
WELSH STATUTORY INSTRUMENTS

2017 No. 309 (W. 80) (C. 29)

SOCIAL CARE, WALES

The Regulation and Inspection of Social Care
(Wales) Act 2016 (Commencement No. 3,
Savings and Transitional Provisions) Order 2017

Made - - - -

7 March 2017

The Welsh Ministers, in exercise of the powers conferred by section 188(1) and (3) of the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾, make the following Order:

Title and interpretation

1.—(1) The title of this Order is the Regulation and Inspection of Social Care (Wales) Act 2016 (Commencement No. 3, Savings and Transitional Provisions) Order 2017.

(2) In this Order “the Act” (“*y Ddeddf*”) means the Regulation and Inspection of Social Care (Wales) Act 2016.

Appointed day

2. 3 April 2017 is the appointed day for the coming into force of the following provisions of the Act—

- (a) Part 2 (which comprises sections 65 to 66 and relates to the overview and interpretation of Parts 3 to 8);
- (b) insofar as it is not already in force, Part 3 (which comprises sections 67 to 78 and relates to Social Care Wales) and Schedule 2⁽²⁾;
- (c) Part 4 (which comprises sections 79 to 111 and relates to social care workers);
- (d) Part 5 (which comprises sections 112 to 116 and relates to social care workers, standards of conduct, education etc.);
- (e) Part 6 (which comprises sections 117 to 164 and relates to the fitness to practise of social care workers), except for sub-section (5) of section 160 (power to require information);
- (f) Part 7 (which comprises sections 165 to 173 and relates to unregistered persons and orders prohibiting work in social care);

(1) 2016 anaw 2.

(2) Schedule 2 (which makes further provision about Social Care Wales) is introduced by section 67(4) of the Act.

- (g) Part 8 (which comprises sections 174 to 175 and relates to Social Care Wales and the duty to establish panels);
- (h) Part 9 (which comprises sections 176 to 182 and relates to co-operation and joint working by regulatory bodies);
- (i) Part 10 (which comprises sections 183 to 184 and relates to miscellaneous and general provisions);
- (j) section 185 and Schedule 3 (minor and consequential amendments) insofar as they relate to Part 2 of Schedule 3 (Social Care Wales).

Savings and transitional provisions

3. The Schedule (which contains savings and transitional provisions) has effect from 3 April 2017.

4. The provision made by the Schedule does not affect the operation of sections 16 and 17 of the Interpretation Act 1978⁽³⁾ as read with section 23 of that Act.

Rebecca Evans
Minister for Social Services and Public Health,
under authority of the Cabinet Secretary for
Health, Well-being and Sport, one of the Welsh
Ministers

7 March 2017

SCHEDULE

Article 3

Savings and transitional provisions

Interpretation

1. In this Schedule—

“the Act” (“*y Ddeddf*”) means the Regulation and Inspection of Social Care (Wales) Act 2016;

“the CCW” (“*CGC*”) means the Care Council for Wales⁽⁴⁾;

“the CCW register” (“*cofrestr CGC*”) means the register maintained by the CCW under section 56 of the Care Standards Act 2000;

“SCW” (“*GCC*”) means Social Care Wales⁽⁵⁾;

“the SCW register” (“*cofrestr GCC*”) means the register maintained by SCW under section 80 of the Act;

“social care worker” (“*gweithiwr gofal cymdeithasol*”) has the meaning given in section 79 of the Act;

“transferred person” (“*person a drosglwyddir*”) has the meaning given by paragraph 3.

General

2. Subject to the following provisions of this Schedule, on or after 3 April 2017, anything done by or in relation to the CCW so far as relating to the statutory regulation of social care workers in Wales is (where appropriate) to be treated as done by, or in relation to SCW.

Transfer of the CCW register

3.—(1) Each person who immediately before the 3 April 2017 is registered on a part of the CCW register⁽⁶⁾ specified in sub-paragraph (2) is, on or after that day, registered in the corresponding part of the SCW register⁽⁷⁾.

(2) The parts of the register referred to in sub-paragraph (1) are—

- (a) the principal part;
- (b) the added part;
- (c) the visiting European part.

