

Fitness to Practise Rules 2016



Scottish Social Services Council (Fitness to Practise) Rules 2016

The Scottish Social Services Council, in exercise of its powers under sections 47, 48, 49, 50 and 57 of the Regulation of Care (Scotland) Act 2001 and of all other powers enabling the SSSC to do so, and having consulted such persons as appear to the SSSC to be appropriate, with the consent of the Scottish Ministers, hereby makes the Scottish Social Services Council (Fitness to Practise) Rules 2016:

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PART 1

INTRODUCTION

1. Citation, commencement, transitional and saving provisions

1. These Rules are the Scottish Social Services Council (Fitness to Practise) Rules 2016.
2. The Rules come into force on 1 November 2016.
3. The Scottish Social Services Council (Conduct) Rules 2013 are revoked.
4. Schedule 1 sets out how these Rules and the 2013 Rules apply to cases and other matters which have been started but not finished when these Rules come into force.

2. Meaning of fitness to practise and impairment

1. For the purposes of these Rules, a worker is fit to practise if they meet the standards of character, conduct and competence necessary for them to do their job safely and effectively with particular regard to the Codes.
2. A worker's fitness to practise may be impaired by one or more of the following grounds:
 - a. misconduct;
 - b. deficient professional practice;
 - c. health;
 - d. a decision about them by a regulatory body listed in Schedule 3;
 - e. a conviction in the United Kingdom, the Channel Islands or the Isle of Man for a criminal offence or a conviction elsewhere for an offence which, if committed in Scotland, would constitute a crime.
3. The matters listed in paragraph 2 include matters occurring:
 - a. whether by act or omission;
 - b. inside or outside the United Kingdom;
 - c. in the course of employment as a social service worker or in any other circumstances;
 - d. at a time when the worker is registered on a professional register or at any other time;
 - e. before or after these Rules come into force;
 - f. before or after the current version of the Codes came into force.

3. Other definitions

In these Rules, unless the context otherwise requires:

'the Act' means the Regulation of Care (Scotland) Act 2001;

'allegation', in an impairment case or an application case, means the alleged facts and behaviour which the SSSC offers to prove to justify a decision that the worker's fitness to practise is impaired;

'application case' has the meaning given in Rule 10.b;

'appropriate representative' has the meaning given in Rule 31.3;

'the Codes' means the Code of Practice for Social Service Workers and the Code of Practice for Employers of Social Service Workers published by the SSSC under section 53(1)(a) of the Act;

'employer' means:

- a. the present or most recent employer of the social service worker in that capacity of whom the SSSC is aware;
- b. the present or most recent employment agency through which the social service worker secures work in that capacity of which the SSSC is aware;

'entry' means the information about the worker entered in the Register under Rule 5 of the Registration Rules;

'Fitness to Practise Panel' and 'Panel' mean a panel formed under Rule 7.1;

'impairment case' has the meaning given in Rule 10.a;

'parties', in a case, means the presenter (including an SSSC officer instructing the presenter) and the worker (including their representative at a hearing before a Fitness to Practise Panel) but does not, in an impairment case, include the person who made the allegation under Rule 8.1;

'presenter' means the solicitor (including a trainee solicitor) or advocate acting on behalf of the SSSC at a hearing before a Fitness to Practise Panel;

'Register' means the Register maintained by the SSSC under section 44 of the Act, and 'registered worker' and 'registration' have corresponding meanings; and references to the Register include a part of the Register;

'Registration Rules' means the Scottish Social Services Council (Registration) (No.2) Rules 2016;

'removal order' means an order for the removal of a worker's registration from the Register;

'restoration order' means an order restoring a worker's registration to the Register;

'SSSC' means the Scottish Social Services Council;

'student' has the same meaning as in the Registration Rules;

'suspension order' means an order for the suspension of a worker's registration;

'temporary conditions order' means an order for temporary conditions to be imposed on a worker's registration;

'temporary order' means a temporary conditions order or a temporary suspension order (or both);

'temporary order referral' means a referral under Rule 9.2.b for consideration by a Fitness to Practise Panel under Part 7;

'temporary suspension order' means an order for the temporary suspension of a worker's registration;

'worker' means a worker applying for registration, renewal of registration or restoration or a registered worker, as the context requires.

4. Service of notices

1. Any reference in these Rules to a notice being sent to a worker is a reference to the notice:
 - a. being delivered personally to the worker;
 - b. being sent to the worker's proper address by a postal service which provides for the delivery or receipt of the notice to be recorded; or
 - c. being sent by email or other appropriate method of electronic communication to an electronic address provided by the worker.
2. For the purposes of paragraph 1.b, a worker's proper address is:
 - a. if the worker is registered in the Register, the worker's address as shown in the Register or, if different, the last address known to the SSSC;
 - b. in any other case, the last address of the worker known to the SSSC.
3. A notice sent to the worker as mentioned in paragraph 1.b is to be taken to have been received on the day after it was posted.
4. A notice sent to the worker as mentioned in paragraph 1.c is to be taken to be received on the day it was sent.

5. Power of SSSC and Fitness to Practise Panel where Rules not complied with

1. Paragraph 2 applies where:
 - a. a person or body (including an employee of the SSSC) fails to comply with a provision of these Rules; and
 - b. the failure is shown to be due to error, oversight or other excusable cause.

2. The SSSC or a Fitness Practise Panel (including the chair of a case management meeting) may relieve any person or body of the consequences of the failure on such conditions, if any, as it thinks fit.

6. Non-disclosure in the public interest

Nothing in these Rules requires the SSSC to disclose any information or documents if the SSSC considers that their disclosure would not be in the public interest.

PART 2

FITNESS TO PRACTISE PANELS

7. Fitness to Practise Panels

1. The SSSC may form Fitness to Practise Panels to carry out the functions set out in these Rules.
2. A Fitness to Practise Panel is a sub-committee of the Fitness to Practise Committee appointed by the SSSC under regulation 8 of the Scottish Social Services Council (Appointments, Procedure and Access to the Register) Regulations 2001.
3. The principal functions of a Fitness to Practise Panel are to consider and decide referrals and applications to the Panel on:
 - a. whether the fitness to practise of a worker applying for registration or renewal of registration is impaired;
 - b. whether a registered worker's fitness to practise is impaired and, if so, what sanctions should be imposed;
 - c. the fitness to practise of a former registered worker applying to be restored to the Register; and
 - d. whether a temporary order should be imposed on a registered worker's registration.
4. Schedule 2 makes further provision about Fitness to Practise Panels.

PART 3

IMPAIRMENT OF FITNESS TO PRACTISE ALLEGATIONS: INVESTIGATIONS AND ORDERS WITH CONSENT

8. Impairment of fitness to practise allegations: investigation by SSSC

1. This Rule applies where the SSSC receives (by any means and from any person) a specific allegation about a named registered worker which, if proved, would in the reasonable opinion of the SSSC be likely to result in a finding that the worker's fitness to practise is impaired.
2. The SSSC must, after carrying out any enquiries which it thinks appropriate, decide whether to investigate the allegation.
3. If the SSSC decides to investigate the allegation it must:
 - a. inform the worker of the allegation;
 - b. inform the worker's employer; and
 - c. if it considers it necessary for the protection of members of the public, or otherwise in the public interest, inform any other person or body which the SSSC considers should be informed because of its interest in these matters.
4. Paragraph 3 does not apply where the SSSC considers that there are exceptional circumstances which make it inappropriate.
5. For the purposes of its enquiries and investigation the SSSC may request information from any person or source.
6. In investigating the allegation the SSSC may require a worker to provide a completed Disclosure Scotland application form signed by the worker, for counter-signature by the SSSC, together with the appropriate fee, for the purpose of obtaining a scheme record or a short scheme record within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007.
7. Where the outcome is awaited of an investigation of the worker by any other person in relation to the matters in the allegation, the SSSC may defer further investigation, or referral to a Fitness to Practise Panel, until the investigation has been concluded.
8. Where the allegation relates to the worker's health and the worker refuses or fails to co-operate with the SSSC's investigation, the SSSC may refer the case to a Fitness to Practise Panel for consideration under Part 6.

