

Consultation Draft

This is an illustrative draft of proposed Social Workers Regulations prepared for the purposes of the consultation.

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The Secretary of State makes the following Regulations in exercise of the powers conferred by paragraphs 129(3) and 130 of Schedule A1 to the Mental Capacity Act 2005(a), sections 38, 39(3) and (4), 40, 43(3) to (6), 44(2) to (5), 45, 48(1) to (4), 50(1) and (4) to (7), 52(2), 53(1)(d), 55(2) and (3), [57] and 65 [and 66] of, and paragraph 4 of Schedule 4 to, the Children and Social Work Act 2017(b), and section 29(2A) of the National Health Service Reform and Health Care Professions Act 2002(c).

(a) 2005 c.9. Schedule A1 was inserted by section 50(5) of, and Schedule 7 to, the Mental Health Act 2007 (c.12), and paragraph 130 was amended by section 49 of the Children and Social Work Act 2017 (“the Act”).

(b) 2017 c.16.

(c) 2002 c.17. Subsection (2A) was inserted by paragraph 15(2) of Schedule 4 to the Act.

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In accordance with section 58(1) of the Children and Social Work Act 2017, the Secretary of State has carried out a public consultation.

In accordance with section 65(4B) of the Mental Capacity Act 2005^(a) and section 59(2) of the Children and Social Work Act 2017, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Social Workers Regulations 2018 and come into force on [date] 2019.

Interpretation

2. In these Regulations—

“the Act” means the Children and Social Work Act 2017;

“adviser” has the meaning given in regulation 4(2);

“approved qualification” has the meaning given in regulation 10(3);

“barring order” has the meaning given in paragraph 26(a) of Schedule 3;

“comparable qualification” has the meaning given in regulation 10(3);

“conditional registration” has the meaning given in regulation 11(3);

“conditions of practice order” has the meaning given in paragraph 26(c) of Schedule 3;

“conflict of interest”, in relation to a person, means a financial or other interest which may prejudice that person’s exercise of functions under these Regulations;

“education and training approval scheme” has the meaning given in regulation 18(1);

“fitness to practise inquiry” has the meaning given in regulation 26(1)(a);

“function”, in relation to the regulator, has the meaning given in regulation 7(3);

“inspector” has the meaning given in regulation 20(2);

“interim conditions of practice order” has the meaning given in paragraph 22(1)(b) of Schedule 3;

“interim suspension order” has the meaning given in paragraph 22(1)(a) of Schedule 3;

“necessary knowledge of English” means a knowledge of the English language which is necessary for safe and effective practice as a social worker, and “knowledge of English” is to be construed accordingly;

“professional standards” means professional standards determined and published by the regulator under section 41(1) of the Act;

“register” means the register described in section 38(1)(b) of the Act;

“registered social worker” means a person who is registered in the register, where their registration has not lapsed or been removed, and “registered” is to be construed accordingly;

“registrar” means any person appointed under regulation 7(1);

(a) Section 65(4B) was inserted by paragraph 11(2) of Schedule 9 to the Mental Health Act 2007.

(b) That is, a register of social workers in England.

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“regulatory body” means a body, other than the regulator, which authorises a person to practise a health or social care profession which is regulated under any enactment, whether in the United Kingdom or elsewhere;

“rules” means rules made in accordance with regulation 3;

“suspension order” has the meaning given in paragraph 26(b) of Schedule 3;

“warning order” has the meaning given in paragraph 26(d) of Schedule 3.

PART 2

The regulator

Power to make rules

3.—(1) Any rules which the regulator(a) is required, or empowered, to make under these Regulations must be made in accordance with this regulation.

(2) Before making or revising rules the regulator must—

- (a) carry out a public consultation,
- (b) consult representatives of any group of individuals who the regulator considers are likely to be affected by the proposed rules, including representatives of—
 - (i) registered social workers,
 - (ii) employers of registered social workers,
 - (iii) users of the services of registered social workers, and
 - (iv) persons providing, assessing or funding education and training for registered social workers and prospective registered social workers, and
- (c) where appropriate [*subject to outcome of consultation*], comply with paragraph (5).

(3) The regulator is not required to comply with paragraph (2)(a) before making rules if the regulator considers that the nature of the proposed rules is such that it would be inappropriate or disproportionate to do so.

(4) The regulator is not required to comply with paragraph (2) before revising rules if the regulator considers that the revision is minor or not substantive.

(5) [*procedure for specific rules: subject to outcome of consultation*].

Appointment and functions of advisers to the regulator

4.—(1) The regulator may appoint one or more individuals to advise it on matters relating to its functions(b), and in particular to provide the regulator with—

- (a) information,
- (b) specialist or expert advice, or
- (c) recommendations.

(2) An individual appointed under paragraph (1) is referred to in these Regulations as an adviser.

(3) The regulator may establish such panels of advisers as it considers appropriate.

(4) The regulator may make members of the regulator’s staff(c), facilities and other assistance available to advisers, in accordance with rules made under regulation 5(3)(j).

(a) By virtue of section 36(1) and (2) of the Act a body corporate called “Social Work England” is established, and is referred to as “the regulator”.

(b) Paragraph 14 of Schedule 3 to the Act provides for the delegation of the regulator’s functions to any person (other than a person mentioned in paragraph 13 of that Schedule).

(c) See further Schedule 4 of the Act, and in particular paragraphs 2, and 8 to 10, regarding members of the regulator and the regulator’s staff.

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Rules relating to advisers

5.—(1) The regulator must make rules setting out the process for the appointment, suspension and removal of advisers.

(2) Any such appointment, suspension or removal must be carried out in accordance with those rules.

(3) Rules made under paragraph (1) must, in particular, make provision about—

- (a) the process for the appointment of advisers,
- (b) the terms of appointment of advisers, including relating to remuneration and pension arrangements,
- (c) the establishment, and size, of panels of advisers,
- (d) the selection and appointment of the chair of any panel of advisers,
- (e) the appraisal of the performance of advisers,
- (f) continuing professional development for advisers,
- (g) the suspension and removal of advisers,
- (h) an appeals process against the suspension and removal of advisers,
- (i) the resignation of advisers,
- (j) the provision of the regulator’s staff, facilities and other assistance to advisers,
- (k) any other information the regulator considers appropriate.

(4) Provision described in paragraph (3)(a) and (j) must require any individual appointed as an adviser, and any member of staff provided, to declare any conflict of interest to the regulator.

(5) Provision described in paragraph (3)(b) must require that advisers are not members of the regulator, or of the regulator’s staff.

Duty to co-operate

6.—(1) The persons specified for the purposes of section 53(1)(d)(a) of the Act are public bodies or other persons concerned with —

- (a) the employment (whether or not under a contract of service) of social workers in England,
- (b) the education or training of social workers in England or health care professionals,
- (c) the regulation of, or the co-ordination of the regulation of, other health or social care professionals,
- (d) the regulation of health services,
- (e) the provision, supervision or management of health or education services,
- (f) the regulation of social work in England, and
- (g) the provision, supervision or management of the services of persons engaged in social work in England.

(2) For the purposes of paragraph (1), “other health care professionals” means persons regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(b).

(a) Section 53(1) provides that the regulator must, where appropriate, co-operate with (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.

(b) 2002 c.17; the bodies mentioned are the General Medical Council, the General Dental Council, the General Optical Council, the General Osteopathic Council, the General Chiropractic Council, the General Pharmaceutical Council, the Pharmaceutical Society of Northern Ireland, the Nursing and Midwifery Council, the Health and Care Professions Council, and any other regulatory body (within the meaning of Schedule 3 to the Health Act 1999 (c.8)) established by an Order in Council under section 60 of that Act.

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PART 3

Registration of social workers

Appointment of the registrar

- 7.—(1) The regulator may appoint a member of the regulator’s staff as registrar.
- (2) A registrar has the following functions—
- (a) any functions of the regulator set out in regulations 8 to 16, other than a power or duty to make rules, and
 - (b) any other functions that the regulator delegates to the registrar^(a).
- (3) In these Regulations “function”, in relation to the regulator, means a function of the regulator set out in Part 2 of the Act or in these Regulations.

