

Scottish Social Services Council (Fitness to Practise) (Amendment) Rules 2017

The Scottish Social Services Council, in exercise of the powers conferred by 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 and groups of 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) (Amendment) Rules 2017:

General

1. Citation, commencement and interpretation

1. These Rules are the Scottish Social Services Council (Fitness to Practise) (Amendment) Rules 2017.
2. The Rules come into force on 1 December 2017 ('the commencement date').
3. In these Rules, 'the Fitness to Practise Rules' means the Scottish Social Services Council (Fitness to Practise) Rules 2016.
4. Expressions used in these Rules and the Fitness to Practise Rules have the same meanings as in those Rules.

2. Transitional provisions

The amendments made by these Rules have no effect in relation to any case which has been referred to a Fitness Practise Panel before the commencement date.

Fitness to Practise Panels: chair to be legally qualified

3. Fitness to Practise Panels: chair to be legally qualified

1. Schedule 2 (Fitness to Practise Panels) of the Fitness to Practise Rules is amended as follows.
2. In paragraph 9, before sub-paragraph a insert:

'za. a chair who is a solicitor or advocate qualified to practise in Scotland;'
3. In paragraph 10, for 'number of lay members' substitute 'total number of other members'.

4. In paragraph 11, for ', 10, 21 and 22' substitute 'and 21'.

5. For paragraph 13 substitute:

'13.The clerk is to appoint a person who is eligible to chair the Panel to chair the case management meeting.'

6. In paragraph 16, leave out ', a legal adviser'.

7. In paragraph 17, leave out 'or a legal adviser'.

8. In paragraph 19, for '2' substitute '3, of which one must be the chair'.

9. In paragraph 21, for 'chair, if the chair is a lay member,' substitute 'lay member with the earliest date of appointment under paragraph 1'.

10. Leave out paragraph 22.

11. After paragraph 25 insert:

'Role of the chair

25A.The functions of the chair of a Panel are:

- a. to chair the Panel;
- b. to advise the Panel on questions of law;
- c. to ensure that the proceedings before the Panel are conducted fairly.'

12. Leave out paragraphs 26 to 29 and the preceding heading.

13. Before paragraph 30 insert the heading:

'Legal advice'

14. In paragraph 30, for 'advice given by a legal adviser' substitute 'legal advice given by the chair'.

15. In paragraph 31, for 'the advice of a legal adviser' substitute 'any legal advice given by the chair'.

16. In paragraph 32, for 'advice given by a legal adviser' substitute 'legal advice given by the chair'.

17. In paragraph 33, for 'advice given by a legal adviser' substitute 'legal advice given by the chair'.

18. In paragraph 34, for 'advice from a legal adviser' substitute 'legal advice from the chair'.

19. Leave out paragraph 35.

20. In paragraph 36, in sub-paragraph a, for 'chairs of the Panel and' substitute 'the chair of'.

4. Amendments consequential on Rule 3

1. The Fitness to Practise Rules are amended as follows.
2. In Rule 12 (evidence), in paragraph 3, leave out 'and the legal adviser'.
3. In Rule 13 (case management meeting):
 - a. in paragraph 1, for the words from 'member' to the end substitute 'chair appointed under paragraph 13 of Schedule 2.';
 - b. leave out paragraph 4;
 - c. in paragraph 5, for 'member' substitute 'chair of the Panel, if';
 - d. in paragraph 12, leave out ', after taking advice from the legal adviser,';
 - e. in paragraph 14, leave out ', after taking advice from the legal adviser,'.
4. In Rule 14 (case management meeting: procedure), in paragraph 4, leave out ', after taking advice from the legal adviser,'.
5. In Rule 15 (hearing):
 - a. in paragraph 6.a, leave out ', a legal adviser';
 - b. leave out paragraph 6.b.
6. In Rule 17 (initial proceedings), in paragraph 3, leave out 'and take advice from the legal adviser'.
7. In Rule 22 (notice of decision), in paragraph 3.a, for 'advice given by the legal adviser' substitute 'legal advice given by the chair'.
8. In Rule 25 (review of suspension order and conditions), in paragraph 14.a, for 'advice given by the legal adviser' substitute 'legal advice given by the chair'.
9. In Rule 27 (postponement of hearing), in paragraph 4, leave out ', after taking advice from the legal adviser,'.
10. In Rule 30 (procedure at hearing), leave out ', after taking advice from the legal adviser,'.
11. In Rule 32 (evidence and standard of proof):
 - a. in paragraph 1, leave out 'After taking advice from the legal adviser,';
 - b. in paragraph 7.b, leave out ', after taking advice from the legal adviser,'.

