

## SCHEDULE 2 **E+W**

Regulation 25(1)(a)

### Fitness to practise proceedings

#### **Modifications etc. (not altering text)**

- C1** Sch. 2 applied (with modifications) (2.12.2019) by [The Children and Social Work Act 2017 \(Transitional and Savings Provisions\) \(Social Workers\) Regulations 2019 \(S.I. 2019/1140\)](#), regs. 1, **16**; [S.I. 2019/1436](#), reg. 2(b)

## **PART 1** **E+W**

### Triage

#### **Triage** **E+W**

1.—(1) Subject to sub-paragraph (2), where a question arises as to whether a social worker's fitness to practise is impaired, the regulator must determine in accordance with criteria set out in rules made under regulation 25(5)(a) whether there are reasonable grounds for investigating whether the social worker's fitness to practise is impaired.

(2) Where a question arises as to whether a social worker's fitness to practise is impaired—

- (a) as a result of them having been convicted of an offence in respect of which a custodial sentence has been imposed, other than a listed offence, or
- (b) where they have been convicted of a listed offence, but have not been removed from the register under regulation 26(5),

there are reasonable grounds for investigating whether the social worker's fitness to practise is impaired, and there is a realistic prospect that adjudicators would determine that the social worker's fitness to practise is impaired.

(3) Where sub-paragraph (2) applies, the regulator—

- (a) must notify the social worker accordingly, and require them 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, and
  - (iii) any regulatory body with which they are registered,
- (b) may invite the social worker to make written submissions,
- (c) may notify any complainant of the action taken under this sub-paragraph.

(4) In this Schedule—

“complainant”, where the fitness to practise proceedings were instigated following a complaint against the social worker, means the person who made the complaint,

“social worker” means the registered social worker who is the subject of the fitness to practise proceedings.

#### **Determination by the regulator that there are no reasonable grounds** **E+W**

2. Where the regulator determines in accordance with paragraph 1(1) that there are no reasonable grounds for investigating whether the social worker's fitness to practise is impaired, the regulator

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must inform any complainant of that determination and the reasons for it unless, in the opinion of the regulator, it is not in the public interest to do so.

## **PART 2** **E+W**

### Investigation

#### **Commencement of investigation** **E+W**

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

- (a) appoint two or more investigators to carry out an investigation, and
- (b) appoint two or more case examiners to determine whether there is a realistic prospect that adjudicators would determine that the social worker's fitness to practise is impaired,

in accordance with this Part.

(2) Where paragraph 1(2) applies the regulator must appoint two or more case examiners to consider the case in accordance with paragraphs 8 and 9, and paragraphs 4 to 6 do not apply.

(3) Any step in the investigation under this Part must be taken within such period as is specified in rules made under regulation 25(5)(b).

#### **Notifying the social worker and the complainant** **E+W**

4.—(1) The investigators must—

- (a) notify the social worker of the grounds for investigating whether their fitness to practise is impaired,
- (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, and
  - (iii) any regulatory body with which they are registered, and
- (c) invite the social worker to make written submissions.

(2) Where the fitness to practise proceedings were 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 further information and referral to case examiners** **E+W**

5.—(1) Subject to sub-paragraph (2), the investigators may require any person who, in their opinion, is able to supply information or produce any document which appears relevant to the discharge of their functions or to those of case examiners or adjudicators under this Schedule, to attend and give evidence, or produce documents, in the fitness to practise proceedings.

(2) Nothing in sub-paragraph (1)—

- (a) requires or permits any disclosure of information which is prohibited by or under any other enactment, or
  - (b) requires the production of any document which a person could not be compelled to supply or produce in proceedings in the High Court on an appeal from a decision of case examiners or adjudicators under Part 5.
- (3) 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 25(5)(b), or such longer period as the investigators may determine.
- (4) 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 time during 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, or
  - (b) at the conclusion of their investigation.

