

DRAFT

Social Work England

Rules

The Social Work England (Appointment and Functions of Advisers and Constitution of Panels of Advisers) Rules 2018

Coming into force in accordance with rule 1

PART 1

Introductory Text

Citation and commencement

1. (1) Social Work England has made these rules in accordance with regulation 3 of The Social Workers Regulations 2018.
- (2) These rules are made in exercise of powers conferred by regulation 4(3) and regulation 5 of The Social Workers Regulations 2018.
- (3) These rules are to be cited as The Social Work England (Appointment and Functions of Advisers and Constitution of Panels of Advisers) Rules 2018.
- (4) These rules come into force on [date TBC].

Interpretation

2. In these rules:

'adjudicator' means an adviser appointed under regulation 15(12), 16(4), 19(3) or 25(7)(c)

'adviser' means a person appointed under regulation 4(1)

'case examiner' means a person appointed under regulation 25(7)(b)

'inspector' means a person appointed under regulation 21(2)

'investigator' means a person appointed under regulation 25(7)(a)

'Nolan Principles' for public life mean the standards set out by Lord Nolan in 1995

'panel' means the adjudicators appointed under regulation 15(3)(a), 16(4), 19(3) and Schedule 2 8(1)(b) and 10(2)(b) and panels of advisers established under Part 3 of these rules

'public sector equality duty' means the duty in section 149 of the Equality Act 2010

'registered social worker' means a person holding current registration with the regulator

'regulations' means The Social Workers Regulations 2018.

'regulation' means a regulation in The Social Workers Regulations 2018.

'regulator' means Social Work England

'regulator's competency framework' means the regulator's competency framework published on its website.

PART 2

Advisers

Appointment of advisers

3. (1) The regulator may appoint to and maintain a list of advisers eligible to fulfil the roles set out in regulation 4(1).

(2) The regulator must set and publish criteria about the composition of its list with particular regard to achieving an appropriate mix of persons specified in

(3)(a) and (3)(b) and having due regard to its obligations under the public sector equality duty.

To what extent do you agree with the minimum criteria for advisers in rule 3(3)?

- (3) A person shall only be appointed as an adviser if, as a minimum, they:
- (a) are a registered social worker and currently practicing without restriction or adverse fitness to practise history; and / or
 - (b) have a demonstrable ability to apply professional expertise and knowledge to the work of the regulator.
- (4) The regulator is not precluded by (3) from setting and publishing further criteria which a person must satisfy to be appointed as an adviser.
- (5) The regulator must decide the grounds on which it may suspend or remove a person from holding an appointment as an adviser.
- (6) Advisers appointed under this rule must notify the regulator as soon as reasonably practicable of any matter that might call into question their suitability or eligibility to continue to hold an appointment as an adviser.
- (7) A person appointed as an adviser holds and ceases to hold the position on the relevant list in accordance with the terms of their appointment.

Suspension or removal of appointment of an adviser

4. (1) Subject to rule 4(2) where the regulator is in receipt of information that may give grounds to suspend or remove the appointment of a person as an adviser, the regulator must –
- (a) notify the adviser that the regulator is considering whether to suspend or remove their appointment as an adviser,
 - (b) provide the adviser with copies of the information,
 - (c) invite the adviser to submit in writing within 28 days any comments on the question of whether their appointment as an adviser should be suspended or removed.

(2) (a) The regulator may suspend or remove an adviser from their appointment with immediate effect where it considers it necessary to maintain public confidence in the regulation of the profession.

(b) Where the regulator decides to suspend or remove the appointment of an adviser under rule 4(2)(a), it must as soon as practicable -

(i) notify the adviser that their appointment has been suspended or removed,

(ii) provide the adviser with copies of the information, and

(iii) inform the adviser of their right of appeal against the decision.

(3) After the period of 28 days specified in rule 4(1)(c) or on receipt of any comments submitted by the adviser, whichever is the sooner, the regulator may decide to -

(a) take no further action,

(b) suspend the appointment of the adviser, or

(c) terminate the appointment of the adviser.

(4) As soon as practicable after making a decision under rule 4(3) the regulator must notify the adviser of the decision and the reasons for it, and inform them of their right of appeal.

Appeals against suspension or removal and publication of decisions

5. (1) An adviser may appeal against a decision by the regulator under rules 4(2)(a) or 4(3)(b) or (c).

(2) Where an adviser appeals under rule 5(1), the regulator must appoint two or more individuals, who can be members of the regulator's staff or advisers or a combination of both, as the regulator thinks fit, to a panel to consider the appeal provided that the persons so appointed may not be individuals who were involved in the decision to remove or suspend that is the subject of the appeal.

(3) The regulator and the panel may require persons other than the person concerned to attend before them and give evidence or produce documents.

(4) (a) Subject to rule 5(4)(b) the panel must decide the appeal within 28 days of it being made.

(b) The panel may defer determination of the appeal for such period as they see fit where they consider it in the public interest to do so.

(5) (a) The panel may dispose of the appeal with or without a hearing but they must hold a hearing where the adviser concerned requests it.

(b) Where the panel holds a hearing the adviser may attend and make oral representations.

(6) (a) In determining the appeal, the panel may

- (i) dismiss the appeal,
- (ii) quash the decision,
- (iii) substitute for the decision being appealed any other decision that the regulator could have made, or

(b) The panel must provide the regulator with reasons for its determination under rule 6(a).

(7) The regulator must notify the adviser concerned of the determination and the reasons for it.

(8) The regulator may publish a determination made under rule 4(2), 4(3) or 5(6) and some or all of the reasons for it where it considers it necessary to maintain confidence in the regulation of the profession or is otherwise in the public interest.

Appraisal and continuing professional development

Please review our proposed requirements for appraisal and continuing professional development of advisers in rules 6 and 7. To what extent do you agree with our proposed approach?

6. The regulator must set and publish criteria and arrangements for appraisal of advisers in the performance of duties pursuant to membership of a list under rule 3.

7. (1) (a) The regulator must provide such training or written guidance to advisers as the regulator thinks necessary to support the effective discharge of their duties pursuant to their membership of a list.

(b) The regulator must publish any guidance provided under rule 7(1)(a).

(2) The regulator may require advisers to provide it with information as to their continuing professional development.

Resignation

8. The regulator must remove from the list maintained under rule 3(1) any person who, by giving notice in writing to the regulator, resigns from their position as adviser.

Facilities

9. The regulator may make such facilities, staff and other resources, including relevant information, equipment, access to systems and other support and points of contact and liaison within the regulator's staff, available to advisers that it considers necessary and proportionate to support the advisers in the effective discharge of their duties.

PART 3

Constitution of panels of advisers

Scope

10. This part applies to the constitution of panels of advisers for the purposes of:

(a) restoration hearings under regulation 15, registration appeal hearings under regulation 19, and fitness to practise proceedings under Schedule 2 of the regulations.

(b) the provision of advice on matters relating to regulatory functions, in particular the provision of information, specialist or expert advice, or recommendations to the regulator.

Panel membership

11. (1) Membership of a panel of advisers must be composed of those on the list established in accordance with rule 3(2).

To what extent do you agree with the minimum criteria for panel members rule 11(2)?

(2) An adviser shall only be appointed to a panel if they can, as a minimum, demonstrate:

- (a) a commitment to the seven "Nolan Principles" for public life; and
- (b) an ability to meet the requirements of the regulator's competency framework

(3) When deciding the composition of panels of advisers the regulator will have regard to:

- (a) the different purposes for which panels can be established; and
- (b) the appropriate number of panel members based on the purpose of the panel.

Chairs

12. (1) The regulator must identify on the list maintained under rule 3 advisers who are eligible to act as Chairs of panels of advisers.

To what extent do you agree with the minimum criteria for panel chairs in rule 12(2)?

(2) An adviser shall only be appointed as a Chair if, as a minimum, they:

- (a) meet the criteria in rule 11(2); and
- (b) can demonstrate an ability to:
 - (i) Facilitate constructive and productive panel discussions, enabling all panellists to contribute to decision making and managing disagreements between panellists.
 - (ii) Run hearings effectively and efficiently.
 - (iii) Take responsibility for the preparation and clarity of the panel's reasoning.

(3) The regulator must, having regard to the different purposes for which panels of advisers can be established, appoint a Chair in respect of proceedings, from the persons identified in accordance with (1).

(4) If the person selected under rule 12(1) is unavailable for the whole or part of the proceedings, or becomes ineligible to act as Chair during the course of any proceedings, then the regulator may appoint another panel member, present at the start of the proceedings, to act as Chair for the whole or part of the proceedings.

Validity of proceedings

13. The validity of any proceedings of a panel of advisers is not to be affected by any defect in the appointment of an adviser.

14. (1) This rule applies to panels established under rule 11 where a panellist is unavailable for the whole or part of any proceedings or becomes ineligible to act during the course of any proceedings.

(2) Where rule 14(1) applies the hearing may proceed notwithstanding that -

(a) Any panellists present at the start of the hearing are no longer present, or

(b) Any panellists present at the continuation of the hearing were not present at the start.

(3) Rule 14(2) does not apply where the regulator considers that it is in the interests of justice to convene a freshly constituted panel.

EXPLANATORY NOTE

(This note is not part of the rules)

These rules are made pursuant to regulations 4 and 5 of The Social Workers Regulations 2018.

Rules 3 to 9 set out how Social Work England ('SWE') must appoint to and maintain lists of advisers for the purposes of carrying out specific functions in respect of education, registration and fitness to practise and for the provision of advice to SWE as regulator. The Rules enable SWE to suspend or remove an adviser's appointment. The Rules also make provision for a process of appeal for advisers against suspension or removal.

The rules require SWE to provide training and written guidance for advisers, and to publish any such guidance. The Rules require SWE to set and publish criteria for the appraisal of advisers.

Rules 10 to 12 provide for the appointment of advisers to panels for the purposes of adjudicating in registration and fitness to practise hearings and for the provision of advice. SWE must keep a list of advisers eligible to act as panel Chairs and must appoint a Chair to each panel.

Rules 13 and 14 provide that the validity of the proceedings of panels are unaffected by certain specified defects.