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.

D R A F T S T A T U T O R Y I N S T R U M E N T S

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 and Transitional Provision) Regulations 2022

Made - - - -	*****
Coming into force - -	*16th 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), 52(2), 53(1)(d), 57(1) and (3), 65, 66(1) and (2), and 67(2)(a) of the Children and Social Work Act 2017(**a**).

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. In accordance with section 58(2) of that Act, that draft was accompanied by a report by the Secretary of State about the consultation referred to above.

(**a**) 2017 c. 16.

Citation, commencement, extent, application and interpretation

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

(2) These Regulations come into force on 16th December 2022.

(3) These Regulations—

(a) extend to England and Wales;

(b) apply to England only.

(4) In these Regulations, "the 2018 Regulations" means the Social Workers Regulations 2018(**a**).

Amendment of the 2018 Regulations

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

(2) In regulation 7 (duty to co-operate), in paragraph (1)(a)(i), (ii) and (vii), after "in England" insert "or elsewhere".

(3) After regulation 7 insert—

"**Disclosure of information relating to functions**

7A.—(1) Where the regulator receives a request from any person (P) to disclose information to P, the regulator must disclose that information to P where the regulator considers such disclosure—

(a) to relate to any of the regulator's functions under the Act; and

(b) to be in the public interest.

(2) The regulator may disclose to any person any information relating to a registered social worker's fitness to practise where the regulator considers the disclosure to relate to any of the regulator's functions under the Act.

(3) Except as provided by paragraph (4), the disclosure of information under paragraph (1) or (2) does not breach—

(a) any obligation of confidence owed by the person making the disclosure; or

(b) any other restriction on the disclosure of information (however imposed).

(4) Paragraphs (1) and (2) do not authorise a disclosure of information if the disclosure would contravene the data protection legislation, where "the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).".

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

(5) In regulation 14 (removal from the register)—

(a) omit paragraph (1)(c)(i);

(b) 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";

(c) in paragraph (8), in the words before sub-paragraph (a), after "paragraph (1)" insert "or (1A)";

(d) after paragraph (8) insert—

(**a**) S.I. 2018/893.

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

(a) may include the particulars of the removal;

(b) must not include any information relating to the registered social worker's physical or mental health.".

(6) In regulation 26 (automatic removal from the register)—

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

(b) omit paragraph (7);

(c) in paragraph (8)(b), for "13" substitute "14".

(7) In regulation 32 (offences in connection with the provision of information), in paragraph (1)—

(a) in sub-paragraph (d), for "paragraph 1(3)(a)" substitute "paragraph 1(1A) or (3)(a)";

(b) in sub-paragraph (e), before "investigators" insert "the regulator or".

(8) In regulation 34—

(a) for paragraph (b) substitute—

"(b) a decision made under regulation 15(6) (to restore a person to the register after a previous removal order),";

(b) in paragraph (g), for "paragraph 15(2)" substitute "paragraph 15(1) or (2)".

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

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

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

(a) section 1 (slavery, servitude and forced or compulsory labour);

(b) section 2 (human trafficking).".

Amendment of the Health and Social Work Professions Order 2001

3. In the Health and Social Work Professions Order 2001(**b**), in article 14 (Education and Training Committee)—

(a) 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);";

(b) omit paragraph (ba).

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

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

(**a**) 2015 c. 2.

(**b**) S.I. 2002/254. Article 14(ba) was inserted by section 218(4) of the Health and Social Care Act 2012 (c. 7). Article 14(b) was inadvertently revoked by regulation 41(1) and (3) of S.I. 2018/893 instead of article 14(ba) as intended. These Regulations correct this error by re-inserting article 14(b) and revoking article 14(ba).

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

Transitional provisions

5.—(1) Paragraph (2) applies in relation to a review of a final order which—

(a) is made under paragraph 13 of Schedule 2 to the 2018 Regulations; and

(b) has effect immediately before these Regulations come into force,

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

(2) Paragraph 15(2)(d) of Schedule 2 to the 2018 Regulations (as substituted by paragraph 11(4)(c) of the Schedule to these Regulations) has effect in relation to such a review as if for the words "could have made on the date on which they made the order" there were substituted the words "are able to make".

