



Department
for Education

Social Work England

**Consultation on changes to the
regulatory framework**

Launch date 23 March 2022

Respond by 11 May 2022

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Introduction

About this consultation

The Children and Social Work Act 2017 sets out the broad legal framework for Social Work England, but much of the detail of the legal framework is set out in the Social Workers Regulations 2018. This consultation seeks views on proposed technical changes to the Social Workers Regulations 2018. The consultation can be read in parallel with the draft amendments (Annex A), which set out how the proposals in this consultation document are likely to appear in legislation. The final amendments may change as a result of this consultation.

Who this is for

We are particularly interested in the views of:

- social workers;
- social work employers;
- social work sector organisations;
- social work academics and social work education institutions;
- providers of social work services;
- other organisations and individuals with an interest in social work;
- other professional regulators; and
- children and families, adults, and the wider public.

Issue date

The consultation was issued on 23 March 2022.

Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team by email:

SocialWorkerRegs.consultation@education.gov.uk

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: Consultations.Coordinator@education.gov.uk or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The response

The results of the consultation and the Department's response will be [published on GOV.UK](#)

Respond online

To help us analyse the responses please use the online system wherever possible. Visit www.education.gov.uk/consultations to submit your response.

Other ways to respond

If for exceptional reasons you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it.

By email

SocialWorkerRegs.consultation@education.gov.uk

By post

Social Work England Consultation
Department for Education
2 St Paul's Place
Sheffield
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Deadline

The consultation closes on 11 May 2022.

Changes to Social Work England's regulatory framework

Background

1. In January 2016, the then Secretary of State for Education announced, in partnership with the Secretary of State for Health, the intention to set up a new regulator for social workers, as part of wider reforms to improve confidence in social work and raise the status of the profession. The following year the Children and Social Work Act 2017 provided for the establishment of Social Work England as a specialist regulator for social workers in England, with the over-arching objective of public protection.
2. The Social Workers Regulations 2018 set out the detail of the regulatory framework for Social Work England, covering registration of professionals, education standards, professional standards, and the fitness to practise regime for registered social workers.
3. The purpose of the 2018 Regulations is to protect, promote and maintain the health, safety and wellbeing of the public through promoting and maintaining professional standards for social workers and ensuring there is public confidence in the profession.
4. At the heart of any decision to regulate a profession is ensuring that statutory regulation provides the most effective and proportionate means of delivering this public protection function. Having operated under the new framework since December 2019, the Department for Education and Social Work England have identified small changes which could be made to the 2018 Regulations to improve operational efficiency in support of effective and proportionate public protection.
5. We aim to lay the draft amendments during the second half of 2022 under the affirmative resolution procedure, with a view to them coming into force before the end of 2022.

Proposal and rationale

6. The changes we are seeking to make are primarily technical in nature and do not reflect a change in overall direction for the regulator. Where possible, the changes are consistent with the powers of other health and care regulators and with the approach to regulating the social work profession in Scotland, Wales, and Northern Ireland.

7. The proposed changes will allow Social Work England to improve its existing flexible model of professional regulation to secure public protection, foster professionalism, and ensure standards of practice. Each of the proposed changes seeks to do one of the following:
 - give greater clarity to the regulator’s processes; or
 - remove operational inefficiencies identified by the regulator and/or the Department for Education; or
 - correct unintended anomalies in the original drafting.
8. We expect the proposed changes will have a limited impact on the public sector, social work stakeholders and on individuals. Overall, there are likely to be benefits to children, families, adults and wider society as a result of the proposed changes which support the regulator in its overarching public protection objective.
9. The majority of the proposed changes relate directly to the internal processes of the regulator. Where a proposed change also relates to the registrant this is clearly set out in Table 1.

Duty to co-operate

10. It is vital that Social Work England co-operates not only with other regulators, but also with other bodies which work with and alongside it for public protection. The proposed changes seek to strengthen this provision to give the regulator confidence to share information where necessary to perform its functions and where it is in the public interest.

Question 1

Do you agree or disagree with the proposed changes to Regulation 7, the social work regulator’s duty to co-operate, set out in Table 1? Please provide details to explain your answer.

Registration of social workers

11. Establishing and maintaining a transparent and accurate register of social workers is fundamental to effective regulation and public protection. Registration functions include keeping and maintaining the register, the assessment and determination of registration applications, annotation of the register, renewal and lapse, and restoration following removal. The proposed change seeks to remove delay in the

process of publishing details to the register in support of the regulator's core function of public protection.

Question 2

Do you agree or disagree with the proposed changes to Regulations 9 and 14, the social work regulator's registration of social workers, set out in Table 1? Please provide details to explain your answer.

Discipline and fitness to practise proceedings

12. An effective fitness to practise system is vitally important both in terms of public protection and public confidence in regulated professions. The proposed changes support Social Work England's fitness to practise system to be transparent, accountable and consistent.