The keeping of the register

- 8.—(1) The regulator must ensure that the register enables—
- (a) information to be recorded in accordance with this Part and Schedule 1,
 - (b) the regulator, the registrar, any advisers, and any investigator, case examiner or adjudicator appointed under regulation 26(4), to access information held on it as necessary to enable them to carry out their functions under these Regulations, and
 - (c) the regulator to publish the information recorded, in accordance with this Part.
- (2) Information mentioned in paragraph 2(b), (d) or (g) of Schedule 1 may not be recorded until the expiry of the period within which an appeal against the order could be made, or where an appeal against the order has been made, before the appeal is withdrawn or otherwise finally disposed of.
- (3) Any information recorded in accordance with paragraph 2 or 3 of Schedule 1 must remain on the register—
- (a) in the case of an interim order, a conditions of practice order, or a suspension order, for the period during which the order remains in force,
 - (b) in the case of an entry removed from the register pursuant to regulation 24 (automatic removal from the register), or a barring order, for at least five years,
 - (c) in any other case, for such period as the regulator specifies in rules made under paragraph (6).
- (4) The regulator must—
- (a) publish the information recorded in the register in such manner and at such times as it considers appropriate, but subject to paragraph (5),
 - (b) make the register available for public inspection at all reasonable times,
 - (c) amend information recorded in the register, where the regulator is satisfied that the information is incorrect, or that there has been a material change of circumstances since it was recorded.
- (5) The regulator is not required to publish information which is—
- (a) evidence of spent convictions,
 - (b) a warning given under paragraph 10(a)(i) or 19(1)(a)(i) of Schedule 3 at least 5 years previously,

^(a) Paragraph 13(1) of Schedule 3 to the Act provides that the regulator may delegate functions to a committee, sub-committee, or member of staff; paragraph 13(2) provides that the functions that may be delegated include the power to delegate functions under sub-paragraph (1), but do not include any power or duty to make rules.

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- (c) any information recorded under paragraph 1(f) to (h) of Schedule 1 which, in the opinion of the regulator, it is not in the public interest to publish.
- (6) The regulator—
 - (a) must make rules—
 - (i) setting out qualifications that are relevant for the purposes of paragraph 1(f) of Schedule 1, and
 - (ii) the period for which information mentioned in paragraph (3)(c) must remain in the register, and
 - (b) may make rules setting out further provision as to the content of the register including, in particular—
 - (i) specialisms, accreditation and competences that are relevant for the purposes of paragraph 1(g) of Schedule 1,
 - (ii) whether any information mentioned in paragraph 1(f) or (g) of Schedule 1 may only be recorded on the application of the registered social worker.
- (7) Any copy of, or extract from, the register relating to information recorded in accordance with this Part and Schedule 1 is evidence of the matters mentioned in it.
- (8) A certificate purporting to be signed by the regulator certifying that a person—
 - (a) is, or is not, registered,
 - (b) was, or was not, registered at a specific date or during a specified period,
 - (c) has never been registered,is evidence of the matters certified.

Procedure for registration and annotation of entries

9.—(1) A person who wishes to be registered as a social worker must apply to the regulator in accordance with this Part and rules made under paragraph (5).

- (2) Where a person who is eligible to be registered—
 - (a) applies to be registered following any procedure set by rules made under paragraph (5), and
 - (b) pays any fee payable in accordance with rules made under regulation 16(3),the regulator must register that person by recording the information set out in paragraph 1(a) to (e) of Schedule 1 in relation to them in the register, and must notify them accordingly.

(3) The regulator must annotate an entry in the register to record any relevant information mentioned in paragraphs 2 and 3 of Schedule 1 as is relevant to that entry.

- (4) Where a registered social worker—
 - (a) applies to the regulator in accordance with rules made under paragraph (5) and rules made under regulation 8(6)(b) to have their entry in the register annotated to record any information mentioned in paragraph 1(f) or (g) of Schedule 1 as is applicable to them, and
 - (b) pays any fee payable in accordance with rules made under regulation 16(3),the regulator must annotate their entry, and must notify them accordingly.

(5) The regulator must make rules in relation to the procedure for registration and annotation of entries, in particular setting out the procedure for dealing with—

- (a) applications for registration,
- (b) annotation of the register (including the period for which annotations must remain on the register and any evidence which must be provided by a social worker in support of an application under paragraph (4)), and
- (c) removal of annotations.

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(6) In any case where the regulator is not satisfied that a person is eligible to have their entry annotated to record any information mentioned in paragraph 1(f) or (g) of Schedule 1, the regulator must notify them accordingly, and of their right to appeal under regulation 17(1).

Eligibility for registration

10.—(1) In the case of an initial registration, a person is eligible to be registered on the register where the regulator is satisfied that they—

- (a) hold an approved qualification which was awarded—
 - (i) not more than 5 years before the date of the application for registration, or
 - (ii) before the period mentioned in (i), and the person has met such requirements as to additional education, training and experience as are determined by the regulator to apply to them,
- (b) are capable of safe and effective practise in accordance with the professional standards relating to proficiency, performance, and conduct and ethics^(a), and
- (c) have the necessary knowledge of English.

(2) In the case of a renewal of registration under regulation 12(4), a person is eligible to be registered on the register where the regulator is satisfied that they—

- (a) are capable of safe and effective practise in accordance with the professional standards relating to proficiency, performance, and conduct and ethics,
- (b) meet the professional standards relating to continuing professional training and development,
- (c) if they have not practised (or have practised less than the period determined by the regulator) since their initial registration or last renewal, meet any requirement as to additional education, training or experience as is determined by the regulator to apply to them, and
- (d) meet any requirements as to necessary knowledge of English as the regulator may determine apply to them.

(3) In these Regulations—

“approved qualification” means—

- (a) a qualification approved by the regulator under the education and training approval scheme, or
- (b) a comparable qualification,

“comparable qualification” means a qualification which—

- (a) is not a qualification approved by the regulator under the education and training approval scheme, and
- (b) the regulator is satisfied meets the requirements of such a qualification.

Determination of eligibility

11.—(1) The regulator must consider any question as to the eligibility of a person to be registered, or to continue to be registered, in accordance with this regulation.

(2) In any case where the regulator is not satisfied, having considered any evidence, information or documents provided by it, that a person has the necessary knowledge of English to be eligible to be registered, or to continue to be registered, the regulator may—

- (a) request the person to provide further evidence, information or documents, or

(a) Section 41(1) of the Act requires the regulator to determine and publish professional standards for social workers. By virtue of section 63(1) of the Act, “professional standards” includes standards relating to (a) proficiency, (b) performance, (c) conduct and ethics, and (d) continuing professional training and development.

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- (b) require the person to undergo an examination or other assessment, and provide information in respect of that examination or assessment, but with the proviso that it notifies the social worker of their right to appeal under regulation 17(1),
within such period as is determined by the regulator.
- (3) The regulator may grant an application for registration or renewal subject to such conditions as the regulator thinks fit to impose (“conditional registration”), and must notify the social worker accordingly, and of their right to appeal under regulation 17(1).
- (4) In any case where the regulator is not satisfied that a person is eligible to be registered, it must notify the social worker accordingly, and of their right to appeal under regulation 17(1).
- (5) The regulator must make rules in relation to determining eligibility, including in particular—
 - (a) any period within which an approved qualification must have been awarded,
 - (b) setting out the process and criteria by which the regulator will determine whether a qualification is a comparable qualification, in particular specifying the documents that may be accepted by the regulator as evidence of a qualification awarded,
 - (c) setting out the process and criteria by which the regulator will determine—
 - (i) requirements as to additional education, training or experience that may be imposed for the purposes of an application for registration, and
 - (ii) any such requirements that are applicable in relation to any person applying for registration,
 - (d) setting out the process and criteria by which the regulator will determine, for the purposes of regulation 10(1)(b), whether a person is capable of safe and effective practise in accordance with the professional standards relating to proficiency, performance, and conduct and ethics, including any evidence of good health and good character that may be required,
 - (e) setting out the process for determining whether a person has the necessary knowledge of English, including any evidence, information or documents which must be provided, and the criteria by which the regulator will determine, for the purposes of regulation 10(2)(d), whether a person must meet requirements as to necessary knowledge of English,
 - (f) setting out the circumstances in which a person may be granted conditional registration and the circumstances in which conditional registration may be converted into full registration.

