

Status: Point in time view as at 01/04/2009. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)

SCHEDULES

SCHEDULE 5

FURTHER AMENDMENTS RELATING TO PART 1

PART 1

AMENDMENTS OF CARE STANDARDS ACT 2000

- 1 In this Part of this Schedule “the 2000 Act” means the Care Standards Act 2000 (c. 14).

Commencement Information

- I1** Sch. 5 para. 1 in force at 1.4.2009 by [S.I. 2009/462](#), art. 2(1), [Sch. 1 para. 35\(a\)](#)

- 2 (1) Section 1 of the 2000 Act (children's homes) is amended as follows.
- (2) In subsection (4), after “establishment” insert “ in Wales ”.
- (3) After that subsection insert—
- “(4A) An establishment in England is not a children's home if it is—
- (a) a hospital (within the meaning of the National Health Service Act 2006); or
- (b) a residential family centre,
- or if it is of a description excepted by regulations.”

Commencement Information

- I2** Sch. 5 para. 2 partly in force; Sch. 5 para. 2 in force for specified purposes at Royal Assent, see s. 170

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- 3 In section 2 of the 2000 Act (independent hospitals etc), in subsection (1), after “this Act” insert “ as it applies in relation to Wales ”.

- 4 (1) Section 3 of the 2000 Act (care homes) is amended as follows.
- (2) In subsection (3), after “establishment” insert “ in Wales ”.
- (3) After that subsection insert—
- “(4) And an establishment in England is not a care home if it is—
- (a) a hospital (within the meaning of the National Health Service Act 2006); or

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(b) a children's home,
 or if it is of a description excepted by regulations.”

Commencement Information

I3 Sch. 5 para. 4 partly in force; Sch. 5 para. 4 in force for specified purposes at Royal Assent, see s. 170

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- 5 (1) Section 4 of the 2000 Act (other basic definitions) is amended as follows.
- (2) In subsection (8), for paragraph (a) substitute—
- “(a) any reference to a description of establishment is a reference to—
- (i) a children's home,
 - (ii) a children's home providing accommodation for the purpose of restricting liberty,
 - (iii) an independent hospital in Wales,
 - (iv) an independent hospital in Wales in which treatment or nursing (or both) are provided for persons liable to be detained under the Mental Health Act 1983,
 - (v) an independent clinic in Wales,
 - (vi) a care home in Wales, or
 - (vii) a residential family centre;”.
- (3) For subsection (9) substitute—
- “(9) Below in this Act—
- (a) any reference to a description of agency is a reference to—
 - (i) an independent medical agency in Wales or, where the activities of an independent medical agency are carried on from two or more branches, a branch in Wales of an independent medical agency,
 - (ii) a domiciliary care agency in Wales or, where the activities of a domiciliary care agency are carried on from two or more branches, a branch in Wales of a domiciliary care agency,
 - (iii) a nurses agency in Wales or, where the activities of a nurses agency are carried on from two or more branches, a branch in Wales of a nurses agency,
 - (iv) a fostering agency or, where the activities of a fostering agency are carried on from two or more branches, a branch of a fostering agency,
 - (v) a voluntary adoption agency, or
 - (vi) an adoption support agency or, where the activities of an adoption support agency are carried on from two or more branches, a branch of an adoption support agency;
 - (b) a reference to any agency is a reference to an agency or branch of any of those descriptions.”

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- 6 (1) Section 5 of the 2000 Act (registration authorities) is amended as follows.
- (2) In subsection (1)—
- (a) for paragraph (a) substitute—
- “(a) the registration authority in the case of establishments and agencies mentioned in subsection (1A) is Her Majesty's Chief Inspector of Education, Children's Services and Skills (referred to in this Act as “the CIECSS”);”, and
- (b) in paragraph (b) for “in relation to Wales” substitute “ in any other case ”.
- (3) After subsection (1) insert—
- “(1A) The establishments and agencies are—
- (a) children's homes in England,
- (b) residential family centres in England,
- (c) fostering agencies in England or, where the activities of a fostering agency are carried on from two or more branches, the branches in England,
- (d) voluntary adoption agencies whose principal office is in England, and
- (e) adoption support agencies in England or, where the activities of an adoption support agency are carried on from two or more branches, the branches in England.”
- 7 Omit section 5A (general duties of Commission for Healthcare Audit and Inspection) and section 5B (general duties of Commission for Social Care Inspection) of the 2000 Act.