(3) But sub-paragraph (1) does not apply where a person is—

- (a) registered in the added part of the CCW register, and
- (b) falls within either of the following descriptions—
 - (i) an adult care home worker, or
 - (ii) a domiciliary care worker.

(4) A person whose name appears in the principal part, the added part, or the visiting European part of the CCW register, and whose registration has been suspended, counts for the purposes of sub-paragraphs (1) to (3) as being registered in that part of the register, but paragraph 6 makes further provision about such persons.

(4) The Care Council for Wales was established by section 54 of the Care Standards Act 2000 (c. 14) (“the 2000 Act”).

(5) Section 67 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) repeals section 54 of the 2000 Act; but the body corporate it established, the Care Council for Wales, is renamed as Social Care Wales and its original functions are restated, modified and added to by the Act.

(6) See section 56(2A) of the 2000 Act.

(7) See section 80(3) of the Act; these are the “social worker part”, the “added part” and the “visiting European part”.

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(5) References in the Act to an entry in the register having been included on the basis of false or misleading information are to be treated on or after 3 April 2017 as including former entries in the CCW register relating to transferred persons.

(6) A person who becomes registered in the SCW register by virtue of this paragraph is referred in this Schedule as a “transferred person”.

Registration subject to conditions

4.—(1) This paragraph applies if a transferred person’s registration in the CCW register was immediately before 3 April 2017 subject to conditions imposed—

- (a) on the grant of the transferred person’s application to the CCW for registration or for renewal of registration by the CCW, the Registration Committee(8) or the Restoration Committee(9), or
- (b) during, or at the conclusion of, proceedings in relation to a person’s conduct by the Investigation Committee or the Fitness to Practise Committee.

(2) If the conditions would have continued in force on 3 April 2017, that person’s registration in the SCW register continues to be subject to those conditions as if they had been imposed in the same terms and for the same duration in a conditional registration order made by an interim orders panel or fitness to practise panel(10) (which is to be taken to have had the power to impose such conditions).

Registration subject to admonishment

5.—(1) This paragraph applies if—

- (a) immediately before 3 April 2017 there was a record of an admonishment(11) on a transferred person’s entry in the CCW register, and
- (b) the record of the admonishment would have continued on 3 April 2017.

(2) On or after 3 April 2017 that person’s registration in the SCW register is to be treated as if it is subject to a warning as to future conduct or performance, made in the same terms and for the same duration as the admonishment, issued by SCW or a fitness to practise panel(12) (which are to be taken to have had the power to issue such a warning).

Suspended registration

6.—(1) This paragraph applies if—

- (a) a transferred person’s registration in the CCW register was immediately before 3 April 2017 suspended by virtue of a suspension order imposed by the CCW’s Fitness to Practise Committee or an interim suspension order imposed by its Investigation Committee, and
- (b) the suspension would have continued on 3 April 2017.

(2) On or after 3 April 2017, the person’s registration in the SCW register is to be treated as if it had been suspended on the same terms and for the same duration by order of an interim order

(8) The Registration Committee is established by rule 14 of the Care Council for Wales (Registration) Rules 2015(b), which are made by CCW under powers in Part 4 of the 2000 Act and with the consent of the Welsh Ministers.

(9) The Restoration, Investigation and Fitness to Practise Committees are established by rule 4 of the Care Council for Wales (Fitness to Practise) Rules 2014, which are made by CCW under powers in Part 4 of the 2000 Act and with the consent of the Welsh Ministers.

(10) Section 174 of the Act requires SCW to establish a registration appeals panel, a fitness to practise panel and an interim orders panel.

(11) See the Care Council for Wales (Fitness to Practise) Rules 2014.

(12) Warnings may be issued by SCW under section 126(3)(c) of the Act, and by a fitness to practise panel under sections 137(5), 138(6), 152(3)(b)(ii) and (8)(b), 153(3)(b)(ii) and (9)(b), 154(3)(b)(ii) and (8)(b) and 155(6)(b)(ii).

panel or a fitness to practise panel of SCW (which is to be taken to have had the power to make such an order).

