



## **Guidance Note: repeals and transition in relation to the Social Services and Well-being (Wales) Act 2014**

### **Introduction**

1. The Social Services and Well-being (Wales) Act (“the 2014 Act”) contains a number of provisions that amend the existing legal framework for social services in Wales. Many of these provisions will have an impact on people currently receiving care and support under the pre-existing system and on service providers operating within it.
2. As a consequence of the commencement of these provisions, on 6 April 2016, it is necessary to repeal or make amendments to relevant primary legislation. It is also necessary to make provision for the transitional arrangements which will apply to people receiving care and support within the pre-existing framework, in order to move them across to the new framework that is set up under the 2014 Act.
3. This note principally relates to the repeals and consequential amendments to primary legislation which can be found in the [Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016](#)<sup>1</sup> (“the Regulations”).
4. This note also relates to the provision for the transitional arrangements. Some transitional provision is contained in the Schedule to the Regulations. Additional transitional provision can also be found in the [Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) \(Secondary Legislation\) Regulations 2016](#)<sup>2</sup> and the [Social Services and Well-being \(Wales\) Act 2014 \(Commencement No. 3, Savings and Transitional Provisions\) Order 2016](#)<sup>3</sup>.

### **Summary of principal repeals**

5. The Regulations amend and in some cases repeal primary legislation where this is necessary to ensure that there is no duplication or overlapping of functions under the 2014 Act and functions under pre-existing primary legislation. It is also necessary to make consequential amendments to other primary legislation which refers to provisions which are being amended or repealed by the Regulations.
6. For example, Part 6 of the 2014 Act replaces the provisions of Part 3 of and Schedule 2 to the Children Act 1989 in their application to Wales. Consequently, the Regulations amend Part 3 of and Schedule 2 to the 1989 Act so that it no

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<sup>1</sup> S.I. 2016 413

<sup>2</sup> S.I. 2016 211

<sup>3</sup> S.I. 2016 412

longer applies to Wales but continues to apply to England. The Regulations also make consequential amendments to other legislation which refers to these Children Act 1989 provisions, so that reference is made to the equivalent provision in the 2014 Act.

7. In some cases, the Regulations simply repeal primary legislation. For example, where legislation has already been disapplied in relation to England (such as section 21 of the National Assistance Act 1948), the Regulations now repeal that legislation.
8. Parts 2 to 6 of the 2014 Act make provision about improving the well-being outcomes for people in Wales who need care and support and carers who need support. The Regulations amend primary legislation that currently underpins the provision of care and support for people and support for carers in Wales, including legislation relating to direct payments and charging.
9. In general, the primary legislation to be amended which relates to the provision of care and support for adults and carers (“the previous community care legislation”) applies only in relation to Wales. The amendments made in the Regulations will mean that the current community care legislation is repealed. Where it does continue to apply in relation to England a provision is amended so that it will no longer apply in relation to Wales but will continue to apply in relation to England only.
10. In summary, community care legislation which is being repealed or disapplied in relation to Wales as a consequence of the commencement of the 2014 Act includes the following:
  - Parts 3 and 4 of the National Assistance Act 1948
  - Section 3 of the Disabled Persons (Employment) Act 1958
  - Section 45 of the Health Services and Public Health Act 1968
  - Sections 1, 2 and 28A of the Chronically Sick and Disabled Persons Act 1970
  - Section 17 of the Health and Social Services and Social Security Adjudications Act 1983
  - Sections 3, 4 and 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986
  - Section 46 of the National Health Service and Community Care Act 1990 (NB section 47 of the 1990 Act has been amended so that it does not apply to assessing and meeting needs for community care services in so far as this is now provided for in the 2014 Act but it will continue to apply to assessing and meeting needs for services under section 117 of the Mental Health Act 1983)
  - Carers (Recognition and Services) Act 1995
  - Carers and Disabled Children Act 2000
  - Sections 49, 50, 54, 55, 56 and 57 of the Health and Social Care Act 2001
  - Section 16 of the Community Care (Delayed Discharges etc) Act 2003
  - Carers (Equal Opportunities) Act 2004
  - Section 192 of and Schedule 15 to the National Health Service (Wales) Act 2006
  - Personal Care at Home Act 2010
  - Social Care Charges (Wales) Measure 2010
  - Carers Strategies (Wales) Measure 2010 (NB this is being repealed as a consequence of the provisions in section 14 of the 2014 Act which require

local authorities and Local Health Boards to carry out assessments of the needs of their local population, including the needs of carers).

