



Gofal Cymdeithasol **Cymru**
Social Care **Wales**

**SOCIAL CARE WALES
(INVESTIGATION)
RULES 2020**

April 2020

The regulation of the registration and fitness to practise of the social care workforce by Social Care Wales is governed by three types of legal documents, which are **all** applicable to the registration and fitness to practise of registered persons:

- **Regulation and Inspection of Social Care (Wales) Act 2016 (the Act);**
- **Welsh Government Regulations;**
- **Social Care Wales' suite of Registration Rules and Fitness to Practise Rules.**

Neither the content of the Act nor the Regulations are contained in these Rules. You should therefore read the content of the Act and the Regulations in conjunction with the Rules to provide a comprehensive understanding of the registration and fitness to practise procedures.

The Act is available at: <http://www.legislation.gov.uk/anaw/2016/2/contents/enacted>.

The Regulations are listed below and can be found at - <http://www.legislation.gov.uk/wsi>

- The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations 2016
- The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016
- The Social Care Wales (Content of Register) Regulations 2016
- The Social Care Wales (List of Persons Removed from the Register) Regulations 2016
- The Social Care Wales (Constitution of Panels: Prescribed Persons) Regulations 2016
- The Social Care Wales (Proceedings before Panels) Regulations 2016
- The Social Care Wales (Proceedings before Panels) (Amendment) Regulations 2017
- The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2018
- Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020

The Social Care Wales rules are available at:

<https://socialcare.wales/collections/social-care-wales-2017-rules>

Social Care Wales, in exercise of its powers under sections 73(2) and (4) and 91(2) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) and of all other powers enabling Social Care Wales in that behalf, and after consulting in accordance with section 75 of the Act, hereby makes the following Rules:

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INTRODUCTION

Citation, commencement and transitional arrangements

1. (1) These Rules may be cited as the Social Care Wales (Investigation) Rules 2020 and shall come into force on 1 April 2020.
- (2) These Rules apply to any complaint made on or after the coming into force of these Rules.
- (3) The Care Council for Wales (Fitness to Practise) Rules 2014 (“the 2014 Rules”) are hereby revoked save that where a complaint has been received by Social Care Wales before 3 April 2017, Social Care Wales shall deal with that complaint in accordance with the 2014 Rules as if those Rules remain in force.
- (4) The Social Care Wales (Investigation) Rules 2017 (“the 2017 Rules”) are hereby revoked save that where a complaint has been received by Social Care Wales on or after 3 April 2017, but before 1 April 2018, Social Care Wales shall deal with that complaint in accordance with the 2017 Rules as if those Rules remain in force.
- (5) The Social Care Wales (Investigation) Rules 2018 (“the 2018 Rules”) are hereby revoked save that where a complaint has been received by Social Care Wales on or after 1 April 2018, but before 1 April 2020, Social Care Wales shall deal with that complaint in accordance with the 2018 Rules as if those Rules remain in force.

Interpretation

2. (1) In these Rules, unless the context otherwise requires:
 - “**Act**” means the Regulation and Inspection of Social Care (Wales) Act 2016;
 - “**allegation**” means any information regarding a registered person that raises a question regarding whether the fitness to practise of a registered person is impaired, and includes any information that has come to the attention of the Social Care Wales by any means;
 - “**barred list**” has the meaning given in section 117(3) of the Act;
 - “**caution**” has the meaning given in section 189 of the Act;
 - “**complaint**” means information relating to a registered person which forms the basis of an allegation against that person and includes information that has come to the attention of Social Care Wales by any means and information relating to criminal convictions and cautions;
 - “**complainant**” means any person (including an employer or institution) who makes a complaint against a registered person;

"**days**" means calendar days;

"**duly authorised person**" means an individual to whom authority has been delegated by Social Care Wales and can include:

- (a) one or more members of Social Care Wales's staff, and/or
- (b) one or more persons appointed by Social Care Wales for that purpose;

"**employer**" includes employment agencies, the self-employed, and any employer of a social worker or social care worker (working in the capacity of a social worker or social care worker) of whom Social Care Wales is aware;

"**fitness to practise**" shall be construed in accordance with section 117 of the Act and the terms "**impaired fitness to practise**" and "**impairment**" shall be construed accordingly;

"**fitness to practise panel**" means a panel of that name constituted in accordance with the Fitness to Practise Rules to make determinations in relation to the fitness of persons registered in the register to practise as social care workers;