(3) Accordingly, and for so long as the suspension is treated as continuing, section 163 of the Act will apply to the person's registration in the SCW register⁽¹³⁾.

Barring orders

7.—(1) This paragraph applies if immediately before 3 April 2017 a transferred person was subject to a barring order imposed by the CCW's Restoration Committee⁽¹⁴⁾.

(2) On or after 3 April 2017, the person's right to make an application for restoration to the SCW register⁽¹⁵⁾ is to be treated as suspended indefinitely by a direction made, on the same date as the barring order, by a registration appeals panel of SCW under section 98(4) of the Act (restoration proceedings)⁽¹⁶⁾.

Existing CCW proceedings

8.—(1) This paragraph applies if immediately before 3 April 2017 a transferred person is—

- (a) subject to proceedings before the Investigating Committee or the Fitness to Practise Committee of the CCW, or
- (b) a person about whom the CCW has received information which might lead to such proceedings.

(2) Notwithstanding the provision made by article 2, on or after 3 April 2017 such proceedings or prospective proceedings are to be concluded by SCW in accordance with the provision made by the Care Council for Wales (Fitness to Practise) Rules 2014⁽¹⁷⁾.

Outstanding applications for registration or renewal

9.—(1) This paragraph applies if immediately before 3 April 2017 an application has been made to, but not determined by the CCW for—

- (a) registration in the principal part, the added part or the visiting European part of the CCW register, or
- (b) renewal of such a registration.

(2) On or after the 3 April 2017, such an application is to be treated as having been made to SCW for registration in the corresponding part of the SCW register, or for the renewal of such a registration.

⁽¹³⁾ Section 163 of the Act (which makes supplementary provision about suspension) makes provision that subject to subsection (3), a person is not to be treated as a registered person if he or she is subject to a suspension order despite the fact that his or her name still appears in the register. This will ensure that social workers who are subject to a suspension order cannot call themselves registered social workers or hold themselves out as being registered, but fitness to practise proceedings, proceedings under section 94 of the Act (entries based on false or misleading information), or an application for removal from the register by agreement (by rules made under section 92) may continue.

⁽¹⁴⁾ A barring order may be made by the Restoration Committee of CCW in accordance with the Care Council for Wales (Fitness to Practise) Rules 2014 in circumstances where a person has been removed from the register and has made a previous application for restoration to the CCW register which has been refused.

⁽¹⁵⁾ See section 97 of the Act (restoration following fitness to practise proceedings).

⁽¹⁶⁾ Section 98(4) of the Act provides a power for a registration appeals panel to direct that a person may not make any further applications for restoration to the SCW register. Section 97 makes provision which enables a person to apply for such a direction to be reviewed after a period of three years beginning on the date on which the direction is given.

⁽¹⁷⁾ The Care Council for Wales (Fitness to Practise) Rules 2014 are made under sections 59 and 71 of the 2000 Act. Article 2 of this Order commences Parts 2 to 10 of the Act (subject to limited exceptions and in so far as not already in force) and also section 185 and Part 2 of Schedule 3, which repeal certain provisions within the 2000 Act. This provision saves the Rules for the purposes specified in the paragraph.

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(3) Notwithstanding the provision made by article 2, if immediately before 3 April 2017 an application is subject to proceedings before the CCW's Registration Committee, the proceedings are to be concluded by SCW in accordance with the provision made by the Care Council for Wales (Registration) Rules 2015(b)(18).

(4) But sub-paragraphs (2) and (3) do not apply to—

- (a) an application for registration as an adult care home worker or a domiciliary care worker in the added part of the CCW register,
- (b) the renewal of such an application, or
- (c) proceedings in respect of such an application(19).

Applications for restoration

10.—(1) Subject to paragraph 7 and to sub-paragraph (2), a person in relation to whom a removal order was made in accordance with the Care Council for Wales (Conduct) Rules 2011 or the Care Council for Wales (Fitness to Practise) Rules 2014 before 3 April 2017, and who has not by that day been restored to the CCW register, may make an application to SCW for restoration to the SCW register.

