
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Social Workers Regulations 2018

PART 7

Powers of intervention

Referral of cases by the Authority to the High Court

34. The following decisions are specified for the purposes of section 29(2A)(1) of the National Health Service Reform and Health Care Professions Act 2002—

- (a) a decision made under regulation 14(1)(a) (removal from the register where registration fraudulently procured or incorrectly made),
- (b) a decision made under regulation 15(6)(b) (to impose a conditions of practice order on an application for restoration),
- (c) a decision made under regulation 26(5) (automatic removal from the register),
- (d) a decision made under paragraph 12(1) of Schedule 2 (that fitness to practise is not impaired),
- (e) a decision made under paragraph 12(3)(a) or (c) of Schedule 2 (that fitness to practise is impaired, but imposing no order)
- (f) a decision made under paragraph 12(3)(b) of Schedule 2 (making a final order),
- (g) a decision under paragraph 15(2) of Schedule 2 (on a review of a final order).

Power of the Secretary of State to investigate

35.—(1) This paragraph applies where the Secretary of State has reason to believe that the regulator—

- (a) has defaulted in performing any function and has not remedied the default, or
- (b) is likely to default in performing any function.

(2) Where paragraph (1) applies, the Secretary of State must carry out an investigation in accordance with paragraphs (3) to (5).

(3) Unless the Secretary of State considers that it would not be in the public interest, the Secretary of State must inform the following of the investigation and the grounds for it, and invite them to make representations—

- (a) the regulator,
- (b) the Authority,
- (c) any person or body affected, or likely to be affected, by the default, and

(1) By virtue of section 29(2A) and (4) of the National Health Service Reform and Health Care Professions Act 2002, the Professional Standards Authority for Health and Social Care may refer decisions of the regulator, of a description specified in regulations, to the High Court.

- (d) any other person or body the Secretary of State considers appropriate.
- (4) The Secretary of State must—
 - (a) review the facts and evidence, or
 - (b) appoint a person or body to review the facts and evidence and report to the Secretary of State, and

determine whether there has been, or is likely to be, a default by the regulator.

- (5) Unless the Secretary of State considers that it would not be in the public interest, as soon as practicable after the determination referred to in paragraph (4) the Secretary of State—
 - (a) must notify the regulator of—
 - (i) the determination and the reasons for it, and
 - (ii) in the case of a determination that there has been, or is likely to be, a default by the regulator, the time within which the regulator may make representations to the Secretary of State, and
 - (b) may notify any other person who was informed of the investigation in accordance with paragraph (3), of the determination and the reasons for it.

The procedure for giving remedial directions

36.—(1) This paragraph applies where the Secretary of State has determined, in accordance with regulation 35(4) that the regulator—

- (a) has defaulted in performing any function and has not remedied the default, or
- (b) is likely to default in performing any function.
- (2) Where paragraph (1) applies the Secretary of State—
 - (a) must consider any representations made by the regulator under regulation 35(5)(a)(ii), and
 - (b) having done so, may give a direction in writing (a “remedial direction”) to the regulator specifying—
 - (i) the nature of the default, or likely default,
 - (ii) the reasons for the Secretary of State’s determination,
 - (iii) the action (the “remedial action”) the regulator must take in order to remedy or avoid the default,
 - (iv) the date by which the remedial action must be taken, and
 - (v) the steps the Secretary of State may take if the regulator fails to take the remedial action by that date.
- (3) A remedial direction may direct the regulator to require an adviser to support and assist it in taking any remedial action.
- (4) The Secretary of State must publish a remedial direction in such manner as the Secretary of State thinks appropriate.

Failure to comply with a remedial direction

37.—(1) This paragraph applies where the regulator has failed to take remedial action by the date specified in a remedial direction.

- (2) Where paragraph (1) applies, the Secretary of State must notify the regulator in writing that it has failed to comply with the remedial direction, and set out any steps the Secretary of State will take in order to give effect to the remedial direction.

(3) The steps the Secretary of State may take for the purposes of giving effect to the remedial direction are—

- (a) taking over the exercise of any of the regulator’s functions,
- (b) taking any other action which the regulator is empowered to take under these Regulations,
- (c) appointing an individual or body (an “appointee”) to take the steps in sub-paragraph (a) or (b), or both,

provided that the Secretary of State and any appointee must not take a decision about whether to make, amend, remove or restore an entry in the register in respect of an individual.

(4) The Secretary of State must consult the regulator in exercising any of the regulator’s functions under paragraph (3) where the Secretary of State considers that to be appropriate.

(5) The Secretary of State must ensure that any appointee—

- (a) is appointed as soon as practicable after the notification mentioned in paragraph (2) is given,
- (b) has the experience and expertise which the Secretary of State considers is necessary to exercise the relevant functions of the regulator, and
- (c) is able to exercise those functions in accordance with any timetable specified by the Secretary of State.

(6) Before their appointment, a prospective appointee must agree in writing with the Secretary of State—

- (a) the terms on which, and the period for which, they will exercise the relevant functions of the regulator,
- (b) whether the appointee must consult the regulator in exercising any of those functions,
- (c) the terms on which, and the manner in which, the exercise of those functions will be returned to the regulator, or transferred to another appointee, at the end of the period mentioned in sub-paragraph (a), and
- (d) the circumstances in which the appointment may be revoked before the end of that period.

(7) An appointee must exercise the relevant functions of the regulator in accordance with the agreement mentioned in paragraph (6).

(8) The regulator must co-operate with the Secretary of State and any appointee, and provide such information, advice, guidance or assistance as the Secretary of State, or appointee, considers appropriate.

Payment by the regulator of expenses incurred

38. Where the Secretary of State makes payment to an appointee, or incurs expenses as a result of taking any action under regulations 35 or 37, the Secretary of State may recover the amount of that payment, or that expense, from the regulator.