**Regulation and Inspection of Social Care (Wales) Act 2016**

Guidance note on savings and transitional provisions in connection

with the new system of social care workforce regulation to be operated by Social Care Wales from 3 April 2017.

**This guidance note should be read in conjunction with the Regulation and Inspection of Social Care (Wales) Act 2016 (Commencement No.3, Savings and Transitional Provisions) Order 2017**[[1]](#footnote-1) **(‘the Order’).**

Within its Schedule (‘the Schedule’), the Order makes savings and transitional provisions in relation to the following administrative issues that will arise when the Care Standards Act 2000[[2]](#footnote-2) (‘the 2000 Act’) is repealed on commencement of Parts 3 to 8 of the Regulation and Inspection of Social Care (Wales) Act 2016[[3]](#footnote-3) (‘the 2016 Act’) on 3 April 2017.

The Order identifies 3 April 2017 as the ‘Appointed Day’ when – with limited exceptions - Parts 2 to 11 of the 2016 Act come into force, renaming the Care Council for Wales (‘the CCW’) as Social Care Wales (‘SCW’) and extending its powers and duties to regulate the social care workforce in Wales.

**The Register**

Paragraph 3 of the Schedule provides that when section 56 of the 2000 Act is repealed, the existing registration of those groups below will transfer to the register of social care workers to be kept by SCW under section 80(1) of the 2016 Act i.e. they will be treated as having registered under the 2016 Act.

* social workers
* student social workers / social work students
* residential child care workers
* residential child care managers
* residential adult care home managers
* domiciliary care managers
* visiting social workers from relevant European States

Provision has not been made for the transfer of those parts of the register that deal with voluntary registrations of domiciliary care and adult care home workers. It is the Welsh Government’s intention to bring forward regulations that will enable registration of these groups from 2018 and 2020 respectively.

**The Register– fraudulent entries**

Paragraph 3(5) of the Schedule ensures that SCW will be able to take action against a person who fraudulently obtained their registration under the 2000 Act (and whose registration with them is maintained as a result of the operation of the transitional provision).

**Types of registration – conditions and admonishments**

Paragraphs 4 and 5 of the Schedule ensure that any conditions/annotations or admonishments imposed on a person’s registration under the 2000 Act (including those imposed on a temporary basis) will be transferred to the new register.

**The Register – suspended persons**

Section 59(4) of the 2000 Act treats those who are suspended from the register (even temporarily) as not being registered for the duration of their suspension. Section 164 of the 2016 has the opposite effect. As such, Paragraph 6 of the Schedule makes provision to transfer those who are currently suspended from the register under the 2000 Act onto the register to be kept under section 80(1) of the 2016 Act.

Furthermore, those persons will be treated as though their suspensions had been imposed by an interim orders panel or a fitness to practice panel under the 2016 Act.

**Types of registration - barring orders**

Paragraph 7 of the Schedule preserves any barring orders made by the CCW Restoration Committee so that they are treated as if they were directions of the Registrations Appeals Panel under section 98 of the 2016 Act.

It is noted that there is a different approach taken in the 2016 Act so that a person is unable to apply for restoration for the 3 year period(s) specified in section 97(6) whereas the Restoration Committee is able to bar an applicant from applying for an indeterminate time.

**Existing CCW proceedings – conduct**

Paragraph 8 of the Schedule makes provision to preserve any ongoing fitness to practise proceedings; proceedings being considered by officers in relation to the imposition of undertakings or removal by agreement (under Part III of the CCW Fitness to Practice Rules); or proceedings being considered under the Conduct Rules 2011.

**Existing CCW proceedings – application for registration / renewal of application**

Paragraph 9 of the Schedule ensures that any applications for registration received prior to 3 April 2017, and which are being processed, will be dealt with under the existing CCW Registration Rules. This is because the rules for registration under the 2016 Act are different to those which currently apply and therefore the applicant would need to resubmit.

**Existing CCW proceedings - applications for restoration**

In cases where a person has been removed from the register by a CCW Fitness to Practice committee, they have applied for restoration, and their application has not been considered or determined by the CCW by 3 April 2017, paragraph 10 of the Schedule provides for their application to continue to be dealt with under the existing rules and if successful, their registration transferred to the register kept under section 80(1) of the 2016 Act.

**Appeals – to the Tribunal**

Under section 68 of the 2000 Act, appeals against the determinations of theCCW committees are submitted to the Health, Education and Social Care Chamber of the First-tier Tribunal. This is repealed by Schedule 3, Part 2, paragraph 41(b) of the 2016 Act.

Paragraph 11 of the Schedule ensures that applications for appeal made but not determined by 3 April 2017will continue. Essentially, this will allow SCW to “step into the shoes” of the CCW as respondent in cases before the Tribunal which were in process that date. The right to appeal will also be maintained (during the 3 month period in which an appeal may be submitted), for cases where an application had not yet been made by 3 April 2017.