9. Impairment of fitness to practise allegations: orders with consent and referral to Fitness to Practise Panel

1. The SSSC may, after investigating an allegation under Rule 8.1:
 - a. decide to take no further action;
 - b. impose:
 - i. a warning on the worker's registration for a period of up to 5 years;
 - ii. conditions on the worker's registration;
 - iii. a warning and conditions;
 - iv. a suspension order;
 - v. a suspension order and conditions;
 - vi. a removal order;
 - c. refer the case to a Fitness to Practise Panel for consideration as an impairment case under Part 4.
2. The SSSC may, during or after the investigation of an allegation under Rule 8.1:
 - a. make a temporary order;
 - b. refer the case to a Fitness to Practise Panel for consideration as a temporary order referral under Part 7.
3. The SSSC may impose a sanction under paragraph 1.b only where:
 - a. it considers that there is a real prospect that a Fitness to Practise Panel would make a finding of impairment of fitness to practise and that it would be proportionate to impose the sanction; and
 - b. the worker consents to the sanction.
4. The SSSC may make a temporary order under paragraph 2.a only where:
 - a. it considers that it is necessary for the protection of members of the public, or otherwise in the public interest, or is in the interests of the worker; and
 - b. the worker consents to the order.
5. The SSSC may refer the case to a Fitness to Practise Panel:
 - a. under paragraph 1.c, only where it considers that the test in paragraph 3.a for imposing a sanction is met;
 - b. under paragraph 2.b, only where it considers that the test in paragraph 4.a for making a temporary order is met.
6. The case is to be treated as being referred to the Panel on the date on which the SSSC decides that it should be heard by the Panel.
7. If, after referring the case to a Panel, the SSSC:
 - a. considers at any time that no further action should be taken on the case at that time; or
 - b. imposes a sanction under paragraph 1.b or makes a temporary order under paragraph 2.a,it may withdraw the referral.
8. The SSSC must inform the persons listed in paragraph 9 of the actions taken by it under paragraphs 1.a and b, 2.a and 7.

9. Those persons are:
 - a. the person who made the allegation under Rule 8.1;
 - b. the worker or their representative;
 - c. the worker's employer (if any);
 - d. if the worker is registered in the part of the Register for students, the worker's university; and
 - e. any other person or body which the SSSC considers should be informed because of its interest in the protection of members of the public or in the public interest.
10. Paragraph 8 does not apply where the SSSC considers that there are exceptional circumstances which make it inappropriate.
11. The SSSC may, if it considers it appropriate, combine cases involving allegations against different workers.

PART 4

IMPAIRMENT CASES AND APPLICATION CASES: FITNESS TO PRACTISE PANEL HEARINGS

Introduction

10. Overview

This Part applies to:

- a. cases referred to a Fitness to Practise Panel under Rule 9.1.c for consideration under this Part ('impairment cases'); and
- b. cases referred to a Fitness to Practise Panel under Rule 9 of the Registration Rules ('application cases').

Procedure

11. Initial notice

1. After deciding to refer an impairment case to a Fitness to Practise Panel, the SSSC must send a notice complying with paragraph 3 to:
 - a. the worker;
 - b. the person who made the allegation under Rule 8.1;
 - c. the worker's employer (if any); and
 - d. if the worker is registered in the part of the Register for students, the worker's university.
2. After deciding to refer an application case to a Fitness to Practise Panel, the SSSC must send a notice complying with paragraph 3 to:
 - a. the worker;
 - b. except in the case of a student, the worker's employer or other person who countersigned the application form;
 - c. in the case of a student, the university or other person who endorsed the student's application.
3. The notice must:
 - a. state that a hearing of the Panel is to be held to consider the case;
 - b. state the allegation; and
 - c. state the reasons why the SSSC considers the worker's fitness to practise to be impaired.

12. Evidence

1. Within 21 days of the date on which the initial notice under Rule 11 was sent, the SSSC must ensure that the worker has been sent the evidence on which the SSSC intends to rely.
2. At least 7 days before the case management meeting:
 - a. the SSSC must send to the worker any additional evidence on which it intends to rely;

- b. the worker must send to the SSSC any evidence on which the worker intends to rely.
3. As soon as practicable after the expiry of the time limit in paragraph 2 the SSSC must send to the chair of the Fitness to Practise Panel and the legal adviser copies of:
 - a. the initial notice under Rule 11; and
 - b. the evidence referred to in paragraphs 1 and 2.
4. At least 14 days before the hearing:
 - a. the SSSC must send to the worker any evidence additional to that sent under paragraphs 1 and 2 on which it intends to rely;
 - b. the worker must send to the SSSC any evidence additional to that sent under paragraph 2 on which the worker intends to rely.
5. At least 7 days before the hearing the SSSC must send to the Panel and the parties copies of:
 - a. the initial notice under Rule 11 so far as it relates to findings of fact; and
 - b. any evidence referred to in paragraphs 1, 2 and 4 which relates to findings of fact.

13. Case management meeting

1. A case management meeting must be held by the member of the Fitness to Practise Panel appointed under Schedule 2 to chair the meeting.
2. The clerk must arrange the meeting and inform the parties of the date, time and place.
3. Unless there are exceptional circumstances, the date of the meeting must be no earlier than 28 days after the date on which the initial notice was sent under Rule 11.
4. The legal adviser is to attend the meeting.
5. Members of the Panel (apart from the member appointed to chair the meeting) do not have a right to attend the meeting.
6. The meeting may be held by telephone conferencing or by any other method.
7. The chair may adjourn the meeting at any time.
8. Either party may request the chair to adjourn the meeting.
9. Either party may, before the date of the meeting, apply to the clerk to postpone the meeting.
10. Unless there are exceptional circumstances, the application to postpone must be made at least 48 hours before the date of the meeting.
11. The clerk must:
 - a. send a copy of the application, together with any supporting evidence, to the other party; and
 - b. send a copy of any written representations made by the other party to the party making the application.
12. The chair, after taking advice from the legal adviser, must decide whether to postpone the meeting taking into account:

- a. the submissions of the parties;
 - b. any likely prejudice to either party; and
 - c. the public interest in the case being decided without delay.
13. If the application is granted or the meeting is postponed for any other reason the clerk must:
- a. arrange a new meeting (either as soon as possible or after the occurrence of a specified event); and
 - b. inform the parties of the date, time and place of the new meeting.
14. If either party at any time requests that a further case management meeting be held, the chair, after taking advice from the legal adviser, must decide whether to do so.
15. Paragraphs 2 to 13 apply to any further case management meeting.

14. Case management meeting: procedure

1. At least 7 days before the case management meeting the parties must send to the clerk and each other:
 - a. the information set out in paragraph 2; and
 - b. submissions on the matters set out in paragraph 3.
2. That information is:
 - a. the names and contact details of any witnesses (including any expert witnesses) to be called;
 - b. any dates on which the parties, their representatives or witnesses could not attend a hearing;
 - c. a time estimate for the hearing.
3. Those matters are:
 - a. whether any witness is a vulnerable witness and, if so, what arrangements should be made for the witness at the hearing;
 - b. whether any special arrangements should be made at the hearing for any other witnesses;
 - c. whether any oral evidence should be given by video conferencing or any similar visual communications system;
 - d. whether either party intends to lead expert evidence or witnesses;
 - e. whether the health of the worker will be raised as an issue and, if so, whether any reports should be obtained by the worker;
 - f. in an impairment case, whether the hearing, or any part of it, should be held in private;
 - g. in an application case, whether the hearing, or any part of it, should be held in public;
 - h. any questions about admissibility of evidence;
 - i. whether the allegation should be amended;
 - j. any other legal issues (for example, questions about competency, specification, relevancy and jurisdiction);
 - k. any request that any person be directed to produce specified material which would be relevant to the Panel's deliberations;

- I. any request for a direction that a statement of facts be agreed by a specified date.
4. At the case management meeting the chair may, after taking advice from the legal adviser, issue decisions and directions for the purpose of facilitating the hearing of the case by a Panel.
5. The parties must comply with the decisions and directions of the chair.
6. The chair may also, where practicable, decide at the case management meeting any application under Rule 26, Rule 31.4 and 5 or Rule 33.2.
7. As soon as reasonably practicable after the meeting the clerk must send the parties a record of the meeting including:
 - a. the decisions and directions issued by the chair, with the reasons for them; and
 - b. the date for the hearing by the Panel.
8. Unless the worker agrees to an earlier date, the date of the hearing must be at least 28 days after the date on which the clerk sends the parties the record of the meeting.