11. In general, the primary legislation which relates to the provision of care and support to children and their families is contained in Part 3 of and Schedule 2 to the Children Act 1989 (“the 1989 Act”). The amendments made in the Regulations mean that these provisions will no longer apply in relation to Wales but will, however, continue to apply in relation to England. The core provisions for care and support to children and their families are now contained within the 2014 Act (see paragraph 19 below).
12. Part 7 of the 2014 Act makes provision about safeguarding of adults at risk and children, including the establishment of Safeguarding Boards for adults and children. The Regulations repeal sections 31 – 34 of the Children 2004 (“the 2004 Act”) to remove the current requirements for the establishment of Local Safeguarding Children Boards in Wales.
13. Part 8 of the 2014 Act makes provision for social services functions. It introduces Schedule 2, which specifies the social services functions of local authorities. It also makes provision for the appointment of directors of social services, for the making of codes about the exercise of social services functions and for intervention by the Welsh Ministers where a local authority is failing to exercise its social services functions properly. Provision for these matters was contained in the Local Authority Social Services Act 1970 (“the 1970 Act”). The Regulations amend the 1970 Act so that no longer applies in relation to Wales but will continue to apply in relation to England only.
14. Part 9 of the 2014 Act includes provisions for partnership arrangements between local authorities and Local Health Boards. Requirements within the [Partnership Arrangements \(Wales\) Regulations 2015](#) in relation to Integrated Family Support Services replace the current provisions in Part 3 of the Children and Families (Wales) Measure 2010, which are repealed by the Regulations.
15. Part 10 of the 2014 Act makes provision for complaints and representations about social services provided or arranged by local authorities. Provision for complaints was contained in Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”) and provision for representations in relation to children is contained in the Part 3 of the 1989 Act. The Regulations amend the 2003 Act and the 1989 Act to remove the provision for these matters in so far as they relate to Wales.

## **General**

16. In general, where a provision in UK primary legislation has been disapplied in relation to England and it is intended that it will no longer apply in relation to Wales, the Regulations provide for that provision to be omitted or (if this applies to a whole Act) repealed. In terms of the extent of that omission or repeal, it can only extend to the jurisdiction of England and Wales and has no effect on that provision in so far as it extends to the jurisdiction of Scotland or the jurisdiction of Northern Ireland.

## Other amendments

17. The Regulations also make consequential and incidental amendments to other primary legislative provisions which refer, for various purposes, to the current community care legislation, the 1989 Act, the 2004 Act, the 1970 Act or the 2003 Act. These amendments make, in respect of Wales, provision which reflects the new provisions in the 2014 Act.
18. The Regulations make a number of amendments to the 2014 Act itself, including amendments principally for the purpose of giving full effect to provisions of the 2014 Act or in consequence of such provision.

## Other information

19. A table of destinations, setting out the provisions in the Children Act 1989 which are disapplied in relation to Wales as a result of the Regulations and the corresponding provision in the Social Services and Well-being (Wales) Act 2014, is attached for information at **Doc A**. This table includes coverage of **Part 6 (looked after and accommodated children)**.
20. A separate table lists the sections in Parts 1 to 5 and 7 to 11 of the Social Services and Well-being (Wales) Act 2014 and the corresponding provisions in existing primary legislation which are repealed or amended as a result of the Regulations. This table is attached for information at **Doc B**.

## Summary of transitional provisions

### *Disability Registers (Section 18)*

21. In order to ensure continuity of entitlement to social security and other benefits, adults registered as blind or partially sighted under section 29 of the National Assistance Act 1948 (“the 1948 Act”) are to be treated as registered as severely sight-impaired and sight-impaired under section 18 of the 2014 Act.

### *Assessment (Sections 19, 21, 24)*

22. No transitional regulations on assessment for children, adults or carers have been made; the new arrangements will apply from 6 April 2016. If an assessment is underway and has not been completed but the assessment meets the requirements of assessment under the 2014 Act, it can apply. If the assessment does not meet the requirements of assessment under the 2014 Act the information gathered under old legislation can be used to inform the new assessment. This approach ensures that the eligibility decision is based on the new assessment process from 6 April 2016.