Commencement Information

I4 Sch. 5 para. 7 in force at 1.4.2009 by [S.I. 2009/462](#), art. 2(1), [Sch. 1 para. 35\(b\)](#)

- 8 (1) Section 8 of the 2000 Act (general functions of the Welsh Ministers) is amended as follows.
- (2) For subsection (3A) substitute—
- “(3A) But the functions which may be so specified do not include functions of making, confirming or approving subordinate legislation (as defined by section 158(1) of the Government of Wales Act 2006).”
- (3) In subsection (6)(b)(i), for “the CSCI” substitute “ the Care Quality Commission ”.
- (4) In subsection (7), omit the words from “, other than” to the end.

Commencement Information

I5 Sch. 5 para. 8 in force at 1.4.2009 by [S.I. 2009/462](#), art. 2(1), [Sch. 1 para. 35\(c\)](#)

- 9 In section 10 of the 2000 Act (inquiries), omit subsection (6).

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I6 Sch. 5 para. 9 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 35(d)

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- 10 In section 11 of the 2000 Act (requirement to register)—
- (a) omit subsection (2),
 - (b) in subsection (3), for “subsections (1) and (2)” substitute “ subsection (1)”, and
 - (c) in subsection (4), omit “the CHAI, the CSCI or”.

VALID FROM 02/11/2009

- 11 In section 12 of the 2000 Act (applications for registration), in subsection (2), for the words from “the amount determined” to the end substitute “ the prescribed amount ”.

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- 12 In section 14 of the 2000 Act (cancellation of registration), in subsection (2), after paragraph (e) insert—
- “(f) an offence under Part 1 of the Health and Social Care Act 2008 or regulations made under that Part.”

- 13 After section 14 of the 2000 Act insert—

“14A Suspension of registration

- (1) The Welsh Ministers may at any time suspend for a specified period the registration of a person in respect of an establishment or agency for which the Welsh Ministers are the registration authority.
- (2) Except where the Welsh Ministers give notice under section 20B, the power conferred by subsection (1) is exercisable only on the ground that the establishment or agency is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements.
- (3) The suspension of a person's registration does not affect the continuation of the registration (but see sections 24A and 26 as to offences).
- (4) A period of suspension may be extended under subsection (1) on one or more occasions.
- (5) Reference in this Part to the suspension of a person's registration is to suspension under this section, and related expressions are to be read accordingly.
- (6) In this section “relevant requirements” has the same meaning as in section 14.”

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Commencement Information

I7 Sch. 5 para. 13 in force at 1.4.2009 for specified purposes by [S.I. 2009/462](#), art. 2(1), [Sch. 1 para. 35\(e\)](#)

- 14 In section 15 of the 2000 Act (applications by registered persons)—
- (a) in subsection (1), at the end of paragraph (b) insert “; or
 - (c) for the cancellation of, or the variation of the period of, any suspension of the registration.”,
 - (b) in subsection (3)—
 - (i) after “(a)” insert “ or (c) ”, and
 - (ii) for the words from “a fee of—” to the end substitute “ a fee of the prescribed amount ”,
 - (c) after subsection (4) insert—

“(4A) If the Welsh Ministers decide to grant an application under subsection (1)(c), they must serve notice in writing of their decision on the applicant (stating, where applicable, the period as varied).”

and
 - (d) for subsection (5) substitute—

“(5) If different amounts are prescribed under subsection (3), the regulations may provide for the appropriate Minister to determine which amount is payable in a particular case.”

Commencement Information

I8 Sch. 5 para. 14(a)(b)(i)(c) in force at 1.4.2009 by [S.I. 2009/462](#), art. 2(1), [Sch. 1 para. 35\(f\)](#)

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- 15 In section 16 of the 2000 Act (regulations about registration), in subsection (3), for the words from “an annual fee—” to the end substitute “ an annual fee of the prescribed amount ”.

- 16 In section 17 of the 2000 Act (notice of proposals)—
- (a) in subsection (4), after “section 20” insert “ or 20A or gives notice under section 20B ”,
 - (b) after paragraph (a) of that subsection insert—

“(aa) to suspend the registration or extend a period of suspension;”

and
 - (c) in subsection (5), after “(a)” insert “ or (c) ”.

Commencement Information

I9 Sch. 5 para. 16(b)(c) in force at 1.4.2009 by [S.I. 2009/462](#), art. 2(1), [Sch. 1 para. 35\(g\)](#)

- 17 In section 19 of the 2000 Act (notice of decisions), in subsection (4)—
- (a) omit the word “and” at the end of paragraph (b), and
 - (b) after that paragraph insert—

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“(ba) in the case of a decision to adopt a proposal under section 17(4)(aa), state the period (or extended period) of suspension; and”.

Commencement Information

I10 Sch. 5 para. 17 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 35(h)

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- 18 (1) Section 20 of the 2000 Act (urgent procedure for cancellation etc) is amended as follows.
- (2) In subsection (1)—
- (a) after “If” insert “ in respect of an establishment or agency for which the CIECSS is the registration authority ”,
 - (b) in paragraph (a), for “the registration authority” substitute “ the CIECSS ”, and
 - (c) in sub-paragraph (i) of that paragraph, for “an” substitute “ the ”.
- (3) In subsection (3), for “the registration authority” substitute “ the CIECSS ”.
- (4) In subsection (5), for “the registration authority” substitute “ the CIECSS ”.
- (5) For subsection (6) substitute—
- “(6) For the purposes of this section the appropriate authorities are—
- (a) the local authority in whose area the establishment or agency is situated; and
 - (b) any other statutory authority whom the CIECSS thinks it appropriate to notify.”
- (6) Accordingly, for the heading of section 20 substitute “ Urgent procedure for cancellation, variation etc: England ”

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- 19 After section 20 of the 2000 Act insert—
- “20A Urgent procedure for cancellation: Wales**
- (1) If in respect of an establishment or agency for which the Welsh Ministers are the registration authority—
- (a) the Welsh Ministers apply to a justice of the peace for an order cancelling the registration of a person in respect of the establishment or agency, and
 - (b) it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being,
- the justice may make the order, and the cancellation has effect from the time when the order is made.

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- (2) An application under subsection (1) may, if the justice thinks fit, be made without notice.
- (3) As soon as practicable after the making of an application under this section, the Welsh Ministers must notify the appropriate authorities of the making of the application.
- (4) An order under subsection (1) is to be in writing.
- (5) Where such an order is made, the Welsh Ministers must, as soon as practicable after the making of the order, serve on the person registered in respect of the establishment or agency—
 - (a) a copy of the order, and
 - (b) notice of the right of appeal conferred by section 21.
- (6) For the purposes of this section the appropriate authorities are—
 - (a) the local authority in whose area the establishment or agency is situated,
 - (b) the Local Health Board in whose area the establishment or agency is situated, and
 - (c) any statutory authority not falling within paragraph (a) or (b) whom the Welsh Ministers think it appropriate to notify.
- (7) In this section “statutory authority” has the same meaning as in section 20.

20B Urgent procedure for suspension or variation etc: Wales

- (1) Subsection (2) applies where—
 - (a) a person is registered under this Part in respect of an establishment or agency for which the Welsh Ministers are the registration authority, and
 - (b) the Welsh Ministers have reasonable cause to believe that unless they act under this section any person will or may be exposed to the risk of harm.
- (2) Where this subsection applies, the Welsh Ministers may, by giving notice in writing under this section to the person registered in respect of the establishment or agency, provide for any decision of the Welsh Ministers that is mentioned in subsection (3) to take effect from the time when the notice is given.
- (3) Those decisions are—
 - (a) a decision under section 13(5) to vary or remove a condition for the time being in force in relation to the registration or to impose an additional condition;
 - (b) a decision under section 14A to suspend the registration or extend the period of suspension.
- (4) The notice must—
 - (a) state that it is given under this section,
 - (b) state the Welsh Ministers' reasons for believing that the circumstances fall within subsection (1)(b),

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(c) specify the condition as varied, removed or imposed or the period (or extended period) of suspension, and

(d) explain the right of appeal conferred by section 21.”

20 (1) Section 21 of the 2000 Act (appeals to the Tribunal) is amended as follows.

(2) In subsection (1)(b), after “20” insert “ or 20A ”.

(3) In subsection (3), after “authority” insert “ , other than a decision to which a notice under section 20B relates, ”.

(4) After subsection (4) insert—

“(4ZA) On an appeal against a decision to which a notice under section 20B relates, the Tribunal may confirm the decision or direct that it shall cease to have effect.”

(5) In subsection (5)—

(a) omit the word “or” at the end of paragraph (b), and

(b) after paragraph (c) insert “; or

(d) to vary the period of any suspension.”

(6) After subsection (5) insert—

“(6) Subsection (1) does not apply to a decision of the Welsh Ministers under section 30ZA (penalty notices).”

Commencement Information

III Sch. 5 para. 20(1) in force at 1.4.2009 for specified purposes by [S.I. 2009/462](#), [art. 2\(1\)](#), [Sch. 1 para. 35\(i\)](#)

II2 Sch. 5 para. 20(5)(6) in force at 1.4.2009 by [S.I. 2009/462](#), [art. 2\(1\)](#), [Sch. 1 para. 35\(i\)](#)

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21 In section 22 of the 2000 Act (regulation of establishments and agencies), in subsection (7)(i), for the words from “a fee of—” to the end substitute “ a fee of the prescribed amount; ”.

22 After section 24 of the 2000 Act insert—

“24A Offences relating to suspension

(1) If a person who is registered under this Part in respect of an establishment or agency carries on or (as the case may be) manages the establishment or agency while the person's registration is suspended, the person is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

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I13 Sch. 5 para. 22 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 35(j)

23 In section 26 of the 2000 Act (false descriptions of establishments and agencies), after subsection (1) insert—

“(1A) If a person's registration under this Part has been suspended, the registration is to be treated for the purposes of subsection (1) as if it had not been effected.”

Commencement Information

I14 Sch. 5 para. 23 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 35(j)

24 In section 29 of the 2000 Act (proceedings for offences)—

(a) for subsection (1) substitute—

“(1) Proceedings in respect of an offence under this Part or regulations made under it shall not, without the written consent of the Attorney General, be taken by any person other than the CIECSS or the Welsh Ministers.”,

(b) in subsection (2), for “a period of six months” substitute “ the permitted period ”, and

(c) after subsection (2) insert—

“(3) “The permitted period” means—

(a) in the case of proceedings brought by the Welsh Ministers, a period of 12 months;

(b) in any other case, a period of 6 months.”

Commencement Information

I15 Sch. 5 para. 24(b)(c) in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 35(k)

25 After section 30 of the 2000 Act insert—

“Penalty notices

30ZA Penalty notices

(1) Where the Welsh Ministers are satisfied that a person has committed a fixed penalty offence, they may give the person a penalty notice in respect of the offence.

(2) A fixed penalty offence is any relevant offence which—

(a) relates to an establishment or agency for which the Welsh Ministers are the registration authority, and

(b) is prescribed for the purposes of this section.

(3) A relevant offence is—

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- (a) an offence under this Part or under regulations made under this Part, or
 - (b) an offence under regulations made under section 9 of the Adoption and Children Act 2002.
- (4) A penalty notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence to which the notice relates by payment of a penalty in accordance with the notice.
- (5) Where a person is given a penalty notice, proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed.
- (6) Where a person is given a penalty notice, the person cannot be convicted of the offence to which the notice relates if the person pays the penalty in accordance with the notice.
- (7) Penalties under this section are payable to the Welsh Ministers.
- (8) In this section “prescribed” means prescribed by regulations made by the Welsh Ministers.

30ZB Penalty notices: supplementary provision

- (1) The Welsh Ministers may by regulations make—
- (a) provision as to the form and content of penalty notices,
 - (b) provision as to the monetary amount of the penalty and the time by which it is to be paid,
 - (c) provision determining the methods by which penalties may be paid,
 - (d) provision as to the records to be kept in relation to penalty notices,
 - (e) provision for or in connection with the withdrawal, in prescribed circumstances, of a penalty notice, including—
 - (i) repayment of any amount paid by way of penalty under a penalty notice which is withdrawn, and
 - (ii) prohibition of the institution or continuation of proceedings for the offence to which the withdrawn notice relates,
 - (f) provision for a certificate—
 - (i) purporting to be signed by or on behalf of a prescribed person, and
 - (ii) stating that payment of any amount paid by way of penalty was or, as the case may be, was not received on or before a date specified in the certificate,
 to be received in evidence of the matters so stated,
 - (g) provision as to action to be taken if a penalty is not paid in accordance with a penalty notice, and
 - (h) such other provision in relation to penalties or penalty notices as the Welsh Ministers think necessary or expedient.
- (2) Regulations under subsection (1)(b)—
- (a) may make provision for penalties of different amounts to be payable in different cases, including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid, but

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- (b) must secure that the amount of any penalty payable in respect of any offence does not exceed one half of the maximum amount of the fine to which a person committing the offence would be liable on summary conviction.

(3) In this section—

“penalty” means a penalty under a penalty notice;

“penalty notice” has the meaning given by section 30ZA(4).”

Commencement Information

I16 Sch. 5 para. 25 partly in force; Sch. 5 para. 25 in force for specified purposes at Royal Assent, see s. 170

I17 Sch. 5 para. 25 in force at 1.4.2009 in so far as not already in force by [S.I. 2009/462, art. 2\(1\)](#), [Sch. 1 para. 35\(l\)](#)

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- 26 (1) In section 30A of the 2000 Act (notification of matters relating to persons carrying on or managing certain establishments or agencies), inserted by the Children and Young Persons Act 2008, subsection (2) is amended as follows.
- (2) After paragraph (a) insert—
- “(aa) has decided to adopt a proposal under section 17(4)(aa) to suspend the registration of P in respect of the establishment or agency or to extend any such suspension,
- (ab) has given a notice under section 20B to suspend the registration of P in respect of the establishment or agency or to extend any such suspension.”.
- (3) Omit the word “or” at the end of paragraph (b).
- (4) At the end of paragraph (c) insert “or
- (d) has given P a penalty notice under section 30ZA in respect of an offence which it alleges P committed in relation to the establishment or agency and P has paid the penalty in accordance with the notice,”.

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- 27 In section 31 of the 2000 Act (inspections by persons authorised by registration authority), in subsection (7), for the words from “require” to “the CIECSS” substitute “ require the CIECSS ”.

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- 28 (1) Section 42 of the 2000 Act (power to extend the application of Part 2) is amended as follows.
- (2) In subsection (1), after “(2)” insert “ , (2A) ”.

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(3) For subsection (2) substitute—

“(2) This subsection applies to—

- (a) Welsh local authorities providing services in the exercise of their social services functions, and
- (b) persons who provide services which are similar to services which—
 - (i) may or must be so provided by Welsh local authorities, or
 - (ii) may or must be provided by Welsh NHS bodies.

(2A) This subsection applies to—

- (a) English local authorities providing services in the exercise of their social services functions so far as relating to persons aged under 18, and
- (b) persons who provide services which are similar to services which may or must be so provided by English local authorities.”

(4) In subsection (4), after “(2)” insert “ or (2A) ”.

(5) Omit subsection (5).

(6) After subsection (5) insert—

“(6) For the purposes of this section, functions mentioned in section 135(1)(e) of the Education and Inspections Act 2006 are taken to be social services functions relating to persons aged under 18.

(7) In this section—

“cross-border Special Health Authorities” means Special Health Authorities not performing functions only or mainly in respect of England or only or mainly in respect of Wales,

“English local authorities” means local authorities in England,

“Welsh local authorities” means local authorities in Wales, and

“Welsh NHS bodies” means—

- (a) Local Health Boards,
- (b) National Health Service trusts all or most of whose hospitals, establishments and facilities are situated in Wales,
- (c) Special Health Authorities performing functions only or mainly in respect of Wales, and
- (d) cross-border Special Health Authorities but only so far as their functions are performed in respect of Wales.”

29 (1) Section 55 of the 2000 Act (interpretation of Part 4) is amended as follows.

(2) In subsection (2)(c), for “an establishment, or an agency, of a description” substitute “ a home, centre or agency of a kind ”.

(3) In subsection (3)—

(a) in paragraph (e) omit “the CSCI,”, and

(b) after that paragraph insert—

“(ea) staff of the Care Quality Commission who inspect premises under Part 1 of the Health and Social Care Act 2008 used

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for or in connection with the provision of social care (within the meaning of that Part) or who are responsible for persons who do so.”.

Commencement Information

I18 Sch. 5 para. 29 in force at 1.4.2009 by [S.I. 2009/462](#), art. 2(1), [Sch. 1 para. 35\(m\)](#)

30 In section 113 of the 2000 Act (default powers of appropriate Minister) omit subsection (1A).

Commencement Information

I19 Sch. 5 para. 30 in force at 1.4.2009 by [S.I. 2009/462](#), art. 2(1), [Sch. 1 para. 35\(m\)](#)

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31 Omit section 113A of the 2000 Act (fees payable under Part 2).

32 After section 118 of the 2000 Act insert—

“118A Regulations: Wales

- (1) This section has effect where a power to make regulations under this Act is conferred on the Welsh Ministers other than by or by virtue of the Government of Wales Act 2006.
- (2) Subsections (1) and (5) to (7) of section 118 apply to the exercise of that power as they apply to the exercise of a power conferred on the Welsh Ministers by or by virtue of that Act.
- (3) A statutory instrument containing regulations made in the exercise of that power is subject to annulment in pursuance of a resolution of the Assembly.”

Commencement Information

I20 Sch. 5 para. 32 in force at 1.4.2009 by [S.I. 2009/462](#), art. 2(1), [Sch. 1 para. 35\(n\)](#)

33 In section 120 of the 2000 Act (Wales) omit subsection (1).

Commencement Information

I21 Sch. 5 para. 33 in force at 1.4.2009 by [S.I. 2009/462](#), art. 2(1), [Sch. 1 para. 35\(n\)](#)

34 In section 121 of the 2000 Act (general interpretation etc), in the Table in subsection (13), omit the entries for the expressions “CHAI” and “CSCI”.

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I22 Sch. 5 para. 34 in force at 1.4.2009 by [S.I. 2009/462](#), art. 2(1), [Sch. 1 para. 35\(n\)](#)

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