Question 3

Do you agree or disagree with the proposed changes to Regulation 25 and 26, the social work regulator's discipline and fitness to practise, set out in Table 1? Please provide details to explain your answer.

Question 4

Do you agree or disagree with the proposed changes to Schedule 2, Part 2 Investigation, part of the social work regulator's fitness to practise proceedings, set out in Table 1? Please provide details to explain your answer.

Question 5

Do you agree or disagree with the proposed changes to Schedule 2, Part 3 Fitness to practise hearings, part of the social work regulator's fitness to practise proceedings, set out in Table 1? Please provide details to explain your answer.

Question 6

Do you agree or disagree with the proposed changes to Schedule 2, Part 4 Review of orders and Schedule 2, Part 5 Appeals, part of the social work regulator's fitness to practise proceedings, set out in Table 1? Please provide details to explain your answer.

Powers of intervention

13. The regulations allow for oversight by the Professional Standards Authority (PSA) of Social Work England's regulatory functions. This includes providing for the PSA to refer adjudicators' final decisions to the High Court if it is concerned that such decisions do not sufficiently protect the public. The proposed change extends the PSA's oversight to include all final order reviews by the regulator.

Question 7

Do you agree or disagree with the proposed changes to Regulation 34, powers of intervention, set out in Table 1? Please provide details to explain your answer.

Other legislation

The regulations make provisions to amend other legislation to reflect the change of regulatory oversight of social workers from the Health and Care Professions Council (HCPC) to Social Work England. The changes seek to address anomalies in the original drafting of these provisions.

Question 8

Do you agree or disagree with the proposed changes to amend other legislation set out in Table 1? Please provide details to explain your answer.

Listed offences

This allows the regulator to take action to remove social workers convicted of certain very serious criminal offences from the register, without having to go through fitness to practise processes. The proposed changes are to ensure equivalent offences across all the devolved governments are included on the list.

Question 9

Do you agree or disagree with the proposed changes to the listed offences set out in Table 1? Please provide details to explain your answer.

Equalities Analysis

14. The Department takes its obligations under the Equality Act 2010 very seriously. In line with them, the Department is considering how the proposed changes to the 2018 Regulations may impact differently on different people. The Government would like to gather further evidence on how the proposed changes could impact those individuals with protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race (includes ethnic or national origins, colour or nationality), religion or belief (includes lack of belief), sex and sexual orientation.

Question 10

Do you think that any of the proposed changes outlined in Table 1 would help achieve any of the following aims:

- Eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010?
- Advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?
- Fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?

If you have answered 'yes' to any of the above questions, please explain the effect you think the proposed changes will have?

If you have answered 'no' to any of the above questions, please explain what effect you think the proposed changes will have and whether you think the proposals should be changed so that they would help achieve those aims?

Technical detail of our proposed changes to the framework

The table below sets out all the proposed amendments giving details of exactly what we are proposing to change and why we think the change is necessary. The draft amendments (Annex A) which can be considered alongside this table will show how the changes will look in legislation.

Regulation	What we are changing	Why we think the change is needed
Duty to co-operate		
7(3)	<p>This is a new provision. It makes clear the regulator has the power to disclose information relating to any individual, including those:</p> <ul style="list-style-type: none"> i. applying to the register; or ii. currently on the register; or iii. formally registered <p>to those bodies specified under Regulation 7(1), where the regulator considers it to be in the public interest.</p>	<p>Social Work England already has a duty to cooperate (Reg 7) and powers to request information (Reg 25) but does not currently have any express authority in the Regulations to disclose information.</p> <p>This new regulation will ensure the regulator is able to confidently disclose relevant information to those who need it to aid the regulator's overarching objective of public protection.</p> <p>Section 52 of the Children and Social Work Act 2017 already gives the regulator a discretionary power to publish or disclose information about any matter relating to its functions or give advice about any matter relating to its functions.</p> <p>This change complements the power granted to the regulator in Section 52 of the 2017 Act.</p>
7(1)	<p>Amending to enable the regulator to:</p> <ul style="list-style-type: none"> i. cooperate with employers outside England; ii. cooperate with education bodies outside England; and iii. cooperate with bodies involved in the regulation of social work outside England. 	<p>This amendment widens the ability of the regulator to cooperate with relevant bodies outside of England and, alongside the disclosure power, improves and clarifies the regulator's powers to share information with other bodies when it considers it to be necessary.</p>
Registration of social workers		
9(4)	<p>This amends the existing regulation so that only final orders made by the adjudicators may not be recorded until:</p>	<p>One of the purposes of the register is to inform the public of orders in effect against social workers.</p> <p>This change removes a delay in publishing orders and reviews of orders which support</p>