"**Fitness to Practise Rules**" means the Social Care Wales (Fitness to Practise Hearings) Rules 2017, the Social Care Wales (Fitness to Practise Hearings) Rules 2018 or the Social Care Wales (Fitness to Practise) Rules 2020, whichever version is applicable;

"**register**" means the register maintained by Social Care Wales under section 80 of the Act;

"**registered person**" means a person who is registered in the social worker part, an added part or the visiting European social worker part or the visiting European social care manager part of the register; and it includes a person:

- (a) whose registration would have lapsed under section 87(1) of the Act, but for the fact that subsection (2) of that section applies to the person;
- (b) in respect of whom a suspension order has effect;
- (c) in respect of whom an interim suspension order has effect;
- (d) in respect of whom an indefinite suspension order has effect;

"**registrar**" means the person appointed in accordance with section 81(1) and (2) of the Act;

"**registration**" means the entry in the register relating to a particular registered person;

"**relevant body**" has the meaning given in section 117(4)(a) to (f) of the Act;

"**relevant criminal offence**" has the meaning in section 120(5) of the Act;

"**relevant persons**" has the meaning in section 122(3) of the Act;

"**Social Care Wales**" means the body corporate known as Social Care Wales and which was previously known as the Care Council for Wales;

“**undertaking**” means an agreement by the registered person to comply with an undertaking proposed by Social Care Wales in accordance with section 126(3)(d) of the Act.

- (2) In these Rules, unless the context otherwise requires:
- (a) words in the singular include the plural, and words in the plural include the singular;
 - (b) any reference to a numbered rule or part is a reference to the rule or part bearing that number in these rules, as the case may be;
 - (c) any reference in a rule or a part to a numbered paragraph, is a reference to the paragraph bearing that number in that rule or part;
 - (d) any reference in a paragraph in a rule or a part to a numbered sub-paragraph is a reference to the sub-paragraph bearing that number in that rule or part.

PART II

PRELIMINARY PROCEDURES

Preliminary consideration

3. (1) On receipt of information about a registered person, a duly authorised person of Social Care Wales shall consider whether such information amounts to an allegation that the registered person’s fitness to practise is impaired.
- (2) For the purpose of establishing whether any information received is capable of amounting to an allegation of impaired fitness to practise, a duly authorised person may make such preliminary enquiries as considered necessary, including seeking further information and/or a completed complaint form from the complainant.
- (3) Where a duly authorised person determines that the matter is not eligible for onward referral under section 120(1) of the Act, any notice given to the relevant persons under section 122(2) or (4) of the Act, shall state that no further action will be taken and that the matter will be closed.
- (4) The notice under paragraph (3) shall contain the decision and the reasons for the decision.

Direct referral to a fitness to practise panel

4. (1) In addition to direct referral under section 121(a) of the Act¹, a duly authorised person giving preliminary consideration to a matter must refer it directly to a fitness to practise panel if the matter relates to:
- (a) a caution of a registered person in respect of a relevant criminal offence;
 - (b) a finding of fact by a relevant body to the effect that the registered person’s fitness to practise is impaired; or
 - (c) the inclusion of the registered person in a barred list.

¹ Section 121(a) of the Act requires direct referral to a Fitness to Practise Panel if the matter relates to the conviction of a person for a relevant criminal offence

- (2) Where a duly authorised person refers the matter under paragraph (1)(a) or (b) of this rule or under section 121 of the Act, the notice under section 123(2) of the Act must:
 - (a) be given in writing within 21 days of the referral;
 - (b) specify the ground(s) on which the matter has been referred directly to a fitness to practise panel.

Referral for investigation

- 5. (1) Where a duly authorised person refers the matter for investigation under section 125 of the Act, the notice under section 123(2) of the Act must be given within 21 days of the referral and shall:
 - (a) state that the matter has been referred for investigation;
 - (b) set out the procedure under rule 6;
 - (c) in the case of the notice to the registered person, specify the allegation that the registered person's fitness to practise may be impaired