(2) Notwithstanding the provision made by article 2, such an application is to be determined by SCW in accordance with the provision made by the Care Council for Wales (Fitness to Practise) Rules 2014.

(3) An application made before 3 April 2017 for restoration to the principal part, the added part or the visiting European part of the CCW register is to be treated on or after that day as having been made to SCW for restoration to the corresponding part of the SCW register.

(4) Notwithstanding the provision made by article 2, if immediately before 3 April 2017 proceedings before the CCW's Restoration Committee have begun pursuant to such an application, the proceedings are to be concluded by SCW in accordance with the provision made by the Care Council for Wales (Fitness to Practise) Rules 2014.

(5) But this paragraph does not apply to—

- (a) an application made by an adult care home worker or a domiciliary care worker for restoration to the added part of the register, or
- (b) proceedings in respect of such an application.

Appeals

11.—(1) Notwithstanding the provision made by article 2, section 68 of the Care Standards Act 2000 (appeals to the Tribunal) continues to have effect in relation to a decision of the CCW made before 3 April 2017 in relation to a transferred person or to a person subject to a removal order.

(2) But on or after 3 April 2017—

- (a) the respondent to an appeal made or continued by virtue of sub-paragraph (1) is to be treated as SCW rather than the CCW, and
- (b) SCW (or a panel established under section 174 of the Act) is to be treated—

(18) The Care Council for Wales (Registration) Rules 2015(b) were made under powers in sections 57 to 60, 63 to 65 and 71 of the 2000 Act. Article 2 commences Parts 2 to 10 of the Act (subject to limited exceptions and in so far as not already in force) and also section 185 and Schedule which repeal certain provisions within the 2000 Act. This provision saves the Rules for the purposes specified in the paragraph.

(19) Adult care home workers and domiciliary care workers could apply for voluntary registration in the added part of the register maintained by the CCW under section 56 of the 2000 Act. The register maintained by SCW under section 80 of the Act makes no provision for voluntary registration by such persons. See paragraph 3 for provision about the transfer of entries on the register maintained by CCW. Applications and proceedings referred to in paragraph 9(4) will lapse.

- (i) as having made the decision in question, and
- (ii) as having the power to implement the decision of the Tribunal (or any decision made on a further appeal from the Tribunal).

Questions relating to conduct

12.—(1) Any question as to the conduct or practice, before 3 April 2017, of a transferred person or a person subject to a removal order, is to be determined on or after that day as it would have been determined before that day.

(2) Notwithstanding the provision made by article 2, a code of practice published under section 62 of the Care Standards Act 2000 which would have been applied immediately before 3 April 2017 in respect of the conduct or practice in question is to continue to apply on or after that day in respect of that conduct or practice.

Approval of standards, courses, etc.

13.—(1) The required standard of proficiency in relevant social work⁽²⁰⁾ described immediately before 3 April 2017 in rules made by the CCW under section 63 of the Care Standards Act 2000 (approval of courses etc.) has effect on or after that day as if it had been established under section 114 of the Act (approval of courses etc.) as being the standard of proficiency required to be admitted to the SCW register.

(2) On or after 3 April 2017 the following are to be treated as an approved qualification for the purposes of section 84 of the Act (“appropriately qualified”)—

- (a) the successful completion of a course in relevant social work which was immediately before 3 April 2017 approved by the CCW by virtue of section 63 of the Care Standards Act 2000;
- (b) the satisfaction of requirements as to training imposed before 3 April 2017 by virtue of section 58(2)(a)(iii) of the Care Standards Act 2000 (which relates to a condition for the grant of registration under that Act as a social worker);
- (c) the satisfaction of requirements as to training imposed before 3 April 2017 by virtue of section 58(2)(b) of the Care Standards Act 2000 (which relates to training requirements for the grant of registration under that Act, for persons other than social workers, as a social care worker).

(3) Sub-paragraph (2)(a) also applies to courses treated immediately before 3 April 2017 as approved by the CCW by virtue of article 5(2)(a) of the Central Council for Education and Training in Social Work (Transfer Scheme) Order 2001⁽²¹⁾ as it applies to courses approved by the CCW by virtue of section 63 of the Care Standards Act 2000.