Lapse and renewal of registration

12.—(1) Subject to paragraph (2), a registered social worker’s registration lapses when their registration has not been renewed within the period specified in rules made by the regulator under paragraph (3).

- (2) The registration of a registered social worker does not lapse while—
 - (a) regulation 24(1) applies and—
 - (i) the regulator has not removed their entry from the register in accordance with regulation 24(5), or
 - (ii) the regulator has removed their entry from the register and the period within which an appeal may be made under regulation 25 has not expired or, if an appeal is made, the appeal has not been withdrawn or otherwise finally disposed of,
 - (b) they are subject to a fitness to practise inquiry,
 - (c) they are subject to—
 - (i) an interim suspension order,
 - (ii) an interim conditions of practice order,
 - (iii) a conditions of practice order, or
 - (iv) a suspension order,

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- (d) they have made an appeal under regulation 17(1) or (7) and the appeal has not been withdrawn or otherwise finally disposed of, or
 - (e) they are subject to a decision specified in regulation 33(1) (reference of cases by the Authority to the High Court) and the period within which the decision may be referred to the High Court has not expired or, if a referral is made, the appeal has not been withdrawn or otherwise finally disposed of.
- (3) The regulator must make rules in relation to the lapse, and renewal, of registration, including in particular—
- (a) the period after which a registered social worker's registration lapses,
 - (b) the process for applying for renewal of an entry which has not lapsed, including—
 - (i) the time within which any step must be taken, and
 - (ii) the evidence of eligibility to be provided to the regulator.
- (4) In any case where the regulator is not satisfied that a person is eligible to have their registration renewed, it must notify them accordingly, and of their right to appeal under regulation 17(1).

Removal from the register

- 13.—**(1) A registered social worker's entry must be removed from the register where—
- (a) the regulator is satisfied that their registration was fraudulently procured or incorrectly made,
 - (b) a barring order is made in relation to them as the result of a fitness to practise inquiry,
 - (c) they request the removal, but with the proviso that the regulator may not remove them—
 - (i) while they are subject to a fitness to practise inquiry,
 - (ii) if they have made an appeal under regulation 17(1) or (7) and the appeal has not been withdrawn or otherwise finally disposed of,
 - (d) the regulator is satisfied that they have not complied with the conditions attached to their conditional registration,
 - (e) the regulator is satisfied that the entry has lapsed under regulation 12(1),
 - (f) they are in breach of any rules made under regulation 15(3)(c) which provide for removal,
 - (g) they are in breach of any rules made under regulation 16(3)(d)(ii) which provide for removal,
 - (h) regulation 24(5) applies,
 - (i) the regulator is satisfied that they have died.
- (2) For the purposes of paragraph (1)(b), a registered social worker may not be removed from the register before—
- (a) the expiry of the period within which an appeal against the barring order may be made, or if an appeal is made, the appeal is withdrawn or otherwise finally disposed of, or
 - (b) if the decision is referred to the High Court under regulation 33(1), the case is finally disposed of.
- (3) For the purposes of paragraph (1)(d), a registered social worker may not be removed from the register unless the regulator has given them opportunity to provide evidence to satisfy the regulator that the conditions attached to their registration have been satisfied.
- (4) In any case where the regulator removes an entry under paragraph (1)(a) or (d), it must notify the social worker accordingly, and of their right to appeal under regulation 17(1).
- (5) The regulator must make rules setting out the procedure for the removal of entries from the register, including in particular process for determining whether a person's registration was fraudulently procured which must—
- (a) provide for the regulator to specify timescales within which any steps must be taken,

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- (b) require that the social worker is notified of the proposed determination and the reasons for it, and given the opportunity to make representations to the regulator,
- (c) provide for the regulator to obtain such other information as it considers necessary to determine whether the registration was fraudulently procured,
- (d) enable the regulator to require persons other than the social worker to attend and give evidence, or produce documents, and
- (e) require the regulator to notify the person of the determination.

Restoration to the register

14.—(1) A person whose entry in the register has been removed and who wishes to have their entry restored to the register must apply to the regulator in accordance with this regulation and rules made under paragraph (5).

(2) An application for restoration—

- (a) must be considered in accordance with rules made under paragraph (5), and
- (b) must, in the case of a person who was removed from the register following a fitness to practise inquiry, be referred by the regulator to two or more adjudicators for determination.

(3) A person whose entry has been removed from the register as the result of a barring order is eligible to be restored to the register where the adjudicators are satisfied that they—

- (a) were removed from the register at least five years previously, and no application for restoration to the register has been made by them in the preceding 12 months,
- (b) are capable of safe and effective practise in accordance with the professional standards relating to proficiency, performance, and conduct and ethics,
- (c) meet any requirements as to additional education, training or experience as are determined by the regulator to apply to them, and
- (d) have the necessary knowledge of English.

(4) A person whose entry was removed from the register, other than a person falling within paragraph (3), is eligible to be restored to the register where the regulator, or the adjudicators (as the case may be), are satisfied that they meet the requirements in paragraph (3)(b) to (d).

(5) The regulator must make rules in relation to restoration to the register, including in particular—

- (a) the process for applying for restoration,
- (b) the time within which any step in that process must be taken,
- (c) the evidence of eligibility to be provided to the regulator or the adjudicators, and
- (d) enabling the regulator or the adjudicators to require persons other than the social worker to attend and give evidence, or produce documents in relation to an application for restoration.

(6) Where a person, other than a person falling within paragraph (3), who is eligible to be restored to the register—

- (a) applies to be restored in accordance with rules made under paragraph (5), and
- (b) pays any fee charged in accordance with rules made under regulation 16(3),

the regulator must restore that person's registration by recording the information set out in paragraph 1 of Schedule 1 in relation to them in the register, and must notify them accordingly.

(7) In any case not referred to the adjudicators, the regulator may grant an application for restoration subject to such conditions as the regulator thinks fit to impose ("conditional registration"), and must notify the social worker accordingly, and of their right to appeal under regulation 17(1).

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(8) In any case not referred to the adjudicators, where the regulator is not satisfied that the person applying for restoration is eligible to be restored to the register, the regulator must notify them accordingly, and of their right to appeal under regulation 17(1).

(9) The regulator must appoint such advisers, or members of the regulator's staff, as the regulator thinks fit, as adjudicators for the purposes of this regulation.

Duty to provide information to the regulator

15.—(1) A registered social worker must inform the regulator as soon as practicable if any of the information registered in relation to them ceases to be accurate.

(2) Any person who applies to be registered, and any registered social worker, must respond as soon as possible to any request from the regulator for information or evidence relevant to their registration or their continued registration.

(3) The regulator may make rules in relation to the provision of information under paragraphs (1) and (2), in particular setting out—

- (a) the changes to be notified,
- (b) the manner in which and the time within which changes must be notified, and
- (c) any consequences of a failure to notify or to comply with rules made under this paragraph which may include suspension or removal from the register, or referral to a fitness to practice inquiry.

Fees for registration

16.—(1) The regulator may charge a fee in connection with—

- (a) an application for registration,
- (b) an application for annotation,
- (c) an application for renewal of registration,
- (d) an application for restoration to the register.

(2) Any fee charged by the regulator under paragraph (1)—

- (a) may be set at a level which exceeds the cost of dealing with the application in respect of which it is charged,
- (b) must be set with a view to ensuring that, so far as possible, the regulator's total fee income in any year does not exceed the regulator's total expenses in the same year.

(3) The regulator may make rules setting out—

- (a) the amount of any fee payable,
- (b) the time within which any fee is to be paid,
- (c) the circumstances in which a fee—
 - (i) is not chargeable,
 - (ii) may be reduced, or
 - (iii) may be waived, and
- (d) the steps the regulator may take in the event that a fee charged under paragraph (1) is not paid within the time set, including—
 - (i) refusing to make, annotate, renew or restore an entry,
 - (ii) removing an entry, or part of an entry, after first warning the registered social worker, and
 - (iii) recovery of the fee as a civil debt.

(4) The regulator must pay any fees received under this regulation to the Secretary of State, unless the Secretary of State with the consent of the Treasury directs otherwise.

