

## SCHEDULE

Regulation 325

### Transitional and saving provisions

#### Interpretation

**1.** In this Schedule—

- “the Act” (“*y Ddeddf*”) means the Social Services and Well-being (Wales) Act 2014;
- “the 1948 Act” (“*Deddf 1948*”) means the National Assistance Act 1948(1);
- “the 1983 Act” (“*Deddf 1983*”) means the Health and Social Services and Social Security Adjudications Act 1983(2);
- “the 2001 Act” (“*Deddf 2001*”) means the Health and Social Care Act 2001(3);
- “the 2004 Act” (“*Deddf 2004*”) means the Children Act 2004(4);
- “the 2013 Act” (“*Deddf 2013*”) means the Schools Standards and Organisation (Wales) Act 2013(5).

#### Section 26 of the Children Act 1989

**2.** In accordance with the provision made in article 3 of the Children and Young Persons Act 2008 (Commencement No. 8 and Saving Provision) (Wales) Order 2016(6) and notwithstanding the provision made in regulation 90, section 26 of the Children Act 1989 continues to have effect without amendment for the purposes of paragraph 10(2)(l) of that Act (regulations as to the placing of children in private children’s homes).

#### General transitional and saving provisions

**3.—(1)** Despite the amendments made by these Regulations, on or after the date on which these Regulations come into force—

- (a) support or services may continue to be provided, and
- (b) payments towards the cost of support or services may continue to be made,

in the case of a person to whom, or in relation to whom, support or services are being provided, or payments towards the cost of support or services are being made, immediately before these Regulations come into force.

(2) Sub-paragraph (1) applies until—

- (a) Part 4 of the Act applies in relation to the provision of support or services, or the making of payments towards the cost of support or services, in that person’s case by virtue of transitional provision made in an order under section 199(2) of the Act (commencement), or
- (b) if earlier, 31 March 2017.

(3) Despite the amendments made by these Regulations—

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(1) 1948 c. 29.

(2) 1983 c. 41.

(3) 2001 c. 15.

(4) 2004 c. 31.

(5) 2013 anaw 1.

(6) S.I.2016/452 (W. 143)(C. 22). Article 3 makes provision which provides that despite the amendments made to section 26 of the Children Act 1989 (c. 41) by the coming into force of the provision within section 10 of the Children and Young Persons Act 2008, section 26 of the Children Act 1989 continues to have effect without amendment for the purposes of making regulations under paragraph 10(2)(l) of Schedule 6 to that Act (regulations as to the placing of children in private children’s homes).

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- (a) any provision that operates in relation to, or by reference to, support or services provided, or payments towards the cost of support or services made, before or (in accordance with sub-paragraph (1)) on or after the date on which these Regulations come into force, and
- (b) anything done under that provision,

continue to have effect for the purpose of that support or those services or payments, subject to sub-paragraph (6).

(4) The references in sub-paragraph (3) to support or services provided, or payments made, before the date on which these Regulations come into force include support or services that are not provided but are or may be required or permitted to be provided, or payments that are not made but are or may be required or permitted to be made, before that date.

(5) The provision referred to in sub-paragraph (3) includes in particular provision about—

- (a) costs and other amounts payable and their recovery;
- (b) civil legal services (within the meaning of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012);
- (c) offences.

(6) Sub-paragraph (3) does not authorise a local authority to do any of the following on or after the date on which these Regulations come into force—

- (a) create a charge under section 22(1) of the 1983 Act;
- (b) make an order under section 23(1) of that Act;
- (c) enter into a deferred payment agreement under section 55(1) of the 2001 Act.

(7) Where under these Regulations an enactment ceases to have effect for a purpose for which a local authority holds land immediately before these Regulations come into force, the land is to be treated as appropriated for whatever purposes of the Act the authority may designate.

(8) Where under these Regulations an enactment ceases to have effect for a purpose for which a local authority has a right to use land immediately before these Regulations come into force—

- (a) the authority continues to have that right to use the land for whatever purposes of the Act the authority may designate, but
- (b) that does not affect the circumstances (other than the enactment ceasing to have effect) in which the right ceases.

