the regulator proposes to remove their entry from the register.

- (3) On an appeal under paragraph (1) the High Court may—
- (a) dismiss the appeal,
 - (b) set aside the determination, or

(c) remit the case to the regulator to dispose of in accordance with the directions of the court, and may make any order as to costs as it thinks fit.