12. In Rule 33 (witnesses):
 - a. in paragraph 5, leave out 'or by the legal adviser';
 - b. in paragraph 6, leave out 'or legal adviser's'.
13. In Rule 34 (vulnerable witnesses), in paragraph 2, leave out 'taking advice from the legal adviser and'.
14. In Rule 41 (restoration hearing: notice of decision), in paragraph 2.a, for 'advice given by the legal adviser' substitute 'legal advice given by the chair'.
15. In Rule 43 (temporary order referral: initial notice), in paragraph 5, leave out 'and taking advice from the legal adviser'.
16. In Rule 45 (temporary order referral: procedure and hearing), leave out paragraph 3.c.
17. In Rule 46 (temporary order referral: notice of decision), in paragraph 2.a, for 'advice given by the legal adviser' substitute 'legal advice given by the chair'.

Further amendments of Fitness to Practise Rules

5. Miscellaneous amendments

1. The Fitness to Practise Rules are further amended as follows.
2. In Rule 9 (impairment of fitness to practise allegations: orders with consent and referral to Fitness to Practise Panel), after paragraph 10 insert:
 - '10A. The SSSC may publish a decision to impose a sanction under paragraph 1.b in any way it considers appropriate.
 - 10B. Where the SSSC has referred a case to a Fitness to Practise Panel under paragraph 1.c, it may publish the allegation in any way it considers appropriate.'
3. In Rule 12 (evidence), in paragraph 2, for '7' substitute '8'.
4. In Rule 14 (case management meeting: procedure):
 - a. in paragraph 3:
 - i. in sub-paragraph i, after 'amended' insert '(including by adding further allegations)';
 - ii. after sub-paragraph i insert:
 - 'ia. whether the case should be combined with one or more other cases;';

- b. in paragraph 4, after 'directions' insert '(on the matters listed in paragraph 3 and any other matter)';
 - c. in paragraph 6, leave out 'Rule 26,'.
- 5. In Rule 15 (hearing):
 - a. in paragraph 2, after '9' insert 'and any decision under Rule 14.4';
 - b. after paragraph 2 insert:
 - '2A. A decision under Rule 14.4 that the hearing in an impairment case, or any part of it, is to be held in private may be reviewed by the Panel on the application of either party.';
 - c. in paragraph 7, for 'the worker requests that it' substitute 'a decision under Rule 14.4 provides that the hearing, or any part of it, is to be held in public or the worker requests that the hearing';
 - d. after paragraph 7 insert:
 - '7A. A decision under Rule 14.4 that the hearing in an application case, or any part of it, is to be held in public may be reviewed by the Panel on the application of either party.';
 - e. in paragraph 9, for 'The chair must announce the Panel's decisions' substitute 'The Panel's decisions must be announced'.
- 6. In Rule 17 (initial proceedings), in paragraph 2, after 'may' insert 'add to or otherwise'.
- 7. In Rule 18 (findings of fact), in paragraph 9, for 'The chair must announce the Panel's findings of fact' substitute 'The Panel's findings of fact must be announced'.
- 8. In Rule 19 (finding on impairment of fitness to practise):
 - a. in paragraph 2, for the words from ', the Panel' to the end substitute 'and the Panel is satisfied that:
 - a. the worker's fitness to practise is impaired; and
 - b. the impairment is on the ground stated by the worker under paragraph 1.b,
 the Panel must announce its finding that the worker's fitness to practise is impaired and the ground of impairment.
 - 2A. Where the worker admits impairment of fitness to practise but the Panel is not satisfied about either or both of the matters in paragraph 2.a and b, the Panel may require the presenter to present the case against the worker.';
 - b. leave out paragraph 3;
 - c. in paragraph 4, at the beginning insert 'Where the worker does not admit impairment of fitness to practise or paragraph 2A applies,';
 - d. in paragraph 9, after 'impaired' insert 'and, if so, on what ground';

- e. in paragraph 10, for 'The chair must announce the Panel's decision' substitute 'The Panel's decision must be announced';
 - f. after paragraph 10 insert:
 - '10A. If the Panel decides that the worker's fitness to practise is impaired, the decision must state which of the grounds of Rule 2.2 applies to the impairment.'
9. In Rule 20 (mitigation, sanctions and decisions on registration):
- a. in paragraph 3, after sub-paragraph b insert:
 - 'c. to grant the application unconditionally.';
 - b. leave out paragraph 4;
 - c. in paragraph 5, leave out ', and then the worker,';
 - d. after paragraph 5 insert:
 - '5A. The worker may make representations about the sanction to be imposed or the decision on registration and may lead evidence and call witnesses.';
 - e. leave out paragraph 6.
10. In Rule 21 (conditions):
- a. in paragraph 7.a, for 'the chair must announce the Panel's decision on sanctions' substitute 'the Panel's decision on sanctions must be announced';
 - b. in paragraph 8, for 'the chair must announce the Panel's decision on conditions' substitute 'the Panel's decision on conditions must be announced'.
11. In Rule 25 (review of suspension order and conditions):
- a. in paragraph 1, for '9' substitute '9.1';
 - b. in paragraph 2, for '9' substitute '9.1';
 - c. in paragraph 12, for 'The chair must announce the Panel's decision' substitute 'The Panel's decision must be announced'.
12. Leave out Rule 26 (amending and combining cases).
13. In Rule 37 (application for restoration to the Register), in paragraph 2, for 'restoration fee set out in Schedule 4' substitute 'application fee payable by a worker under Schedule 3 of the Registration Rules in connection with registration in the part of the Register to which the application for restoration relates'.
14. In Rule 38 (application for restoration: evidence):
- a. in paragraph 2, for '7' substitute '8';
 - b. in paragraph 5, after 'Panel' insert 'and the parties'.

