

EXPLANATORY MEMORANDUM TO
THE SOCIAL WORKERS (AMENDMENT AND TRANSITIONAL PROVISION)
REGULATIONS 2022

2022 No. 1216

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes several small changes to Social Work England’s (SWE) regulatory framework to improve the regulator’s operational efficiency in support of effective public protection.
- 2.2 The instrument predominantly makes changes to SWE’s discipline and fitness to practise proceedings and includes limited changes to the regulator’s:
 - duty to co-operate
 - registration of social workers
 - powers of intervention
- 2.3 The instrument also addresses anomalies in other legislation and ensures all UK wide equivalent offences are included in the list of offences that prohibit registration.
- 2.4 The procedure for free issue of these Regulations has been applied and these Regulations are being issued free of charge to all known recipients of SI 2018/No.893.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument amends the Health and Social Work Professions Order 2001 and Mental Capacity (DoLs: Standard Authorisations Assessments and Ordinary Residence) Regulations 2008 which were amended by the Social Workers Regulations 2018. Please see paragraph 6.8 for further detail.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Children, Families and Wellbeing, Claire Coutinho MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Social Workers (Amendment and Transitional Provision) Regulations 2022 are compatible with the Convention rights.”

6. Legislative context

- 6.1 Part 2 of the Children and Social Work Act 2017 (“the 2017 Act”) established SWE as a non-departmental public body, sponsored by the Department for Education, to be the new regulator for social work in England, taking over from the Health and Care Professions Council (HCPC) in December 2019.
- 6.2 This instrument needs to be read alongside the Social Workers Regulations 2018 (“the 2018 Regulations”) which it amends. The 2018 Regulations set out the detail of the regulatory framework under which SWE regulates social workers in England. This instrument makes several changes to the 2018 Regulations to improve operational efficiency in further support of effective public protection and to correct anomalies in the original drafting.
- 6.3 Section 58 of the 2017 Act stipulates that before making such regulations the Secretary of State must carry out a public consultation and any instrument laid before Parliament must be accompanied by a report by the Secretary of State about the consultation.
- 6.4 The Department carried out a public consultation between 23 March and 11 May on the draft proposals contained in this instrument and the Government Response to the consultation was published in August 2022 to fulfil this statutory requirement. Further details of the consultation are set out in section 10 of this document.
- 6.5 Part 2 through to Part 6 of the 2018 Regulations contain the detail of SWE’s regulatory framework, setting out how SWE performs its core functions including of keeping a register of social workers in England, approving education and training for social workers, and maintains standards through fitness to practise processes. This instrument makes changes to Part 2 to improve data sharing provisions using powers in section 52 of the Children and Social Work Act 2017. At consultation we had drafted changes to Part 2 and Part 5 using the general powers granted in sections 53 and 67 of the CSWA. However, we have subsequently refined the drafting to achieve the policy objective in a single provision under Part 2 using the specific powers granted under section 52.
- 6.6 It also makes changes to Parts 3, 5 and 6 to introduce voluntary removal, remove delay in publishing orders by the regulator, and to allow automatic removal to take immediate effect following a decision to remove where a social worker has been convicted of a listed offence under Schedule 3 of the 2018 Regulations.
- 6.7 Part 7 of the 2018 Regulations sets out the powers of intervention available to the Secretary of State and Professional Standards Authority (“PSA”) over the regulator. This instrument extends the PSA’s powers of oversight to include mandatory reviews and any restoration decision made by the regulator following a fitness to practise removal. The changes in this instrument will make the PSA’s powers of intervention in Regulation 34 equal to those for other regulators in section 29 of the NHS Reform and Health Care Professions Act 2002.
- 6.8 Part 8 of the 2018 Regulations makes amendments to correct anomalies in other legislation. This instrument amends article 14 of the Health and Social Work Professions Order 2001. Regulation 41 of the 2018 Regulations was meant to omit article 14(ba) of the Health and Social Work Professions Order to reflect the fact that HCPC would no longer have the function of setting criteria for approving courses for approved mental health professionals but instead omitted article 14(b) in error. This amendment reinstates article 14(b) and omits article 14(ba) as originally intended.

