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STATUTORY INSTRUMENTS

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**2019 No. 1140**

**SOCIAL WORK, ENGLAND  
HEALTH CARE AND ASSOCIATED  
PROFESSIONS, ENGLAND  
PROFESSIONAL QUALIFICATIONS, ENGLAND**

The Children and Social Work Act 2017 (Transitional and Savings Provisions) (Social Workers) Regulations 2019

*Made - - - - 17th July 2019*

*Coming into force in accordance with regulation 1*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 65 of the Children and Social Work Act 2017(1).

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Children and Social Work Act 2017 (Transitional and Savings Provisions) (Social Workers) Regulations 2019 and come into force on the date on which section 39(1) of the Children and Social Work Act 2017 comes into force.

**Interpretation**

2.—(1) In these Regulations—

“the 2001 Order” means the Health Professions Order 2001(2);

“adjudicator” has the meaning given in regulation 2(1) of the Principal Regulations;

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(1) 2017 c. 16.

(2) S.I. 2002/254, as amended by S.I. 2018/893. The Order was re-named by section 213(4) and (6) of the Health and Social Care Act 2012 (c. 7), and by paragraphs 45 and 46 of Schedule 5 to the Children and Social Work Act 2017. There are other amending instruments but none is relevant.

- “the HCPC” means the Health and Care Professions Council(3);
- “the HCPC register” means the register maintained by the HCPC under article 5(1) of the 2001 Order;
- “previous fitness to practise case” has the meaning given in regulation 14;
- “previous fitness to practise sanction” has the meaning given in regulation 13(1);
- “previous register entry case” has the meaning given in regulation 17;
- “the Principal Regulations” means the Social Workers Regulations 2018(4);
- “the register” means the register described in section 39(1) of the Children and Social Work Act 2017;
- “registered” and “registered social worker” have the meanings given in regulation 2(5) of the Principal Regulations;
- “the Registration and Fees Rules” means the Health and Care Professions Council (Registration and Fees) Rules 2003 set out in the Schedule to the Health Professions Council (Registration and Fees) Rules Order of Council 2003(5);
- “the transfer date” means the date on which section 39(1) of the Children and Social Work Act 2017 comes into force;
- “transferred social worker” means a person who is deemed to be a registered social worker by virtue of regulation 2(6)(6) of the Principal Regulations.

(2) Any reference to a striking-off order, a suspension order, a conditions of practice order, or a caution order made by virtue of the 2001 Order, is to that order as defined in article 29(5)(a), (b), (c) or (d) (as the case may be) of the 2001 Order.

(3) Any reference to an interim suspension order or an interim conditions of practice order made by virtue of the 2001 Order, is to that order as defined in article 31(2)(a) or (b) (as the case may be) of the 2001 Order.

(4) Any reference to a removal order, a suspension order, a conditions of practice order, a warning order, an interim suspension order or an interim conditions of practice order made by virtue of the Principal Regulations, is to that order as defined in regulation 2(1) of the Principal Regulations.

(5) Except in regulations 9(2), 15(2), 18(2) and 23, any reference to the 2001 Order is to the 2001 Order as it had effect immediately before the transfer date.

## PART 2

### Registration of social workers

#### Transfer of registration on the transfer date

- 3.—(1) A transferred social worker is treated, with effect from the transfer date, as—
- (a) having their name entered in the register, and

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(3) The Health Professions Council was established by article 3(1) of the Health Professions Order 2001. It was continued in existence, and its name changed to the Health and Care Professions Council, by section 214(1) of the Health and Social Care Act 2012.

(4) S.I. 2018/893.

(5) S.I. 2003/1572; as amended by S.I. 2004/2524, 2005/1625 and 2114, 2007/1280 and 3101, 2009/1355, 2010/479, 2011/210, 2012/1479, 2014/532 and 1887, 2015/93 and 1337, 2016/693 and 1030.

(6) Regulation 2(6) of the Principal Regulations provides that a person who is registered as a social worker in the register maintained by the HCPC under article 5(1) of the 2001 Order immediately before the coming into force of the Principal Regulations, where that registration has not lapsed or been removed in accordance with the provisions of the 2001 Order, is deemed to be a registered social worker for the purposes of the Principal Regulations.

(b) being registered on the same terms and, in particular subject to any condition or annotation, or any previous fitness to practise sanction, as their previous registration, provided that their registration has not lapsed, been subject to any condition, annotation or previous fitness to practise sanction, or been removed, in accordance with the provisions of the Principal Regulations.