15. In Rule 39 (application for restoration: Panel procedure), in paragraph 2:
 - a. in the entry for Rule 27, for the words after 'hearing)' substitute 'reading the reference in Rule 27.5 to persons referred to in Rule 11.1.b to d as a reference to persons referred to in Rule 11.1.c and d;';
 - b. in the entry for Rule 28, for the words after 'hearing)' substitute 'reading the reference in Rule 28.2 to persons referred to in Rule 11.1.b to d as a reference to persons referred to in Rule 11.1.c and d;'.
16. In Rule 40 (restoration hearing: procedure), in paragraph 11, for 'The chair must announce the Panel's decision' substitute 'The Panel's decision must be announced'.
17. In Rule 42 (removal order where worker does not co-operate with SSSC investigation), in paragraph 1:
 - a. in the entry for Rule 27, for the words after 'hearing)' substitute 'reading the reference in Rule 27.5 to persons referred to in Rule 11.1.b to d as a reference to persons referred to in Rule 11.1.c and d;';
 - b. in the entry for Rule 28, for the words after 'hearing)' substitute 'reading the reference in Rule 28.2 to persons referred to in Rule 11.1.b to d as a reference to persons referred to in Rule 11.1.c and d;'.
18. In Rule 44 (temporary order referral: evidence):
 - a. in paragraph 2, after 'Panel' insert 'and the parties';
 - b. leave out paragraph 3.
19. In Rule 45 (temporary order referral: procedure and hearing):
 - a. in paragraph 2:
 - i. after the entry for Rule 15.4 to 6 insert:
'Rule 17.1 to 3 (initial proceedings);';
 - ii. leave out the entry for Rule 26;
 - iii. in the entry for Rule 27, for the words after 'hearing)' substitute 'reading the reference in Rule 27.5 to persons referred to in Rule 11.1.b to d as a reference to persons referred to in Rule 11.1.c and d;';
 - iv. in the entry for Rule 28, for the words after 'hearing)' substitute 'reading the reference in Rule 28.2 to persons referred to in Rule 11.1.b to d as a reference to persons referred to in Rule 11.1.c and d;';
 - v. in the entry for Rule 32.1 to 11, after 'proof)' insert 'substituting for the words 'in advance of the hearing' in Rule 32.7 the words 'within the time limit in Rule 44.1';

- b. in paragraph 5, for 'The chair of the Panel must announce the Panel's decision' substitute 'The Panel's decision must be announced'.

20. In Rule 48 (review of temporary order):

- a. in paragraph 5.b, for '(where appropriate)' substitute ', where the temporary order was made by a Panel,';
- b. in paragraph 6:
 - i. after sub-paragraph a insert:

'aa. where the temporary order was made by the SSSC, set out the allegation in relation to which the temporary order was made and any additional allegations;';
 - ii. in sub-paragraph b, at the beginning insert 'where the temporary order was made by a Panel,'.

21. In Rule 49 (review of temporary order: procedure at hearing):

- a. for paragraph 1 substitute:

'1. Rule 45 applies (with any necessary modifications) to a review hearing as it does to the hearing of a temporary order referral.';
- b. in paragraph 4, for 'the order' substitute 'an order made by a Fitness to Practise Panel';
- c. in paragraph 5, leave out sub-paragraph b.iv;
- d. after paragraph 5 insert:

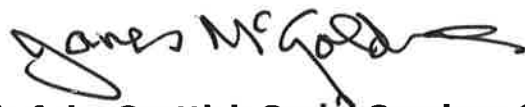
'5A. The Panel's power in paragraph 5.b.ii to vary the order includes power:

 - a. to impose a temporary conditions order, where the order being varied is a temporary suspension order;
 - b. to impose a temporary suspension order, where the order being varied is a temporary conditions order.';
- e. in paragraph 6, leave out 'or make a further temporary conditions order'.

22. In Schedule 2 (Fitness to Practise Panels), in paragraph 23, for 'the chair' substitute 'a Panel member'.

23. Leave out Schedule 4 (restoration fees).

Convener



On behalf of the Scottish Social Services Council

Dated

28/11/17