This instrument also corrects 5(2) of the Mental Capacity (DoLs: Standard Authorisations Assessments and Ordinary Residence) Regulations 2008 to only reference social workers registered with Social Work England.

- 6.9 Schedule 2 of the 2018 Regulations sets out the details of SWE's fitness to practise processes and procedures. This instrument makes 28 technical amendments to Schedule 2.
- 6.10 Schedule 3 of the 2018 Regulations contains the listed offences which will allow the regulator to automatically prohibit registration which include serious violent or sexual offences and other offences relevant to the role of a social worker. This instrument amends Schedule 3 to include two additional offences, section 1 and section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

7. Policy background

What is being done and why?

- 7.1 Social Work England was created as a specialist regulator for the social work profession in England. The purpose of the regulator is to protect, promote and maintain the health, safety and wellbeing of the public through promoting and maintaining professional standards for social workers and ensuring there is public confidence in the profession.
- 7.2 Having operated under its regulatory framework since December 2019, the Department for Education and Social Work England have identified small changes which could be made to the 2018 Regulations to improve operational efficiency in support of effective public protection.

Duty to co-operate

- 7.3 It is vital that Social Work England co-operates not only with other regulators, but also with other bodies which work with and alongside it for public protection such as the Disclosure and Barring Service, local policing bodies, NHS trusts, social worker employers. Regulation 7 already lists public bodies and persons the regulator is required to co-operate with in the exercise of its functions.
- 7.4 This instrument makes changes to strengthen the regulator's duty to cooperate to give the regulator confidence to share information related to its functions where it is in the public interest. SWE already has a duty to cooperate and powers to request information, it does not have any express authority in the 2018 Regulations to disclose information. The instrument introduces Regulation 7A to impose a duty on the regulator to disclose relevant information relating to its functions, when requested, and where it is in the public interest to do so. Regulation 7A also introduces a power to allow the regulator to confidently disclose any information relating to a registered social worker's fitness to practise. The provision does not override General Data Protection Regulation (GDPR). The instrument also makes changes to Regulation 7(1) to make clear the regulator can cooperate with relevant bodies outside of England in addition to those outside of the UK. The changes will aid the regulator in its overarching objective of public protection.

Registration and removal from the register

- 7.5 Establishing and maintaining a transparent and accurate register of social workers is fundamental to effective regulation and public protection. Registration functions

include keeping and maintaining the register, the assessment and determination of registration applications, annotation of the register, renewal and lapse, and restoration following removal.