(2) For the purposes of paragraph (1)—

- (a) where a transferred social worker’s previous registration was subject to a previous fitness to practise sanction, regulation 9(2) of the Principal Regulations is treated as requiring details of the equivalent fitness to practise sanction mentioned in the second column of the table in regulation 13(2) to be recorded in their entry in the register,
- (b) any condition to which a previous registration was subject by virtue of article 10(3) of the 2001 Order is treated as having been imposed in accordance with regulation 11(3) of the Principal Regulations,
- (c) where any qualification, specialism, accreditation, or competence was recorded in a transferred social worker’s previous registration—
  - (i) that social worker is treated as being eligible to have that qualification, specialism, accreditation, or competence recorded in their entry in the register,
  - (ii) the regulator must annotate their entry with that information, and
  - (iii) regulation 12(1) of the Principal Regulations does not apply in relation to the recording of that information,
- (d) in regulation 14(1)(a) and (7)(a) of the Principal Regulations, and any rules made under regulation 14(6) of the Principal Regulations, the registration of a transferred social worker is treated as being fraudulently procured or incorrectly made where the regulator<sup>(7)</sup> is satisfied or has reasonable grounds to believe (as appropriate), that the entry in the HCPC register from which it is derived was fraudulently procured or incorrectly made,
- (e) where all or part of any registration fee or renewal fee payable under the Registration and Fees Rules remains outstanding on the transfer date by virtue of an agreement made under rule 18(2) of the Registration and Fees Rules<sup>(8)</sup>, the outstanding amount is treated with effect from the transfer date as a fee payable to the regulator in accordance with rules made under regulation 17(3) of the Principal Regulations.

(3) In this regulation, “previous registration”, in relation to a transferred social worker, means their registration as a social worker in the HCPC register immediately before the transfer date.

### **Transfer of outstanding application for registration**

4.—(1) An application made under article 9(1) of the 2001 Order<sup>(9)</sup> on which the HCPC has not made its decision before the transfer date is treated, with effect from the transfer date, as an application to the regulator to be registered as a social worker.

(2) For the purposes of paragraph (1)—

- (a) the application is treated as having been made in accordance with regulation 10 of the Principal Regulations, and any rules made under paragraph (4) of that regulation,
- (b) where the person making the application paid any registration fee payable in accordance with rule 14 of the Registration and Fees Rules, and any scrutiny fee payable in accordance

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(7) By virtue of section 36(1) and (2) of the Children and Social Work Act 2017 a body corporate called “Social Work England” is established, and is referred to as “the regulator”.

(8) Rule 18(2) provides for the payment of fees by instalments.

(9) That is, an application for admission to part of the HCPC register.

with rule 17 of the Registration and Fees Rules, regulation 10(2)(b) of the Principal Regulations does not apply,

- (c) where all or part of any registration fee or scrutiny fee payable in accordance with the Registration and Fees Rules remains outstanding on the transfer date, that fee is treated with effect from the transfer date as a fee payable to the regulator in accordance with rules made under regulation 17(3) of the Principal Regulations.

#### **Transfer of outstanding application for readmission**

**5.**—(1) An application made under article 10(4) of the 2001 Order(**10**) which was not determined before the transfer date is treated, with effect from the transfer date, as an application to the regulator for restoration to the register.

(2) For the purposes of paragraph (1)—

- (a) the application is treated as having been made in accordance with regulation 15 of the Principal Regulations, and any rules made under paragraph (11) of that regulation,
- (b) where the person making the application paid any readmission fee payable in accordance with rule 15A of the Registration and Fees Rules, regulation 15(9)(b) of the Principal Regulations does not apply,
- (c) where all or part of any readmission fee payable in accordance with the Registration and Fees Rules remains outstanding on the transfer date, that fee is treated with effect from the transfer date as a fee payable to the regulator in accordance with rules made under regulation 17(3) of the Principal Regulations.

#### **Transfer of outstanding application for restoration**

**6.**—(1) An application made under article 33(1) of the 2001 Order(**11**) which was not determined before the transfer date is treated, with effect from the transfer date, as an application to the regulator for restoration to the register by a person whose entry was removed from the register as the result of a removal order made under the Principal Regulations.

(2) For the purposes of paragraph (1)—

- (a) the application is treated—
  - (i) in the case of a person who was struck off the HCPC register as the result of a striking-off order made by virtue of article 29(5)(a) of the 2001 Order, as an application by a person whose entry was removed from the register as the result of a removal order made under paragraph 12(3)(b) of Schedule 2 to the Principal Regulations,
  - (ii) in the case of a person who was struck off the HCPC register as the result of a striking-off order made by virtue of article 30 of the 2001 Order, as an application by a person whose entry was removed from the register as the result of a removal order made under paragraph 15(2) of Schedule 2 to the Principal Regulations,
- (b) the application is treated as having been made in accordance with regulation 15 of the Principal Regulations and any rules made under paragraph (11) of that regulation,
- (c) where the person making the application paid any restoration fee payable in accordance with rule 16 of the Registration and Fees Rules, regulation 15(9)(b) of the Principal Regulations does not apply,

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**(10)** That is, an application to be readmitted to the HCPC register, made by a person whose registration has lapsed.