Regulation	What we are changing	Why we think the change is needed
	<ul style="list-style-type: none"> 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. 	<p>the regulator's core function of public protection.</p> <p>While we recognise this change will have a resulting impact on the registrant, we consider this provision is necessary to ensure public safety and maintain public confidence in the regulator.</p>
14	<p>This is a new provision. It allows for voluntary removal from the register while the social worker has an ongoing fitness to practise process.</p> <p>In line with its overarching objective of public protection, the regulator will have discretion to agree to a registrant's request for voluntary removal from the register where there are fitness to practise concerns.</p> <p>The regulator will be required to publish voluntary removals on the register.</p>	<p>This change will give the regulator comparable powers to other health and social care regulators who already have provision in their regulations to allow voluntary removal of registrants with outstanding fitness to practise concerns.</p> <p>Protection of the public from registrants whose fitness to practise could be impaired will be the regulator's primary consideration when deciding whether or not voluntary removal is appropriate.</p> <p>The regulator will be required to publish the fact of voluntary removal and may publish further details it deems necessary for the protection of the public.</p> <p>We have included provision to limit the scope of what details may not be published to protect registrants' rights.</p> <p>The regulator will set out its approach for dealing with voluntary removal requests from the register during a fitness to practise investigation in its Rules and guidance.</p> <p>Decisions will be open to challenge by judicial review.</p>
Discipline and fitness to practise		
25A	<p>This is a new provision. It makes clear the regulator has the power to disclose information relating to a registered social worker's fitness to practise where the regulator considers it is in the public interest to do so.</p>	<p>This new regulation will ensure the regulator is able to confidently disclose relevant information to those who need it to aid the regulator's overarching objective of public protection.</p> <p>Social Work England already has a duty to cooperate (Reg 7) and powers to request information (Reg 25) but does not currently have any express authority in the Regulations to disclose information.</p> <p>Section 52 of the Children and Social Work Act 2017 gives the regulator a discretionary power to publish or disclose information about any matter relating to its functions or</p>

Regulation	What we are changing	Why we think the change is needed
		<p>give advice about any matter relating to its functions.</p> <p>This change complements the power already granted to the regulator in Section 52 of the 2017 Act.</p>
26(5) and (7)	<p>This amends the existing regulation. It provides for automatic removal to take effect immediately following the removal decision, notwithstanding the appeal period.</p>	<p>The regulator currently has to seek an interim order where necessary for public protection during the appeal period of someone who has been convicted of an offence listed in Schedule 3 of the Regulations.</p> <p>This change removes the need to use an interim order to fill a gap in public protection by ensuring that automatic removal takes immediate effect notwithstanding an appeal.</p> <p>Automatic removal is only used when a social worker has been found guilty of one of the serious offences in Schedule 3 of the Regulations.</p>
Fitness to practise proceedings – Investigation		
Schedule 2 Paras 5(1), (3) and (4)	<p>This amends the existing provision. It provides the regulator with the power to require disclosure of information which appears relevant to fitness to practise concerns.</p>	<p>This change will allow the regulator to require disclosure of information where it appears relevant in fitness to practise cases.</p> <p>This power is currently limited to the investigators at present rather than extending to the regulator more generally. The amendment means that regulator can require information at any stage rather than limiting it to the investigation stage.</p> <p>This will bring the regulator’s powers in line with other health and care regulators who already have existing powers to require disclosure.</p> <p>By gaining further relevant information early in the process, the regulator will be able to determine whether a concern has been addressed and no longer poses a risk without the need to progress the matter to case examiners.</p>
Schedule 2 Para 5(4)	<p>This amends the existing provision. It provides the regulator with the power to initiate an interim order application.</p>	<p>Currently only case examiners can initiate interim orders. This creates a delay in the process as the regulator must refer the matter to case examiners first. This change moves the power to initiate interim orders to the regulator, removing that delay.</p> <p>The change will improve public protection by removing delay in the process, allowing the regulator to initiate the interim order process</p>