PART III
INVESTIGATION

Procedure

6. (1) Subject to section 125(5) of the Act, Social Care Wales may appoint:
- (a) one or more members of Social Care Wales's staff to carry out investigations or to assist in relation to an investigation;
 - (b) one or more persons other than members of Social Care Wales's staff to provide assistance in relation to an investigation.
- (2) A duly authorised person(s) must make such enquiries as are considered appropriate for the investigation of the allegation, which may include requesting relevant information or documents from the registered person or any person pursuant to section 160 of the Act and obtaining witness statements and other information.
- (3) At the conclusion of the investigation of a matter relating to a registered person's fitness to practise, a duly authorised person must write to the registered person:
- (a) informing the registered person of the allegation that the registered person's fitness to practise may be impaired if different from that stated in the notice previously given under rule 5(1)(c);
 - (b) providing the registered person with copies of any information and/or documents received or gathered by Social Care Wales in the investigation of the allegation;
 - (c) inviting the registered person to respond to the allegation with written representations and copies of any information or documents which the registered person wishes to be considered within the period of 28 days from the date of Social Care Wales's letter; and
 - (d) informing the registered person that such representations will be disclosed, where Social Care Wales considers it appropriate, to the complainant.
- (4) Unless Social Care Wales considers it inappropriate, Social Care Wales must disclose to the complainant such representations as are received from the registered person, inviting written comments within 21 days.
- (5) Social Care Wales must send a copy of any written comments received from the complainant under paragraph (4) to the registered person, but, unless considered by a duly authorised person to be necessary or appropriate in the particular circumstances of the case, any further comments submitted by the registered person shall not be taken into consideration in making a decision as to whether the case be referred for hearing before a fitness to practise panel.

PART IV

POWERS FOLLOWING AN INVESTIGATION

Warnings

7. (1) Where a duly authorised person is proposing to issue a warning to a registered person, Social Care Wales must send a notice, within seven days of the decision, to the registered person, which shall contain the following information:
- (a) the proposal for a warning;
 - (b) the reason(s) for the proposal;
 - (c) the right of the registered person to make representations either in writing or in person at a hearing before the fitness to practise panel, subject to giving written notice to Social Care Wales of the wish to exercise such right within 21 days of the date of the notice;
 - (d) the right of the registered person to be represented at a hearing;
 - (e) an explanation of the procedure at an oral hearing in relation to a proposed warning under Rule 25 of the Fitness to Practise Rules.
- (2) Where the registered person does not respond to a notice under paragraph (1) of this rule or responds confirming that he or she does not wish to make any representations, the warning may be given by the duly authorised person without the need for a hearing.
- (3) Where a warning is given under paragraph (2), Social Care Wales must give notice within seven days of the decision to:
- (a) the registered person;
 - (b) the complainant;
 - (c) the registered person's employer(s) (if any);
 - (d) where the registered person is registered in the part of the register for students, the university.
- (4) Social Care Wales may also inform within seven days of the decision:
- (a) the Welsh Government;
 - (b) a relevant body;
 - (c) the Disclosure and Barring Service.
- (5) Rule 25 of the Fitness to Practise Rules shall apply where a registered person has requested an oral hearing in response to a notice under paragraph (1) of this rule.

Undertakings

8. (1) This rule applies where a duly authorised person considers:
- (a) there is a real prospect of a finding of impaired fitness to practise in relation to an allegation against a registered person, but
 - (b) it would not be contrary to the public interest for disposal by means of the registered person agreeing to comply with an undertaking(s).

- (2) A duly authorised person shall give notice, within seven days of the decision, to the registered person to that effect and provide the terms of the proposed undertaking(s).
- (3) A case shall only be disposed of under paragraph (1) where the registered person:
- (a) admits the allegation;
 - and
 - (b) confirms within 14 days of service of the notice referred to in paragraph (1) that he or she agrees to comply with the proposed undertaking(s).
- (4) Where the registered person does not agree to disposal in accordance with paragraph (2) of this rule, the registered person may be referred to a fitness to practise panel.
- (5) Where the case is disposed of by undertaking(s) in accordance with this rule, Social Care Wales shall give notice of the outcome within seven days to:
- (a) the registered person;
 - (b) the complainant;
 - (c) the registered person's employer(s) (if any);
 - (d) where the registered person is registered in the part of the register for students, the university.
- (6) Social Care Wales may also inform:
- (a) the Welsh Government;
 - (b) the Disclosure and Barring Service;
 - (c) a relevant body.
- (7) Where a case is disposed of by means of an undertaking(s) in accordance with this rule, a duly authorised person may request from:
- (a) the registered person; or
 - (b) the registered person's employer(s) (if any)
- such information as will enable Social Care Wales to determine whether the undertaking(s) has been complied with or continues to be complied with.
- (8) Where the case is disposed of by undertaking(s) in accordance with this rule and a duly authorised person subsequently receives information that the requirements of the undertaking(s) have been fully complied with, a duly authorised person shall give notice to the registered person that the undertaking(s) should no longer apply and may give notice to that effect to those other persons specified in paragraphs (5) and (6) of this rule.
- (9) Where the case is disposed of by undertaking(s) in accordance with this rule and Social Care Wales subsequently receives information that an undertaking(s) has not been complied with (or the registered person fails to provide relevant information in response to a request under paragraph (7)(a) of this rule), Social Care Wales shall refer the case to a fitness to practise panel to carry out a review in accordance with section 133(3) of the Act