**(11)** That is, an application to be restored to the HCPC register by a person who has been struck off.

- (d) where the person making the application did not pay any restoration fee payable in accordance with the Registration and Fees Rules before the transfer date, that fee is treated with effect from the transfer date as a fee payable to the regulator in accordance with rules made under regulation 17(3) of the Principal Regulations.

### **Documents, information and evidence in relation to transferred applications**

7.—(1) Any request for documents, information or evidence, or any other communication, made by the HCPC before the transfer date in relation to an application falling within regulation 4, 5, or 6 is, where appropriate, treated as made by the regulator.

(2) Any document, information or evidence, or any other communication, provided or made by an applicant or any other person to the HCPC before the transfer date in relation to such an application is, where appropriate, treated as provided or made to the regulator.

### **Application for restoration made on or after the transfer date**

8.—(1) A person may make an application for restoration in accordance with regulation 15 of the Principal Regulations and any rules made under paragraph (11) of that regulation, on or after the transfer date, where—

- (a) their registration as a social worker in the HCPC register lapsed before the transfer date in accordance with article 10(3) or 11 of the 2001 Order, or
  - (b) they were struck off the HCPC register by virtue of an order made under article 29(5)(a) or 30 of the 2001 Order or an order of the court.
- (2) But a person may not make an application for restoration where—
- (a) a direction made by virtue of article 33(9) of the 2001 Order<sup>(12)</sup> had effect in relation to them immediately before the transfer date, and
  - (b) less than 3 years has elapsed since the making of that direction, or the most recent decision on the review of that direction under article 33(10) of the 2001 Order, whichever is the later.
- (3) For the purposes of paragraph (1)—
- (a) regulation 15(1) of the Principal Regulations is treated as applying to a person whose entry in the HCPC register has been removed,
  - (b) regulation 15(3)(a) and (4) of the Principal Regulations is treated as applying in the case of a person whose entry was removed from the HCPC register as the result of a striking-off order made under article 29(5)(a) or 30 of the 2001 Order,
  - (c) regulation 15(4)(b) of the Principal Regulations is treated as requiring, in addition, that the person has not in the preceding 12 months made an application for restoration to the HCPC register which was refused.

### **Appeal against a registration decision: determination by the HCPC**

9.—(1) Paragraph (2) applies where the hearing of an appeal under article 37(1) of the 2001 Order had commenced, but the appeal had not been determined, before the transfer date<sup>(13)</sup>.

(2) Any decision made by the HCPC on an appeal mentioned in paragraph (1) on or after the transfer date, by virtue of article 37(9)(a), (b), (c) or (d) of the 2001 Order (as that article continues

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<sup>(12)</sup> That is, a direction that a person's right to make applications to be restored to the HCPC register is indefinitely suspended.

<sup>(13)</sup> That is, an appeal to the HCPC against a registration decision of the Education and Training Committee of the HCPC. See the Health Professions Council (Registration Appeals) Rules 2003, set out in the Schedule to the Health Professions Council (Registration Appeals) Rules Order of Council 2003 (S.I. 2003/1579) for the procedure to be followed in determining such an appeal.

to have effect as modified by regulation 23(4)), is treated as a decision of the adjudicators under regulation 19(6)(a), (b), (c) or (d) (as the case may be) of the Principal Regulations.

**Appeal against a registration decision: determination by the regulator**

**10.**—(1) Where an appeal was made under article 37(1) of the 2001 Order and the hearing of the appeal had not commenced before the transfer date the appeal is treated, with effect from the transfer date, as an appeal under regulation 19(1) of the Principal Regulations.

(2) Where a person had a right of appeal under article 37(1) of the 2001 Order immediately before the transfer date which had not been exercised, they may appeal under regulation 19(1) of the Principal Regulations.

(3) For the purposes of paragraphs (1) and (2), regulation 19(1) of the Principal Regulations is treated as—

- (a) including reference to the matters set out in article 37(1)(a) to (d) of the 2001 Order,
- (b) requiring the adjudicators, in considering the appeal, to apply any standards of proficiency or other registration requirement that would have applied by virtue of Part 3 of the 2001 Order had the matter been determined by the HCPC.