The provisions also allow the Tribunal to deem that SCW has the authority to implement any judgment made in cases which are affected by the transitional provisions.

**Other CCW functions – conduct standards**

Paragraph 12 of the Schedule ensures that any existing CCW conduct standards guidance or codes of practice issued under section 62 of the 2000 Act are preserved for specified purposes so that conduct-related issues that are raised/considered after 3 April 2017 that relate to conduct before that date are determined in accordance with the standards/codes that were current at the relevant time.

**Required standard of proficiency in relevant social work**

Under section 63(6) of the 2000 Act, the CCW has the power to make rules in which the “required standard of proficiency in relevant social work” is specified. Paragraph 13(1) of the Schedule preserves these standards for the purposes of section 114(6) of the 2016 Act so that persons who are registered in the social worker part of the register will be able to fulfil the registration requirements in section 83 (registration) and section 84 (“appropriated qualified”) of the 2016 Act for the purposes of the transfer of registration.

**Approved qualifications / “appropriately qualified” – training and courses**

Social workers

Linked to the standard of proficiency, paragraph 13(2) (a) and (b) of the Schedule also provide that the courses, training etc which were approved by the relevant 2000 Act provisions are to be treated as approved by SCW under the corresponding provision in the 2016 Act.

Other social care workers

Paragraph 13(2)(c) makes similar provision in respect of other registered persons whose registrations (by virtue of section 58(2)(b) of the 2000 Act) will be transferred to the new register.

These will include existing requirements for social care managers/workers registering with the CCW which are set out in Schedule 2 of the 2015(b) CCW Registration Rules and in the Table of Qualifications.

**Courses approved before the coming into force of the 2000 Act**

There may be persons (social workers) whose registration with the CCW is based on qualifications which pre-date its inception (and its functions in relation to the approval of courses, standard setting etc). Paragraph 13(3) of the Schedule preserves their entitlement to registration by making provision to deem their qualifications as evidence of their being “appropriately qualified” for the purposes of section 84(a)(i) of the 2016 Act.

NB Schedule 1 of the CCW 2015(b) Registration Rules and Schedule 1 of the Social Care Wales Registration Rules set out which qualifications are acceptable as evidence of an applicant being appropriately qualified for the purposes of registration as a social worker.

**Qualifications gained outside the CCW’s area – General Systems Regulations**

Paragraph 13(4) of the Schedule preserves the registration status of persons who are registered in the principal part of the existing register on the basis that they are within the scope of Part 3 of the General Systems Regulations (under section 64(A1) of the 2000 Act).

The provisions take account of any period of adaption or the passing of an aptitude test that is mentioned in that section (and which is undertaken in accordance with the General Systems Regulations).

The completion of a period of adaption or the passing of such a test will be treated as being within the scope of section 85(1) of the 2016 Act (and therefore to fulfil the qualification criteria specified in the 2016 Act).

**Qualifications gained outside the CCW’s area – other**

Paragraph 13(5) of the Schedule also preserves the registration status of persons who are registered in the principal part of the existing register – social workers, social care managers and social care workers qualified elsewhere other then in Wales – on the basis that they have undergone training in “relevant social work” outside Wales. This relates to section 64(2) of the 2000 Act.

Provision has also been made – within paragraph 13(6) of the Schedule - for those who have completed any additional training required (see section 64(2)(b)(ii) of the 2000 Act, in order that such persons can fulfil the requirements of section 85(2) of the 2016 Act from 3 April 2017.

**Post-registration training**

Paragraph 13(7) of the Schedule recognises training undertaken in accordance with the requirements set out in section 65 of the 2000 Act so that it may be treated as though it were undertaken as a requirement of section 113 of the 2016 Act. This will also include courses approved by the CCW under section 114A of the Mental Health Act 1983 (for persons approved to act as “approved mental health professionals”). The analogous provision within the 2016 Act is found within sections 114, 115 and 73 – 75.

**Complaints to the Public Services Ombudsman for Wales(‘the PSOW’)**

The Care Council for Wales’ entry as a relevant body under Schedule 3 of the Public Services Ombudsman (Wales) Act 2005 will be substituted by a reference to Social Care Wales.

Paragraph 14 of the Schedule includes provision to deal with complaints which have been submitted to the PSOW but which, on 3 April 2017, have not been determined, or those in respect of which the CCW has yet to undertake any action required following such an investigation.

This will permit the continuation any investigation into the actions of the CCW following the repeal of section 54 of the 2000 Act and to treat the complaint as having been made in relation to SCW.

1. http://www.legislation.gov.uk/wsi/2017/309/pdfs/wsi\_20170309\_mi.pdf [↑](#footnote-ref-1)
2. http://www.legislation.gov.uk/ukpga/2000/14/contents [↑](#footnote-ref-2)
3. http://www.legislation.gov.uk/anaw/2016/2/contents [↑](#footnote-ref-3)