### *Meeting Care and Support Needs (general)*

23. Where a person’s needs are being met under pre-existing legislation at 6 April 2016, the general savings and transitional provision will provide that the pre-existing legislation will continue to apply, notwithstanding the repeal of that legislation. This applies until that person’s case is reviewed or 31 March 2017

(or 1 October 2016 in the case of a child), whichever is earlier. At that point, the 2014 Act requirements will then apply in that person's case.

***Determination of eligibility and consideration of what to do to meet needs (Section 32)***

24. If a person is eligible pre-existing legislation their status will remain until their review. The review should take place by 1 October 2016 for children and 31 March 2017 for adults, following which the 2014 Act requirements will apply.

***Meeting care and support needs of adults (Section 35)***

25. If an adult has needs being met under pre-existing legislation their plan should remain in place until the first review which should take place within 12 months of commencement (i.e. by 31 March 2017).

***Meeting care and support needs of children (Section 37)***

26. Where a local authority is meeting the needs of a child these needs should continue to be met until a review has been made under the 2014 Act. This review should take place within 6 months of commencement (i.e. by 1 October 2016).

***Meeting support needs of a carer (Sections 40 to 45)***

27. If a local authority is meeting the needs of a carer under current legislation this should continue until the point of review. For a child carer this should be within 6 months (by 1 October 2016) and for an adult carer within 12 months (by 31 March 2017). The review of the carer and cared for person should take place at the same time.

***Meeting Needs – restrictions (Section 49)***

28. A person who is currently in receipt of cash payments under section 17(6) of the Children Act 1989 will continue to receive those payments until there has been a review of their case (see paragraph 27). The provisions of section 49 of the 2014 Act will then apply, which could result in a decision to discontinue payments or to make the payments as direct payments under sections 50 to 53 of the 2014 Act.

***Direct Payments (Sections 50 to 53)***

29. A person's entitlement to direct payments under the previous legislation will be preserved until such time as there has been a review of that person's needs as outlined above. Once this occurs, if such needs are to be met through the continued provision of direct payments, then such future payments should be provided in accordance with sections 50 to 53 of the 2014 Act as appropriate to the individual.

***Care and Support Plans and Support Plans (Section 54)***

30. As the 2014 Act will not apply to any person whose needs are being met under pre-existing legislation until a review has been carried out, the 2014 Act will not apply to any person who has an existing care plan (see paragraph 26 on). Once

the review has been carried out, the 2014 Act will apply and a care plan under section 54 will be required.

### ***Choice of accommodation (Section 57)***

31. The general savings and transitional provisions apply to “any provision that operates in relation to, or by reference to, support or services provided”, including “costs and other amounts payable and their recovery”. This would include where a person expresses a choice for particular residential accommodation and amounts payable as “third party top-ups” under the existing additional payments regulations.

### ***Protecting property of persons being cared for away from home (Section 58)***

32. Where steps have been taken prior to commencement of the 2014 Act to prevent or mitigate the loss of, or damage to, property in accordance with section 48 of the 1948 Act, these steps are treated as taken in accordance with section 58 of the 2014 Act. Similarly, where expenses have been incurred by a local authority under section 48 of the 1948 Act but not recovered before the commencement of the 2014 Act, these expenses can be recovered under section 58 of the 2014 Act.

### ***Charging for meeting needs (Sections 50 to 53 - direct payments and Sections 59 to 67 - care and support provided or arranged)***

#### ***Charging for preventative services and assistance (Section 69)***

#### ***Enforcement of debts (Sections 70 to 73)***

33. As the general savings and transitional provisions apply to “any provision that operates in relation to, or by reference to, support or services provided”, including “costs and other amounts payable and their recovery”, charges will continue to be imposed and recovered under the previous legislation until such time as a review has been carried out of the person’s needs. Once this review has been carried out, financial assessment and charging should be undertaken under Part 4 (in relation to direct payments) and Part 5 (in relation to care and support provided or arranged) of the 2014 Act.

#### ***Deferred Payment Agreements (Section 68)***

34. Where a person is receiving care and accommodation under pre-existing legislation at 6 April 2016 and there is an existing deferred payment agreement, this will remain in place. Following the review of the person’s needs in accordance with the general savings and transitional provisions, the new provisions on charging will apply but the existing deferred payment agreement will still operate to secure payment of those charges.