(3) In paragraphs (4) and (5), "relevant interim order" means an interim suspension order or an interim conditions of practice order made by an adjudicator under paragraph 8(2) or 11(1) of Schedule 2 to the 2018 Regulations on or after 18th November 2022 but before 16th December 2022.

(4) A relevant interim order must be recorded in the register referred to in section 39(1) of the Children and Social Work Act 2017(**a**) immediately on the coming into force of these Regulations.

(5) In so far as paragraph 14(1)(b) of Schedule 2 to the 2018 Regulations (as amended by paragraph 10(2) of the Schedule to these Regulations) applies to a relevant interim order, the period of six months in that paragraph begins on the date on which the relevant interim order was made.

(6) For the purposes of regulation 34(g) of the 2018 Regulations (as amended by regulation 2(8)(b) of these Regulations), a decision under paragraph 15(1) of Schedule 2 to the 2018 Regulations is specified for the purposes of section 29(2A) of the National Health Service Reform and Health Care Professions Act 2002(**b**) only where that decision was taken on or after the date on which these Regulations come into force.

Name
Parliamentary Under Secretary of State
Department for Education

Date

SCHEDULE

Regulation 2(9)

AMENDMENT OF SCHEDULE 2 TO THE 2018 REGULATIONS

1. After paragraph 1(1) insert—

"(1A) In order to make a determination under sub-paragraph (1), the regulator may require the supply of information or documents in accordance with paragraph 5(1).".

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

(2) In sub-paragraph (1), before "the investigators" insert "the regulator or".

(3) In sub-paragraph (3), before "the investigators" in both places, insert "the regulator or".

(4) 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.

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

(**b**) 2002 c. 17. Section 29(2A) is inserted by section 70(2) of, and paragraph 15(2) of Schedule 4 to, the Children and Social Work Act 2017.

(5) At any stage in fitness to practise proceedings, the regulator may—

(a) consider whether an interim order may be necessary for the protection of the public or in the best interests of the social worker, and

(b) propose that an interim order be made in accordance with paragraph 8.

(6) Where the regulator has been notified in accordance with paragraph 8(1), it must consider whether an interim order may be necessary for the protection of the public or in the best interests of the social worker.

(7) Where the regulator considers an interim order may be necessary for the protection of the public or in the best interests of the social worker, it must appoint two or more adjudicators to consider whether to make an interim order in accordance with paragraph 8.

(8) The investigators must refer the case to the case examiners at the conclusion of the investigation.".

3.—(1) Paragraph 8 is amended as follows.

(2) For sub-paragraph (1) substitute—

"(1) If, at any stage, an investigator or 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 of their opinion and the reasons for that opinion.

(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.".

(3) For sub-paragraph (3) substitute—

"(3) The adjudicators may not make an interim order unless the conditions in sub-paragraphs (3A) and (3B) have been complied with.

(3A) The condition in this sub-paragraph is that the regulator has first informed the social worker—

(a) that an interim order may be made, and

(b) of the reasons why it considers that an interim order may be necessary for the protection of the public or in the best interests of the social worker.

(3B) The condition in this sub-paragraph is that the regulator has given the social worker the opportunity—

(a) to make written submissions, or

(b) to attend before the adjudicators and be represented, in order to make oral submissions.

(3C) 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.".

(4) In sub-paragraph (4)—

(a) for the words before paragraph (a) substitute "Where the regulator has been informed in accordance with sub-paragraph (3A), the regulator must—";

(b) in paragraph (a)—

(i) before "order" insert "interim";

(ii) omit sub-paragraph (i).

(5) After sub-paragraph (5) insert—

"(5A) An interim order made under sub-paragraph (2) takes effect from the date on which it is made notwithstanding any appeal against the order.".

(6) In sub-paragraph (6)—

(a) 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,";

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

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

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

4. In paragraph 9, after sub-paragraph (3), insert—

"(4) A decision to dispose of a case under sub-paragraph (3)(a) takes effect from the date on which 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).".

5. 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.".

6. In paragraph 10(4)—

(a) for "adjudicators" substitute "regulator";

(b) in sub-paragraph (a), for "they" substitute "the adjudicators".

7.—(1) Paragraph 11 is amended as follows.