**Appeal against a registration decision: appeal to the county court**

**11.**—(1) Where an appeal was made to the county court under article 37(10) of the 2001 Order<sup>(14)</sup> and is not finally determined immediately before the transfer date the appeal is treated, with effect from the transfer date, as an appeal under regulation 19(8) of the Principal Regulations.

(2) Where a person had a right of appeal under article 37(10) of the 2001 Order immediately before the transfer date they may appeal under regulation 19(8) of the Principal Regulations.

(3) For the purposes of paragraphs (1) and (2), the regulator is treated as—

- (a) the respondent to the appeal,
- (b) having made the decision appealed against, and
- (c) having the power to implement the decision of the court, and any decision made on a further appeal from the court.

## PART 3

### Education and training

**Education and training approval scheme: deemed approval of courses, qualifications and tests**

**12.**—(1) A course, qualification, or test described in paragraph (2) is treated, with effect from the transfer date, as—

- (a) being included in the list of courses of initial education and training, qualifications, tests of knowledge of English, and AMHPs courses which is published by the regulator by virtue of regulation 20(4) of the Principal Regulations, and
- (b) approved under the education and training approval scheme on the same terms (and, in particular, subject to any condition) as it was approved by the HCPC immediately before the transfer date,

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<sup>(14)</sup> That is, an appeal to the county court against a decision of the HCPC.

provided that the regulator has not refused to re-approve, or withdrawn approval of, that course, qualification, or test in accordance with the provisions of Part 4 of the Principal Regulations.

- (2) The courses, qualifications, and tests referred to in paragraph (1) are—
- (a) any course of education or training which was approved by the HCPC under article 15(5)(a) of the 2001 Order immediately before the transfer date, and falls within the description in regulation 20(1)(a) of the Principal Regulations,
  - (b) any qualification which was approved by the HCPC under article 15(5)(b) of the 2001 Order immediately before the transfer date, and falls within the description in regulation 20(1)(b) of the Principal Regulations,
  - (c) any test of competence or knowledge of English which was approved by the HCPC under article 15(5)(d) of the 2001 Order immediately before the transfer date, and falls within the description in regulation 20(1)(c) of the Principal Regulations,
  - (d) any qualification which is treated as an approved qualification, for the purposes of article 12(1)(a) of the 2001 Order, by article 14(2) or (3) of the General Social Care Council (Transfer of Register and Abolition-Transitional and Saving Provision) Order of Council 2012(15), and falls within the description in regulation 20(1)(b) of the Principal Regulations,
  - (e) any course for persons who are, or wish to become, approved to act as approved mental health professionals by a local social services authority whose area is in England, which was approved by the HCPC under section 114ZA(1) of the Mental Health Act 1983(16) immediately before the transfer date.
- (3) For the purposes of paragraph (1)—
- (a) in regulation 20(2) of the Principal Regulations, the references to an “approved course of initial education or training” and “approved qualification” are treated as including a course or qualification approved by virtue of paragraph (2)(a), (b) or (d) (as appropriate),
  - (b) in regulation 20(4)(a) and (b) of the Principal Regulations the references to courses, qualifications, test of knowledge of English and AMHPs courses which are, or were, approved under the education and training scheme are treated as including references to courses, qualifications, tests of knowledge of English and AMHPs courses which are, or were, approved by virtue of paragraph (2)(a), (b), (c), (d) or (e) (as appropriate),
  - (c) any condition referred to in paragraph (1)(b) is treated as if it had been attached by the regulator under regulation 22(1) of the Principal Regulations,
  - (d) regulations 21 to 24 (other than regulation 22(1)) of the Principal Regulations, and any rules made under regulation 20(6) of the Principal Regulations, do not apply in relation to the approval of the course, qualification, or test.
- (4) In this regulation—
- “AMHPs course” has the meaning given in regulation 20(1)(d) of the Principal Regulations,
- “initial education and training” has the meaning given in regulation 20(1)(a) of the Principal Regulations,
- “education and training approval scheme” has the meaning given in regulation 20(1) of the Principal Regulations.

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(15) S.I. 2012/1480, to which there are amendments not relevant to these Regulations.

(16) 1983 c. 20. Section 114ZA was inserted by section 217(2) of the Health and Social Care Act 2012.

## PART 4

### Discipline and fitness to practise

#### Transferred fitness to practise sanctions

**13.**—(1) In these Regulations, “previous fitness to practise sanction” means any order, decision or direction, imposed by virtue of Part 5 of the 2001 Order<sup>(17)</sup>, which had effect immediately before the transfer date.