Regulation	What we are changing	Why we think the change is needed
		<p>at the point it identifies a risk to public protection.</p> <p>This will bring the regulator in line with other health and care regulators who already have the power to initiate interim orders.</p>
Schedule 2 Para 8(1) and (1A)	This amends the existing provision. It provides that following the changes to 5(4) case examiners will be able to recommend that the regulator initiates an interim order application where they see fit.	<p>This change ensures case examiners can continue to recommend interim orders by informing the regulator where they consider an interim order to be necessary.</p> <p>This will bring the regulator in line with other health and care regulators who already have the power to initiate interim orders.</p>
Schedule 2 Para 8(3) and (3A)	This amends the existing provision. It makes clear it is the responsibility of the regulator to inform the social worker that an interim order may be made by the adjudicators.	<p>The adjudicators are not involved in scheduling or case management.</p> <p>This change makes clear the administrative functions relating to the interim order process rest with the regulator; it does not move the power away from adjudicators to make the interim order.</p>
Schedule 2 Para 8(4)	This amends the existing provision. It makes clear it is the responsibility of the regulator to inform the social worker and others listed under 8(4) of an order imposed by the adjudicator.	<p>The adjudicators are not involved in scheduling or case management.</p> <p>This change makes clear the administrative functions relating to the interim order process rest with the regulator; it does not move the power away from adjudicators to make the interim order.</p>
Schedule 2 Para 8(5A)	This is a new provision. It makes clear that interim orders come into effect immediately, even when the social worker appeals the interim order.	Interim orders are only put in place where it is necessary for the protection of the public or in the best interests of the social worker. This change ensures the public are still protected while an appeal is ongoing.
Schedule 2 Para 8(6)	This amends the existing provision. It makes clear that the interim order will only cease to exist if one of the circumstances in (6)(a) to (d) occurs on the same case on which the interim order was made.	<p>This change supports the regulator's public protection objective to address an unintended risk where there are two or more unrelated concerns against a registrant.</p> <p>Currently, an interim order will cease to have effect when a no-impairment decision or a final order is made in respect of a specific social worker rather than in respect of a specific case.</p> <p>This change means that the interim order will only cease to exist in relation to the specific case against that social worker where there has been a no impairment decision, or a final order made. However, the order will remain in place if there are other unrelated open cases</p>

Regulation	What we are changing	Why we think the change is needed
		against the registrant where an order has been deemed necessary for public protection.
Schedule 2, Para 9	This is a new provision. It makes clear that a decision by the case examiners will take effect even if the decision is reviewed (either under Paragraph 9A or 15(2)).	This clarifies what will happen if a case examiner's decision is reviewed, providing the social worker with certainty.
Schedule 2 Para 9A	This is a new provision. It provides a power of review by the regulator of a case examiner decision.	<p>This change addresses an existing gap in the regulations and will provide the regulator with powers similar to the General Medical Council and General Dental Council.</p> <p>The power of review will enable the regulator to correct procedural errors with decisions or achieve fairer outcomes in cases where new information materially changes a decision.</p> <p>The regulator will be able to set out the details of the review process in its Rules including:</p> <ul style="list-style-type: none"> • which outcomes could be subject to review • what actions will be taken as a result of the review • any time limits in which the review can take place.
Fitness to practise proceedings – Fitness to practise hearings		
Schedule 2 Para 10(4)	This amends the existing provision. It makes clear it is the responsibility of the regulator to inform the social worker of the fitness to practise hearing and matters relating to it.	<p>The adjudicators are not involved in scheduling or case management.</p> <p>This change makes clear the administrative functions relating to the fitness to practise hearing rest with the regulator.</p>
Schedule 2 Para 11(2)	This amends the existing provision. It makes clear it is the responsibility of the regulator to inform the social worker that an interim order may be made, but that the adjudicators do not need to propose a specific order before the hearing.	<p>The adjudicators are not involved in scheduling or case management.</p> <p>This change makes clear the administrative functions relating to the interim order process rest with the regulator. It also removes delay in the system by preventing the adjudicators having to propose an order before the hearing. It does not move the power away from adjudicators to make the interim order.</p>
Schedule 2 Para 11(2A)	This is a new provision. It makes clear that an interim order comes into force immediately, even if the order is appealed.	Interim orders are only put in place where it is necessary for the protection of the public or in the best interests of the social worker. This change ensures the public are still protected while an appeal is ongoing.

Regulation	What we are changing	Why we think the change is needed
Schedule 2 Para 12(3A) and (4)	This amends the existing provision. It makes clear it is the responsibility of the regulator to inform the social worker and others listed under 12(4) of a final order imposed by the adjudicators.	The adjudicators are not involved in scheduling or case management. This change makes clear the administrative functions relating to the final order process rest with the regulator. It does not move the power away from adjudicators to make the final order.
Schedule 2 Para 12(5)	This is a new provision. It makes clear that a final order does not take effect while there is an appeal ongoing.	This clarifies the position for social workers if they appeal a final order made by the adjudicators.
Schedule 2 Para 13(2)	This amends the existing provision. It makes clear: <ul style="list-style-type: none"> i. removal orders can be imposed by case examiners or adjudicators ii. where a review of a final order occurs shortly before the two year mark, the power to remove is engaged when: <ul style="list-style-type: none"> a) the social worker was subject to a mixture of either suspension and/or conditions of practise during the two-year period; and b) the two-year period is counted back from when the removal order would take effect rather than when the order would be made. 	Case examiners are already able to impose a final order by accepted disposal under Schedule 2 para 12(3)(b). This change makes clear that they can also impose removal orders. The current wording of 13(2) confirms that a removal order – when a finding is made on adverse health, competency or English language grounds – can only be imposed when a social worker has been suspended or subject to a conditions of practise order for two years. This change will allow for either or both situations by changing the provision to include ‘and/or’. This will clarify that, over the course of the two years, there could have been a combination of the two orders i.e., the social worker started with conditions of practise and was then suspended. By making clear the two-year period is from when the order would ‘take effect’ rather than when it would be made will avoid the need for the regulator to impose a short order to ‘bridge’ a gap where the review period falls just short of the two-year mark. This will allow the regulator to impose removal orders without undue delay.
Fitness to practise proceedings – Review of orders and Appeals		
Schedule 2 Para 14(1)	This amends the existing provision. It amends the review period for interim orders from three to six months.	This will align the regulator’s interim order process with those of other health and social care regulators. This change does not affect a registrant’s right to request early review at any time where new information is available.
Schedule 2 Para 14(8)	This is a new provision. It makes clear that when an	Interim orders are only put in place where it is necessary for the protection of the public or in

