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WELSH STATUTORY INSTRUMENTS

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**2016 No. 413**

**The Social Services and Well-being (Wales) Act  
2014 (Consequential Amendments) Regulations 2016**

*Social Services and Well-being (Wales) Act 2014 (anaw 4)*

**294.** The Social Services and Well-being (Wales) Act 2014 is amended as follows.

**295.** In subsection (2)(h) of section 15 (preventative services) after “secure accommodation” insert “within the meaning given in section 119 and in section 25 of the Children Act 1989”.

**296.** In section 37(4) (duty to meet care and support needs of a child) after “notified about a child under section 120(2)(a)” insert “or under section 85(1) of the Children Act 1989 (children accommodated by health authorities and local education authorities)”.

**297.** In section 53 (direct payments: further provision)—

- (a) omit subsection (11) from the English text(1);
- (b) after subsection (10) insert the following—

“(11) The ways in which a local authority may discharge its duty under section 117 of the Mental Health Act 1983 include by making direct payments; and for that purpose Schedule A1 (which includes modifications of sections 50 and 51 and this section) has effect.”

**298.** In section 58(1) (protecting property of persons being cared for away from home), in paragraph (a) for “or admission to hospital” substitute “, is admitted to hospital”.

**299.** In section 76 (accommodation for children without parents or who are lost or abandoned etc) after subsection (2) insert—

“(2A) Where a local authority in England provides accommodation under section 20(1) of the Children Act 1989 (provision of accommodation for children: general) for a child who is ordinarily resident in the area of a local authority in Wales, that local authority in Wales may take over the provision of accommodation for the child within—

- (a) three months of being notified in writing that the child is being provided with accommodation, or
- (b) such other longer period as may be specified.”

**300.** In section 77 (accommodation for children in police protection or detention or on remand etc)—

- (a) in subsection (4)(b)(i) after “local authority” insert “or local authority in England”;
- (b) in subsection (5) after “local authority” insert “or local authority in England”.

**301.** For section 86 (children’s homes provided, equipped and maintained by the Welsh Ministers) substitute—

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(1) Section 53(11) is inserted by section 75(8) of the Care Act 2014 (c. 23) and was only enacted in English.

**“Children’s homes provided, equipped and maintained by Welsh Ministers or Secretary of State**

**86.** Where a local authority places a child it is looking after in a children’s home provided, equipped and maintained by the Welsh Ministers or the Secretary of State under section 82(5) of the Children Act 1989, it must do so on such terms and conditions as the Welsh Ministers or the Secretary of State (as the case may be) may from time to time determine.”

**302.** In section 93(1) (regulations providing for approval of local authority foster parents) in paragraph (a) after “such local authority” insert “or other persons”.

**303.** In section 95(4) (promotion and maintenance of contact between child and family) for “from another local authority (“the transferring authority”) under section 76” substitute “from a local authority or a local authority in England under section 76 (“the transferring authority”)”.

**304.** In section 119 (use of accommodation for restricting liberty)—

- (a) in subsection (2)(c) after “local authority” insert “or a local authority in England”;
- (b) in subsection (6) for the words from “representation funded by” to “Criminal Defence Service” substitute “the provision of representation under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012”;
- (c) after subsection (10) insert—

“(11) An order made under this section in relation to a child, if it would otherwise still be in force, ceases to have effect when the child reaches the age of 18.”

**305.** In section 120(5) (assessment of children accommodated by health authorities and education authorities) after “local authority has been notified under this section” insert “, or under section 85 of the Children Act 1989 (assessment of children accommodated by health authorities and education authorities)”.

**306.** In section 122 (visitors for children notified to a local authority under section 120 or 121)—

- (a) in subsection (1)(a) after “section 120(2)(a) or 121(2)(a),” insert “or under section 85(1) of the Children Act 1989 (children accommodated by health authorities and local education authorities),”;
- (b) in subsection (1)(b) after “section 120(2)(b) or section 121(2)(b)” insert “, or under section 85(2) of the Children Act 1989”;
- (c) in the heading omit “under section 120 or 121”.