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Registration appeals

17.—(1) A person may appeal, in accordance with rules made under paragraph (5), against—

- (a) a decision to refuse to annotate an entry under regulation 9(6),
- (b) a decision to require a person to undergo an examination or other assessment under regulation 11(2)(b) on the ground that the regulator was not satisfied that the person had the necessary knowledge of English,
- (c) a decision to grant conditional registration under regulation 11(3) or 14(7),
- (d) a decision to refuse to register under regulation 11(4),
- (e) a decision to refuse to renew registration under regulation 12(4),
- (f) a decision to remove an entry from the register, where the regulator is satisfied that their registration was fraudulently procured or incorrectly made, under regulation 13(1)(a),
- (g) a decision to remove an entry from the register, for failure to comply with conditions of a conditional registration, under regulation 13(1)(d),
- (h) a decision to refuse to restore registration under regulation 14(8),
- (i) failure by the regulator to issue a decision under this Part within any relevant time limit, and
- (j) any other decision the regulator specifies in rules made under paragraph (5).

(2) Paragraph (1) does not apply in relation to a case where the decision was made solely on the ground that the person—

- (a) failed to pay any fee payable in accordance with rules made under regulation 16(3), or
- (b) failed to apply in accordance with any procedure set by relevant rules.

(3) The regulator must ensure that appeals are carried out in accordance with rules made under paragraph (5).

(4) The regulator must establish a panel of not less than two advisers (an “appeal panel”) to consider an appeal under this regulation.

(5) The regulator must make rules setting out the procedure for appeals which must, in particular—

- (a) specify any decision that may be appealed in accordance with paragraph (1)(j),
- (b) specify the time within which—
 - (i) an appellant must give notice of the appeal to the regulator,
 - (ii) the regulator must acknowledge notice of the appeal,
 - (iii) the regulator must give notice of any hearing,
 - (iv) the parties may make written representations,
- (c) require the regulator to take reasonable steps to obtain any further relevant information and supply it to the appeal panel,
- (d) enable the regulator to require persons other than the social worker to attend and give evidence, or produce documents, to the appeal panel,
- (e) provide for the appeal panel to dispose of the appeal with, or without, a hearing, and for the regulator to notify the parties of the appeal panel’s decision,
- (f) provide, in relation to any hearing, for the hearing to take place in England and for the social worker to—
 - (i) attend, and be represented,
 - (ii) make oral representations,
 - (iii) call witnesses,
- (g) require the appeal panel to consider the appeal and—
 - (i) affirm the decision,

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- (ii) quash the decision,
 - (iii) substitute their decision for the decision being appealed, or
 - (iv) remit the decision to the regulator to be disposed of in accordance with the appeal panel's directions,
- (h) require the regulator to notify the parties of the appeal panel's determination of the appeal under paragraph (g),
- (i) require the regulator to publish the details of the appeal panel's determination and the reasons for it, but with the proviso that if the appeal panel's determination is favourable to the person concerned, the regulator is not required to publish it unless the person concerned so requests, but may do so with their consent.
- (6) Where the appeal panel—
- (a) affirm the decision,
 - (b) substitute their decision for the decision being appealed, or
 - (c) remit the decision to the regulator to be disposed of in accordance with the appeal panel's directions,

the regulator must inform the appellant of their right to appeal to the County Court.

(7) Where paragraph (6) applies, a person may appeal to the County Court against the appeal panel's determination, and the County Court may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the determination,
- (c) substitute its decision for the appeal panel's determination,
- (d) remit the matter to the appeal panel to be decided in accordance with any directions of the Court,
- (e) make any order as to costs as it thinks fit.

PART 4

Education and training

Education and training approval scheme

18.—(1) The regulator must determine and operate a scheme (an “education and training approval scheme”) for the approval of—

- (a) courses of education and training for persons who wish to become social workers in England (“initial education and training”), and
- (b) qualifications granted following success in an examination, or other appropriate assessment, taken as part of an approved course of education or training,
- (c) such tests of knowledge of English as it may require.

(2) The regulator must keep the education and training approval scheme under review.

(3) The regulator must make rules setting out the education and training approval scheme which must, in particular—

- (a) include criteria for the approval, and continued approval, of—
 - (i) courses of initial education and training, which ensure that approved courses meet the standards of education or training determined and published by the regulator under section 43(1) of the Act,
 - (ii) tests of knowledge of English, and

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- (iii) comparable qualifications, granted following success in an examination, or other appropriate assessment, taken as part of a course of education or training run outside the United Kingdom,
 - (b) require the regulator, before approving or re-approving a course of initial education and training, to be satisfied that the course will enable a person who successfully completes it to meet the professional standards,
 - (c) set out the procedure for decision making,
 - (d) in relation to a course mentioned in paragraph (a)(i), require the regulator to consult the following in relation to any matters relevant to the approval, or continued approval, of the course—
 - (i) persons undertaking the course,
 - (ii) social work service users,
 - (iii) education providers, other than the institution concerned, that provide any element of the education or training comprised in the course,
 - (e) set out the information that will be provided to education providers during the approval process,
 - (f) set out further information with regard to—
 - (i) [*approval of courses of initial education and training subject to conditions (“conditional approval”)*],
 - (ii) [*suspension of approval of a course or qualification*],
 - (iii) withdrawal, or refusal, of approval of a course or qualification,
 - (g) provide for the regulator to—
 - (i) consider the re-approval of approved courses of initial education and training at specified intervals of not more than six years, and
 - (ii) monitor the continued approval of such courses, in accordance with regulation 20,
 - (h) set out the steps that the regulator may take where an institution does not provide information required by the regulator, and
 - (i) include information about the publication of—
 - (i) reports (including inspection reports),
 - (ii) decisions in relation to approval.
- (4) The regulator must maintain and publish a list of the courses of education and training, qualifications, and tests of knowledge of English—
- (a) which are for the time being approved under the education and training approval scheme,
 - (b) which were, but are no longer, approved under the education and training approval scheme, together with the periods in respect of which they were approved, and
 - (c) which are mentioned in paragraph (3)(a)(iii),
- and ensure that universities and other bodies in the United Kingdom concerned with such education and training (“relevant institutions”) are notified, from time to time, of information published under this paragraph and of any material changes to that information.
- (5) The regulator may operate the education and training approval scheme so as to provide for the approval of courses of education and training for people who are social workers (“post qualification courses”).
- (6) [*Rule making power in relation to professional standards relating to continuing professional training and development: subject to outcome of consultation*]
- (7) [*Approval of courses for adult mental health professionals: subject to outcome of consultation*]

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(8) In this regulation “approved course” means a course of initial education and training approved under the education and training approval scheme.

Provision of information to the regulator

19. A relevant institution must provide the regulator with such information or assistance as the regulator may reasonably require in connection with the exercise of the regulator’s functions under this Part, and within such period as may be specified in the request.

Inspections

20.—(1) The regulator may appoint an adviser, or a member of the regulator’s staff, to visit and inspect any relevant institution in connection with the approval, continued approval, or re-approval of any—

- (a) relevant course of education or training,
- (b) examination or other assessment,
- (c) test of knowledge of English,

conducted, provided or facilitated, or proposed to be conducted, provided or facilitated, by that institution.

(2) A person appointed under paragraph (1) is referred to in these Regulations as an inspector.

(3) The regulator must make rules relating to inspections which, in particular—

- (a) set out—
 - (i) the requirements of the role of an inspector,
 - (ii) the knowledge, skills or experience necessary to undertake the role of inspector,
 - (iii) any individuals, or classes of individual, who may not act as an inspector,
- (b) require an inspector appointed to inspect a relevant institution to declare any conflict of interest to the regulator,
- (c) set out the procedure for an inspector to report to the regulator following an inspection, including—
 - (i) the information to be provided to the regulator in relation to the inspection,
 - (ii) the manner in which the information must be presented,
 - (iii) any relevant timescales.

(4) The regulator may make members of the regulator’s staff, facilities and other assistance available to inspectors.

[Conditional approval, and suspension of approval]

[Subject to outcome of consultation]

Refusal, and withdrawal of approval

21.—(1) The regulator may refuse or withdraw approval of a course of education and training, a qualification, or a test of knowledge of English, where—

- (a) an institution fails to respond to a request under regulation 19 within the period specified in the request, or
- (b) the regulator is satisfied on the basis of evidence obtained under regulations 18 and 19 or following an inspection that the course, qualification, or test, does not meet the criteria for approval.

