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WELSH STATUTORY INSTRUMENTS

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**2016 No. 412 (W. 130) (C. 21)**

**SOCIAL CARE, WALES**

The Social Services and Well-being (Wales)  
Act 2014 (Commencement No. 3, Savings  
and Transitional Provisions) Order 2016

Made - - - -

19 March 2016

The Welsh Ministers, in exercise of the powers conferred by section 199(2) of the Social Services and Well-being (Wales) Act 2014<sup>(1)</sup>, make the following Order:

**Title and Interpretation**

1.—(1) The title of this Order is the Social Services and Well-being (Wales) Act 2014 (Commencement No. 3, Savings and Transitional Provisions) Order 2016.

(2) In this Order “the Act” means the Social Services and Well-being (Wales) Act 2014.

**Provisions coming into force on 6 April 2016**

2. The appointed day for the coming into force of the provisions of the Act, to the extent they are not already in force, is 6 April 2016.

**Savings and transitional provisions**

3. The Schedules (which contain savings and transitional provisions) have effect.

4. Unless otherwise specified, anything done in the Schedules does not affect the operation of sections 16, 17 and 23 of the Interpretation Act 1978<sup>(2)</sup>.

19 March 2016

*Mark Drakeford*  
Minister for Health and Social Services, one of  
the Welsh Ministers

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(1) 2014 anaw 4.  
(2) 1978 c. 30.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE 1

Article 3

Savings and transitional provision other than in relation to looked after and accommodated children

### Interpretation

1. In this Schedule—

“the 1948 Act” (“*Deddf 1948*”) means the National Assistance Act 1948(3);

“the 2001 Act” (“*Deddf 2001*”) means the Health and Social Care Act 2001(4);

“relevant date” (“*dyddiad perthnasol*”) means, in relation to a person, the date on which the Act applies to that person by virtue of paragraph 2.

### Transitional provision in respect of persons in receipt of services

2.—(1) Notwithstanding the commencement of the provisions of the Act by article 2 of this Order, the Act does not apply in the case of a person to whom, or in relation to whom, immediately before the coming into force of the provisions of the Act—

(a) support or services are being provided,

(b) payments towards the cost of support or services are being made.

(2) For the purposes of this paragraph, the provision of support or services includes the provision of assistance under section 17(6) of the Children Act 1989.

(3) But the Act will apply in respect of that person’s case from the time the local authority has completed a review of that person’s case in accordance with sub-paragraph (3) or (4).

(4) A local authority providing support or services or making payments to an adult to whom sub-paragraph (1) applies must complete a review of the adult’s case before 1 April 2017.

(5) A local authority providing support or services or making payments to a child to whom sub-paragraph (1) applies must complete a review of the child’s case before 1 October 2016.

(6) If a local authority fails to comply with sub-paragraph (3), the Act applies in that adult’s case with effect from 1 April 2017.

(7) If a local authority fails to comply with sub-paragraph (4), the Act applies in that child’s case with effect from 1 October 2016.

(8) In respect of a person to whom sub-paragraph (5) or (6) applies, the person is to be treated as—

(a) having needs for care and support or support which meet the eligibility criteria under section 32(4) of the Act or which the local authority is otherwise under a duty to meet following a determination under section 32(1)(b);

(b) being entitled to have those needs met under the Act; and

(c) having complied with any requirements in or under the Act to enable the person to have those needs met,

until the local authority has completed a review in that person’s case.

(9) A local authority has completed a review in a person’s case when—

(a) they conclude that the person does not have needs for care and support or for support (as the case may be) in accordance with the Act;

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(3) 1948 c. 29.

(4) 2001 c. 15.

- (b) having concluded that the person has such needs and that they are going to meet some or all of them, they begin to do so; or
- (c) having concluded that the person has such needs, they conclude that they are not going to meet any of those needs (whether because those needs do not meet the eligibility criteria or for some other reason).

#### **Transitional provision in relation to sight registers**

3. An adult who is registered as blind or partially sighted in a register maintained by or on behalf of a local authority in Wales under section 29 of the 1948 Act (welfare services) immediately before the coming into force of the provisions of the Act is to be treated on or after that date as being registered as, respectively, severely sight impaired or sight impaired in the register maintained by or on behalf of that local authority under section 18 of the Act (registers of sight-impaired, hearing-impaired and other disabled people).

