



# Regulation and Inspection of Social Care (Wales) Act 2016

2016 anaw 2

## PART 6

SOCIAL CARE WORKERS: FITNESS TO PRACTISE

### CHAPTER 3

DISPOSAL OF FITNESS TO PRACTISE CASES

#### **134 Scope and interpretation of Chapter 3**

- (1) This Chapter applies in respect of a matter which has been referred to a fitness to practise panel.
- (2) But it does not apply in respect of review proceedings under section 151 (except to the extent that rules may be made under section 136(4) or 137(6) about undertakings agreed, confirmed or varied, or warnings given, on a review carried out under section 151).
- (3) Nor does it apply in respect of proceedings before a fitness to practise panel, or that part of proceedings before a fitness to practise panel, in which that panel is considering—
  - (a) whether to make an interim order under section 144, or
  - (b) the review of an interim order under section 146.
- (4) In this Chapter a reference to a registered person is a reference to the registered person in respect of whom the referral to the fitness to practise panel has been made.

#### **135 Removal from register on consensual basis**

- (1) Subsection (2) applies where—

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- (a) a registered person has applied under section 92 for the entry relating to that person to be removed from the register by agreement, and
  - (b) that application has been referred to a fitness to practise panel by virtue of rules made under section 92(3).
- (2) The fitness to practise panel may make an order for the entry relating to the registered person to be removed from the register by agreement only if the person has agreed to a statement of facts relating to the matter in respect of which the referral mentioned in subsection (1) was made.
- (3) If an order for removal by agreement is made, SCW—
- (a) may publish the statement of agreed facts in such manner as it thinks appropriate, and
  - (b) may disclose the statement to any person if SCW thinks it is in the public interest to do so.

### **136 Other consensual disposal by fitness to practise panel: undertakings**

- (1) A fitness to practise panel may agree undertakings with the registered person if the person admits that his or her fitness to practise is impaired.
- (2) SCW must disclose details of the undertakings to any person—
- (a) by whom, to the knowledge of SCW, the registered person is employed as a social care worker;
  - (b) who, to the knowledge of SCW, has an arrangement with the registered person for the registered person to provide services to a third party in his or her capacity as a social care worker;
  - (c) from whom, to the knowledge of SCW, the registered person is seeking such employment or such an arrangement;
  - (d) as may be prescribed.
- (3) But SCW may not disclose to any person details of any undertaking which relates solely to the registered person's physical or mental health.
- (4) SCW may by rules make provision about undertakings agreed with a fitness to practise panel under this section; and the rules may, in particular, make provision about the matters specified in section 129(2) (procedure to be followed for agreement of undertakings etc.).
- (5) Rules under subsection (4) may include provision in respect of undertakings agreed, confirmed or varied on a review under section 138(4), 152(5) or (6), 153(4), 154(4) or 155(7).

### **137 Disposals by fitness to practise panel: finding of no impairment**

- (1) This section applies where a fitness to practise panel has determined that a registered person's fitness to practise is not impaired.
- (2) The panel may decide to take no further action in respect of that person.
- (3) Or, the panel may do either or both of the following things—
- (a) dispose of the matter in the way specified in subsection (4);
  - (b) dispose of the matter in the way specified in subsection (5).

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- (4) The panel may give advice on any matter related to the allegation under section 118(1) (a) or the information which gave rise to the proceedings under section 118(1)(b) (as the case may be)—
  - (a) to the registered person, and
  - (b) to any other person involved in the proceedings.
- (5) The panel may give a warning to the registered person in respect of future conduct or performance.
- (6) SCW may by rules make provision about the procedure for giving a warning under this section.
- (7) Rules under subsection (6) may, in particular, make provision—
  - (a) requiring notice of a proposed warning to be given to the registered person, and
  - (b) allowing the registered person to make representations in respect of the proposed warning.
- (8) Rules under subsection (6) may also include provision in respect of a warning given under section 138(6) or on a review under section 152(3)(b)(ii), 153(3)(b)(ii), 154(3)(b)(ii) or 155(6)(b)(ii).