#### **Determination by case examiners** **E+W**

- 6.—**(1) The case examiners must—
- (a) consider the information and any written submissions referred to them by the investigators, and
  - (b) determine whether there is a realistic prospect that adjudicators would determine, under Part 3, that the social worker's fitness to practise is impaired.
- (2) Where the case examiners determine that there is no realistic prospect that adjudicators would determine that the social worker's fitness to practise is impaired, the case examiners may—
- (a) give a warning to the social worker regarding their future conduct or performance,
  - (b) give advice to the social worker on any matter related to the investigation,
  - (c) take no further action.
- (3) Where sub-paragraph (2) applies, the case examiners must inform the following of their determination and the reasons for it—
- (a) the regulator,
  - (b) the social worker, and
  - (c) where the fitness to practise proceedings were instigated following a complaint against the social worker, the complainant.
- 7.—**(1) Where the case examiners determine that there is a realistic prospect that adjudicators would determine that the social worker's fitness to practise is impaired, the case examiners must notify the social worker of that determination and the reasons for it.
- (2) The case examiners must refer a case falling within sub-paragraph (1), or a case to which paragraph 1(2) applies, to a fitness to practise hearing if, in their opinion, it would be in the public interest to do so.
- (3) Where the case examiners do not refer the case to a fitness to practise hearing under paragraph (2) the case examiners 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 paragraph 9.
- (4) At any time before the case examiners determine that a case is to proceed to a fitness to practise hearing they may require the investigators to obtain, and supply to them, further information or submissions relevant to the investigation, provided that paragraph 5(2) and (3) applies to the provision of information under this sub-paragraph.

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The Social Workers Regulations 2018, SCHEDULE 2. (See end of Document for details)

## Interim orders **E+W**

8.—(1) Where the case examiners consider an interim order may be necessary for the protection of the public or in the best interests of the social worker—

- (a) they must notify the regulator accordingly,
- (b) the regulator must appoint two or more adjudicators to consider whether to make an interim order in accordance with this paragraph.

(2) Subject to sub-paragraph (3), the adjudicators may make any interim order they consider is necessary for the protection of the public, or in the best interests of the social worker.

(3) The adjudicators may not make an interim order unless they have first informed the social worker of the proposed order and given them the opportunity—

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

(4) Where they make an interim order under sub-paragraph (2) the adjudicators 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 proceedings were 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.

(5) 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.

(6) An interim order made under sub-paragraph (2) ceases to have effect before the expiry of the period specified in the order, or such period as is substituted by the court pursuant to paragraph 14(3)(a) (as the case may be)—

- (a) if the case examiners determine that there is no realistic prospect that adjudicators would determine that the social worker's fitness to practise is impaired,
- (b) following a fitness to practise hearing, if the adjudicators determine that the social worker's fitness to practise is not impaired,
- (c) where a case is disposed of under paragraph 9(3) by either of the means mentioned in paragraph 9(2)(a) or (b),
- (d) where 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,
  - (ii) if there is an appeal against that order, when the appeal is withdrawn or otherwise finally disposed of, or
- (e) where the social worker is removed from the register under regulation 26(5).

## **Disposal without hearing** **E+W**

**9.**—(1) This sub-paragraph applies where—

- (a) the case examiners give the notification referred to in paragraph 7(3), or paragraph 1(2)
  - (a) applies (social worker convicted of an offence, other than a listed offence), and
  - (b) the case examiners determine that it would not be in the public interest for the case to proceed to a fitness to practise hearing.

(2) Where sub-paragraph (1) 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.

(3) If the social worker notified under sub-paragraph (2) notifies the case examiners that the social worker consents to the proposed disposal of the case and does not wish to proceed to a fitness to practise hearing, the case examiners must, provided that they remain satisfied that it would not be in the public interest for the case to proceed to a fitness to practise hearing—

- (a) dispose of the case accordingly, 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 proceedings were instigated following a complaint against the social worker, the complainant.

## **PART 3** **E+W**

### Fitness to practise hearing

#### **Commencement of hearing procedure** **E+W**

**10.**—(1) This sub-paragraph applies where a case has not been disposed of under paragraph 9(3) and the case examiners determine that—

- (a) there is a realistic prospect that adjudicators would determine that the social worker's fitness to practise is impaired, and
- (b) it would be in the public interest for the case to proceed to a fitness to practise hearing.

(2) Where sub-paragraph (1) applies—

- (a) the case examiners must inform the regulator, and
- (b) the regulator must appoint two or more adjudicators (who may be the adjudicators appointed under paragraph 8(1)(b), if any) to conduct a fitness to practise hearing in accordance with this Part.