#### **Transitional modifications in respect of deferred payments**

4. Where a deferred payment agreement under section 55 of the 2001 Act (power for local authorities to take charges on land instead of contributions) is in force in respect of a person to whom, by virtue of paragraph 2, the Act does not apply, the deferred payment agreement under section 55 of the 2001 Act is to continue to apply on the terms and conditions which pertained to it immediately before the coming into force of the Act, save that from the relevant date in relation to the person concerned, references in that agreement to—

- (a) accommodation provided under Part 3 of the 1948 Act must be read as including accommodation provided by a local authority under section 35 or 36 (duty or power to meet care and support needs of an adult) of the Act (including anything provided in connection with that accommodation), and
- (b) relevant contributions must be read as including the amount due from the person to the local authority under section 59 of the Act or, as the case may be, in accordance with regulations under section 57(2) of the Act.

#### **Transitional provision in relation to the appointment of directors of social services**

5.—(1) A director of social services who has been appointed by a local authority under section 6 of the Local Authority Social Services Act 1970 and who is in post immediately before the coming into force of the Act is to be treated as having been appointed under section 144(1) of the Act.

(2) Section 144(2) of the Act does not apply to an appointment to which subparagraph (1) applies.

#### **Transitional provision relating to where a person's ordinary residence is**

6. Any adult who, immediately before the relevant date in relation to that adult, is deemed to be ordinarily resident in a local authority's area by virtue of section 24(5) or (6) of the 1948 Act (authority liable for provision of accommodation) is, on that date, to be treated as ordinarily resident in that area for the purposes of the Act.

## SCHEDULE 2

## Article 3

## Savings and transitional provisions in relation to looked after and accommodated children

**Interpretation****1.—(1)** In this Schedule—

“the 1989 Act” (“*Deddf 1989*”) means the Children Act 1989<sup>(5)</sup>;

“the 2015 Regulations” (“*Rheoliadau 2015*”) means the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2015;

“local authority foster parent” means a local authority foster parent within the meaning given in section 105 of the 1989 Act;

“relevant day” (“*diwrnod perthnasol*”) means 6 April 2016.

(2) References to a child who is looked after by a local authority under Part 3 of and Schedule 2 to the 1989 Act have the same meaning as they have by virtue of section 22 of the 1989 Act.

(3) References to a child who is looked after by a local authority under Part 6 of the Act have the same meaning as they have in section 74 of the Act.

(4) References to a child who is in care have the same meaning as they have in the definition of “care order” in section 105 of the 1989 Act.

**Transitional provision in relation to children in the care of a local authority under section 31 of the 1989 Act**

**2.—(1)** This sub-paragraph applies where a child is in the care of a local authority by virtue of an order under section 31 of the 1989 Act.

(2) Where immediately before the relevant day a local authority had, in accordance with Part 3 of and Schedule 2 to the 1989 Act, made arrangements for the child to live—

- (a) with a person who is a parent of the child,
- (b) with a person who is not a parent of the child but who has parental responsibility for the child,
- (c) with a local authority foster parent,
- (d) in a children’s home,
- (e) in secure accommodation within the meaning of section 25 of the 1989 Act, or
- (f) in any other accommodation arranged by the local authority which does not fall within the description in paragraphs (a) to (e),

on and after that day Part 6 of the Act applies as if the arrangements were made in accordance with that Part.

**Transitional provision in relation to children provided with accommodation under section 20 of the 1989 Act**

**3.—(1)** This sub-paragraph applies where, immediately before the relevant day a child is looked after by a local authority and is being provided with accommodation by that authority under section 20 of the 1989 Act.

(2) A child to whom sub-paragraph (1) applies will, on and after the relevant day, be treated for the purposes of the Act as a child who is looked after by a local authority under Part 6 of the Act and

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(5) 1989 c. 41.

who is provided with accommodation by that authority under section 76 of the Act (but will cease to be so treated once he or she ceases to be provided with accommodation under section 76).

(3) Where, immediately before the relevant day, a local authority had made arrangements for a child to whom sub-paragraph (1) applies to live—

- (a) with a person who is a parent of the child,
- (b) with a person who is not a parent of the child but who has parental responsibility for the child,
- (c) with a local authority foster parent,
- (d) in a children’s home,
- (e) in secure accommodation within the meaning of section 25 of the 1989 Act, or
- (f) in any other accommodation arranged by the local authority which does not fall within the description in paragraphs (a) to (e),

on and after that day Part 6 of the Act applies as if those arrangements were made in accordance with that Part.