#### ***Looked after children (Sections 75 to 119, 124 and 125)***

##### Children who are in the care of a local authority

35. The status of children who are in the care of a local authority (by virtue of a care order under section 31 of the 1989 Act) will be unaffected by the disapplication of

Part 3 of and Schedule 2 to the 1989 Act to Wales. However, the way in which such children are accommodated and maintained by the local authority will be affected. Decisions about the placement of children who are in the care of a local authority at 6 April 2016 are deemed to have been taken and made under Part 6 of the 2014 Act.

#### Children who are provided with accommodation under section 20 of the 1989 Act

36. The status of children who are looked after by a local authority by virtue of their being accommodated and maintained in accordance with section 20 of the 1989 Act is preserved on and after 6 April 2016; such children are deemed to be looked after under section 76 of the 2014 Act, and the decisions about and placement of such children are deemed to have been made in accordance with Part 6 of the 2014 Act.

#### Looked after children – relevant children / category 1 young persons

37. Prior to 6 April 2016, in order to qualify as a “relevant child” under Part 3 of the 1989 Act, a child must be looked after by a local authority for a period or periods totalling 13 weeks which begins after they reach the age of 14 and ends after they reach the age of 16.
38. Any time which a child spends in the care of a local authority in accordance with Part 3 of the 1989 Act prior to 6 April 2016 and which fulfils the conditions in the definition of “category 1 young person” set out in section 104(2) of the 2014 Act is to be counted when determining the child’s status under the 2014 Act.

#### Persons who qualify for advice and assistance under section 24(1B) of the 1989 Act

39. Prior to 6 April 2016, certain young persons are able to qualify for advice and assistance under section 24 of the 1989 Act as a result of their time spent being looked after, accommodated or fostered (within the meaning of section 24 of the 1989 Act) when they are aged 16 or over (but while still a child). Any such periods which fall before 6 April 2016 are to be included in any calculation of time made under section 104(2) of the 2014 Act in relation to that child.

#### Short breaks

40. Prior to 6 April 2016 a child may be provided with accommodation by a local authority for a short period under section 20 of the 1989 Act. If the accommodation is provided for 24 hours or longer then the child will be looked after by the local authority. Regulation 14 of the Placement of Children (Wales) Regulations 2007 makes provision which disapplies certain provisions of those regulations to children who are accommodated by a local authority in a “short-term placement” (or series of such placements) which fall within a set of conditions specified in that regulation.
41. Any time in which a child is accommodated in a “short-term placement” within the meaning of regulation 14 of the 2007 regulations is to be counted when calculating the time in which a child has been provided with accommodation as a short break (within the meaning of regulation 62 of the [Care Planning, Placement and Case Review \(Wales\) Regulations 2015](#)).

### Local authority decisions to refuse contact with a child in care

42. If a child is subject to a care order under section 31 of the 1989 Act, section 34 of that Act requires the local authority that is looking after the child to allow the child's parents (and other persons specified in the section 34(1)) contact with the child.
43. However, when exercising its functions under Part 3 of the 1989 Act, a local authority may decide that it is not in the child's best interests to have such contact.
44. Any decision taken by a local authority under section 22(3)(a) of the 1989 Act to refuse contact with a child in its care that would otherwise be required under section 34 of the 1989 is deemed to have been taken in accordance with section 78(1)(a) of the 2014 Act after 6 April 2016.

### Looked after children – review of cases

45. Prior to the 6<sup>th</sup> April 2016, the case of any child who is looked after by a local authority was required to be regularly reviewed in accordance with provision made in the Review of Cases (Wales) Regulations 2007.
46. Transitional provisions ensure that the timescales for reviews that would be required for children who come within the scope of this pre-existing legislative provision are maintained after 6 April 2016.
47. Any reviews undertaken after 6 April 2016 must be carried out in accordance with the regulations made under section 102 of the 2014 Act (see the Care Planning, Placement and Case Review (Wales) Regulations 2015).

### Looked after children – independent reviewing officers

48. The appointment of any independent reviewing officer appointed for a looked after child in accordance with regulations made under section 26 of the 1989 Act (see the Review of Children's Cases (Wales) Regulations 2007) is, after 6 April 2016, deemed to be made in accordance with regulations made under section 99 of the 2014 Act (see the Care Planning, Placement and Case Review (Wales) Regulations 2015).