Regulation	What we are changing	Why we think the change is needed
	interim order is reviewed under Paragraph 14, the review decision comes into force immediately, even if the order is appealed.	the best interests of the social worker. This change ensures the public is still protected while an appeal is ongoing.
Schedule 2 Para 15(1)	This amends the existing provision. It: <ul style="list-style-type: none"> i. allows the regulator power to revoke a suspension or conditions of practise order on review with immediate effect; and ii. makes clear any new order imposed at a review cannot exceed three years, without limit to extensions or sequential running time. 	The regulator currently has to use its powers under the early review provisions at paragraph 15(2) to revoke a suspension order or a conditions of practise order as there is no express power to revoke an order under paragraph 15(1). This change provides the regulator the specific power of revocation at mandatory review which is consistent with the powers of other health and social care regulators. This change also clarifies that any new order imposed on review under paragraph 15(1) can only be imposed for a maximum of three years at a time, but an order can be extended by a further decision of the adjudicators.
Schedule 2 Para 15(1A)	This is a new provision, It makes clear that when a review decision made under Para 15(1), the order comes into force after the expiry of the previous order even if the order is appealed.	This clarifies what happens if a social worker appeals a review order.
Schedule 2 Para 15(2)	This amends the existing provision. It allows: <ul style="list-style-type: none"> i. warning orders to be extended to five years; and ii. both case examiner and adjudicator warning orders to be reduced on review to a period not less than one year. 	Warning orders can be imposed for up to five years but can only be extended for up to three years currently. This change allows warning orders to be extended for a period of up to five years. There is no reason to have a distinction between adjudicator and case examiner warning orders. The change provides parity between the regulator's approach to case examiner warnings and adjudicator warnings.
Schedule 2 Para 15(2A)	This is a new provision, it makes clear that when a review decision is made under Para 15(2), the order comes into force immediately even if the order is appealed.	This clarifies what happens if a social worker appeals a review order.
Schedule 2 Para 15(3)	This amends the existing provision. It makes clear that orders made by accepted disposal take effect immediately, and only adjudicator-made final orders	This change removes a potential public protection risk to ensure that, in cases of accepted disposal, there is no delay in the order taking effect.

Regulation	What we are changing	Why we think the change is needed
	do not take effect until the expiry of the 28-day period set out in the regulator's Fitness to Practise Rules.	The purpose of a 28-day delay for adjudicator decisions is to allow for the registrant to request an early review. However, as case examiner accepted disposals are agreed by the registrant, there is no purpose for such a period. This change makes clear the 28-day period is not applicable to accepted disposal.
Schedule 2 Para 15(4)	This amends the existing provision. It makes clear the regulator's power of review under paragraph 15 applies to final orders made by adjudicators and accepted disposals by case examiners.	This change removes ambiguity in the drafting. It does not change the regulator's current processes.
Powers of intervention		
34(g)	This amends the existing provision to include mandatory reviews.	This change will put both early and mandatory reviews within the PSA's remit. This will ensure the PSA's powers relating to social workers is the same as for other regulators as set out in Section 29 of the NHS Reform and Health Care Professions Act 2002.
Amendments to other legislation		
41(3)	This amends article 14 of the Health and Social Work Professions Order 2001 to omit article 14(ba).	This is a technical change to address an erroneous reference to 14(b) instead of to article 14(ba) in the original drafting.
44(2)	This amends 5(2) of the Mental Capacity (DoLs: Standard Authorisations Assessments and Ordinary Residence) Regulations 2008 to only reference social workers registered with Social Work England.	This is a technical change to address an erroneous reference to social workers registered with HCPC or Social Work England in the Mental Capacity regulations. As HCPC no longer register social workers we are removing the reference to HCPC.
Amendments to listed offences		
Schedule 3	This amends Schedule 3 to include two additional offences: <ul style="list-style-type: none"> s.1 and s.2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. 	This change ensures all UK wide equivalent offences are included as listed offences. Equivalent offences in the Modern Slavery Act 2015 and the Scottish equivalents are already listed offences. This change adds the Northern Irish equivalents.