(2) Before refusing or withdrawing approval under paragraph (1), the regulator must—

- (a) notify the institution concerned, setting out its reasons, and

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- (b) inform the institution of the period within which it may make observations on the matters raised.
- (3) The regulator must take no further steps to refuse or withdraw approval under paragraph (1) before the end of the period specified under subparagraph (2)(b).
- (4) If, taking into account the matters referred to in paragraph (1), and any observations received from the institution concerned, the regulator determines that it is appropriate to refuse or withdraw approval, the regulator must notify the institution of that decision and the reasons for it.
- (5) The decision under paragraph (4) has effect from—
 - (a) the date of the decision, or
 - (b) such later date as may be specified in the decision.
- (6) The withdrawal of approval of a course of education and training, a qualification, or a test of knowledge of English, does not affect the entitlement of any person to be registered on the basis of—
 - (a) an award to them of that qualification,
 - (b) an award to them of a qualification in connection with that course of education or training, or
 - (c) a determination that they have the necessary knowledge of English following that test, made before the date on which the decision under paragraph (4) has effect.

Fees in relation to approval

- 22.**—(1) The regulator may charge a fee in connection with approval, and re-approval, of education and training courses, qualifications, and tests of knowledge of English.
- (2) Any fee charged by the regulator under paragraph (1)—
 - (a) may be set at a level which exceeds the cost of the approval in respect of which it is charged,
 - (b) must be set with a view to ensuring that, so far as possible, the regulator's total fee income in any year does not exceed the regulator's total expenses in the same year.
 - (3) The regulator must make rules setting out—
 - (a) the time within which any fee is to be paid,
 - (b) the circumstances in which a fee—
 - (i) is not chargeable,
 - (ii) may be reduced, or
 - (iii) may be waived, and
 - (c) the steps the regulator may take in the event that a fee charged under paragraph (1) is not paid within the time set, including—
 - (i) refusing to approve, or re-approve, the course, qualification or test in question,
 - (ii) recovery of the fee as a civil debt.
 - (4) The regulator must pay any fees received under this regulation to the Secretary of State, unless the Secretary of State with the consent of the Treasury directs otherwise.

PART 5

Discipline and fitness to practise

Fitness to practise: grounds for action

- 23.**—(1) A person is not fit to practise where their fitness to practise is impaired by reason of—

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- (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 body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession, to the effect that the person's fitness to practise is impaired, or a determination by a licensing body elsewhere to the same effect,
 - (g) being included—
 - (i) by the Disclosure and Barring Service in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006^(a) or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007^(b)), or
 - (ii) by the Scottish Ministers in the children's list or the adults' list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007^(c)), or
 - (h) not having the necessary knowledge of English.
- (2) Paragraph (1) applies regardless of whether the matter occurred—
- (a) outside the United Kingdom, or
 - (b) at a time when the person was not registered.
- (3) For the purposes of paragraph (1)(c) and (d), references to a conviction include references to a conviction by a Court Martial.

Automatic removal from the register

24.—(1) This paragraph applies where the regulator becomes aware that a social worker has been convicted of a listed offence which was committed on or after the date on which these Regulations come into force.

- (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,
 - (ii) attend before the regulator and be represented, in order to make oral submissions, and
 - (d) of the social worker's right of appeal in accordance with regulation 25.
- (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, it must notify the social worker accordingly.
- (5) Unless paragraph (4) applies, the regulator must—
- (a) remove the entry relating to that person ("P") from the register,
 - (b) notify the following of the removal and the date of the removal—

(a)
(b)
(c)

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- (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), and
 - (iv) any person who notified the regulator that P had been convicted of a listed offence, and
- (c) terminate any ongoing fitness to practise inquiry in relation to P.
- (6) The regulator must make rules setting out—
- (a) the procedure for removing an entry from the register under this regulation,
 - (b) the procedure for restoring an entry in the register where a person’s entry is removed under this regulation and the regulator subsequently becomes aware that their conviction is quashed,
- including, in particular, the time within which any step must be taken.

(7) In this regulation—

“custodial sentence” has the meaning given by section 76 of the Powers of Criminal Courts (Sentencing) Act 2000(a),

“listed offence” means—

- (a) an offence listed in paragraphs 1 to 7 of Schedule 2, or
- (b) an offence listed in paragraphs 8 to 13 of Schedule 2 in respect of which a custodial sentence has been imposed.

Appeals against automatic removal from the register

25.—(1) A person may appeal to the High Court against the decision of the regulator to remove their entry from the register under regulation 24(5), on the ground that the determination was based on an error of fact or of law.

(2) An appeal must be made within 28 days of the day on which the entry is removed from the register.

(3) On an appeal the High Court may—

- (a) dismiss the appeal,
- (b) confirm the determination,
- (c) set aside the determination,
- (d) remit the case to the regulator to dispose of in accordance with the directions of the court,
- (e) make any order as to costs as it thinks fit.

Fitness to practise inquiry

26.—(1) Where a question arises as to a social worker’s fitness to practise by reason of any matter listed in regulation 23(1), and regulation 24(1) does not apply, the regulator must ensure that—

- (a) a fitness to practise inquiry is carried out in accordance with this regulation and Schedule 3, and any rules made under paragraph (3) (a “fitness to practise inquiry”),
- (b) any order imposed as a result of the fitness to practise inquiry is recorded in the register in accordance with paragraph 2 of Schedule 1.

(2) The standard of proof applicable to a fitness to practise inquiry is that applicable to civil proceedings.

(a)

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(3) The regulator—

(a) must make rules—

- (i) setting out the criteria by which it will determine, pursuant to paragraph 1(1) of Schedule 3, whether there are reasonable grounds for investigating whether a social worker's fitness to practise is impaired,
- (ii) setting out the timescales within which steps in a fitness to practise inquiry are to be taken, and
- (iii) enabling investigators, case examiners, and adjudicators to require persons other than the social worker to attend and give evidence, or produce documents, to a fitness to practise inquiry,

(b) must make rules enabling investigators, case examiners, and adjudicators to direct a social worker whose fitness to practise may be impaired by reason of not having the necessary knowledge of English, to undertake an examination, or other assessment, of their knowledge of English, in particular—

- (i) setting out the procedure to be followed,
- (ii) requiring the social worker to provide, or disclose, information in respect of that examination or assessment, and
- (iii) enabling the investigators, case examiners, and adjudicators to draw such inferences as they deem appropriate if the social worker fails to undergo an examination or assessment, or to provide or disclose information, as directed, and

(c) may make rules setting out the detail of any other aspect of the fitness to practise inquiry.

(4) 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 inquiry.

(5) A person may not be appointed under more than one sub-paragraph of paragraph (4) in relation to the same fitness to practise inquiry.

PART 6

Restrictions on practice, protected titles and offences

Carrying out social work in England

27.—(1) A person may not practise as a social worker in England unless they are a registered social worker.

(2) Paragraph (1) does not apply to a person who is registered as a social worker in a register kept by—

- (a) Social Care Wales,
- (b) the Scottish Social Services Council, or
- (c) the Northern Ireland Social Care Council,

who is practising as a social worker in England on a temporary basis.

Use of title and descriptions

28.—(1) A person must not use the title of “social worker” unless they are—

- (a) a registered social worker, or

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(b) a person falling within regulation 27(2).

(2) A person must not falsely represent themselves to be a registered person, or to be the subject of an entry in the register.

(3) A person must not falsely represent themselves to have a qualification or accreditation in relation to social work.

Holding out of a person as qualified to carry out social work in England

29. A person (“A”) must not make a false representation about a person (“B”) which, if it was made by B, would be contrary to regulation 28.

Offences in connection with registration

30. A person commits an offence if they fraudulently procure, or attempt to procure, the making, amendment, renewal or restoration of an entry in the register.

Offences in connection with restrictions on practice and protected titles

31.—(1) A person commits an offence if, with intent to deceive (whether expressly or by implication), they—

- (a) use the title of “social worker” in breach of regulation 28(1),
- (b) make a false representation as to—
 - (i) being a registered person, or being the subject of an entry in the register, or
 - (ii) having a qualification or accreditation in relation to social work.