### Looked after children – independent visitors

49. The appointment of any independent visitor appointed for a looked after child in accordance with regulations made under paragraph 17 of Schedule 2 to the 1989 Act (see the Definition of Independent Visitors (Children) Regulations 1991) is, after 6 April 2016, deemed to be made in accordance with regulations made under section 98 of the 2014 Act (see the Care Planning, Placement and Case Review (Wales) Regulations 2015).

### When I am ready arrangements

50. Where immediately before the commencement of Part 6 of the 2014 Act (6 April 2016) a young person who is a former relevant child has a "When I am ready" living arrangement which is made in accordance with Part 3 of the 1989 Act, on

and after the commencement of Part 6 of the 2014 Act that arrangement will be deemed to have been made in accordance with Part 6 of that Act for a category 3 young person.

#### Orders and proceedings under Part 3 of and Schedule 2 to the 1989 Act

51. Transitional provisions have been made to ensure that any decisions made, orders made by a court, or legal proceedings which are not concluded at the time Part 6 of and Schedule 1 to the 2014 Act comes into force are preserved.
52. This means, for example, that any orders made by the court under Schedule 2 to the 1989 Act which require a person to make contributions towards the costs of a local authority which is looking after a child are preserved.
53. Any legal proceedings which have been brought under Part 3 of and Schedule 2 to the 1989 Act but which are not concluded at 6 April 2016 will be continued, concluded and any enforcement action may be completed in accordance with the provision made by Part 3 of and Schedule 2 to the 1989 Act.

#### **Safeguarding Children Boards and Safeguarding Adult Boards (Sections 134 to 142)**

54. Any Child Practice Reviews commenced under pre-existing regulations should be completed in accordance with those regulations. However, transitory modifications have been made to those regulations to require that, upon formal establishment of the National Independent Safeguarding Board, any reports should be copied to the Board.

#### **Directors of Social Services (Section 144)**

55. Directors of Social Services who have been appointed under pre-existing legislation and are in post at 6 April 2016 will be treated as having been appointed under the 2014 Act. The new requirements in relation to demonstrating specific competences will not apply. Directors appointed after 6 April 2016 must be appointed in accordance with the requirements of the 2014 Act.

#### **Intervention by central government (Sections 150 to 161)**

56. In any case where the Welsh Ministers have exercised powers of intervention under pre-existing legislation and the period for compliance has not expired at 6 April 2016, the pre-existing legislation will continue to apply in that case.

#### **Complaints and representations**

57. The regulations governing complaints and representations made by or on behalf of both adults and children will remain in force even after 6 April 2016 by virtue of section 17 of the Interpretation Act 1978. These are the Representations Procedure (Wales) Regulations 2014 for children<sup>4</sup> and the Social Services Complaints Procedure (Wales) Regulations 2014 for adults<sup>5</sup>.

#### **Ordinary residence (Section 194)**

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<sup>4</sup> S.I. 2014/1795

<sup>5</sup> S.I. 2014/1794

58. Where an adult has needs which are being met under pre-existing legislation and that adult is being treated as being ordinarily resident in the area of a local authority by virtue of section 24(5) or (6) of the 1948 Act, then they will be treated as being ordinarily resident in that area for the purposes of the 2014 Act from the date that the 2014 Act applies to them – i.e from the date of the review (see para 23 above). This will ensure that there is continuity for adults who were placed out of area and for whom the placing authority continues to be responsible.

59. No transitional provision is needed in relation to the ordinary residence of children. Section 194 of the 2014 Act will apply from 6 April 2016 so that any period during which a child is placed in accommodation provided by or on behalf of a local authority, whether under the 2014 Act or the 1989 Act, is disregarded in determining where they are ordinarily resident. This will ensure continuity for children who were looked after by a local authority prior to the commencement of the 2014 Act.

### **Disputes about ordinary residence (Section 195)**

60. Similarly, any questions as to an adult's ordinary residence which arise under the 1948 Act and which are to be determined by the Welsh Ministers after 6 April 2016 are to be determined in accordance with section 195 of the 2014 Act.

### **Short titles of Acts referenced above**

The 1948 Act	National Assistance Act 1948
The 1970 Act	Local Authority Social Services Act 1970
The 1989 Act	Children Act 1989
The 2003 Act	Health and Social Care (Community Health and Standards) Act 2003
The 2004 Act	Children Act 2004
The 2014 Act	Social Services and Well-being (Wales) Act 2014