(2) A previous fitness to practise sanction listed in the first column of the table and imposed by virtue of the article in the 2001 Order in that entry continues to have effect on and after the transfer date, on the same terms and for the same duration, but is treated as the sanction listed in the corresponding entry in the second column of the table and as imposed by virtue of the provision in the Principal Regulations in that entry—

<i>Previous fitness to practise sanction under the 2001 Order</i>	<i>Fitness to practise sanction under the Principal Regulations</i>
A striking-off order made by virtue of article 29(5)(a)	A removal order made under paragraph 12(3)(b) of Schedule 2 (final orders)
A striking-off order made by virtue of article 30	A removal order made under paragraph 15(2) of Schedule 2 (review of final orders)
A suspension order made by virtue of article 29(5)(b)	A suspension order made under paragraph 12(3)(b) of Schedule 2
A suspension order made, confirmed, extended or otherwise varied by virtue of article 30	A suspension order made under paragraph 15(2) of Schedule 2
A conditions of practice order made by virtue of article 29(5)(c)	A conditions of practice order made under paragraph 12(3)(b) of Schedule 2
A conditions of practice order made, confirmed, extended or otherwise varied by virtue of article 30	A conditions of practice order made under paragraph 15(2) of Schedule 2
A caution order made by virtue of article 29(5)(d)	A warning order made under paragraph 12(3)(b) of Schedule 2
A caution order made, confirmed, or otherwise varied by virtue of article 30	A warning order made under paragraph 15(2) of Schedule 2
An interim suspension order made by virtue of article 31(2)(a) where article 31(1)(a) applied	An interim suspension order made under paragraph 8(2) of Schedule 2
An interim suspension order made by virtue of article 31(2)(a) where article 31(1)(b) applied	An interim suspension order made under regulation 14(7)
An interim suspension order made by virtue of article 31(2)(a) where article 31(1)(c) applied	An interim suspension order made under paragraph 11(1)(b) of Schedule 2
An interim suspension order made, confirmed, or otherwise varied by virtue of article 31(7)	An interim suspension order made under paragraph 14(5) of Schedule 2

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(17) Part 5 contains provisions relating to fitness to practise.



<i>Previous fitness to practise sanction under the 2001 Order</i>	<i>Fitness to practise sanction under the Principal Regulations</i>
An interim suspension order made, confirmed, or otherwise varied by virtue of article 31(9) or (12)	An interim suspension order made by virtue of paragraph 14(3) of Schedule 2
An interim conditions of practice order made by virtue of article 31(2)(b) where article 31(1) (a) applied	An interim conditions of practice order made under paragraph 8(2) of Schedule 2
An interim conditions of practice order made by virtue of article 31(2)(b) where article 31(1) (b) applied	An interim conditions of practice order made under regulation 14(7)
An interim conditions of practice order made by virtue of article 31(2)(b) where article 31(1) (c) applied	An interim conditions of practice order made under paragraph 11(1)(b) of Schedule 2
An interim conditions of practice order made, confirmed, or otherwise varied by virtue of article 31(7)	An interim conditions of practice order made under paragraph 14(5) of Schedule 2
An interim conditions of practice order made, confirmed, or otherwise varied by virtue of article 31(9) or (12)	An interim conditions of practice order made by virtue of paragraph 14(3) of Schedule 2
A conditions of practice order made under article 33(7)(b)	A conditions of practice order made under regulation 15(6)(b)

### **Previous fitness to practise cases**

**14.** In these Regulations, “previous fitness to practise case” means proceedings under Part 5 of the 2001 Order arising from—

- (a) an allegation falling within article 22(1)(a) of the 2001 Order that a social worker’s fitness to practise is impaired, or
- (b) a determination made in accordance with article 22(6) of the 2001 Order that there should be an investigation into the fitness to practise of a social worker,

where the allegation or determination (as the case may be) was made, and the proceedings were not finally determined, before the transfer date.

### **Previous fitness to practise cases: determination by the HCPC**

**15.—**(1) Paragraph (2) applies where a previous fitness to practise case was referred in accordance with article 22(5) or (6) or 24 of the 2001 Order<sup>(18)</sup> and a hearing had commenced, but the consideration of the allegation had not been concluded, before the transfer date<sup>(19)</sup>.

(2) A decision or order made by the HCPC in a previous fitness to practise case mentioned in paragraph (1) on or after the transfer date, by virtue of article 29 of the 2001 Order (as that article continues to have effect by virtue of regulation 23(3)), has effect as follows—

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<sup>(18)</sup> Which provide for the referral of allegations for consideration by the Health Committee or the Conduct and Competence Committee of the HCPC.