(4) An adaption period or aptitude test required of an applicant by the CCW before 3 April 2017 by virtue of section 64(A1) of the Care Standards Act 2000 (qualifications gained outside the Welsh Council area, where the applicant is an exempt person under the General Systems Regulations)⁽²²⁾ is to be treated on or after that day as being required by virtue of section 85 of the Act (qualifications gained outside Wales).

(5) The successful completion of training in relevant social work which was immediately before 3 April 2017 recognised by the CCW as being of a standard sufficient for registration in the principal

⁽²⁰⁾ See section 63(3) of the 2000 Act.

⁽²¹⁾ *S.I. 2001/2561*. Article 5(2)(a) treats as approved by the CCW (and other bodies) certain courses previously approved by the Central Council for Education and Training in Social Work until such time as the CCW etc. determines that such courses are not recognised by it.

⁽²²⁾ See section 55(6) of the 2000 Act and section 90(8) of the Act for the definition of the “General Systems Regulations”.

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part of the CCW register for the purposes of section 64(2)(b)(i) of the Care Standards Act 2000⁽²³⁾ (qualifications gained outside the Welsh Council’s area) is to be treated on or after 3 April 2017 as a qualification as to which SCW are satisfied for the purposes of section 85(2)(b)(i) of the Act.

(6) The successful completion of additional training required before 3 April 2017 by the CCW under section 64(2)(b)(ii) of the Care Standards Act 2000 (additional training required when the CCW not satisfied as to standard of training) is to be treated on or after that day as additional training which satisfies SCW for the purposes of section 85(2)(b)(ii) of the Act.

(7) Further training which was immediately before 3 April 2017 required by the CCW by virtue of section 65 of the Care Standards Act 2000⁽²⁴⁾ (post-registration training) is to be treated on or after that day as if it were—

- (a) continuing professional development specified by SCW by virtue of section 113(1) of the Act (continuing professional development), unless the training related to an approved mental health professional, or
- (b) a course approved by SCW by virtue of section 114A of the Mental Health Act 1983 (approval of courses: Wales)⁽²⁵⁾, in the case of an approved mental health professional.

(8) Nothing in this paragraph prevents the exercise by SCW on or after 3 April 2017 of its powers under the Act in relation to any standard, qualification, course, training or continuing professional development mentioned in this paragraph.

Public Services Ombudsman for Wales

14.—(1) Notwithstanding the provision made by article 2, a complaint made to the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to the CCW before 3 April 2017 under the Public Services Ombudsman (Wales) Act 2005⁽²⁶⁾ may continue to be investigated by the Ombudsman, but as if the complaint had been made in respect of SCW.

(2) Where the Ombudsman conducts an investigation in accordance with this paragraph, the Ombudsman must send a report of the result of that investigation to the Welsh Ministers and SCW⁽²⁷⁾.

EXPLANATORY NOTE

(This note is not part of the Order)

This is the third Commencement Order made by the Welsh Ministers under the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”). It commences (with limited exceptions) Parts 2 to 11 of the Act on 3 April 2017.

⁽²³⁾ The heading to section 64 of the 2000 Act was substituted by the Health and Social Care Act 2012 (c. 7), Schedule 15, paragraph 12(c) and by the European Qualifications (Health and Social Care Professions) Regulations 2016 (S.I. 2016/1030), Part 7(1), regulation 106(2). Subsection (A1) was added by the European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), Part 18, regulation 238(a).

⁽²⁴⁾ Section 65 was amended by S.I. 2007/3101.

⁽²⁵⁾ 1983 c. 20, section 114A was inserted by section 19 of the Mental Health Act 2007 (c. 12), it is also amended by the Health and Social Care Act 2012, section 217, and by section 185 of and Part 2 of Schedule 3 to the Act.

⁽²⁶⁾ 2005 c. 10 (“the 2005 Act”).

⁽²⁷⁾ Section 16 of the 2005 Act makes provision about the reports of investigations.

The Care Council for Wales (“the CCW”) was established by the Care Standards Act 2000 for the purposes of promoting high standards of conduct and practice among social care workers and promoting high standards in their training.

Parts 2 to 10 of the Act rename the CCW as Social Care Wales (“SCW”), restate and modify its existing functions and confer additional functions.

Article 2 commences Parts 2 to 10 of the Act (in so far as they are not already in force), except for sub-section (5) of section 160 (power to require information). It also commences Schedule 2 (which makes further provision about SCW) and section 185 of, and Schedule 3 to, the Act (minor and consequential amendments) insofar as they relate to Part 2 of Schedule 3 (Social Care Wales).

Article 3 introduces the Schedule, which has effect from 3 April 2017, and which makes savings and transitional provisions.

Paragraph 2 of the Schedule makes general provision so that anything done by or in relation to the statutory regulation of social care workers in Wales by CCW is, where appropriate, to be treated on or after 3 April 2017 as done by or in relation to SCW.

Paragraph 3 of the Schedule provides for the transfer on 3 April 2017 of the majority of entries on the register maintained by the CCW (in accordance with section 56 of the Care Standards Act 2000) to corresponding parts of the register maintained by SCW (under section 80 of the Act). Adult care home workers and domiciliary care workers could apply for voluntary registration in the added part of the register maintained by the CCW. No provision is made for voluntary registration in the register maintained by SCW and any such entries on the CCW register will lapse on 3 April 2017 as they are not transferred in accordance with paragraph 3.

Paragraph 3 also makes it possible for an allegation that an entry in the CCW register was fraudulently obtained or incorrectly made to continue to be investigated by SCW.

Paragraphs 4, 5, 6 and 7 make provision about special cases.

If a person’s registration in the CCW register was subject to conditions, paragraph 4 provides for those conditions to be carried over to the SCW register.

Paragraph 5 makes corresponding provision in relation to a person whose registration is subject to an admonishment issued by the CCW. In such cases their registration in the SCW register will record a warning as to future conduct and performance made in the same terms and for the same duration as the admonishment.

Paragraph 6 provides that a person who is suspended by the CCW will continue to be suspended on the same terms and for the same duration when registered with SCW.

Paragraph 7 makes provision about a person who is subject to a barring order preventing the person from applying for restoration to the register. The order is converted to SCW’s equivalent.

Paragraph 8 makes provision about proceedings pending before one of CCW’s disciplinary committees. Such proceedings will, on or after 3 April 2017, be dealt with by SCW in accordance with the Care Council for Wales (Fitness to Practise) Rules 2014, which are saved for that purpose.

Paragraphs 9 and 10 make similar provision in relation to applications for registration, renewal of registration and applications for restoration to the CCW register which are pending before one of the CCW’s committees. Such applications will, on or after 3 April 2017, be dealt with by SCW in accordance with the relevant CCW Rules, which are saved for that purpose.

Paragraph 11 preserves the right of appeal against a pre-3 April 2017 decision of the CCW. The appeal is to the Tribunal.

Paragraph 12 provides that any question as to a person’s conduct or practice before 3 April 2017 is to be judged on or after that day by the same standards of practice that applied at the relevant time.

Paragraph 13 treats standards of proficiency, qualifications, courses, training and continuing professional development approved by the CCW before 3 April 2017 as though they were approved

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by SCW. It also preserves the right of SCW on or after that day to exercise its own judgement about an approval affected by this provision.

Paragraph 14 provides that complaints made to the Public Services Ombudsman for Wales before 3 April 2017 about the CCW may continue to be investigated on or after that day. Any such complaint is to be treated as though it were made against SCW.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

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

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 67 (partially)	11 July 2016	2016/713 (W. 191) (C. 51)
Section 68 (partially)	11 July 2016	2016/713 (W. 191) (C. 51)
Section 73(1) and (2) (partially)	11 July 2016	2016/713 (W. 191) (C. 51)
Section 75 (partially)	11 July 2016	2016/713 (W. 191) (C. 51)
Section 185 and Schedule 3 (partially)	6 April 2016	2016/467 (W. 149) (C. 28)

See also section 188(2) of the Act for provisions that came into force on 19 January 2016 (the day after the date of Royal Assent).