Annex A – draft amendments

This Statutory Instrument has been made partly in consequence of a defect in S.I. 2018/893 and is being issued free of charge to all known recipients of that Statutory Instrument.

Draft Regulations laid before Parliament under sections 59(2) and 68(2) of the Children and Social Work Act 2017 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2022 No. 000

SOCIAL WORK, ENGLAND

HEALTH CARE AND ASSOCIATED PROFESSIONS, ENGLAND

MENTAL CAPACITY, ENGLAND

MENTAL HEALTH, ENGLAND

PROFESSIONAL QUALIFICATIONS, ENGLAND

The Social Workers (Amendment) Regulations 2022

Made - - - - - *****

Coming into force *1st December 2022*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 39(3)(b) and (c), 44(3), 53(1)(d), 57(1) and (3), 65, 66(1) and (2), and 67(2) of the Children and Social Work Act 2017(1).

In accordance with section 58(1) of that Act, the Secretary of State has carried out a public consultation.

In accordance with sections 59(2) and 68(2) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

1. Citation, commencement, extent, application and interpretation

—(1) These Regulations may be cited as the Social Workers (Amendment) Regulations 2022.

These Regulations come into force on 1st December 2022.

These Regulations—

(1) 2017 c. 16.

extend to England and Wales;
apply to England only.

In these Regulations, “the 2018 Regulations” means the Social Workers Regulations 2018⁽²⁾.

2.Amendment of the 2018 Regulations

—(2) The 2018 Regulations are amended as follows.

In regulation 7 (duty to co-operate)

in paragraph (1)(a)(i), (ii) and (vii) (duty to co-operate), after “in England” insert “or elsewhere”;

after paragraph (2) insert—

“(3) For the purposes of section 53(1) of the Act, the regulator may disclose to any body or person specified in paragraphs (a) to (c) of that subsection or in paragraph (1), any information it has in relation to any person where the regulator considers such disclosure to be—

- (a) in accordance with the exercise of the regulator’s functions under the Act or these Regulations;
or
- (b) in the public interest.”.

In regulation 9(4) (content of the register), for “mentioned in paragraph (2)(a), (b) or (d)” substitute “under paragraph 12(3)(b) of Schedule 2”.

In regulation 14 (removal from the register)—

at the beginning of paragraph (1)(c)(i) insert “subject to paragraph (1A),”;

after paragraph (1) insert—

“(1A) Where a registered social worker—

- (a) requests the removal of their entry from the register; and
- (b) at the time of that request, is subject to fitness to practise proceedings,

the regulator may remove their entry from the register”;

in paragraph (8), after “paragraph (1)” insert “or (1A)”;

after paragraph (8) insert—

“(9) Where an entry relating to a registered social worker is removed from the register pursuant to paragraph (1A), the list in paragraph (8)—

- (a) may include the particulars of the removal; but
- (b) must not include any information relating to the registered social worker’s physical or mental health.”.

After regulation 25 insert—

“Disclosure of information about fitness to practise

25A. The regulator may disclose to any person any information relating to a registered social worker’s fitness to practise which it considers to be in the public interest to disclose.”.

In regulation 26 (automatic removal from the register)—

in paragraph (5)(a), omit “subject to paragraph (7),”;

omit paragraph (7).

In regulation 34(g) (referral of cases by the Authority to the High Court), for “15(2)” substitute “15(1) or (2)”.

Schedule 2 (fitness to practise proceedings) is amended in accordance with the Schedule.

At the end of Schedule 3 (listed offences) insert—

⁽²⁾ S.I. 2018/893.

“14. An offence under the following provisions of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015⁽³⁾—

- (a) section 1 (slavery, servitude and forced or compulsory labour);
- (b) section 2 (human trafficking).”.

3. Amendment of the Health and Social Work Professions Order 2001

In article 14 of the Health and Social Work Professions Order 2001⁽⁴⁾ (Education and Training Committee)—
after paragraph (a) insert—

“(b) the establishing of standards and requirements in respect of education and training or continuing professional development, as the case may be, under articles 15(1) and 19(4) and (6);”;

omit paragraph (ba).

4. Amendment of the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008

In regulation 5(2)(d) of the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008⁽⁵⁾ (eligibility to carry out a best interests assessment), omit “or a social worker registered in Part 16”.

5. Transitional provision

—(3) Paragraph (2) applies in relation to a review of a final order which—
is made under paragraph 13 of Schedule 2 to the 2018 Regulations; and
has effect immediately before these Regulations come into force,

where that review takes place after these Regulations come into force.

The provisions of paragraph 15 of Schedule 2 to the 2018 Regulations specified in paragraph (3) have effect in relation to such a review as if for the words “could have made at the time they made the order” there were substituted “are able to make”.