<sup>(19)</sup> See the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003, set out in the Schedule to the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003 (S.I. 2003/1575), and the Health and Care Professions Council (Health Committee) (Procedure) Rules 2003, set out in the Schedule to the Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003 (S.I. 2003/1576), for the procedure to be followed in considering such a case.

- (a) a decision to take no further action made under article 29(4)(b) of the 2001 Order has effect as if it were made by adjudicators under paragraph 12(3)(c) of Schedule 2 to the Principal Regulations,
- (b) a striking-off order made under article 29(5)(a) of the 2001 Order has effect as if it were a removal order made under paragraph 12(3)(b) of Schedule 2 to the Principal Regulations,
- (c) a suspension order made under article 29(5)(b) of the 2001 Order has effect as if it were a suspension order made under paragraph 12(3)(b) of Schedule 2 to the Principal Regulations,
- (d) a conditions of practice order made under article 29(5)(c) of the 2001 Order has effect as if it were a conditions of practice order made under paragraph 12(3)(b) of Schedule 2 to the Principal Regulations,
- (e) a caution order made under article 29(5)(d) of the 2001 Order has effect as if it were a warning order made under paragraph 12(3)(b) of Schedule 2 to the Principal Regulations.

#### **Previous fitness to practise cases: determination by the regulator**

**16.**—(1) Any previous fitness to practise case not falling within regulation 15 is treated, with effect from the transfer date, as a question as to a social worker’s fitness to practise for determination in accordance with Part 5 of the Principal Regulations.

(2) For the purposes of paragraph (1)—

- (a) Part 5 of, and Schedule 2 to, the Principal Regulations and any rules made under regulation 25(5) of the Principal Regulations, are treated as requiring the regulator, in considering the case, to apply any standards of conduct, performance and ethics or other fitness to practise requirement, that were applicable to the social worker by virtue of Part 5 of the 2001 Order,
- (b) the regulator may modify the application of Part 5 of, and Schedule 2 to, the Principal Regulations and any rules made under regulation 25(5) of the Principal Regulations as it thinks just in the circumstances of the case.

#### **Previous register entry cases**

**17.** In these Regulations, “previous register entry case” means proceedings under Part 5 of the 2001 Order arising from—

- (a) an allegation falling within article 22(1)(b) of the 2001 Order that a person’s entry in the HCPC register has been fraudulently procured or incorrectly made, or
- (b) a determination made in accordance with article 22(6) of the 2001 Order that there should be an investigation into an entry in the HCPC register,

where the allegation or determination (as the case may be) was made, and the proceedings were not finally determined, before the transfer date.

#### **Previous register entry cases: determination by the HCPC**

**18.**—(1) Paragraph (2) applies where a previous register entry case was referred in accordance with article 22(5)(a) of the 2001 Order<sup>(20)</sup> and a hearing had commenced, but the consideration of the allegation had not been concluded, before the transfer date<sup>(21)</sup>.

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<sup>(20)</sup> Article 22(5)(a) provides for the referral of allegations to the Investigating Committee of the HCPC.

<sup>(21)</sup> See the Health Professions Council (Investigating Committee) (Procedure) Rules, set out in the Schedule to the Health Professions Council (Investigating Committee) (Procedure) Rules Order of Council 2003 (S.I. 2003/1574) for the procedure to be followed in considering such a case.

(2) The following decisions and orders made by the HCPC in a previous register entry case mentioned in paragraph (1) on or after the transfer date, by virtue of article 26 of the 2001 Order (as that article continues to have effect by virtue of regulation 23(2)), are treated as if they were made by the regulator under regulation 14 of the Principal Regulations and any rules made under paragraph (6) of that regulation—

- (a) a decision under article 26(2)(d)(ii) of the 2001 Order as to whether the entry in the HCPC register has been fraudulently procured or incorrectly made,
- (b) an order under article 26(7) of the 2001 Order that the entry in the HCPC register be removed or amended,
- (c) an interim order under article 26(11) of the 2001 Order,
- (d) a decision on a review of an order under article 26(12) of the 2001 Order.

#### **Previous register entry cases: determination by the regulator**

**19.**—(1) Where a previous register entry case does not fall within regulation 18, the regulator must consider whether the registration was fraudulently procured or incorrectly made in accordance with regulation 14 of the Principal Regulations and any rules made under paragraph (6) of that regulation.