(2) A person (“B”) commits an offence if—

- (a) with intent that any person is deceived (whether expressly or by implication) they cause or permit another person (“A”) to make any representation about B which, if made by B with intent to deceive, would be an offence under paragraph (1), or
- (b) with intent to deceive (whether expressly or by implication) they make any representation with regard to another person (“A”) which—
 - (i) B knows to be false, and
 - (ii) if made by A with that intent would be an offence by A under paragraph (1).

Offences in connection with the provision of information

32.—(1) A person commits an offence if they fail, without reasonable excuse to—

- (a) provide documents or other information when required by rules made under regulation 9(5),
- (b) provide documents or other information when required by rules made under regulation 13(5)(d),
- (c) provide documents or other information when required by rules made under regulation 14(5)(d) in a case which has been referred under regulation 14(2)(b),
- (d) provide documents or other information when required by rules made under regulation 17(5)(d),
- (e) attend and give evidence, or to produce document, to a fitness to practise inquiry when required by rules made under regulation 26(3),
- (f) provide information required under 4(b) of Schedule 3, or
- (g) provide documents or other information required under paragraph 6 of Schedule 3.

(2) A person guilty of an offence under this Part is liable on summary conviction to a fine.

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PART 7

Powers of intervention

Reference of cases by the Authority to the High Court

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

- (a) a decision made under regulation 13(1)(a) (removal from the register where registration fraudulently procured or incorrectly made),
- (b) a decision made following a referral under regulation 14(2)(b) (referral of application for restoration to adjudicators) to grant registration subject to conditions,
- (c) a decision made under regulation 24(5) (removal of an entry from the register),
- (d) a decision made under paragraph 19(2)(b) of Schedule 3 (imposing a final order),
- (e) a decision under paragraph 32(a) of Schedule 3 (on a review of a final order).

(2) In this regulation “the Authority” means the Professional Standards Authority for Health and Social Care established by section 25(1) of the National Health Service Reform and Health Care Professions Act 2002(b).

Power of the Secretary of State to investigate

34.—(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 (7).

(3) The Secretary of State must inform the regulator of the investigation and the grounds for it, and invite it to make representations.

(4) The Secretary of State must inform the following of the investigation and the grounds for it, and invite them to make representations—

- (a) the Professional Standards Authority for Health and Social Care,
- (b) any person or body affected, or likely to be affected by the default, and
- (c) any other person or body the Secretary of State considers appropriate.

(5) 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
- (c) determine whether there has been, or is likely to be, a default by the regulator.

(6) As soon as practicable after the determination in paragraph (5)(c), the Secretary of State must notify the regulator of—

- (a) the determination and the reasons for it, and
- (b) the time within which the regulator may make representations to the Secretary of State.

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

(b) Section 25(1) was amended by section 222(2)(a) of the Health and Social Care Act 2012 (c.7). By virtue of section 25(2) and (3) of that Act, as amended by paragraph 2 of Schedule 4 of the Act, the functions of the Authority include the promotion of the interests of users of social work services in England in relation to the performance by the regulator of its functions.

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(7) Paragraphs (3), (4) and (6) do not apply where the Secretary of State considers that it would not be in the public interest, or necessary or expedient, for that step to be carried out.

The procedure for giving remedial directions

35.—(1) This paragraph applies where the Secretary of State has determined, in accordance with regulation 34(5)(c) 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 may give a direction in writing (a “remedial direction”) to the regulator stating—

- (a) the nature of the default, or likely default,
- (b) where appropriate, the reasons for the Secretary of State’s determination,
- (c) the action (the “remedial action”) the regulator must take in order to remedy or avoid the default,
- (d) the date by which the remedial action must be taken, and
- (e) 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 require that the regulator appoints an adviser to support and assist the regulator in taking any remedial action.

(4) The Secretary of State may publish a remedial direction in such manner as the Secretary of State thinks appropriate.

Failure to comply with a remedial direction

36.—(1) This paragraph applies where the Secretary of State has given a remedial direction and the regulator has failed to take the remedial action by the date referred to in regulation 35(2)(d).

(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 as a result.

(3) The steps the Secretary of State may take are—

- (a) taking over delivery of the regulator’s functions for a specified period,
- (b) any remedial action specified in the remedial direction,
- (c) appointing an individual or body to take the steps in (a) or (b), or both.

(4) [*Secretary of State required to appoint an individual or body to take over delivery of the regulator’s functions under Parts 3 and 5: subject to outcome of consultation*]

(5) The Secretary of State, or a person or body appointed under paragraph (3)(c) must consult the regulator in exercising any of the regulator’s functions pursuant to a notice under paragraph (2), where the Secretary of State considers that to be appropriate.

(6) The regulator must co-operate with the Secretary of State, or any person or body appointed on the Secretary of State’s behalf, and provide such information, advice, guidance or assistance as the Secretary of State considers appropriate.

Payment by the regulator of expenses incurred

37. Where the Secretary of State makes payment to a person or body appointed under regulation 36(3)(c), the Secretary of State may recover the amount of that payment from the regulator.

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PART 8

Miscellaneous

Amendments to the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008

38.—(1) The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008(a) are amended as follows.

(2) In regulation 5(3)(c) for “Secretary of State” substitute “the regulator”.

(3) [*fees in connection with approval of training*]

Information and advice

39.—(1) [*Duty to make information available in relation to the delivery of regulator’s core regulatory functions: subject to outcome of consultation*].

(2) [*Duty to publish a strategic plan and set a review period: subject to outcome of consultation*]

Address
Date

Name
Parliamentary Under Secretary of State
Department

SCHEDULE 1

Regulation 8(1)

Content of the register

1. The following information must be recorded in the register in relation to all registered persons—

- (a) the person’s name,
- (b) the reference number assigned to the person’s entry,
- (c) whether the person’s registration is temporary or full,
- (d) whether the person’s registration is conditional,
- (e) the date of registration,
- (f) any relevant qualification held by them,
- (g) any relevant specialism, accreditation, or competence,
- (h) any other information the regulator considers appropriate.

2. Where a registered person is, or has been, subject to a fitness to practise inquiry, the following must be recorded in their entry in the register—

- (a) any warning given by case examiners under paragraph 10(a) of Schedule 3 following a determination that there no realistic prospect that an adjudicator would determine that the social worker’s fitness to practise is impaired,
- (b) any interim suspension order or interim conditions of practice order made by case examiners under paragraph 12 of Schedule 3, including where the order is varied, revoked or replaced on a review under paragraph 29 of that Schedule or on appeal to the High Court under paragraph 35 of that Schedule,
- (c) a decision by case examiners or adjudicators to dispose of the case by taking no further action,

(a) S.I. 2008/1858, as amended by S.I. 2012/1479.

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- (d) any order imposed by case examiners on a disposal without hearing under paragraph 14 of Schedule 3,
- (e) any warning or advice given by adjudicators under paragraph 19(1) of Schedule 3 following a determination that the social worker's fitness to practise is not impaired,
- (f) any advice given by an adjudicator under paragraph 19(2) of Schedule 3 following a determination that the social worker's fitness to practise is impaired,
- (g) any final order made by an adjudicator under paragraph 19(2) of Schedule 3, including where that order is varied, revoked or replaced on a review under paragraph 29 or on appeal to the High Court under paragraph 35 of that Schedule.

3. Where a person ceases to be a registered person the following information must be recorded in the register—

- (a) where the registration lapsed pursuant to regulation 12, the date of the lapse,
- (b) [*where the registration is suspended pursuant to rules made under regulation 15(3), the reason for, and date of, the suspension*],
- (c) where the entry is removed pursuant to regulation 13(1), the reason for, and date of, the removal,
- (d) where the entry is removed pursuant to regulation 24, the reason for, and date of, the removal.

SCHEDULE 2

Regulation 24(7)

Listed offences

1. Murder.

2. An offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (trafficking people for exploitation).

3. An offence under any of the following provisions of the Sexual Offences Act 2003—

- (a) section 1 (rape),
- (b) section 2 (assault by penetration),
- (c) sections 5 to 8 (rape and other offences against children under 13),
- (d) sections 9 to 12 (child sex offences),
- (e) sections 30 to 33 (offences against persons with a mental disorder impeding choice),
- (f) sections 47 to 50 (abuse of children through prostitution and pornography), or
- (g) section 59A (trafficking people for sexual exploitation).

