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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

**The Social Workers Regulations 2018**

**PART 5**

**Discipline and fitness to practise**

**Fitness to practise proceedings**

**25.**—(1) Where a question arises as to a social worker’s fitness to practise by reason of any of the grounds in paragraph (2), and regulation 26(5) does not apply, the regulator must ensure that—

- (a) proceedings are carried out in accordance with this regulation and Schedule 2, and any rules made under paragraph (5) (“fitness to practise proceedings”),
- (b) any outcome of the fitness to practise proceedings which is mentioned in regulation 9(2) is recorded in the register in accordance with that regulation, and
- (c) the particulars of any orders and decisions made in fitness to practise proceedings, together with the reasons for them, and the particulars of any order made on review or appeal, are published as soon as reasonably practicable.

(2) The grounds referred to in paragraph (1) are—

- (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 regulatory body to the effect that the person’s fitness to practise is impaired,
- (g) being included—
  - (i) by the Disclosure and Barring Service in a barred list (within the meaning given in section 60(1) of the Safeguarding Vulnerable Groups Act 2006<sup>(1)</sup> or article 2(2A) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007<sup>(2)</sup>), or
  - (ii) by the Scottish Ministers in the children’s list or the adults’ list (within the meaning given in section 1(1) of the Protection of Vulnerable Groups (Scotland) Act 2007<sup>(3)</sup>),  
or
- (h) not having the necessary knowledge of English,

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<sup>(1)</sup> 2006 c. 47.

<sup>(2)</sup> 2007 No. 1351 (N.I. 11). Article 2 was amended by paragraph 76 of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9).

<sup>(3)</sup> 2007 asp 14.

provided that an alleged matter which occurred outside the United Kingdom, or at a time when the person was not registered, may only be grounds for the purposes of paragraph (1) where the regulator considers that to be in the public interest.

(3) For the purposes of paragraph (2), references to a conviction include references to a conviction by a Court Martial.

(4) The standard of proof applicable to fitness to practise proceedings is that applicable to civil proceedings.

(5) The regulator must make rules setting out—

- (a) the criteria by which it will determine, pursuant to paragraph 1(1) of Schedule 2, whether there are reasonable grounds for investigating whether a registered social worker's fitness to practise is impaired,
- (b) the timescales within which any steps in fitness to practise proceedings are to be taken,
- (c) any requirements and restrictions in relation to who may be appointed as an adjudicator, case examiner or investigator in fitness to practise proceedings,

and may make rules setting out the detail of any other aspect of fitness to practise proceedings.

(6) In any case where investigators, case examiners, or adjudicators consider that a registered social worker's fitness to practise may be impaired by reason of not having the necessary knowledge of English, they may—

- (a) direct the social worker to undergo an examination, or other assessment, of their knowledge of English, and regulation 11(4) and (5) and any rules made under regulation 11(6)(d) apply in relation to that examination or other assessment, and
- (b) draw such inferences as they deem appropriate if the social worker fails to undergo an examination or assessment, or fails to provide or disclose any evidence, as directed.

(7) Subject to paragraph (8), 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 proceedings.

(8) A person may not be appointed—

- (a) under more than one sub-paragraph of paragraph (7) in fitness to practise proceedings relating to the same registered social worker, or
- (b) as an adjudicator, if they have been appointed as an investigator or a case examiner in relation to any fitness to practise proceedings in the preceding two years.