(2) For the purposes of paragraph (1)—

- (a) a social worker’s registration is fraudulently procured or incorrectly made where the entry in the HCPC register from which it is derived was fraudulently procured or incorrectly made,
- (b) a reference in regulation 14(1)(a) or (7)(a) of the Principal Regulations, or in any rules made under regulation 14(6) of the Principal Regulations, to the registration of the social worker being fraudulently procured or incorrectly made, is treated as a reference to the registration of that person as a social worker in the HCPC register having been fraudulently procured or incorrectly made.

#### **Documents, information and evidence in relation to previous fitness to practise cases and previous register entry cases**

**20.**—(1) Any request for documents, information or evidence, or any other communication, made by the HCPC before the transfer date in relation to a previous fitness to practise case falling within regulation 16 or a previous register entry case falling within regulation 19 is, where appropriate, treated as made by the regulator.

(2) Any document, information or evidence, or any other communication, provided or made by a person to the HCPC before the transfer date in relation to such a case is, where appropriate, treated as provided or made to the regulator.

#### **Appeal against fitness to practise cases and register entry cases: appeal to the county court or High Court**

**21.**—(1) Where an appeal has been made under article 38(1) of the 2001 Order<sup>(22)</sup> and has not been finally determined before the transfer date, it is treated—

- (a) as an appeal under regulation 19(9) of the Principal Regulations in the case of an appeal against a decision mentioned in article 38(1A)(b), (c), (d) or (e) of the 2001 Order,
- (b) in any other case as an appeal under paragraph 16 of Schedule 2 to the Principal Regulations.

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(22) Article 38 provides for appeal to the county court or High Court against decisions of the HCPC in fitness to practise cases.

(2) Where a person had a right of appeal under article 38(1) of the 2001 Order immediately before the transfer date which had not been exercised, they may appeal under regulation 19(9) of, or paragraph 16 of Schedule 2 to, the Principal Regulations (as the case may be).

(3) For the purposes of paragraph (1)(b), where the appeal has been made to the county court—

(a) paragraph 16(1) of Schedule 2 to the Principal Regulations is treated as allowing an appeal to the county court,

(b) paragraph 16(3) of that Schedule is treated as applying to the county court.

(4) For the purposes of paragraphs (1) and (2), the regulator is treated as—

(a) the respondent to the appeal,

(b) having made the decision appealed against, and

(c) having the power to implement the decision of the court, and any decision made on a further appeal from the court.

## PART 5

### Powers of intervention

#### Cases referred by the Professional Standards Authority for Health and Social Care

**22.**—(1) Paragraph (2) applies where—

(a) the HCPC makes a relevant decision within the meaning of section 29(1)(j) and (3) of the National Health Service Reform and Health Care Professions Act 2002(**23**), whether before, on, or after the transfer date,

(b) the Professional Standards Authority for Health and Social Care(**24**) refers the case to the court under section 29(4) of that Act(**25**), and

(c) the court makes a decision under section 29(8) of that Act on or after the transfer date.

(2) Where this paragraph applies, the regulator is treated as having the power to implement the decision of the court, and any decision made on a further appeal from the court.

## PART 6

### Savings provisions

#### Savings provisions

**23.**—(1) Notwithstanding the amendments to the 2001 Order made by paragraphs 10 to 27 of Schedule 5 to the Children and Social Work Act 2017(**26**), the following provisions continue to have effect to the extent specified.

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(23) **2002 c. 17.** Relevant amendments to section 29 were made by section 118(2)(g) and (3) of the Health and Social Care Act 2008 (c. 14), by sections 213(7)(j) and 223(9) and (10) of, and paragraph 62(g) of Schedule 15(3) to, the Health and Social Care Act 2012, by paragraph 15 of Schedule 4 and paragraph 47 of Schedule 5 to the Children and Social Work Act 2017, and by [S.I. 2015/794](#).

(24) The Professional Standards Authority for Health and Social Care (“the PSA”) was established by section 25(1) of the National Health Service Reform and Health Care Professions Act 2002. Section 25(1), and the heading to section 25, were amended by section 222(2) and (3) of the Health and Social Care Act 2012.

(25) Section 29(4) provides for the PSA to refer a disciplinary decision made by the HCPC to the court, if it considers that the decision is not sufficient for the protection of the public.

(26) And see also the amendments to the Health Act 1999 (c. 8) made by section 61 of the Children and Social Work Act 2017 (repeal of existing powers to regulate social workers).

(2) Articles 26 and 32 of the 2001 Order continue to have effect in relation to any case retained for determination by the HCPC by virtue of regulation 18.

(3) Articles 29 and 32 of the 2001 Order continue to have effect in relation to any case retained for determination by the HCPC by virtue of regulation 15.

(4) Article 37 of the 2001 Order continues to have effect in relation to any appeal falling within regulation 9, but with the modification that article 37(9)(d) is treated as allowing the HCPC to remit the decision appealed against to the regulator.