Those provisions are—

- sub-paragraph (1)(b) (as amended by paragraph 10(2)(b) of the Schedule to these Regulations); and
- sub-paragraph (2)(d) (as inserted by paragraph 10(4)(c) of the Schedule to these Regulations).

Signed by authority of the Secretary of State for Education

Date

Parliamentary Under Secretary of State
Department for Education

SCHEDULE

Regulation 2(8)

AMENDMENT OF SCHEDULE 2 TO 2018 REGULATIONS

1.—(1) Paragraph 5 is amended as follows.

In sub-paragraph (1), before “the investigators” insert “the regulator or”.

⁽³⁾ 2015 c. 2.

⁽⁴⁾ S.I. 2002/254. Article 14(ba) is inserted by section 218(4) of the Health and Social Care Act 2012 (c. 7).

⁽⁵⁾ S.I. 2008/1858. Relevant amending instruments are S.I. 2012/1479 and 2018/893.

In sub-paragraph (3), before “the investigators” insert “the regulator or, as the case may be,”.

For sub-paragraph (4) substitute—

“(4) The regulator or the investigators may take such steps as are reasonably practicable to obtain any further information relevant to carrying out their functions under this Schedule.

(5) The regulator must appoint two or more adjudicators to consider whether to make an interim order in accordance with paragraph 8 where the regulator considers that such an order may be necessary for the protection of the public or in the best interests of the social worker.

(6) The investigators must refer the case to the case examiners at the conclusion of the investigation.”.

—(2) Paragraph 8 is amended as follows.

For sub-paragraph (1) substitute—

“(1) If, at any stage, the case examiners are of the opinion that an interim order may be necessary for the protection of the public or in the best interests of the social worker, they must notify the regulator accordingly.

(1A) Where the regulator has been notified in accordance with sub-paragraph (1), the regulator may appoint two or more adjudicators to consider whether to make an interim order in accordance with this paragraph.”.

In sub-paragraph (3), for “they have first informed the social worker of the proposed order and given them” substitute “the regulator has first informed the social worker that an interim order may be made and given the social worker”.

After sub-paragraph (3) insert—

“(3A) Where the adjudicators make an interim order under sub-paragraph (2), they must inform the regulator of the making of that order and its terms.”.

In sub-paragraph (4)—

for the words before paragraph (a) substitute “The regulator must—”;

in paragraph (a)—

(i) before “order” insert “interim”;

(ii) omit sub-paragraph (i).

After sub-paragraph (5) insert—

“(5A) An interim order made under sub-paragraph (2) takes effect from the time it is made notwithstanding any appeal against the order.”.

In sub-paragraph (6)—

in paragraph (a), after “determine” in the first place in which it occurs, insert “, in the case in respect of which the order was made,”;

in paragraph (b), after “determine” insert “, in the case in respect of which the order was made,”;

in paragraph (c) for “a case” substitute “the case in respect of which the order was made”;

in paragraph (d), after “social worker” insert “in the case in respect of which the interim order was made,”.

After paragraph 9(3) insert—

“(4) A decision to dispose of a case under sub-paragraph (3)(a) takes effect from the time the social worker is informed of the decision under sub-paragraph (3)(b)(ii) notwithstanding any review of that decision under paragraph 9A or 15(2).”.

After paragraph 9 insert (in Part 2)—

“Review of decisions

9A.—(1) Rules under regulation 25(5)(a) may make provision for enabling the regulator to review a decision of the case examiners to take any course of action allowed by paragraph 6, 7 or 9.

(2) Rules made by virtue of sub-paragraph (1) may, in particular, include provision as to—

(a) which decisions made under those paragraphs may be reviewed;

- (b) the period within which such a review is to be commenced;
- (c) the process to be followed by the regulator in carrying out such a review (including the determinations to be made by the regulator);
- (d) the actions which may be taken following such a review.”.

In paragraph 10(4)—

- for “adjudicators” substitute “regulator”;
- in sub-paragraph (a), for “they” substitute “the adjudicators”.

—(3) Paragraph 11 is amended as follows.

In sub-paragraph (2), for “they have first informed the social worker of the proposed order” substitute “the regulator has first informed the social worker that an interim order may be made”.

After sub-paragraph (2) insert—

“(2A) An interim order made under sub-paragraph (1) takes effect from the time it is made notwithstanding any appeal against the order.”.

—(4) Paragraph 12 is amended as follows.

After sub-paragraph (3) insert—

“(3A) Where the adjudicators make a final order, they must inform the regulator of the terms of the order and the reasons for it.”.

In sub-paragraph (4)—

- for the words before paragraph (a) substitute “The regulator must—”;
- in paragraph (a)—

(i) before “order” insert “final”;

(ii) omit sub-paragraph (i).

After sub-paragraph (4) insert—

“(5) A final order does not take effect 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.”.

