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STATUTORY INSTRUMENTS

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**2019 No. 1140**

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

**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
- (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>(1)</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,

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(1) 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".

- (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>(2)</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>(3)</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 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<sup>(4)</sup> 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<sup>(5)</sup> which was not determined before the transfer date is treated, with effect from the transfer date, as an application to the regulator

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

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

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

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

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,
  - (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>(6)</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.

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(6) That is, a direction that a person's right to make applications to be restored to the HCPC register is indefinitely suspended.

- (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>(7)</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 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>(8)</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

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(7) 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.

(8) That is, an appeal to the county court against a decision of the HCPC.

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