(5) Article 39 of the 2001 Order continues to have effect in relation to any offence committed, or alleged to have been committed, before the transfer date.

(6) The Health and Care Professions Council (Investigating Committee) (Procedure) Rules 2003, set out in the Schedule to the Health Professions Council (Investigating Committee) (Procedure) Rules Order of Council 2003, continue to have effect in relation to any case retained for determination by the HCPC by virtue of regulation 18.

(7) The Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003, set out in the Schedule to the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules Order of Council 2003, continue to have effect in relation to any previous fitness to practise case falling within regulation 15 to which they apply.

(8) The Health and Care Professions Council (Health Committee) (Procedure) Rules 2003, set out in the Schedule to the Health Professions Council (Health Committee) (Procedure) Rules Order of Council 2003, continue to have effect in relation to any previous fitness to practise case falling within regulation 15 to which they apply.

(9) The Health Professions Council (Registration Appeals) Rules 2003, set out in the Schedule to the Health Professions Council (Registration Appeals) Rules Order of Council 2003, continue to have effect in relation to any appeal falling within regulation 9, but with the modification that rule 16 (disposal of cases) is treated as requiring the appeal panel to notify the appellant—

- (a) of its decision and the reasons for reaching that decision,
- (b) that the decision is to be treated as a decision of the adjudicators under regulation 19(6) of the Principal Regulations, and
- (c) of the appellant's right to appeal to the county court under regulation 19(8) of the Principal Regulations.

17th July 2019

*Nadhim Zahawi*  
Parliamentary Under Secretary of State  
Department for Education

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Part 2 of the Children and Social Work Act 2017 (“the Act”) made changes to the way in which social workers in England are regulated. In particular, the Act established a body corporate, Social Work England (“SWE”), as the regulator of social workers in England in place of the Health and Care Professions Council (“HCPC”), and made provision for various functions related to the regulation of social workers to be transferred to SWE.

The Social Workers Regulations 2018 (S.I. 2018/893) (“the Principal Regulations”) are made under Part 2 of the Act and set out the detail of SWE’s functions in relation to social workers in England. These Regulations, which come into force at the same time as the Principal Regulations, make transitional and savings provisions which are necessary to facilitate the transfer of functions from the HCPC to SWE.

Section 39(1) of the Act transfers to SWE the function of maintaining the register of social workers in England. Part 2 of these Regulations makes transitional provision in connection with that transfer of functions. It provides for: the transfer of the registration of any person who was registered as a social worker in the register maintained by the HCPC under the Health and Social Work Professions Order 2001 (S.I. 2002/254) (“the 2001 Order”) immediately before the coming into force of section 39(1); the way in which outstanding registration applications are to be dealt with by SWE; and the way in which outstanding appeals against registration decisions are to be dealt with.

Sections 43(3) and 48 of the Act provide for the transfer to SWE of the function of approving courses of education and training for social workers and approved mental health professionals. Part 3 of these Regulations makes transitional provision in connection with that transfer of functions, by providing that any course which was approved immediately before the transfer of functions is deemed to be approved by SWE.

Section 44(1) of the Act transfers to SWE the function of protecting the public from social workers in England whose fitness to practise is impaired. Part 4 of these Regulations makes transitional provision relating to fitness to practise proceedings and sanctions under the 2001 Order in connection with that transfer of functions. In particular it provides for any fitness to practise sanction imposed under the 2001 Order to continue to have effect after the transfer of functions, and for the disposal of fitness to practise proceedings which are commenced, but not finally disposed of, before the transfer of functions.

Section 56 of, and Schedule 4 to, the Act provide for the Professional Standards Authority for Health and Social Care (“the PSA”) to have the function of overseeing SWE as the regulator of social workers in England. Part 5 of these Regulations makes transitional provision in relation to any disciplinary decisions made by the HCPC as regulator of social workers in England before the transfer of that function, and which may be referred to the court by the PSA.

Part 6 of these Regulations contains saving provisions to enable the HCPC to retain conduct of certain fitness to practise proceedings where a hearing has begun, but the matter has not been determined, on the date that these Regulations and the Principal Regulations come into force. It also provides for the offences provision in the 2001 Order to continue to have effect in relation to any offence (such as falsely claiming to be registered as a social worker in the register maintained by the HCPC) committed, or alleged to have been committed, before that date.

A full impact assessment has not been produced for this instrument. A full impact assessment of the effect that the Principal Regulations will have on the costs of business, the voluntary sector and the

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public sector is available from the Department for Education, Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT.