
STATUTORY INSTRUMENTS

2019 No. 1140

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

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⁽¹⁾, 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

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<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 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
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⁽²⁾ and a hearing had commenced, but the consideration of the allegation had not been concluded, before the transfer date⁽³⁾.

(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—

- (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

(2) Which provide for the referral of allegations for consideration by the Health Committee or the Conduct and Competence Committee of the HCPC.

(3) 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.

- (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⁽⁴⁾ and a hearing had commenced, but the consideration of the allegation had not been concluded, before the transfer date⁽⁵⁾.

(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.

(4) Article 22(5)(a) provides for the referral of allegations to the Investigating Committee of the HCPC.

(5) 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) 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⁽⁶⁾ 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.

(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.

⁽⁶⁾ Article 38 provides for appeal to the county court or High Court against decisions of the HCPC in fitness to practise cases.