For paragraph 13(2) substitute—

“(2) A removal order may only be made in a case where—

- (a) the adjudicators found the social worker’s fitness to practise to be impaired on one or more of the grounds set out in regulation 25(2)(a), (c), (d), (f), or (g),
- (b) the adjudicators found the social worker’s fitness to practise to be impaired on one or more of the grounds set out in regulation 25(2)(b), (e) or (h) and the social worker was either suspended from practice, or subject to a conditions of practice order, or a combination of both, for a continuous period of two years immediately preceding the day when the removal order took effect, or
- (c) the case examiners found that there was a realistic prospect that the adjudicators would make a determination that the social worker’s fitness to practise was impaired on one or more of the grounds set out in regulation 25(2)(a), (c), (d), (f), or (g).”.

—(5) Paragraph 14 is amended as follows.

In sub-paragraph (1)(b), for “three” substitute “six”.

After sub-paragraph (7) insert—

“(8) Where sub-paragraph (5) applies, the action taken on a review under sub-paragraph (1) takes effect from the time the regulator completes the review notwithstanding any appeal against that decision.”.

—(6) Paragraph 15 is amended as follows.

In sub-paragraph (1)

in paragraph (a), for “the extended period does not exceed three years” substitute “the extension or further extension does not exceed three years from the date on which it is extended or further extended”;

in paragraph (b)—

(i) after “any order” insert “(“the new order”)”

(ii) for “the orders have effect does not exceed three years in total” substitute “the new order has effect does not exceed three years from the date on which it is made”;

after paragraph (c) insert—

“(d) revoke the order for the remainder of the period for which it would have had effect.”.

After sub-paragraph (1) insert—

“(1A) Where a social worker appeals against a decision made under sub-paragraph (1), the decision being appealed takes effect notwithstanding any appeal against that decision.”.

In sub-paragraph (2)—

in paragraph (b), for “three years” substitute—

“—

(i) in the case of a suspension or a conditions of practice order, three years; or

(ii) in the case of a warning order, five years.”.

in paragraph (c), omit “under paragraph 12(3)(b)”;

for paragraph (d) substitute—

“(d) substitute any order which the adjudicators or the case examiners could have made at the time they made the order.”.

After sub-paragraph (2) insert—

“(2A) The decision on a review under sub-paragraph (2) takes effect from the time the regulator completes the review notwithstanding any appeal against that decision.”.

In sub-paragraph (3), for “a final order” substitute “an order under paragraph 12(3)(b)”.

In sub-paragraph (4), after “paragraph” insert “9(2)(c) or”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 of these Regulations amends the Social Workers Regulations 2018 (S.I. 2018/893) (“the 2018 Regulations”).

Paragraph (2)(a) provides that the regulator can co-operate with persons concerned with the employment and regulation of social workers other than in England.

Paragraph (2)(b) allows the regulator to disclose any information it has about any person to any person or body with whom it has a duty to co-operate where it will assist in carrying out functions under the Children and Social Work Act 2017 (c. 16) or under the 2018 Regulations or where it is in the public interest to do so.

Paragraph (3) provides that interim orders and orders disposed of without a hearing may be recorded in the register before any appeal is concluded.

Paragraph (4) provides that the regulator has a discretion as to whether or not to remove a registered social worker from the register where it is requested voluntarily and the social worker is subject to fitness to practise proceedings. It also provides that where that social worker is removed from the register in those circumstances, the list of those removed may include the particulars of such removal but must not include information about the registered social worker’s physical or mental health.

Paragraph (5) allows the regulator to disclose any information relating to a registered social worker’s fitness to practise to any person where it considers it to be in the public interest to disclose it.

Paragraph (6) allows a social worker to be removed from the register immediately where they are automatically removed on conviction for a listed offence (see regulation 26(8) of, and Schedule 3 to, the 2018 Regulations).

Paragraph (7) allows certain review decisions to be referred to the High Court.

Paragraph (8) and the Schedule amend Schedule 2 to the 2018 Regulations. Schedule 2 sets out the procedure for fitness to practise proceedings for social workers and the amendments make various changes to the procedures relating to such proceedings. In particular, they provide that interim orders take effect immediately after they are made and make provision for the regulator to review certain decisions made by the case examiners.

Paragraph (9) adds offences under sections 1 and 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2) as listed offences.

Regulation 3 both inserts a provision into the Health and Social Work Professions Order 2001 (S.I. 2002/254) which was erroneously omitted by the 2018 Regulations and omits the incorrect provision.

Regulation 4 amends the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008 (S.I. 2008/1858) to clarify the scope of an amendment to those Regulations made by the 2018 Regulations.

Regulation 5 makes a transitional provision in connection with the review of final orders made under paragraph 13 of Schedule 2 to the 2018 Regulations which are in force immediately before these Regulations come into force.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.



Department
for Education

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