(3) Any step in the fitness to practise hearing must be taken within such period as is specified in rules made under regulation 25(5)(b), or such longer period as the adjudicators may determine.

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**Changes to legislation:** There are currently no known outstanding effects for the The Social Workers Regulations 2018, SCHEDULE 2. (See end of Document for details)

- (4) 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, and
  - (c) inform the social worker that they may—
    - (i) attend the hearing, and be represented,
    - (ii) make oral submissions,
    - (iii) call witnesses.
- (5) At any time before the adjudicators make a determination under paragraph 12(1) or (3) they may require the investigators to obtain, and supply to them, further information or submissions relevant to the fitness to practise hearing, provided that paragraph 5(2) and (3) applies to the provision of information under this sub-paragraph.

#### **Interim orders** E+W

- 11.**—(1) The adjudicators may make any interim order they consider is necessary for the protection of the public or in the best interests of the social worker, where they—
- (a) have not yet made a determination under paragraph 12(1) or (3), or
  - (b) are making a final order under paragraph 12(3)(b).
- (2) The adjudicators may not make an interim order under sub-paragraph (1)(a) unless they have first informed the social worker of the proposed order and given them the opportunity—
- (a) to make written submissions, or
  - (b) to attend before the adjudicators and be represented, in order to make oral submissions.
- (3) An interim order ceases to have effect before the expiry of the period specified in the order, or such period as is substituted by the court pursuant to paragraph 14(3)(a) (as the case may be)—
- (a) in the case of an interim order referred to in sub-paragraph (1)(a), when the adjudicators determine that the social worker's fitness to practise is not impaired,
  - (b) in the case of an interim order referred to in sub-paragraph (1)(b)—
    - (i) where there is no appeal against the final order, when the period for appealing expires, or
    - (ii) where there is an appeal against the final order, when the appeal is withdrawn or otherwise finally disposed of.
- (4) Where they make an interim order under sub-paragraph (1) the adjudicators must comply with paragraph 8(4).

#### **Determination by adjudicators** E+W

- 12.**—(1) Where, following a fitness to practise hearing, the adjudicators determine that the social worker's fitness to practise is not impaired the adjudicators may—
- (a) give a warning to the social worker regarding their future conduct or performance,
  - (b) give advice to the social worker on any matter related to the fitness to practise proceedings, or
  - (c) take no further action.
- (2) Where sub-paragraph (1) applies, the adjudicators must inform the following of their determination and the reasons for it—

- (a) the regulator,
  - (b) the social worker, and
  - (c) where the fitness to practise proceedings were instigated following a complaint against the social worker, the complainant.
- (3) Where, following the fitness to practise hearing, the adjudicators determine that the social worker's fitness to practise is impaired, the adjudicators may—
- (a) give advice to the social worker on any matter related to the fitness to practise proceedings,
  - (b) make a final order,
  - (c) take no further action.
- (4) 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 proceedings were 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 15, and
    - (ii) to appeal to the High Court under Part 5.

### **Final orders** **E+W**

- 13.—**(1) A final order may—
- (a) require the removal of the social worker's entry from the register (a “removal order”),
  - (b) suspend the social worker 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”).
- (2) A removal 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 25(2)(a), (c), (d), (f), or (g), or
  - (b) the adjudicators found the social worker unfit to practise on one of the grounds set out in regulation 25(2)(b), (e) or (h) and the social worker was suspended from practice, or subject to a conditions of practice order, for a continuous period of two years immediately preceding the making of the removal order.
- (3) A suspension order and a conditions of practice order have effect for such period, not exceeding three years, as is specified in the order.

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## PART 4 **E+W**

### Review of orders

#### Review of interim orders **E+W**

**14.**—(1) The regulator must review any interim order made under paragraphs 8(2) or 11(1)(a) (including any such order as has been extended or varied)—

- (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) The regulator 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 sub-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 substitutes a different period for which the interim order has effect the regulator must notify any person who was notified of the making of the interim order.

(5) Subject to sub-paragraph (6), on a review under sub-paragraph (1) the regulator may—

- (a) revoke the order,
- (b) revoke or vary any condition imposed by the order,
- (c) confirm the order,
- (d) replace an interim conditions of practice order with an interim suspension order (or vice versa) having effect for the same period, provided it is satisfied that to do so is necessary for the protection of the public or in the best interests of the social worker,

(6) The regulator may not take any of the steps in sub-paragraph (5) unless it has first informed the social worker of the proposed step and given them the opportunity—

- (a) to make written submissions, or
- (b) to attend before it and be represented, in order to make oral submissions.

(7) Where sub-paragraph (5) applies, the regulator must inform the following of the terms of the order and the reasons for it—

- (a) the social worker,
- (b) 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),
- (c) any other regulatory body with which the social worker is registered (where known), and
- (d) where the fitness to practise proceedings were instigated following a complaint against the social worker, the complainant.

#### Review of final orders **E+W**

**15.**—(1) The regulator must review a suspension order, or a conditions of practice order, before its expiry, and may—



- (a) with effect from the date on which the order would have expired, extend or further extend the period for which the order has effect, provided that the extended period does not exceed three years,
  - (b) with effect from the expiry of the order, make any order which the case examiners or the adjudicators (as the case may be) could have made at the time they made the order, provided that the period for which the orders have effect does not exceed three years in total,
  - (c) in the case of a suspension order, with effect from its expiry make a conditions of practice order with which the social worker must comply if they resume practice as a social worker at the end of the period of suspension specified in the order.
- (2) The regulator may review a final order where new evidence relevant to the order has become available after the making of the order, or when requested to do so by the social worker, and may—
- (a) confirm the order,
  - (b) extend, or further extend, the period for which the order has effect, provided that the extended period does not exceed three years,
  - (c) reduce the period for which the order has effect, but in the case of a warning order, not so that it has effect for less than one year beginning on the date when the order was made under paragraph 12(3)(b),
  - (d) substitute any order which the adjudicators could have made at the time they made the order under paragraph 12(3)(b),
  - (e) revoke the order, and in the case of a suspension order may make the revocation subject to the social worker satisfying such requirements as to additional education or training and experience as apply to them,
  - (f) revoke or vary any condition imposed by the order.
- (3) A request by the social worker under sub-paragraph (2) must be made within such period as the regulator determines in rules made under regulation 25(5), and a final order does not have effect until after the expiry of that period.
- (4) Sub-paragraphs (1) and (2) apply in relation to an order made on a review under those paragraphs, as they apply to an order made under paragraph 12(3)(b).
- (5) The regulator may not take any action mentioned in sub-paragraphs (1) or (2) unless it has first informed the social worker of the proposed action and given them the opportunity—
- (a) to make written submissions, or
  - (b) to attend before the regulator and be represented, in order to make oral submissions.
- (6) Where the regulator takes any action mentioned in sub-paragraphs (1) or (2) it must inform the following accordingly—
- (a) the social worker,
  - (b) 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),
  - (c) any regulatory body with which the social worker is registered (where known), and
  - (d) where the fitness to practise proceedings were instigated following a complaint against the social worker, the complainant.

**Status:** Point in time view as at 31/12/2020.

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## PART 5 **E+W**

### Appeals

- 16.**—(1) A social worker may appeal to the High Court against—
- (a) the decision of adjudicators—
    - (i) to make an interim order, other than an interim order made at the same time as a final order under paragraph 11(1)(b),
    - (ii) not to revoke or vary such an order,
    - (iii) to make a final order,
  - (b) the decision of the regulator on review of an interim order, or a final order, other than a decision to revoke the order.
- (2) An appeal must be made within 28 days of the day on which the social worker is notified of the decision complained of.
- (3) On an appeal the High Court may—
- (a) dismiss the appeal,
  - (b) quash the decision,
  - (c) substitute for the decision appealed against any other decision that the adjudicators or the regulator (as the case may be) could have made,
  - (d) remit the case to the regulator to dispose of in accordance with the directions of the court, and may make any order as to costs as it thinks fit.

#### **Modifications etc. (not altering text)**

- C2** Sch. 2 para. 16 modified in part (2.12.2019) by [The Children and Social Work Act 2017 \(Transitional and Savings Provisions\) \(Social Workers\) Regulations 2019 \(S.I. 2019/1140\)](#), regs. 1, **21(3)**; [S.I. 2019/1436](#), reg. 2(b)

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