(2) For sub-paragraph (2) substitute—

"(2) The adjudicators may not make an interim order under sub-paragraph (1)(a) unless the conditions in sub-paragraphs (2A) and (2B) have been complied with.

(2A) The condition in this sub-paragraph is that the regulator has first informed the social worker—

(a) that an interim order may be made, and

(b) of the reasons why it considers that an interim order may be necessary for the protection of the public or in the best interests of the social worker.

(2B) The condition in this sub-paragraph is that the regulator has given the social worker the opportunity—

(a) to make written submissions, or

(b) to attend before the adjudicators and be represented, in order to make oral submissions.

(2C) An interim order made under sub-paragraph (1) takes effect from the date on which it is made notwithstanding any appeal against the order.".

(3) After sub-paragraph (3) insert—

"(3A) Where the adjudicators make an interim order under sub-paragraph (1), they must inform the regulator of the making of that order and its terms.".

(4) For sub-paragraph (4) substitute—

"(4) Where the regulator has been informed in accordance with sub-paragraph (3A), the regulator must—

(a) inform the persons specified in paragraph 8(4)(a)(ii) to (v) of the terms of the order, and

(b) notify the social worker of their right to appeal to the High Court under Part 5.".

8.—(1) Paragraph 12 is amended as follows.

(2) 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.".

(3) In sub-paragraph (4)—

(a) for the words before paragraph (a) substitute "Where the regulator has been informed in accordance with sub-paragraph (3A), the regulator must—";

(b) in paragraph (a)—

(i) before "order" insert "final";

(ii) omit sub-paragraph (i).

(4) 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, until the appeal is withdrawn or otherwise finally disposed of.".

9. 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—

(i) 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), and

(ii) have both disposed of the case in accordance with paragraph 9(3)(a) and informed the persons specified in paragraph 9(3)(b).".

10.—(1) Paragraph 14 is amended as follows.

(2) In sub-paragraph (1)(b), for "three" substitute "six".

(3) 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 date on which the regulator completes the review notwithstanding any appeal against that decision.".

11.—(1) Paragraph 15 is amended as follows.

(2) In sub-paragraph (1)—

(a) 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";

(b) 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";

(c) after paragraph (c) insert—

"(d) revoke the order with effect from the date of the review for the remainder of the period for which it would have had effect.".

(3) 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 from the date specified in that sub-paragraph notwithstanding any appeal against that decision.".

(4) In sub-paragraph (2)—

(a) 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,".

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

(c) for paragraph (d) substitute—

"(d) substitute any order which the adjudicators or the case examiners could have made on the date on which they made the order.".

(5) After sub-paragraph (2) insert—

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

(6) In sub-paragraph (3), for "a final order" substitute "an order made under paragraph 12(3)(b)".

(7) In sub-paragraph (4), after "paragraph" insert "9(2)(c) or".

12. For paragraph 16(2) substitute—

"(2) An appeal must be filed before the end of the period of 28 days beginning with the day after the day on which the social worker is notified of the decision complained of.".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend three statutory instruments which contain provisions relating to the regulation of social workers, and include transitional provision with respect to orders made in the context of fitness to practise proceedings.

Regulation 2 amends the Social Workers Regulations 2018 (S.I. 2018/893) ("the 2018 Regulations").

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

Paragraph (3) provides for the disclosure of information. The regulator may disclose such information where it relates to the fitness to practise of a social worker in England and the regulator considers that it relates to its functions. The regulator must disclose such information when a request is received, and the regulator considers it relates to its functions and it is in the public interest to do so. The regulator must comply with data protection legislation in considering disclosure.

Paragraph (4) provides that interim orders and orders made by the case examiners without a hearing may be recorded in the register before any appeal is concluded.

Paragraph (5) 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 by the social worker who 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 (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) makes additions to the offences relating to a refusal to provide information in connection with fitness to practice proceedings in consequence of the amendments made to Schedule 2 to the 2018 Regulations.

Paragraph (8) allows certain review decisions to be referred to the High Court.

Paragraph (9) 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 (10) 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 provision which was incorrectly inserted.

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 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;
- — the publication and review of interim orders made in the 28 days before these Regulations come into force;
- — decisions which may be referred to the High Court under the National Health Service Reform and Health Care Professions Act 2002 (c. 17).

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

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