(9) This paragraph is without prejudice to section 16 of the Interpretation Act 1978(7) (general savings).

#### **Transitional provision in relation to enforcement of debts**

4.—(1) Subject to sub-paragraphs (4) and (5), a sum or charge to which sub-paragraph (2) applies is recoverable under section 70 of the Act (recovery of charges, interest etc) as if it were an amount due to the local authority in question under Part 5 of the Act.

(2) This sub-paragraph applies to any sum or charge due to a local authority in Wales under any of the relevant provisions in respect of support or services (including a sum or charge which becomes due on or after the date on which these Regulations come into force).

(3) For the purposes of sub-paragraph (2), the relevant provisions are—

- (a) Part 3 of the 1948 Act (local authority services);
- (b) section 17 of the 1983 Act (charges for local authority services in England and Wales);

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(7) 1978 c. 30.

- (c) section 29 of the Children Act 1989<sup>(8)</sup>;
- (d) Part 3 of Schedule 2 to that Act;
- (e) the Social Care Charges (Wales) Measure 2010<sup>(9)</sup>.

(4) Sub-paragraph (1) does not apply to a sum or charge in respect of which proceedings for recovery have begun prior to these Regulations coming into force.

(5) A sum or charge is recoverable under sub-paragraph (1) within the period within which it would, but for this paragraph, have been recoverable under section 56 of the 1948 Act (legal proceedings) or, as the case may be, under any of the relevant provisions.

(6) Notwithstanding paragraph 3(3) of this Schedule, neither section 56(1) of the 1948 Act nor any of the relevant provisions apply in relation to a sum or charge which is recoverable under sub-paragraph (1).

#### **Transitional provision relating to ordinary residence disputes**

5. Any question as to an adult's ordinary residence arising under the 1948 Act and which is to be determined by the Welsh Ministers on or after these Regulations come into force is to be determined in accordance with section 195 of the Act (disputes about ordinary residence and portability of care and support).

#### **Transitional provision in relation to protecting property of persons admitted to hospitals etc.**

6.—(1) Notwithstanding paragraph 3(3) of this Schedule, any steps taken immediately before these Regulations come into force by a local authority in Wales to prevent or mitigate the loss of, or damage to, property in accordance with section 48 of the 1948 Act (duty of councils to provide temporary protection for property of persons admitted to hospitals etc.) are, on or after these Regulations come into force, to be treated as taken in accordance with section 58 of the Act (protecting property of persons being cared for away from home).

(2) Any reasonable expenses incurred but not recovered before these Regulations come into force by the local authority in Wales under section 48 of the 1948 Act may, on or after these Regulations come into force, be recovered under section 58(9) of the Act.

#### **Savings provision in relation to Welsh Ministers powers to intervene**

7.—(1) Despite the amendments made by these Regulations, section 7D of the Local Authority Social Services Act 1970 will continue to apply in any case where an order containing directions has been made under section 7D(1) and the period for complying with the directions has not expired before the coming into force of these Regulations.

(2) Despite the amendments made by these Regulations, the application of Chapter 2 of Part 2 of the 2013 Act (intervention in local authorities) by section 50A(1) of the 2004 Act (intervention – Wales) will continue in any case where—

- (a) the Welsh Ministers are satisfied that there are grounds for intervention in the exercise by a local authority of the functions specified in section 50A(2) of the 2004 Act and the compliance period in a warning notice given under section 22 of the 2013 Act has not expired before the coming into force of these Regulations, or
- (b) immediately before these Regulations come into force, the Welsh Ministers have the power to intervene under Chapter 2 of Part 2 of the 2013 Act in the exercise by a local authority of the functions specified in section 50A(2) of the 2004 Act.

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<sup>(8)</sup> 1989 c. 41.

<sup>(9)</sup> 2010 nawm 2.

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