- 7.6 The 2018 Regulations already require Social Work England to publish decisions made by its case examiners and adjudicators – where a social worker’s fitness to practise is found to be impaired and a sanction imposed as a result, whether by the case examiners under the accepted disposal process or as a final order by the adjudicators after a hearing, the sanction must be included in the social worker’s entry in the register while it remains in place. There is a genuine public interest in sharing this information because it promotes understanding and good practice within the sector, maintains confidence in the social work profession and assists members of the public to make informed choices.
- 7.7 This instrument makes changes to Regulation 9 to ensure the regulator can publish orders and reviews at the point they are made and that only final orders by adjudicators may not be recorded until expiry of appeal period. This change is necessary to remove delay in the process of publishing details to the register in support of the regulator’s core function of public protection. The instrument also makes changes to Regulation 26 to allow automatic removal to take effect immediately following a removal decision. This change removes the need to use an interim order to fill a gap in public protection. Automatic removal is only used when a social worker has been found guilty of one of the serious offences in Schedule 3 of the Regulations. While we recognise expediting publication of decisions will have a resulting impact on the registrant, we consider these provisions are necessary to ensure public safety and maintain public confidence in the regulator given the very serious nature of such offences.
- 7.8 The instrument also introduces a new provision to allow a registrant to seek voluntary removal from the register and gives the regulator discretionary power to approve the request; decisions by the regulator will be open to challenge by judicial review. This change will give the regulator comparable powers to other health and social care regulators who already have provision in their regulations to allow voluntary removal of registrants with outstanding fitness to practise concerns. Protection of the public from registrants whose fitness to practise could be impaired will be the regulator’s primary consideration when deciding whether or not voluntary removal is appropriate. The regulator will be required to publish the fact of voluntary removal and may publish further details it deems necessary for the protection of the public. We have included provision to limit the scope of what details may not be published to protect registrants’ rights. The regulator will have autonomy to set out its approach for dealing with voluntary removal requests from the register during a fitness to practise investigation in its rules and guidance. This is in line with our approach of providing the regulator with greater freedom to set their own operating procedures and provides flexibility so that the regulator can amend its procedures over time.
- 7.9 The regulator already has the power of automatic removal; this allows the regulator to take action to remove social workers convicted of certain very serious criminal offences from the register, without having to go through fitness to practise processes. The offences are listed in Schedule 3 of the 2018 Regulations and contain UK wide equivalent offences. Certain offences under the Modern Slavery Act 2015 are included as listed offence. Following a review of the listed offences, the Government

identified 2 equivalent Northern Ireland (NI) offences for modern slavery which had been omitted from the 2018 Regulations. This instrument adds the NI equivalents.

Powers of intervention

- 7.10 SWE is one of 10 regulators overseen by the PSA. The purpose of the PSA is to promote the interests of the public in relation to the performance of regulatory bodies, promote best practice in the performance of regulatory functions, formulate principles of good regulation and promote co-operation between regulatory bodies. The original intention of the 2018 Regulations was to align PSA's oversight of Social Work England with the other health and social care regulators. This instrument corrects anomalies in Regulation 34 to put mandatory reviews and all restoration decisions by the regulator post fitness to practise removal under the PSA's remit. This change gives the PSA the same powers of oversight for SWE as it currently has over other health and care regulators.

Fitness to practise proceedings

- 7.11 An effective fitness to practise system is vitally important both in terms of public protection and public confidence in regulated professions. The instrument makes several technical changes to Schedule 2 of the 2018 regulations to support the regulator's fitness to practise system to be more transparent, accountable and consistent. Many of the changes are designed to give clarity to the regulator's processes to ensure the 2018 Regulations reflect the working practises of the regulator such as changes to Paragraphs 8, 10 and 11 which make clear adjudicators are not involved in scheduling or case management and that such administrative functions rest with the regulator. Other changes made by this instrument seek to give SWE the same powers as other health and social care regulators which will reduce delays in case handling times. To this effect this instrument grants the regulator power to initiate interim orders and to require disclosure of information which appears relevant to fitness to practise concerns. These changes will support the regulator to continue to meet the PSA standards and directly address the PSA's concerns in both the [2019/20 performance review](#) and the [2020/21 performance review](#) about delays in the regulator's interim order processes.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.12 The Social Workers Regulations 2018 set out the detail of the regulatory framework for Social Work England, covering registration of professionals, education standards, professional standards, and the fitness to practise regime for registered social workers.

Why is it being changed?

- 7.13 The purpose of the 2018 Regulations is to protect, promote and maintain the health, safety and wellbeing of the public through promoting and maintaining professional standards for social workers and ensuring there is public confidence in the profession. Having operated under the framework since 2 December 2019, the Department for Education and Social Work England have identified small changes which could be made to the 2018 Regulations to improve operational efficiency in support of effective public protection.

What will it now do?