### **138 Disposals by fitness to practise panel: finding of impairment**

- (1) This section applies where a fitness to practise panel has determined that a registered person's fitness to practise is impaired.
- (2) The panel must dispose of the matter in one of the ways mentioned in subsections (3) to (9).
- (3) The panel may make an order under section 135(2) for removal of the registered person's entry from the register by agreement.
- (4) The panel may agree undertakings with the registered person; in which case, section 136(2) and (3) apply in respect of such undertakings.
- (5) The panel may decide to take no further action in respect of the registered person.
- (6) The panel may give a warning to the registered person in respect of future conduct or performance.
- (7) The panel may make a conditional registration order, which is an order imposing conditions on the person's registration.
- (8) The panel may make a suspension order, which is an order suspending the registered person's registration.
- (9) The panel may make a removal order, which is an order for the removal of the entry relating to the registered person in the register.
- (10) But the panel may not make a removal order if the only ground on which it has determined that the registered person's fitness to practise is impaired is adverse physical or mental health.

### **139 Disposals: further provision about conditional registration and suspension orders**

- (1) A conditional registration order must specify—
  - (a) the conditions with which the person to whom the order relates must comply, and
  - (b) the period for which the order is to have effect, which must not exceed 3 years; but see section 153 regarding extensions of that period on review.
- (2) A conditional registration order may specify—
  - (a) that the order must be reviewed in accordance with arrangements specified in the order;
  - (b) different conditions that have effect for different periods; but this is subject to the limit mentioned in subsection (1)(b).
- (3) A suspension order must specify the period for which the order is to have effect, which must not exceed one year; but see section 154 regarding extensions of that period on review.
- (4) A suspension order may specify that the order must be reviewed in accordance with arrangements specified in the order.

### **140 Immediate orders for conditional registration or suspension**

- (1) This section applies where a fitness to practise panel has made a conditional registration order, a suspension order or a removal order in respect of a registered person under section 138(7), (8) or (9) (“the decision”).
- (2) The fitness to practise panel may—
  - (a) in the case of a conditional registration order, make an order that the registered person’s registration in the register should be subject to the conditions with immediate effect, or
  - (b) in the case of a suspension order or a removal order, make an order that the registered person’s registration in the register should be suspended with immediate effect.
- (3) The panel may make an order under subsection (2) (an “immediate order”) only if it is satisfied that the order—
  - (a) is necessary for the protection of the public,
  - (b) is otherwise in the public interest, or
  - (c) is in the interests of the registered person.
- (4) SCW must give notice to the registered person of the making of an immediate order.
- (5) An immediate order has effect from the date on which the registered person was notified of it until—
  - (a) the date on which the decision takes effect in accordance with section 141(5), or
  - (b) an appeal against the decision is upheld.

#### **141 Fitness to practise decisions: notification and taking effect**

- (1) Where a fitness to practise panel disposes of a case in any of the ways specified in sections 135 to 138, SCW must give notice to the registered person of the decision as to the disposal of the case.
- (2) In any case where the disposal follows a finding as to impairment of fitness to practise, the notice to the registered person must include—
  - (a) a statement of facts found by the panel, and
  - (b) the panel's finding as to impairment of fitness to practise.
- (3) A decision to dispose of a case in any of the ways specified in section 135, 136 or 137 takes effect immediately.
- (4) Where a fitness to practise panel disposes of a case in any of the ways specified in section 138(5) to (9), SCW must also give notice to the registered person of the right of appeal against the decision under section 158.
- (5) A decision to dispose of a case in any of the ways specified in section 138(5) to (9) does not take effect until—
  - (a) the end of the period of 28 days beginning with the day on which the registered person was notified of the decision, or
  - (b) if an appeal is made within that period, the appeal is withdrawn, discontinued or dismissed.

#### **142 Regulations about disposals by fitness to practise panels**

- (1) The Welsh Ministers may by regulations amend sections 135 to 138 to revise the ways in which a fitness to practise panel may dispose of a fitness to practise matter.
- (2) The regulations may, in particular—
  - (a) add a new disposal power to the powers mentioned in those sections, and make supplementary provision in respect of such a power;
  - (b) amend or repeal a disposal power mentioned in those sections;
  - (c) amend or repeal provisions of those sections which make supplementary provision in respect of a disposal power mentioned in those sections.