15. Hearing

1. The hearing in a case is to be held in the following stages:
 - a. findings of fact (see Rule 18);
 - b. findings on impairment of fitness to practise (see Rule 19);
 - c. mitigation, sanctions and decisions on registration (see Rule 20).
2. Except as provided in paragraphs 3 to 6, 8 and 9, the hearing in an impairment case is to be held in the presence of the parties (if they are in attendance) and in public.
3. Where the allegation is (wholly or partly) that the worker's fitness to practise is impaired due to the worker's health, the parts of the hearing relating to the worker's health are to be held in private.
4. The Panel may, after hearing representations from the parties, decide that persons not connected with the hearing should withdraw from the whole or any part of the proceedings where:
 - a. it considers that the particular circumstances of the case outweigh the public interest in holding a public hearing; and
 - b. it is satisfied that the decision would cause no material prejudice to either party.
5. A decision under paragraph 4 may be made on the application of either party or of the Panel's own volition.
6. For the purposes of this Rule, a person is connected with the hearing if the person is:

- a. a person appointed under paragraph 1 of Schedule 2, a legal adviser or a member of the staff of the SSSC attending the hearing to observe the proceedings for the purposes of training;
 - b. the legal adviser to the Panel;
 - c. the clerk;
 - d. a party, an appropriate representative or a supporter of a party;
 - e. a person who assists the worker under Rule 31.8;
 - f. a witness;
 - g. a shorthand writer;
 - h. an audio technician;
 - i. a translator;
 - j. an interpreter.
7. The hearing in an application case is to be held in the presence of the parties (if they are in attendance) and in private unless the worker requests that it be held in public and the Panel agrees.
 8. The Panel in any case is to sit in private for the purpose of arriving at any decision.
 9. The chair must announce the Panel's decisions:
 - a. in an impairment case, in public except any part relating to the worker's health;
 - b. in an application case, in private except where the hearing of the case was held in public.

16. Impairment case: temporary orders

1. At any time during the proceedings in an impairment case the SSSC may make a temporary order where:
 - a. it considers that it is necessary for the protection of members of the public, or otherwise in the public interest, or is in the interests of the worker; and
 - b. the worker consents to the order.
2. At any time during the proceedings in an impairment case the Panel may:
 - a. on the application of the SSSC, make a temporary order;
 - b. on the application of the SSSC or the worker, extend, vary or revoke a temporary order.
3. Before doing so the Panel must consider any representations from the parties (if they are in attendance).
4. Where the SSSC makes an application under paragraph 2, the Panel may not adjourn until it has made a final decision on the application.

17. Initial proceedings

1. The Panel must consider any preliminary matters raised by the parties.
2. Subject to the requirements of a fair hearing, the Panel may amend the allegation at any time before making findings of fact.

3. The Panel must hear representations from the parties and take advice from the legal adviser before deciding whether the allegation should be amended.
4. Where the worker admits the facts alleged and a statement of facts has been agreed in advance, the presenter is to lodge the statement of facts.

18. Findings of fact

1. The chair is to ask the worker whether the worker admits any facts alleged in the allegation.
2. Where the worker admits the facts alleged the Panel must announce its findings on those facts.
3. Where no admissions are made, or some facts alleged remain disputed, the presenter is to present the SSSC's case and may lead evidence and call witnesses on the facts which are not admitted.
4. The worker may present their case, lead evidence and call witnesses.
5. At the end of the evidence presented by each party, the Panel may ask questions of that party.
6. The presenter, and then the worker, may make a closing statement on the facts.
7. If either party's closing statement raises new issues:
 - a. the other party may comment on the statement; and
 - b. the party making the statement has a right of reply.
8. The Panel must then consider in private whether the facts which remained disputed by the worker have been proved.
9. The chair must announce the Panel's findings of fact in the presence of the parties (if they are in attendance).
10. In an impairment case, if no facts are admitted and the Panel finds that no facts have been proved:
 - a. the Panel must dismiss the case and conclude the hearing; and
 - b. any temporary order is revoked.
11. In an application case, if no facts are admitted and the Panel finds that no facts have been proved, the Panel must grant the application for registration or renewal of registration and may impose on the registration for a specified period any conditions required by the Registration Rules.
12. The Panel need not, unless there are exceptional circumstances, give detailed reasons for its findings of fact but must explain how it resolved any controversial issues.

19. Finding on impairment of fitness to practise

1. The chair is to ask the worker:
 - a. whether the worker admits impairment of the worker's fitness to practise; and
 - b. if so, which ground of Rule 2.2 applies to the impairment.

2. Where the worker admits impairment of fitness to practise, the Panel must announce its finding as to whether the worker's fitness to practise is impaired.
3. Where the worker does not admit impairment of fitness to practise, the clerk is to give the Panel copies of the evidence referred to in Rule 12.1, 2 and 4 which relates to impairment of fitness to practise.
4. The presenter is to present the case against the worker on the question of impairment of fitness to practise and may lead evidence and call witnesses.
5. The worker may present their case, lead evidence and call witnesses.
6. At the end of the evidence presented by each party, the Panel may ask questions of that party.
7. The presenter, and then the worker, may make a closing statement on the question of impairment of fitness to practise.
8. If either party's closing statement raises new issues:
 - a. the other party may comment on the statement; and
 - b. the party making the statement has a right of reply.
9. The Panel must then consider in private whether the worker's fitness to practise is impaired.
10. The chair must announce the Panel's decision in the presence of the parties (if they are in attendance).
11. In an impairment case, if the Panel decides that the worker's fitness to practise is not impaired:
 - a. the Panel must dismiss the case and conclude the hearing; and
 - b. any temporary order is revoked.
12. In an application case, if the Panel decides that the worker's fitness to practise is not impaired, the Panel must grant the application for registration or renewal of registration and may impose on the registration for a specified period any conditions required by the Registration Rules.

20. Mitigation, sanctions and decisions on registration

1. Where the Panel decides (whether or not following an admission by the worker) that the worker's fitness to practise is impaired, the chair must announce:
 - a. in an impairment case, the sanctions; and
 - b. in an application case, the decisions on registration, available to the Panel.
2. Those sanctions are:
 - a. to decide to impose no sanction;
 - b. to warn the worker and direct that a record of the warning be placed on the worker's entry in the Register for a period of up to 5 years;
 - c. to impose a condition on the worker's registration;
 - d. to impose a warning under sub-paragraph b and a condition under sub-paragraph c;

- e. to make a suspension order for a period not exceeding 2 years;
 - f. to make a suspension order under sub-paragraph e and impose a condition under sub-paragraph c;
 - g. to make a removal order;
 - h. to revoke any temporary order.
3. Those decisions on registration are:
 - a. to refuse the application for registration or renewal of registration;
 - b. to grant the application subject to conditions.
 4. The clerk is to give the Panel copies of the evidence referred to in Rule 12.1, 2 and 4 which relates to mitigation and sanctions or, as the case may be, decisions on registration.
 5. The presenter, and then the worker, may make representations about the sanction to be imposed or the decision on registration and may lead evidence and call witnesses.
 6. The worker's evidence may include references and testimonials.
 7. At the end of the representations and evidence presented by each party, the Panel may ask questions of that party.
 8. The Panel must then consider in private what sanction to impose or decision on registration to make.
 9. In considering what sanction to impose or decision on registration to make the Panel:
 - a. must have regard to the evidence presented by the parties under Rule 19 (as well as the evidence presented under this Rule); and
 - b. must take into account:
 - i. the seriousness of the worker's impairment of fitness to practise;
 - ii. the protection of the public;
 - iii. the public interest in maintaining confidence in social services; and
 - iv. the issue of proportionality.
 10. In an impairment case, where the Panel decides:
 - a. to impose no sanction; or
 - b. to impose a sanction only under paragraph 2.b, any temporary order is revoked.
 11. Where the Panel decides to impose a sanction under paragraph 2.e, f or g it may extend a temporary order until the date when the sanction takes effect.

21. Conditions

1. Where, in an impairment case or an application case, the Panel proposes to impose a condition on the worker's registration:
 - a. if the worker is present at the hearing and the parties agree, the Panel must advise the parties of the proposed condition and must adjourn the hearing for a reasonable period of time to allow the parties an opportunity to consider the proposed condition;

- b. if the worker is not present at the hearing or the parties do not agree to the Panel proceeding under sub-paragraph a, the Panel must adjourn the hearing and the clerk must, within 7 days of the adjournment, send the parties a note of the proposed condition.
2. The note of the proposed condition must:
 - a. set out the condition which the Panel proposes to impose and the reasons for it; and
 - b. inform the parties of their right to make written representations to the Panel about the proposed condition within 14 days of the date when the clerk sent the note.
3. The Panel may invite the parties to call witnesses to give evidence about the enforceability or workability of any proposed condition.
4. The Panel must reconvene to consider the matter:
 - a. where paragraph 1.a applies, as soon as practicable;
 - b. where paragraph 1.b applies, after the expiry of the period stated in paragraph 2.b.
5. At least 7 days before the date of the reconvened hearing the clerk must inform the Panel and the parties of the date of the hearing and send them a copy of any written representations submitted by the parties.
6. At the reconvened hearing the Panel:
 - a. must take into account any written representations made by the parties about the proposed condition; and
 - b. may consider oral evidence and submissions.
7. In an impairment case:
 - a. the chair must announce the Panel's decision on sanctions in the presence of the parties (if they are in attendance);
 - b. where the Panel imposes a condition, any temporary order is revoked.
8. In an application case the chair must announce the Panel's decision on conditions in the presence of the parties (if they are in attendance).

22. Notice of decision

1. In an impairment case, within 7 days of the conclusion of the hearing the clerk must send a notice of decision to:
 - a. the parties;
 - b. the person who made the allegation under Rule 8.1;
 - c. the worker's employer (if any); and
 - d. if the worker is registered in the part of the Register for students, the worker's university.
2. In an application case, within 7 days of the conclusion of the hearing the clerk must send a notice of decision to:
 - a. the parties;
 - b. except in the case of a student, the worker's employer or other person who countersigned the application form;

- c. in the case of a student, the university or other person who endorsed the student's application.
3. The notice of decision must:
 - a. record any advice given by the legal adviser;
 - b. set out the allegation;
 - c. set out the Panel's findings of fact and its finding on impairment of fitness to practise;
 - d. in an impairment case, set out its decision on sanctions;
 - e. in an application case, set out its decision on the application;
 - f. set out the reasons for the Panel's decisions;
 - g. clearly set out any conditions imposed on the worker's registration.

23. Note and transcript of proceedings

1. The SSSC must appoint a person to take a shorthand note or make an audio recording of the proceedings before the Panel.
2. Either party may request to hear all or part of any audio recording of a hearing before the hearing has concluded.
3. If the worker has appealed to the sheriff against the decision of the Panel the SSSC may, on payment of a reasonable fee, send to the worker a transcript of the proceedings or of any part of the proceedings at which the worker had a right to be present.

24. Impairment case: publication of decision

1. The SSSC may publish the Panel's decision in an impairment case in any way it considers appropriate.
2. On the date the decision takes effect the SSSC may also provide a copy of the notice of decision to any of the regulatory bodies listed in Schedule 3.

25. Review of suspension order and conditions

1. The SSSC may, at any time, vary or revoke a suspension order or conditions imposed on a registration under Rule 9, 18.11, 19.12 or 20.2 or 3 if:
 - a. it is satisfied that there is good reason to do so, taking into account whether the worker's fitness to practise continues to be impaired; and
 - b. the worker consents.
2. On the application of a worker or the SSSC a Fitness to Practise Panel may, on cause shown, review a suspension order or conditions imposed on a registration under Rule 9, 18.11, 19.12 or 20.2 or 3.
3. Members of the Panel which imposed an order or conditions under Rule 18.11, 19.12 or 20.2 or 3 are not eligible to be members of the Panel considering an application under paragraph 2 to review the order or conditions.

4. At least 28 days (or such shorter period as the parties may agree) before the date of the review hearing the clerk must send to the worker and the SSSC a notice:
 - a. stating that a hearing of the Panel is to be held to review the order or conditions;
 - b. setting out the worker's or SSSC's application for a review; and
 - c. setting out the reasons for the application.
5. The procedure at the review hearing is to be the same (as far as appropriate) as at the original hearing.
6. Rule 15.2 to 6, 8 and 9 (hearing normally to be in public) applies to a review hearing as it does to an impairment case hearing.
7. The presenter is to outline the facts of the case and the circumstances in which the order or conditions were imposed.
8. The parties are to make submissions outlining why the order or conditions should be reviewed and may lead evidence and call witnesses.
9. In reviewing the order or conditions the Panel must consider whether the worker's fitness to practise continues to be impaired.
10. After reviewing the order or conditions the Panel may:
 - a. confirm the order or conditions unchanged;
 - b. vary the order or conditions;
 - c. revoke the order or conditions;
 - d. where the conditions were imposed under Rule 18.11, 19.12 or 20.3, impose additional conditions;
 - e. where the order or conditions were imposed under Rule 20.2, impose any sanction set out in Rule 20.2.
11. Where the Panel proposes to vary conditions, Rule 21.1 to 6 applies as it applies to the imposition of conditions.
12. The chair must announce the Panel's decision in the presence of the parties (if they are in attendance) and in public, except any part relating to the worker's health.
13. Within 7 days of the conclusion of the hearing the clerk must send a notice of decision to:
 - a. the parties;
 - b. where the order or conditions were imposed under Rule 9 or 20.2, the person who made the original allegation under Rule 8.1;
 - c. the worker's employer (if any); and
 - d. if the worker is registered in the part of the Register for students, the worker's university.
14. The notice of decision must:
 - a. record any advice given by the legal adviser;
 - b. set out the Panel's decision;
 - c. set out the reasons for the Panel's decision;
 - d. clearly set out any conditions imposed or varied on, or removed from, the worker's registration.

General provisions

26. Amending and combining cases

1. Where the SSSC has referred a case to a Fitness to Practise Panel it may apply to the Panel to:
 - a. add further allegations;
 - b. combine the case with one or more other cases about the same worker;
 - c. combine the case with one or more other cases about different workers,where the facts or circumstances make it desirable to do so.
2. The SSSC must send a copy of the application and any supporting evidence to the worker in each case.
3. A worker may submit a written response to the SSSC within 14 days of the date of receipt of the application.
4. The SSSC must send the application, evidence and any written response to the chair of the Panel, who must decide it, after taking advice from the legal adviser, taking into account:
 - a. the submissions of the parties;
 - b. any likely prejudice to either party; and
 - c. the public interest in the cases being decided without delay.

27. Postponement of hearing

1. Either party may apply to have a hearing postponed before it starts.
2. The application:
 - a. must be made at least 48 hours before the date of the hearing, unless there are exceptional circumstances; and
 - b. must be sent by the party making it to the other party, together with any supporting evidence.
3. The party to whom the application is sent may submit a written response to the other party as soon as practicable.
4. The SSSC must send the application, any supporting evidence and any written responses to the chair of the Panel, who must decide it, after taking advice from the legal adviser, taking into account:
 - a. the submissions of both parties;
 - b. any likely prejudice to either party; and
 - c. the public interest in the case being decided without delay.
5. If the application is granted, or the hearing is postponed for any other reason, the clerk must:
 - a. arrange a new hearing date (either as soon as possible or after the occurrence of a specified event); and
 - b. inform the parties and the persons referred to in Rule 11.1.b to d (in an impairment case) or Rule 11.2.b and c (in an application case) of the date, time and place of the new hearing.

28. Adjournment of hearing

1. Subject to the requirements of a fair hearing and after hearing representations from the parties the Panel may, at any time during the hearing, adjourn the hearing to request further information or for any other purpose.
2. Where the hearing is adjourned the clerk must, as soon as practicable, notify the parties and the persons referred to in Rule 11.1.b to d (in an impairment case) or Rule 11.2.b and c (in an application case) of the date fixed for the resumed hearing.
3. Evidence produced in response to a request for further information under paragraph 1 is not subject to any time limit in these Rules applying to the production of evidence.

29. Fitness to plead

1. Where a question arises as to the worker's fitness to plead, the Panel may proceed having considered whether the worker can:
 - a. understand the issue in the case;
 - b. appreciate the effect of any advice received from the worker's appropriate representative or supporter (if any); and
 - c. give instructions accordingly.
2. The Panel may direct that expert evidence be obtained and may receive expert evidence and opinion on those issues.
3. Where a court has acquitted the worker of a criminal offence on the ground of insanity the Panel may find the worker unfit to plead.
4. Where the Panel finds the worker unfit to plead it may make a temporary order or a removal order.

30. Procedure at hearing

Subject to these Rules and the requirements of a fair hearing, the Panel may, after taking advice from the legal adviser, decide its own procedures and may issue directions with regard to the just and expeditious determination of cases.

31. Representation and entitlement to be heard

1. The presenter and the worker have a right to be heard by the Panel.
2. An officer of the SSSC may attend the hearing for the purpose of giving instructions to the presenter.
3. The worker may be represented by a solicitor (including a trainee solicitor), counsel, a representative from the worker's trade union or professional body or, where the worker is registered in the part of the Register for students, a representative from a student body (an 'appropriate representative').

4. The chair of the Panel may, at the chair's discretion, permit the worker to be represented by a person who is not an appropriate representative.
5. Any application to be represented by a person who is not an appropriate representative must be sent to the clerk at least 7 days before the hearing.
6. The worker may be accompanied by a supporter.
7. A supporter has a right to address the panel only with the Panel's permission.
8. The worker may be assisted by an interpreter or other person who can facilitate the worker participating in the hearing.
9. A person who represents the worker, accompanies the worker as a supporter or assists the worker under paragraph 8 cannot be called as a witness at the hearing.
10. The Panel may exclude from the whole or part of the hearing any person whose conduct, in the Panel's opinion, has disrupted or is likely to disrupt the hearing.

32. Evidence and standard of proof

1. After taking advice from the legal adviser, the Panel may admit any evidence that would be regarded as relevant and, in terms of the Civil Evidence (Scotland) Act 1988, admissible in an ordinary civil court in Scotland.
2. The Panel may refuse to admit evidence which it does not consider relevant to the material facts in dispute.
3. Oral evidence is not to be admitted where it relates only to facts which have been agreed between the parties in a document lodged with the clerk.
4. The Panel may receive other oral, documentary or other evidence submitted by the worker or the SSSC which appears to be relevant to its consideration of the case.
5. Oral evidence may be given by video conferencing or any similar visual communications system.
6. The Panel may, of its own volition, request the parties to provide documents or other evidence, or request any person to provide documents or other evidence or give oral evidence, which the Panel considers might assist it in deciding the case, and may receive the evidence.
7. Where a party puts forward evidence (other than oral evidence) which has not been disclosed in advance of the hearing the Panel may admit the evidence:
 - a. if the other party consents; or
 - b. where, after taking advice from the legal adviser, it is satisfied that the admission of the evidence is necessary to ensure the fairness of the proceedings and outweighs any prejudice to the other party.

8. The findings of fact and certification of conviction of any criminal court in the United Kingdom are conclusive proof of the facts and conviction.
9. The findings of fact of a civil court in the United Kingdom are conclusive proof of the facts.
10. The findings of fact and decision by a regulatory body listed in Schedule 3 are prima facie evidence of the facts found by the body in question, but the worker has a right to present evidence to the Panel in rebuttal.
11. The burden of proof rests on the SSSC.
12. Where facts are in dispute, the Panel is to decide the facts on the civil standard of proof.

33. Witnesses

1. The chair of the Panel must warn witnesses of the serious nature of the proceedings and of the requirement to tell the truth at all stages.
2. The Panel may, on the application of the party calling a witness, agree that the witness's personal details are not to be revealed in public.
3. Witnesses:
 - a. are to be examined by the party calling them;
 - b. may then be examined by the other party; and
 - c. may be re-examined by the party calling them.
4. Paragraph 3 is subject to Rule 34 (vulnerable witnesses).
5. Witnesses may also be questioned by members of the Panel or by the legal adviser with the permission of the chair.
6. The parties may question the witnesses on matters arising out of the Panel's or legal adviser's questions, with the party calling the witness questioning the witness last.
7. Any further questioning of the witness is at the discretion of the Panel.
8. Witnesses (unless the witness is the worker) are not allowed to attend the proceedings until they have completed giving evidence and have been formally released by the chair.
9. This Rule applies to witnesses giving oral evidence by video conferencing or any similar visual communications system as it does to witnesses giving oral evidence in person.

34. Vulnerable witnesses

1. The following are to be treated as vulnerable witnesses:
 - a. any witness under the age of 18;
 - b. any witness with a mental disorder;
 - c. any witness who is significantly impaired in relation to intelligence and social functioning;
 - d. any witness with physical disabilities who requires assistance to give evidence;
 - e. where an allegation is of a sexual or violent nature (or both):

- i. the person who made the allegation under Rule 8.1 (in an impairment case); and
 - ii. any individual against whom the worker's alleged behaviour was directed;
 - f. any witness who complains of intimidation.
2. After taking advice from the legal adviser and hearing representations from the parties, the Panel may make such arrangements as it considers necessary to enable it to receive evidence from vulnerable witnesses.
3. Those arrangements include (but are not limited to):
 - a. use of video links;
 - b. use of pre-recorded evidence as the evidence in chief of a witness, provided that the witness is available for cross-examination and questioning by the Panel;
 - c. use of screens;
 - d. use of interpreters (including signers and translators) or intermediaries.
4. Paragraphs 5 and 6 apply where:
 - a. an allegation is of a sexual or violent nature (or both); and
 - b. the worker is acting in person.
5. The worker is not allowed to cross-examine the person who made the allegation or any individual against whom the alleged behaviour was directed.
6. Where the worker:
 - a. has attended the case management meeting;
 - b. has indicated an intention to dispute the facts; and
 - c. in an impairment case, does not admit impairment of fitness to practise,

the Panel may, if satisfied that the worker does not have financial resources to instruct a solicitor, appoint a legal representative to cross-examine the witness on the worker's behalf.

35. Hearing in absence of worker

1. Where the worker is not present or represented at the hearing, the Panel must:
 - a. have regard to whether reasonable efforts have been made to inform the worker of the hearing; and
 - b. inquire whether the clerk or the SSSC is aware of any reason for the worker's non-attendance.
2. The Panel may:
 - a. hear and decide the case in the absence of the worker; or
 - b. adjourn the hearing and issue directions.

36. Decisions

1. In reaching a decision on any matter a Panel must take into account the decisions guidance and any practice notes issued by the SSSC.
2. If in any case a Panel does not follow the guidance or comply with the practice notes, it must give reasons for not doing so.
3. A Panel must give detailed reasons for its decisions and must explain how it resolved any controversial issues.
4. Paragraph 3 is subject to Rule 18.12.

PART 5

RESTORATION TO THE REGISTER

37. Application for restoration to the Register

1. A former registered worker may apply to the SSSC for restoration to the part of the Register from which the worker's registration was removed due to:
 - a. a removal order;
 - b. an application for renewal of registration being refused by a Fitness to Practise Panel;
 - c. any other decision of a Fitness to Practise Panel.
2. An application for restoration must be accompanied by the restoration fee set out in Schedule 4, which is non-refundable if the application is refused.
3. The worker may send to the SSSC any report, statement or other evidence which, in the worker's opinion, supports the application.
4. An application under paragraph 1 is not competent within 3 years of the date of removal or within 2 years of a previous application by the worker, except where the removal was due to a removal order and:
 - a. the sole ground for the removal order was the health of the worker; or
 - b. the removal order was made under Rule 29.4 or 42.5.
5. The SSSC may:
 - a. grant the application;
 - b. grant the application and impose conditions on the worker's registration;
 - c. refer the application to a Fitness to Practise Panel.
6. The SSSC may impose conditions under paragraph 5.b only if the worker consents.
7. Where the SSSC grants the application it must make a restoration order.
8. The SSSC must refer to a Fitness to Practise Panel:
 - a. an application which it proposes should be refused;
 - b. an application which it proposes to grant with the imposition of conditions on the worker's registration, unless the worker consents to the conditions.
9. The SSSC must, after deciding to refer an application to a Fitness to Practise Panel, send a notice complying with paragraph 10 to:
 - a. the worker;
 - b. where the removal was due to a removal order, the person who made the original allegation under Rule 8.1, but only where the allegation was made less than 5 years before the date of the application and it is reasonable to do so;
 - c. the worker's employer (if any); and

- d. if the worker is seeking restoration to, or is registered in, the part of the Register for students, the worker's university.
10. The notice must:
- a. state that a hearing of the Panel is to be held to consider the application;
 - b. state the facts which the worker alleges justify the worker's restoration to the Register; and
 - c. state the SSSC's position (if any) on:
 - i. whether or not the application should be granted;
 - ii. the imposition of conditions on the worker's registration; and the reasons for taking that position (including, where the removal was due to a removal order, any new allegations which, if proved, could result in a finding that the worker's fitness to practise is impaired).
11. Where the removal was due to:
- a. a removal order imposed by a Panel;
 - b. an application for renewal of registration being refused by a Panel; or
 - c. any other decision of a Panel,
- members of that Panel are not eligible to be members of the Panel considering the application.

38. Application for restoration: evidence

- 1. Within 21 days of the date on which the initial notice under Rule 37.9 was sent the SSSC must send to the worker any evidence on which the SSSC intends to rely.
- 2. At least 7 days before the case management meeting:
 - a. the worker must send to the SSSC any additional evidence on which the worker intends to rely;
 - b. the SSSC must send to the worker any additional evidence on which it intends to rely.
- 3. As soon as practicable after the expiry of the time limit in paragraph 2 the SSSC must send to the chair of the Fitness to Practise Panel copies of:
 - a. the initial notice under Rule 37.9; and
 - b. the evidence referred to in Rule 37.3 and paragraphs 1 and 2 of this Rule.
- 4. At least 14 days before the hearing:
 - a. the worker must send to the SSSC any evidence additional to that referred to in Rule 37.3 and paragraph 2 on which the worker intends to rely;
 - b. the SSSC must send to the worker any evidence additional to that referred to in paragraphs 1 and 2 on which it intends to rely.
- 5. At least 7 days before the hearing the SSSC must send to the Panel copies of:
 - a. the initial notice under Rule 37.9; and

- b. the evidence referred to in Rule 37.3 and paragraphs 1, 2 and 4.

39. Application for restoration: Panel procedure

1. The Panel hearing an application for restoration referred to it under Rule 37.8 is to sit in private unless the worker requests that the proceedings be held in public and the Panel agrees.
2. The following Rules apply to the application for restoration as they apply to an impairment case:

Rules 13 and 14 (case management meeting);

Rule 15.4 to 6 (power to exclude public from hearing);

Rule 23 (note and transcript of proceedings);

Rule 24 (publication of decision);

Rule 27 (postponement of hearing), omitting the reference in Rule 27.5 to persons referred to in Rule 11.1.b to d;

Rule 28 (adjournment of hearing), omitting the reference in Rule 28.2 to persons referred to in Rule 11.1.b to d;

Rule 30 (procedure at hearing);

Rule 31 (representation and entitlement to be heard);

Rule 32.1 to 10 and 12 (evidence);

Rule 33 (witnesses);

Rule 34 (vulnerable witnesses);

Rule 35 (hearing in absence of worker);

Rule 36 (decisions).

40. Restoration hearing: procedure

1. At the hearing of an application for restoration, the Panel must consider any preliminary matters raised by the parties.
2. The presenter is to outline the facts of the case and the circumstances in which the worker's registration was removed and may:
 - a. produce the notice of decision and any other relevant evidence; and
 - b. lead evidence and call witnesses about anything since the registration was removed which affects the worker's fitness to practise.
3. The worker is to make submissions on the removal of the registration, anything since the removal which affects the worker's fitness to practise

and why the application should be granted and may lead evidence and call witnesses.

4. At the end of the evidence presented by each party, the Panel may ask questions of that party.
5. The burden of proof rests on the worker.
6. The presenter, and then the worker, may make a closing statement.
7. If either party's closing statement raises new issues:
 - a. the other party may comment on the statement; and
 - b. the party making the statement has a right of reply.
8. The Panel:
 - a. may, at any stage of the hearing; and
 - b. must, after the parties have made their closing statements, make findings of the facts which are disputed by the parties.
9. The Panel may grant the application only if it is satisfied that:
 - a. there has been a material change of circumstances since the worker's registration was removed from the Register; and
 - b. the worker's fitness to practise is not impaired.
10. In determining the application the Panel must have regard to:
 - a. the reasons why the worker's registration was removed from the Register;
 - b. the application and any evidence provided by the worker in support of the application;
 - c. any evidence relied on by the SSSC;
 - d. the protection of members of the public;
 - e. the public interest in maintaining confidence in social services; and
 - f. the principle of proportionality.
11. The chair must announce the Panel's decision in the presence of the parties (if they are in attendance).
12. Where the Panel proposes to grant the application it must consider whether the worker's registration should be made subject to conditions for a period specified by the Panel.
13. Where the Panel proposes to impose conditions, Rule 21.1 to 6 applies.
14. Where the Panel decides to grant the application it must make a restoration order.

41. Restoration hearing: notice of decision

1. Within 7 days of the conclusion of the hearing the clerk must send a notice of decision to:
 - a. the parties;
 - b. the worker's employer (if any); and
 - c. if the worker is seeking restoration to, or is registered in, the part of the Register for students, the worker's university.
2. The notice of decision must:
 - a. record any advice given by the legal adviser;
 - b. set out the Panel's decision;

- c. set out the reasons for the Panel's decision;
- d. clearly set out any conditions imposed on the worker's registration.

PART 6

REMOVAL FOR NON-CO-OPERATION WITH SSSC INVESTIGATION

42. Removal order where worker does not co-operate with SSSC investigation

1. Where the SSSC refers a case to a Fitness to Practise Panel under Rule 8.8, the following Rules apply as they apply to an impairment case:

Rule 11 (initial notice);

Rule 12 (evidence);

Rules 13 and 14 (case management meeting);

Rule 15.4 to 6 (power to exclude public from hearing);

Rule 22 (notice of decision);

Rule 23 (note and transcript of proceedings);

Rule 24 (publication of decision);

Rule 27 (postponement of hearing), omitting the reference in Rule 27.5 to persons referred to in Rule 11.1.b to d;

Rule 28 (adjournment of hearing), omitting the reference in Rule 28.2 to persons referred to in Rule 11.1.b to d;

Rule 30 (procedure at hearing);

Rule 31 (representation and entitlement to be heard);

Rule 32 (evidence and standard of proof);

Rule 33 (witnesses);

Rule 34 (vulnerable witnesses);

Rule 35 (hearing in absence of worker);

Rule 36 (decisions).

2. At the case management meeting the chair may issue decisions and directions about the procedure to be followed by the Panel.
3. At the hearing, the presenter is to outline the facts of the case and the SSSC's reasons for seeking a removal order and may lead evidence and call witnesses.

4. The worker (if present) may make submissions outlining why a removal order should not be made and may lead evidence and call witnesses.
5. If the Panel is satisfied that:
 - a. the allegation made under Rule 8.1 relates to the worker's health;
and
 - b. the worker has refused or failed to co-operate with the SSSC's investigation under that Rule,the Panel may make a removal order.

PART 7

TEMPORARY ORDERS

43. Temporary order referral: initial notice

1. At least 28 days before the date set for the hearing of a temporary order referral by a Fitness to Practise Panel the SSSC must:
 - a. send a notice complying with paragraph 2 to:
 - i. the worker;
 - ii. the worker's employer (if any); and
 - iii. if the worker is registered in the part of the Register for students, the worker's university; and
 - b. send a copy of the evidence on which the SSSC intends to rely to the worker.
2. The notice must:
 - a. state that a hearing of the Panel is to be held to consider the temporary order referral;
 - b. set out the allegation;
 - c. provide the worker with a brief statement of the reasons why the SSSC has referred the case to the Panel under Rule 9.2.b; and
 - d. invite the worker to make written representations about the allegation within 14 days of service of the notice.
3. The period of 28 days set out in paragraph 1 may be dispensed with:
 - a. if the worker agrees; or
 - b. if the SSSC considers that there are good reasons for doing so.
4. Where the period of notice is dispensed with, the Panel must hear the case as soon as practicable on a date to be fixed by the clerk.
5. Where, after hearing submissions from the parties and taking advice from the legal adviser, the Panel considers that dispensing with the period of notice under paragraph 3.b was not necessary, it may adjourn the hearing to allow the worker further time to prepare for the hearing or for any other reason.

44. Temporary order referral: evidence

1. At least 8 days before the hearing:
 - a. the SSSC must send to the worker any additional evidence on which it intends to rely;
 - b. the worker must send to the SSSC any evidence on which the worker intends to rely.
2. As soon as practicable after the expiry of the time limit in paragraph 1 the SSSC must send to the Panel copies of:
 - a. the initial notice under Rule 43.1; and
 - b. any evidence referred to in Rule 43.1.b and paragraph 1 of this Rule.

3. The chair of the Panel may, in exceptional circumstances, waive the time limit in paragraph 1.

45. Temporary order referral: procedure and hearing

1. The Panel hearing a temporary order referral is to sit in private unless the worker requests that the proceedings be held in public and the Panel agrees.
2. The following Rules apply to a temporary order referral as they apply to an impairment case:

Rule 15.4 to 6 (power to exclude public from hearing);

Rule 23 (note and transcript of proceedings);

Rule 24 (publication of decision);

Rule 26 (amending and combining cases);

Rule 27 (postponement of hearing), omitting the reference in Rule 27.5 to persons referred to in Rule 11.1.b to d;

Rule 28 (adjournment of hearing), omitting the reference in Rule 28.2 to persons referred to in Rule 11.1.b to d;

Rule 30 (procedure at hearing);

Rule 31 (representation and entitlement to be heard);

Rule 32.1 to 11 (evidence and standard of proof);

Rule 33 (witnesses);

Rule 34 (vulnerable witnesses);

Rule 35 (hearing in absence of worker);

Rule 36 (decisions).

3. The order of proceedings at the hearing is as follows:
 - a. the presenter is to set out the allegation and the reasons why the worker's registration should be made subject to a temporary order and may lead evidence and call witnesses;
 - b. the worker (if present) is to set out the reasons why the registration should not be made subject to the order and may lead evidence and call witnesses;
 - c. the Panel may take advice from the legal adviser;
 - d. the Panel is to decide the referral in private.
4. In deciding a temporary order referral the Panel must:
 - a. decide whether there is prima facie evidence of the allegation;
 - b. if there is, decide whether a temporary order is necessary;

- i. for the protection of members of the public or is otherwise in the public interest or is in the interests of the worker; or
 - ii. where the worker's fitness to plead has been called into question;
 - c. if a temporary order is necessary on those grounds, decide whether to make a temporary conditions order, a temporary suspension order or both; and
 - d. make the order (or orders).
5. The chair of the Panel must announce the Panel's decision in the presence of the parties (if they are in attendance).
6. Where the Panel proposes to make a temporary conditions order, Rule 21.1 to 6 applies as it applies to the imposition of a condition under Rule 20.2.c.

46. Temporary order referral: notice of decision

1. Within 7 days of the conclusion of the hearing the clerk must send a notice of decision to:
 - a. the parties;
 - b. the worker's employer (if any); and
 - c. if the worker is registered in the part of the Register for students, the worker's university.
2. The notice of decision must:
 - a. record any advice given by the legal adviser;
 - b. give reasons for the Panel's decisions;
 - c. where a temporary suspension order has been made, set out the period of suspension;
 - d. where a temporary conditions order has been made, set out its terms.

47. Duration of temporary order

1. The total period for which the worker's registration is subject to:
 - a. temporary suspension under a temporary suspension order made under Rule 9, 16, 45 or 49 and any further temporary suspension order made under any of those Rules; or
 - b. temporary conditions under a temporary conditions order made under Rule 9, 16, 45 or 49 and any further temporary conditions order made under any of those Rules,must not exceed 2 years unless paragraph 2 applies.
2. This paragraph applies where:
 - a. the outcome of criminal or other third party investigations or proceedings is or was awaited in respect of the worker;
 - b. the impairment case based on the allegation made under Rule 8.1 has been referred to a Fitness to Practise Panel for consideration under Part 4; or

- c. a Fitness to Practise Panel has imposed a sanction under Rule 20.2 or made a removal order under Rule 42.5 and:
 - i. the time limit for the worker to appeal to the sheriff against the Panel's decision has not expired; or
 - ii. the worker has within that time limit lodged an appeal to the sheriff.

48. Review of temporary order

1. The SSSC may revoke a temporary order made by the SSSC or a Fitness to Practise Panel.
2. The SSSC may extend or vary a temporary order made by the SSSC or a Panel if the worker consents.
3. At the request of a worker or the SSSC a Panel may review a temporary order made by the SSSC or a Panel.
4. Unless there are exceptional circumstances, a request under paragraph 3 is not competent until at least 3 months after the date on which the order was made.
5. The clerk must, at least 28 days before the review hearing:
 - a. send to the worker and the SSSC a notice complying with paragraph 6; and
 - b. send to the worker a copy of any evidence on which the SSSC intends to rely, including (where appropriate) a copy of the previous notice of decision under Rule 46.
6. The notice must:
 - a. state that a hearing of the Panel is to be held to consider the request for review;
 - b. set out any allegations additional to the allegation in the initial notice under Rule 43.1;
 - c. where the SSSC has requested the review for the purpose of imposing a further temporary order, set out a brief statement of the SSSC's reasons for requesting the review; and
 - d. where the worker has requested the review, set out a brief statement of whether the SSSC intends to oppose the review and, if so, its reasons for doing so.
7. Rules 43.3 to 5 and 44 apply to the review as they apply to a temporary order referral, but:
 - a. reading the reference in Rule 43.3 to paragraph 1 of that Rule as a reference to paragraph 5 of this Rule;
 - b. reading the reference in Rule 44.2.a to the notice under Rule 43.1 as a reference to the notice under paragraph 5.a of this Rule.
8. The review of a temporary order by a Fitness to Practise Panel is not affected by the expiry of the order after the date on which notice under paragraph 5.a is sent but before the conclusion of the review hearing.
9. Where a temporary order would, but for this paragraph, expire after the start of the review hearing but before the Panel reaches a decision under

Rule 49.5, the order continues to have effect until the Panel reaches its decision.

49. Review of temporary order: procedure at hearing

1. The procedure at the review hearing is to be the same (with the necessary modifications) as at the original hearing.
2. The presenter is to outline the facts of the case and the circumstances in which the order or conditions were imposed and may lead evidence and call witnesses.
3. The worker (if present) is to make submissions outlining why the order should be reviewed and may lead evidence and call witnesses.
4. In reviewing the order the Panel must accept the decision of the original Panel that there is prima facie evidence of the allegation in the initial notice under Rule 43.1 unless it appears to the Panel, on the basis of evidence led at the hearing, that the allegation is or may be manifestly unreliable, manifestly unfounded or manifestly exaggerated.
5. After reviewing the order the Panel may:
 - a. decide to take no action;
 - b. decide to do one or more of the following:
 - i. extend the order;
 - ii. vary the order;
 - iii. revoke the order;
 - iv. make a further temporary order to take effect on the expiry of the existing order.
6. Where the Panel proposes to vary a temporary conditions order or make a further temporary conditions order, Rule 21.1 to 6 applies as it applies to the imposition of a condition under Rule 20.2.c.
7. Rule 46 applies to a review hearing as it does to the hearing of a temporary order referral.

50. Temporary order referrals and reviews: cancellation of hearings

1. If, at any time, it appears to the SSSC that a hearing of a temporary order referral by a Fitness to Practise Panel should not take place, it may cancel the hearing.
2. If, at any time, it appears to the SSSC that a review hearing by a Fitness to Practise Panel on a request made by the SSSC under Rule 48.3 should not take place, it may cancel the hearing.
3. Paragraphs 1 and 2 do not affect the SSSC's powers and duties to make a further referral to the Panel under Part 4.

The Scottish Ministers having consented, the SSSC hereby makes these Rules

Convener James McGoldrick

On behalf of the Scottish Social Services Council

Dated 14 October 2016

SCHEDULE 1

TRANSITIONAL AND SAVING PROVISIONS

1. In this Schedule—

‘the Conduct Rules’ means the Scottish Social Services Council (Conduct) Rules 2013;

‘the new Rules’ means these Rules;

‘the start date’ means 1 November 2016.

2. Where, before the start date, the SSSC refers a complaint to the Conduct Sub-committee or the Preliminary Proceedings Sub-committee under the Conduct Rules, those Rules continue to apply to the complaint and its hearing and disposal by that Sub-committee after that date.
3. Paragraph 4 applies where the SSSC, having received a complaint under the Conduct Rules, considers that—
 - a. an interim suspension order or an interim conditions order (or both);
 - b. a removal order;
 - c. conditions; or
 - d. a warning;should be imposed on the registered worker’s registration and, before the start date, requests the registered worker’s agreement to the imposition of the order, conditions or warning.
4. If the registered worker confirms (whether before or after the start date) the worker’s agreement, the Conduct Rules continue to apply to the disposal of the complaint.
5. Any other complaint made to the SSSC under the Conduct Rules which has not been referred to the Conduct Sub-committee or otherwise disposed of by the start date is to be treated as an allegation made to the SSSC under Rule 8.1 of the new Rules and dealt with accordingly.
6. Where an interim suspension order or an interim conditions order imposed under the Conduct Rules is in force on the start date, the order is to be treated as a temporary suspension order or, as the case may be, a temporary conditions order imposed under the new Rules and Rules 48 to 50 of these Rules (review of temporary orders) apply accordingly.
7. Paragraphs 8 and 9 apply where a former registered worker has made an application for restoration to the register under paragraph 32 of Schedule 2 to the Conduct Rules which has not been disposed of by the start date.
8. If, before that date, the application has been referred for hearing by the Conduct Sub-committee, the Conduct Rules continue to apply to the hearing and disposal of the application by the Sub-committee after that date.

9. If, on that date, the application has not been referred for hearing by the Conduct Sub-committee, the application is to be treated as an application for restoration to the register under Rule 37 of the new Rules and dealt with accordingly.

The Scottish Ministers having consented, the SSSC hereby makes these Rules

Convener James McGoldrick

On behalf of the Scottish Social Services Council

Dated 14 October 2016

SCHEDULE 2

FITNESS TO PRACTISE PANELS

Panel members

1. The SSSC must appoint such number of persons as it thinks fit to be eligible to serve as members of a Fitness to Practise Panel.
2. An appointment under paragraph 1 is for a specified period of not more than 3 years.
3. A person appointed under paragraph 1 is eligible for re-appointment for further periods, the total period of appointment under paragraph 1 and this paragraph not exceeding 7 years.
4. A person appointed under paragraph 1 who ceases to be eligible to serve as a member of a Fitness to Practise Panel when their appointment expires is not eligible for a further appointment under paragraph 1 for a period of 5 years from that date.
5. A member of a Fitness to Practise Panel whose appointment under paragraph 1 expires after the Panel has started considering a matter may continue as a member of the Panel until the Panel finally determines the matter.
6. No defect in the appointment of a person under paragraph 1 affects the validity of proceedings or decisions of a Fitness to Practise Panel.
7. The convener and members of the SSSC are not entitled to be members of a Fitness to Practise Panel.

Constitution of Fitness to Practise Panel

8. A Fitness to Practise Panel is to consist of up to 5 persons appointed under paragraph 1 selected by a clerk.
9. The Panel must include:
 - a. at least one lay member; and
 - b. at least one social service member.
10. The number of social service members must not exceed the number of lay members.
11. In paragraphs 9, 10, 21 and 22, 'lay member' means a person who is not, and has not in the period of 5 years prior to appointment to the Panel been:
 - a. a social service worker or a student; or
 - b. involved in the training, education, appointment, employment supply, supervision, monitoring or representation of social service workers or students.
12. In paragraphs 9 and 10, 'social service member' means a person who has experience or understanding of the area of social service work and, where appropriate, registration and inspection of social services, practised by the worker whose case the Panel is to consider.
13. The clerk is to appoint:

- a. a member to chair the Panel; and
 - b. a member to chair the case management meeting.
14. A member of a Fitness to Practise Panel which has heard an application for a temporary order under Part 7:
- a. must not sit as a member of a Panel hearing any further application under that Part in the same case;
 - b. must not sit as a member of the Panel hearing the case under Part 4.
15. Paragraph 14 does not prohibit the Panel member:
- a. chairing a case management meeting on the case;
 - b. sitting as a member of a Panel considering an application for postponement of the hearing of the case; or
 - c. sitting in any other case concerning the same worker.

Attendance at hearings

16. A person appointed under paragraph 1, a legal adviser or a member of the staff of the SSSC may attend any hearing of any Panel to observe the proceedings for the purposes of training.
17. A person appointed under paragraph 1 or a legal adviser may attend the private deliberations of any Panel to observe the proceedings for the purposes of training.
18. A member of the staff of the SSSC may attend the private deliberations of a Panel only for the purpose of carrying out functions under paragraph 36.

Quorum, voting and decisions

19. The quorum of a Panel is 2.
20. Decisions of a Panel are to be taken by simple majority.
21. If the Panel consists of an even number of members, the chair, if the chair is a lay member, has a casting vote.
22. If the chair is not a lay member, the lay member with the earliest date of appointment under paragraph 1 has a casting vote.
23. A decision of the Panel may be announced by the chair in the absence of other Panel members.
24. Paragraph 25 applies where a Panel becomes inquorate:
- a. before the Panel reaches a decision; or
 - b. where the Panel has proposed to impose conditions, after the 14 day period stated in Rule 21.2.b but before the Panel has reconvened and reached a new decision or confirmed the original decision.
25. If, in the opinion of the clerk, the Panel is unlikely to become quorate within a reasonable period, the clerk may appoint a substitute member or make arrangements for rehearing the case afresh.

Legal adviser to Panel

26. A legal adviser must be present at case management meetings, hearings and private deliberations of the Panel.
27. The legal adviser must be a solicitor or advocate qualified to practise in Scotland.
28. The same legal adviser need not be present:
 - a. throughout any meeting, hearing or deliberations;
 - b. at all the meetings, hearings and deliberations on any particular case.
29. The functions of a legal adviser are:
 - a. to advise the Panel on questions of law; and
 - b. to ensure that the proceedings before the Panel are conducted fairly and to inform the Panel immediately of any irregularity in the conduct of the proceedings.
30. The clerk to the Panel must keep a record of any advice given by a legal adviser, whether the proceedings are held in public or in private.
31. Whether the proceedings are held in public or in private, the advice of a legal adviser must be given in the presence of the parties (if they are in attendance).
32. Any advice given by a legal adviser during the private deliberations of the Panel must subsequently be given in the presence of the parties (if they are in attendance).
33. The Panel must give the parties an opportunity to make representations on the contents of advice given by a legal adviser.
34. If representations are made, the Panel may request further advice from a legal adviser, which must be given in the presence of the parties (if they are in attendance).
35. A legal adviser must not take part in the decision making of the Panel and does not have a right to vote.

Clerk to Panel

36. The functions of the clerk are:
 - a. to select the members of a Panel and appoint chairs of the Panel and the case management meeting in accordance with this Schedule;
 - b. to make administrative arrangements for hearings and meetings; and
 - c. to keep a record of the decisions of the Panel and the reasons for them.
37. The clerk must not take part in the decision making of the Panel and does not have a right to vote.

The Scottish Ministers having consented, the SSSC hereby makes these Rules

Convener James McGoldrick

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On behalf of the Scottish Social Services Council

Dated 14 October 2016

SCHEDULE 3

REGULATORY BODIES WHOSE DECISIONS MAY BE CONSIDERED BY A FITNESS TO PRACTISE PANEL UNDER RULE 32

1. The Scottish Social Services Council
2. The Nursing and Midwifery Council
3. The National College of Teaching and Leadership
4. The General Teaching Council for Northern Ireland
5. The General Teaching Council for Scotland
6. Education Workforce Council Wales
7. The Health and Care Professions Council
8. The General Medical Council
9. The General Dental Council
10. The Care Council for Wales
11. The Northern Ireland Social Care Council
12. Social Care and Social Work Improvement Scotland
13. The Commission for Social Care Inspection
14. The Care Inspectorate for Wales
15. The Health and Personal Services Regulation and Improvement Authority
16. The General Pharmaceutical Council
17. The Pharmaceutical Society of Northern Ireland
18. Employment Tribunals (Scotland)
19. Employment Tribunals (England and Wales)
20. The Office of Industrial Tribunals and the Fair Employment Tribunal in Northern Ireland
21. Any body carrying out statutory regulatory functions previously carried out by any of the above bodies

The Scottish Ministers having consented, the SSSC hereby makes these Rules

Convener James McGoldrick

On behalf of the Scottish Social Services Council

Dated 14 October 2016

SCHEDULE 4

RESTORATION FEES

The Table of Restoration Fees sets out in column 2 the fee payable by a worker for an application for restoration to the part of the Register in column 1.

Table of Restoration Fees

(1) Part of Register	(2) Restoration fee
Social workers	£30
Students	£10
SCSWIS authorised officers	£30
Residential child care workers	£30
Managers of adult day care service	£30
Managers of care home service for adults	£30
Practitioners in care home service for adults	£20
Supervisors in care home service for adults	£20
Support workers in care home service for adults	£15
Managers of day care of children service	£30
Practitioners in day care of children service	£20
Support workers in day care of children service	£15
Managers of residential school care accommodation service	£30
Supervisors in residential school care accommodation service	£30
Workers in residential school care accommodation service	£30
Managers of care at home service	£30
Supervisors in care at home service	£20
Managers of housing support service	£30
Supervisors in housing support service	£20

The Scottish Ministers having consented, the SSSC hereby makes these Rules

Convener James McGoldrick

On behalf of the Scottish Social Services Council

Dated 14 October 2016



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