- 7.14 This instrument will amend the Social Workers Regulations 2018 to:
- allow the regulator to confidently disclose relevant information to those who need it to aid the regulator's overarching objective of public protection;
 - introduce the discretionary power of voluntary removal;
 - increase the PSA's oversight of Social Work England to be equal to that which the PSA has over other health and care regulators;
 - introduce changes to the regulator's fitness to practise processes to reduce delays in implementing and publishing orders;
 - adds 2 NI offences to the listed offence to ensure all UK equivalent modern slavery offences are grounds for automatic removal from the register.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 There is no consolidation proposed.

10. Consultation outcome

- 10.1 A 7-week public consultation on the proposed amendments to the 2018 Regulations ran from 23 March to 11 May 2022.
- 10.2 The consultation received 48 responses from a wide variety of interested stakeholders including: social workers, unions, local authorities, regulatory bodies, and service users. Almost half the responses were from individual social workers.
- 10.3 Public interest in changes to the regulatory framework for social work in England has been limited. Public interest is often more focused on the frontline practise of social workers than the regulation that underpins it. This low response rate was anticipated given the technical and specialist nature of the consultation. Although the number of respondents to this consultation is not large, the Government is confident that this was an effective consultation based on the range of people and organisations who responded. We have provided the Government response as a report to accompany the laying of regulations, which is a requirement of the Act. The consultation response is available at: <https://www.gov.uk/government/consultations/changes-to-social-work-englands-regulatory-framework>.
- 10.4 All proposals received a positive majority with approval ranging from 67% to 94%.
- 10.5 Some respondents noted the need for the regulator to have better data on protected characteristics of the workforce, with particular consideration of ethnicity and fitness to practise processes. While these responses fall outside the scope of the consultation on the changes to the legislative framework, the Government expects Social Work England to comply with the PSA's standards of Good Regulation including Standard 3 which requires regulators to understand 'the diversity of its registrants and their patients and service users and of others who interact with the regulator and ensures that its processes do not impose inappropriate barriers or otherwise disadvantage people with protected characteristics'. The Government expects SWE to work closely

with the sector as part of its Equality, Diversity and Inclusion Action Plan to build a deeper understanding the needs and experiences of the workforce and take appropriate action where necessary to achieve this.

- 10.6 One change has been made to the instrument following feedback from the public consultation which was announced in the government response. Regulation 34 in the 2018 Regulations provides for the ‘PSA’ to oversee Social Work England. The intention of the changes introduced by this instrument was to extend the existing provision to be equal to the PSA’s oversight of other health and care regulators. A particular concern was raised regarding the drafting of changes to Regulation 34 which did not appear to fully deliver the intended benefit of aligning PSA oversight of Social Work England with that which exists for the other regulators. In response, we have included provision for restoration decisions by the regulator post fitness to practise removal in addition to extending provision to include mandatory reviews.

11. Guidance

- 11.1 No guidance is being issued.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because no, or no significant impact on business, charities or voluntary bodies is foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The objective of this instrument is to improve Social Work England regulatory functions, particularly in its public protection objective to ensure registrants are fit to practice.
- 14.2 The objective will be monitored through standard arrangements between the Department for Education, as the sponsoring department, and Social Work England.
- 14.3 In addition, section 64 of the 2017 Act requires the Secretary of State to commission an independent person to review and report on the first five years of the operation of Part 2 of the 2017 Act which commenced on 2 December 2019, the day section 39(1) came fully into force. The reviewer’s report must be laid before Parliament along with the Secretary of State’s response to the report.
- 14.4 The PSA also has an ongoing role overseeing the performance of SWE in delivering its regulatory functions and publishes performance reviews on an annual cycle. This is in the context of the PSA’s general functions as set out in section 25 of the National Health Service Reform and Health Care Professions Act 2002.

15. Contact

- 15.1 Tamsin Bond at the Department for Education Telephone: 0114 274 2584 or email: tamsin.bond@education.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Felicity Allen, Deputy Director for Social Work Strategy, Practice and Evidence, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Claire Coutinho MP, Parliamentary Under Secretary of State for Children, Families and Wellbeing can confirm that this Explanatory Memorandum meets the required standard.