- (10) Section 152 of the Act shall apply to any review of undertakings by a fitness to practise panel.

Removal from the register by agreement

9. (1) Where a registered person in respect of whom an allegation(s) of impaired fitness to practise has applied under section 92 of the Act for the entry relating to that person to be removed by agreement, the application shall not be granted other than in the circumstances described in this rule.
- (2) Where a decision is made by a duly authorised person not to refer the registered person to a fitness to practise panel, the registrar may remove the registered person's entry from the register.
- (3) Paragraphs (4) and (5) apply in relation to a registered person where a duly authorised person:
- (a) is satisfied that there is a real prospect of a finding of impaired fitness to practise in relation to the allegation against the registered person, but
 - (b) the public interest does not require a hearing of the allegation(s) against the registered person.
- (4) Where paragraph (3) applies, a duly authorised person may:
- (a) invite the registered person to agree and sign a written statement of facts; and
 - (b) inform the registered person that, if the application for removal from the register is granted, the statement of agreed facts will be taken into account in considering any future application for registration in any part of the register.
- (5) Where the requirements of paragraphs (4)(a) and (b) are met, the registrar may remove the registered person's entry from the register.

Review of decisions by Social Care Wales

10. (1) Where a duly authorised person reviews a decision under sections 131(1) and (2) of the Act the following procedures shall apply.
- (2) The notice referred to in section 131(4) which is sent to the registered person in respect of whom the decision under review was made must:
- (a) be accompanied by copies of any information or documents received or gathered by Social Care Wales as part of the preliminary investigation of the allegation(s) which have not previously been disclosed;
 - (b) invite the registered person to respond to the decision to carry out a review with written representations and copies of any information or documents which the registered person wishes to be considered within the period of 21 days from the date of Social Care Wales's letter; and
 - (c) inform the registered person that such representations will be disclosed, where Social Care Wales considers it appropriate, to the complainant or another named person or persons who Social Care Wales thinks has an interest in the decision for comment.

- (3) Unless a duly authorised person considers it inappropriate, Social Care Wales must disclose to the complainant and may disclose to another named person or persons who Social Care Wales thinks has an interest in the decision, such representations as are received from the registered person, inviting written comments within 14 days.
- (4) Social Care Wales must send a copy of any written comments received from the complainant to the registered person, but, unless considered by a duly authorised person to be necessary or appropriate in the particular circumstances of the case, any further comments submitted by the registered person shall not be taken into consideration in making a decision in paragraph (5).
- (5) A duly authorised person may decide to:
 - (a) refer a matter to a fitness to practise panel;
 - (b) refer a matter for investigation;
 - (c) dispose of a case in one of the manners specified in section 126(3) of the Act.

Cancellation of referral to an interim orders or fitness to practise panel

- 11. (1) Where a duly authorised person is considering whether to cancel a referral to an interim orders panel or fitness to practise panel under section 132 of the Act, he or she must give written notice to the complainant.
- (2) The notice referred to in paragraph (1) must:
 - (a) state the reason(s) why the circumstances referred to in section 132(1)(a) or (b) might apply;
 - (b) invite the complainant to submit any comments within a period of 21 days from the date of the notice.
- (3) Not before the expiry of the period of 21 days referred to in paragraph (2), the duly authorised person must:
 - (a) consider any comments received from the complainant;
 - (b) make one of the determinations specified in section 132(2)(a) or (b) of the Act;
 - (c) give reasons for the decision.
- (4) Notice of determination under section 132(4) of the Act must be given within seven days of the determination.

Signed on behalf of Social Care Wales

A handwritten signature in black ink, appearing to read 'Mick Giannasi'. The signature is written in a cursive style with some loops and a long horizontal stroke at the end.

Mick Giannasi

Chair Social Care Wales

24/02/20