4. An offence under any of the following provisions of the Sexual Offences (Scotland) Act 2009—

- (a) section 1 (rape),
- (b) section 2 (assault by penetration),
- (c) sections 18 to 26 (rape and other offences against children under 13), or
- (d) sections 28 to 33 (offences against older children).

5. An offence under any of sections 3 to 6 of the Sexual Offences (Scotland) Act 2009 (sexual coercion) committed against a person who is, by virtue of section 17 of that Act (capacity to consent: mentally disordered persons), treated as incapable of consenting.

6. An offence under any of sections 9 to 12 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (sexual services of children and child pornography).

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7. An offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2008—

- (a) article 5 (rape),
- (b) article 6 (assault by penetration),
- (c) articles 12 to 15 (rape and other offences against children under 13),
- (d) articles 16 to 19 (offences against children under 16),
- (e) articles 37 to 40 (abuse of children through prostitution and pornography), or
- (f) article 43 to 46 (offences against persons with a mental disorder impeding choice).

8. Blackmail under section 21 of the Theft Act 1968.

9. Blackmail under section 20 of the Theft Act (Northern Ireland) 1969.

10. Extortion (in Scotland).

11. An offence under section 3 of the Sexual Offences Act 2003 (sexual assault).

12. An offence under section 3 of the Sexual Offences (Scotland) Act 2009 (sexual assault).

13. An offence under Article 7 of the Sexual Offences (Northern Ireland) Order 2008 (sexual assault).

SCHEDULE 3

Regulation 26(1)(a)

Fitness to practise inquiry

PART 1

Triage

Triage

1.—(1) Subject to paragraph (2), where a question arises as to whether a social worker's fitness to practise is impaired, the regulator must determine whether there are reasonable grounds for investigating whether the social worker's fitness to practise is impaired.

(2) Where a question arises as to a social worker's fitness to practise as a result of them being convicted of an offence, other than a listed offence, in respect of which a custodial sentence has been imposed, there are reasonable grounds for investigating whether the social worker's fitness to practise is impaired.

(3) In this Schedule "the social worker" means the social worker who is the subject of the fitness to practise inquiry.

Determination of preliminary consideration

2. Where—

- (a) the regulator determines that there are no reasonable grounds for investigating the social worker's fitness to practise, and
- (b) the fitness to practise process was instigated following a complaint against the social worker,

the regulator must inform the person who made the complaint ("the complainant"), and give reasons.

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PART 2

Investigation

Commencement of investigation

3.—(1) Where the regulator determines that there are reasonable grounds for investigating whether a social worker's fitness to practise is impaired, the regulator must—

- (a) except in a case where paragraph 1(2) applies, require two or more investigators to carry out an investigation in accordance with paragraphs 4 to 8,
- (b) require two or more case examiners to determine whether there is a realistic prospect that an adjudicator would determine that the social worker's fitness to practise is impaired,

in accordance with this Part.

(2) Any step in the investigation must be taken within such period as is specified in rules made under regulation 26(3).

Notifying the social worker and the complainant

4. The investigators must—

- (a) notify the social worker of the grounds for investigating their fitness to practise,
- (b) require the social worker to provide details of—
 - (i) any person by whom they are, or have been, employed to provide services as a social worker, or in relation to social work,
 - (ii) any person with whom they have, or had, an arrangement to provide services as a social worker, or in relation to social work,
 - (iii) any regulatory body with which they are registered, and
- (c) invite the social worker to make written submissions.

5. Where the fitness to practise process was instigated following a complaint against the social worker, the investigators may—

- (a) provide the complainant with a copy of any written submissions made by the social worker, and
- (b) invite the complainant to make written submissions in response.

Obtaining information and referral to case examiners

6. The investigators may require any person (other than the social worker) who in their opinion is able to supply information or produce any document which appears relevant to the discharge of their functions under this Part, to supply such information or produce such a document.

7. Any information required, and any representations made, under this Part must be provided to the investigators within such period as is specified in rules made under regulation 29(4), or such longer period as the investigators may determine.

8. The investigators may take such steps as are reasonably practicable to obtain any further information relevant to the investigation, and must refer the case to the case examiners —

- (a) at any point in their investigation if they consider an interim order may be necessary for the protection of the public or in the best interests of the social worker,
- (b) at the conclusion of their investigation.

Determination of investigation

9.—(1) The case examiners must—

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- (a) consider the information and any written submissions referred to them by the investigators, or in a case where paragraph 1(2) applies any relevant information provided to the regulator, and
- (b) determine whether there is a realistic prospect that an adjudicator would determine, under Part 3, that the social worker's fitness to practise is impaired.

(2) At any time before making the determination in paragraph (1)(b), the case examiners may require the investigators to obtain further information or submissions relevant to the investigation.

10. Where the case examiners determine that there no realistic prospect that an adjudicator would determine that the social worker's fitness to practise is impaired, the case examiners—

- (a) may—
 - (i) give a warning to the social worker regarding their future conduct or performance,
 - (ii) give advice to the social worker on any matter related to the investigation,
- (b) must inform the following of their determination and the reasons for it—
 - (i) the regulator,
 - (ii) the social worker, and
 - (iii) where the fitness to practise inquiry was instigated following a complaint against the social worker, the complainant.

11. Where the case examiners determine that there is a realistic prospect that an adjudicator would determine that the social worker's fitness to practise is impaired, the case examiners—

- (a) must notify the social worker of that determination,
- (b) may notify the social worker of the terms on which, and the time within which, the social worker may elect to have the case disposed of without a hearing in accordance with paragraphs 13 to 15.

12.—(1) At any time before making the determination in paragraph 9(1)(b), the case examiners may, unless paragraph 13(b) or (c) applies, make any interim order they consider is necessary for the protection of the public or in the best interests of the social worker, and must—

- (a) inform the following of the terms of the order—
 - (i) the regulator,
 - (ii) the social worker,
 - (iii) any person by whom the social worker is employed, or with whom they have an arrangement, to provide services as a social worker or in relation to social work (where known),
 - (iv) any regulatory body with which the social worker is registered (where known), and
 - (v) where the fitness to practise inquiry was instigated following a complaint against the social worker, the complainant, and
- (b) notify the social worker of their right to appeal to the High Court under Part 5.

(2) The case examiners may not make an interim order unless they have first informed the social worker of the proposed order and given the social worker the opportunity to make written or oral submissions (and if oral submissions, to be represented) on the matter.

Disposal without hearing

13. This paragraph applies where—

- (a) at any time before the case examiners make a determination under paragraph 10 or paragraph 11, the social worker informs the investigators or case examiners in writing that the social worker accepts that their fitness to practise is impaired,

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- (b) following notification under paragraph 11(b), the social worker informs the case examiners in writing, within the time specified in that notification, that the social worker accepts that their fitness to practise is impaired, or
- (c) paragraph 1(2) applies (social worker convicted of an offence, other than a listed offence).

14. Where paragraph 13 applies, the case examiners may notify the social worker that they propose to dispose of the case without further investigation by—

- (a) taking no further action,
- (b) giving advice to the social worker on any matter related to the case, or
- (c) making a final order.

15. If the social worker notified under paragraph 14 notifies the case examiners that the social worker consents to the proposed disposal of the case, the case examiners must—

- (a) give the proposed advice or impose the proposed order, and
- (b) inform the following of the manner in which the case was disposed of—
 - (i) the regulator,
 - (ii) the social worker,
 - (iii) any person by whom the social worker is employed, or with whom they have an arrangement, to provide services as a social worker or in relation to social work (where known),
 - (iv) any regulatory body with which the social worker is registered (where known), and
 - (v) where the fitness to practise inquiry was instigated following a complaint against the social worker, the complainant.

PART 3

Fitness to practise hearing

Commencement of hearing procedure

16.—(1) Where the case examiners determine that there is a realistic prospect that an adjudicator would determine that the social worker's fitness to practise is impaired, and the matter has not been disposed of under paragraph 15—

- (a) the case examiners must inform the regulator, and
- (b) the regulator must appoint two or more adjudicators to conduct a fitness to practise hearing in accordance with this Part.