#### **Transitional provision in relation to looked after children**

4. When calculating, for the purposes of section 104(2) of the Act, the period of time for which a child has been looked after by a local authority or a local authority in England, any part of that period which fulfils the conditions specified in the definition of “category 1 young person” in section 104(2) of the Act which falls before the relevant day is to be included.

#### **Transitional provision in relation to children to whom section 24(1B) of the 1989 Act applies**

5.—(1) When calculating, for the purposes of section 104(2) of the Act, the period during which a child aged 16 or over has been looked after, accommodated or fostered, any period which falls before the relevant day is to be included.

(2) In this paragraph “looked after, accommodated or fostered” has the meaning specified in section 104(3) of the Act.

#### **Transitional provision in relation to short breaks**

6.—(1) On and after the relevant day when calculating the period of time in which a child has been placed by a local authority in accommodation which constitutes a short break any time, in the 12 months immediately preceding the relevant day, which the child has spent in an arrangement which constitutes a short-term placement is to be counted.

(2) In this paragraph—

“short break” (“*seibiant byr*”) means a short break within the meaning of regulation 62 of the Care Planning, Placement and Case Review (Wales) Regulations 2015<sup>(6)</sup> (application of these regulations with modifications to short breaks);

“short-term placement” (“*lleoliad tymor byr*”) means a short-term placement within the meaning of regulation 14 of the Placement of Children (Wales) Regulations 2007<sup>(7)</sup> (application of regulations to short-term placements).

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(6) S.I. 2015/1818 (W. 261).

(7) S.I. 2007/310 (W. 27).

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### **Transitional provision in relation to decisions to refuse contact with a child in care**

7. Any decision taken by a local authority in accordance with section 22(3)(a) of the 1989 Act to refuse contact with a child who is in the care of the local authority, that it would otherwise be required to allow in accordance with section 34(1) of the 1989 Act, will on and after the relevant day be treated as if the decision had been made in accordance with section 78(1)(a) of the Act.

### **Transitional provision in relation to the review of cases**

8.—(1) Where immediately before the relevant day a child is—

- (a) looked after by a local authority, or
- (b) placed by a local authority in a short-term placement, and
- (c) in either case, there has not been a first review of the child’s case, or the first review is overdue in accordance with regulations made under section 26 of the 1989 Act<sup>(8)</sup>,

that child’s case must be reviewed not later than 20 working days from the relevant day and any subsequent reviews must take place in accordance with regulations made under section 102 of the Act<sup>(9)</sup>.

(2) Where immediately before the relevant day a child is looked after by a local authority and there has been a review of their case before that day and no further review is due in accordance with regulations made under section 26 of the 1989 Act until after the relevant day, the next review of the case must be carried out—

- (a) where the review was a first review, within 3 months from the date of the that review; or
- (b) where the last review was a second or subsequent review, 6 months from the date of that review; and

in either case subsequent reviews must be carried out in accordance with regulations made under section 102 of the Act.

(3) Where immediately before the relevant day a child is placed in a short-term placement and there has been a review of the child’s case before that day and no further review is due in accordance with regulations made under section 26 of the 1989 Act until after the relevant day, the next review of the child case must be carried out—

- (a) where the review was a first review, within 6 months from the date of that review; or
- (b) where the last review was a second or subsequent review, 6 months from the date of that review; and

in either case subsequent reviews must be carried out in accordance with regulations made under section 102 of the Act.

### **Transitional provision in relation to independent reviewing officers for looked after children**

9. Where on the relevant day a person has been appointed as an independent reviewing officer in accordance with regulations made under section 26 of the 1989 Act<sup>(10)</sup> for a child who is looked after by a local authority in accordance with Part 3 of that Act, on and after that day the person is deemed to be appointed as the independent reviewing officer for that child in accordance with regulations made under section 99 of the Act<sup>(11)</sup>.

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<sup>(8)</sup> See the Review of Children’s Cases (Wales) Regulations 2007 (S.I. 2007/307 (W. 26)).

<sup>(9)</sup> See the Care Planning, Placement and Case Review (Wales) Regulations 2015 (S.I. 2015/1818 (W. 261)).

<sup>(10)</sup> See the Review of Children’s Cases (Wales) Regulations 2007.

<sup>(11)</sup> See the Care Planning, Placement and Case Review (Wales) Regulations 2015 (S.I. 2015/1818 (W. 261)).

### **Transitional provision in relation to independent visitors for looked after children**

10. Where on the relevant day a person has been appointed as an independent visitor in accordance with regulations made under paragraph 17 of Schedule 2 to the 1989 Act(12) for a child who is looked after by a local authority in accordance with Part 3 of that Act, on and after that day the person is deemed to be appointed as an independent visitor for that child in accordance with regulations made under section 98 of the Act(13).

### **Transitional provision in relation to entitlement for former looked after children**

11.—(1) This sub-paragraph applies to a person who is immediately before the relevant day entitled to receive advice, assistance and support from a local authority under Part 3 of and Schedule 2 to the 1989 Act by virtue of their being a person who was, but is no longer, a looked after child.

(2) On and after the relevant day a person to whom sub-paragraph (1) applies is entitled to receive advice and other support that is appropriate to their circumstances in accordance with the provision made in sections 103 to 118 of the Act.

### **Transitional provision in relation to when I'm ready living arrangements**

12.—(1) This sub-paragraph applies where immediately before the relevant day a former relevant child has a when I'm ready living arrangement which is made in accordance with Part 3 of and Schedule 2 to the 1989 Act.

(2) Where sub-paragraph (1) applies the when I'm ready living arrangement will on and after the relevant day be deemed to be a post-18 living arrangement made in relation to a category 3 young person in accordance with Part 6 of the Act.

(3) In this paragraph—

“category 3 young person” (“*person ifanc categori 3*”) means a category 3 young person within the meaning of section 104 of the Act;

“former relevant child” has the meaning set out in section 23C(1) of the 1989 Act;

“former foster parent” and “post-18 living arrangement” have the meanings given in section 108 of the Act;

“when I'm ready living arrangement” (“*trefniant byw pan fydda i'n barod*”) means a time limited living arrangement facilitated by a local authority in which a former relevant child remains living with his or her former foster parent after the former relevant child ceases to be looked after by the local authority.

### **Saving and transitional provision in relation to orders and proceedings under Part 3 of and Schedule 2 to the 1989 Act**

13.—(1) The commencement of Part 6 of and Schedule 1 to the Act and the provision made by regulations 57 and 107 of the 2015 Regulations do not affect—

- (a) any act done, any notice sent, any application made, or any decision taken;
- (b) any requirements or limitations of time;
- (c) any legal proceedings commenced; or
- (d) any order made by a court,

under or in relation to any provision in Part 3 of and Schedule 2 to the 1989 Act.

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(12) See the Definition of Independent Visitors (Children) Regulations 1991 (S.I. 1991/892).

(13) See the Care Planning, Placement and Case Review (Wales) Regulations 2015.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2) For the purposes of this paragraph any reference to an order of the court is to be interpreted as including an order made after the relevant day in proceedings which were pending before that day.

(3) Where a person has appealed to a court under or in relation to proceedings in Part 3 of or Schedule 2 to the 1989 Act which have not been finally disposed of immediately before the relevant day, notwithstanding the commencement of Part 6 of and Schedule 1 to the Act and the provision made by regulations 57 and 107 of the 2015 Regulations the appeal is to be determined in accordance with Part 3 of and Schedule 2 to the 1989 Act and any remedies or penalties may be enforced or imposed in relation to acts done under, or in relation to, or in contravention of those provisions.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This is the third Commencement Order made by the Welsh Ministers under the Social Services and Well-being (Wales) Act 2014 (“the Act”).

Article 2 brings the provisions of the Act into force, to the extent that they are not already in force, on 6 April 2016.

Article 3 introduces the Schedules, which make savings and transitional provisions.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

The following provisions of this Act have been brought into force by Commencement Orders made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 132	21 October 2015	<a href="#">2015/1744 (W. 240) (C. 107)</a>
Section 133	21 October 2015	<a href="#">2015/1744 (W. 240) (C. 107)</a>
Section 170	1 November 2014	<a href="#">2014/2718 (W. 274) (C. 118)</a>
Section 179	1 November 2014	<a href="#">2014/2718 (W. 274) (C. 118)</a>
Section 180	1 November 2014	<a href="#">2014/2718 (W. 274) (C. 118)</a>
Schedule 3	1 November 2014	<a href="#">2014/2718 (W. 274) (C. 118)</a>

See also section 199(1) of the Act for provisions that came into force on 2 May 2014 (the day after the date of Royal Assent).