(2) Any step in the fitness to practise hearing must be taken within such period as is specified in rules made under regulation 29(4), or such longer period as the adjudicators may determine.

Notifying the social worker

17. The adjudicators must—

- (a) notify the social worker, and where relevant the complainant, that they will conduct a fitness to practise hearing to determine whether the social worker's fitness to practise is impaired,
- (b) invite the social worker to make written submissions,
- (c) inform the social worker that they may—
 - (i) attend the hearing, and be represented,
 - (ii) make oral submissions,

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- (iii) call witnesses.

18. Where, at any time before making a determination under paragraph 19 the adjudicators are satisfied that it is necessary for the protection of the public or in the best interests of the social worker, they may make any interim order, and must inform the following of the terms of the order—

- (a) the regulator,
- (b) the social worker,
- (c) any person by whom the social worker is employed, or with whom they have an arrangement, to provide services as a social worker or in relation to social work (where known),
- (d) any regulatory body with which the social worker is registered (where known), and
- (e) where the fitness to practise inquiry was instigated following a complaint against the social worker, the complainant.

Determination

19.—(1) Where, following the fitness to practise hearing, the adjudicators determine that the social worker's fitness to practise is not impaired, the adjudicators

- (a) may—
 - (i) give a warning to the social worker regarding their future conduct or performance,
 - (ii) give advice to the social worker on any matter related to the investigation,
- (b) must inform the following of their determination and the reasons for it—
 - (i) the regulator,
 - (ii) the social worker, and
 - (iii) where the fitness to practise inquiry was instigated following a complaint against the social worker, the complainant.

(2) Where, following the fitness to practise hearing, the adjudicators determine that the social worker's fitness to practise is impaired the adjudicators may, subject to paragraph 20—

- (a) give advice to the social worker on any matter related to the investigation,
- (b) make a final order.

Making a final order

20. Where the adjudicators make a final order they must—

- (a) inform the following of the terms of the order and the reasons for it—
 - (i) the regulator,
 - (ii) the social worker,
 - (iii) any person by whom the social worker is employed, or with whom they have an arrangement, to provide services as a social worker or in relation to social work (where known),
 - (iv) any regulatory body with which the social worker is registered (where known), and
 - (v) where the fitness to practise inquiry was instigated following a complaint against the social worker, the complainant,
- (b) notify the social worker of their right—
 - (i) to request a review under paragraph 29, and
 - (ii) to appeal to the High Court under Part 5.

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21. The adjudicators may not make an order unless they have first informed the social worker of the proposed order and given the social worker the opportunity to make written or oral submissions (and if oral submissions, to be represented) on the matter.

PART 4

Orders

Interim orders

22.—(1) An interim order may—

- (a) suspend the social worker from practising (an “interim suspension order”), or
- (b) impose a restriction or condition with which the social worker must comply (an “interim conditions of practice order”),

for such period, not exceeding eighteen months, as is specified in the order.

(2) An interim order ceases to have effect before the expiry of the period mentioned in paragraph (1), or the period mentioned in paragraph 23(3)(a) (as the case may be)—

- (a) if the case examiners determine that there no realistic prospect that an adjudicator would determine that the social worker’s fitness to practise is impaired,
- (b) if, following a fitness to practise hearing, the adjudicators determine that the social worker’s fitness to practise is not impaired, or
- (c) if a final order is made in respect of the social worker—
 - (i) if there is no appeal against that order, when the period for appealing expires, or
 - (ii) if there is an appeal against that order, when the appeal is withdrawn or otherwise finally disposed of.

Review of interim orders

23.—(1) Case examiners must review an interim order, including an extended or varied interim order—

- (a) within the period of six months beginning on the date on which the order was made,
- (b) thereafter, before the end of the period of three months, beginning on the date of the decision of the immediately preceding review, for so long as the order continues in force, and
- (c) where new evidence relevant to the order has become available after the making of the order, or the last review.

(2) Case examiners may apply to the High Court to extend, or further extend, the period for which an interim order has effect.

(3) On an application under paragraph (2) the High Court may—

- (a) substitute a different period for which the interim order has effect, or
- (b) confirm the order.

(4) Where the High Court varies the period for which the interim order has effect the case examiners must notify any person who was notified of the making of the interim order.

24. The case examiners may not carry out a review under paragraph 23(1) unless they have first notified the social worker of the proposed review and given them the opportunity to make written or oral submissions (and if oral submissions, to be represented) as to the review.

25. On a review under paragraph 23(1) the case examiners—

- (a) may—
 - (i) revoke the order,

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- (ii) revoke or vary any condition imposed by the order,
 - (iii) confirm the order,
 - (iv) replace an interim conditions of practice order with an interim suspension order (or vice versa) having effect for the same period, provided they are satisfied that to do so is necessary for the protection of the public or in the best interests of the social worker,
- (b) must inform the following of the terms of the order and the reasons for it —
- (i) the regulator,
 - (ii) the social worker,
 - (iii) any person by whom the social worker is employed, or with whom they have an arrangement, to provide services as a social worker or in relation to social work (where known),
 - (iv) any regulatory body with which the social worker is registered (where known), and
 - (v) where the fitness to practise inquiry was instigated following a complaint against the social worker, the complainant.

Final orders

26. A final order may—

- (a) require the removal of the social worker’s name from the register (a “barring order”),
- (b) require the social worker is suspended from practising for such period as is specified in the order (a “suspension order”),
- (c) impose a restriction or condition with which the social worker must comply for such period as is specified in the order (a “conditions of practice order”),
- (d) give a warning to the social worker regarding their future conduct or performance (a “warning order”).

27. A barring order may only be made in a case where—

- (a) the adjudicators found the social worker unfit to practise on one of the grounds set out in regulation 26(1) (a), (c), (d), (f), or (g), or
- (b) the social worker was suspended from practise, or subject to a conditions of practice order, for a continuous period of two years immediately preceding the making of the barring order.

28. A suspension order and a conditions of practice order have effect for such period, not exceeding three years, as is specified in the order.

Review of final orders

29. The regulator must review a final order—

- (a) where new evidence relevant to the order has become available after the making of the order, and
- (b) when requested to do so by the social worker.

30. An application under paragraph 29 must be made within such period as the regulator determines in rules made under regulation 31(4), and a final order does not have effect until after the expiry of that period.

31. The regulator may not carry out a review under paragraph 29 unless the regulator has first given the social worker the opportunity to make written or oral submissions (and if oral submissions, to be represented) as to the review.

32. On a review under paragraph 29 the regulator—

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- (a) may—
 - (i) revoke the order,
 - (ii) revoke or vary any condition imposed by the order,
 - (iii) confirm the order,
 - (iv) substitute any other order,
 - (v) confirm the order and make any other order in addition,
- (b) must inform the following of the terms of the order—
 - (i) the regulator,
 - (ii) the social worker,
 - (iii) any person by whom the social worker is employed, or with whom they have an arrangement, to provide services as a social worker or in relation to social work (where known),
 - (iv) any regulatory body with which the social worker is registered (where known), and
 - (v) where the fitness to practise inquiry was instigated following a complaint against the social worker, the complainant.

PART 5

Appeals

33. A social worker may appeal to the High Court against—

- (a) the decision of case examiners—
 - (i) to make or vary an interim order,
 - (ii) not to revoke or vary such an order,
- (b) the decision of an adjudicator—
 - (i) to make or vary a final order,
 - (ii) not to revoke or vary such an order.

34. An appeal must be made 28 days of the day on which the social worker is notified of the decision complained of.

35. On an appeal the High Court may—

- (a) dismiss the appeal,
- (b) revoke the order,
- (c) revoke or vary any condition imposed by the order,
- (d) confirm the order,
- (e) replace an interim conditions of practice order with an interim suspension order (or vice versa) having effect for the same period, provided they are satisfied that to do so is necessary for the protection of the public or in the best interests of the social worker,
- (f) replace an interim conditions of practice order with an interim suspension order (or vice versa) having effect for the same period, provided they are satisfied that to do so is necessary for the protection of the public or in the best interests of the social worker,
- (g) extend (or further extend) the period for which the order applies, by not more than eighteen months from the date of the Court's decision,
- (h) make any order as to costs as it thinks fit.

EXPLANATORY NOTE

(This note is not part of the Regulations)

[To be added in final version]