**307.** In section 123 (services for children notified to a local authority under section 120 or 121)—

- (a) in subsection (1) after “section 120 or 121” insert “, or under section 85 of the Children Act 1989 (children accommodated by health authorities and local education authorities)”;
- (b) in the heading omit “under section 120 or 121”.

**308.** After section 125 (death of children being looked after by local authorities) insert—

*“Jurisdiction and procedure*

**Jurisdiction of courts**

**125A.** For the purposes of this Part “court” (“*llys*”) means the High Court or a family court.

### **Rules of court**

**125B.**—(1) An authority having power to make rules of court may make such provision for giving effect to—

- (a) this Part, or
- (b) the provisions of any statutory instrument made under this Part,

as it appears to that authority to be necessary or expedient.

(2) Section 93 of the Children Act 1989 (rules of court) applies to rules made in accordance with this section as it applies to rules made in accordance with that section.

The rules may, in particular, make provision—

- (a) with respect to the procedure to be followed in any relevant proceedings (including the manner in which any application is to be made or other proceedings commenced);
- (b) as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the court;
- (c) for children to be separately represented in relevant proceedings;
- (d) with respect to the documents and information to be furnished, and notices to be given, in connection with any relevant proceedings;
- (e) with respect to preliminary hearings;
- (f) enabling the court, in such circumstance as may be prescribed, to proceed on any application even though the respondent has not been given notice of the proceedings.

(3) In subsection (2)—

“notice of proceedings” (*“hysbysiad o achos”*) means a summons or such other notice of proceedings as is required; and “given” (*“rhoi”*) in relation to a summons, means “served” (*“cyflwyno”*);

“prescribed” (*“a ragnodir”*) means prescribed by the rules; and

“relevant proceedings” (*“achos perthnasol”*) means any application made, or proceedings brought, under any of the provisions mentioned in paragraphs (a) to (c) of subsection (1) and any part of such proceedings.

(4) This section and any other power in this Act to make rules of court are not to be taken as in any way limiting any other power of the authority in question to make rules of court.

(5) When making any rules under this section an authority will be subject to the same requirement as to consultation (if any) as apply when the authority make rules under its general rule making power.

### **Privacy for children involved in proceedings under this Part**

**125C.** Section 97 of the Children Act 1989 (privacy for children involved in certain proceedings) applies in relation to children involved in any proceedings under this Part as it applies in relation to children involved in any proceedings under that Act.

**125D.**—(1) A person must not publish to the public at large or any section of the public any material which is intended, or likely, to identify—

- (a) any child which is being involved in any proceedings before the High Court or the family court in which any power under this Act may be exercised by the court with respect to any child; or
- (b) an address or school as being that of a child involved in any such proceedings.

(2) In any proceedings for an offence under this section it is a defence for the accused to prove that he or she did not know, and had no reason to suspect, that the published material was intended, or likely, to identify the child.

(3) The court or the Lord Chancellor may, if satisfied that the welfare of the child requires it and, in the case of the Lord Chancellor, if the Lord Chief Justice agrees, by order dispense the requirements of subsection (1) to such extent as may be specified in the order.

(4) For the purposes of this section—

“material” (“*deunydd*”) includes any picture or representation; and

“publish” (“*cyhoeddi*”) includes—

- (a) include in a programme service (within the meaning of the Broadcasting Act 1990);
- (b) cause material to be published.

(5) Any person who contravenes this section is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(6) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his or her functions under subsection (3).”

**309.** In section 134(2)(d) (safeguarding children boards and safeguarding adults boards) for “NHS trust” substitute “NHS Trust”.

**310.** In section 162(4)(f) (arrangements to promote co-operation: adults with needs for care and support and carers) for “NHS trust” substitute “NHS Trust”.

**311.** In section 164(4)(b) (duty to co-operate and provide information in the exercise of social services functions) for “NHS trust” substitute “NHS Trust”.

**312.** After section 164 (duty to co-operate and provide information in the exercise of social services functions) insert—

**“Duty of other persons to co-operate and provide information**

**164A.**—(1) If a local authority requests the co-operation of a person mentioned in subsection (4) in the exercise of its functions mentioned in subsection (5), the person must comply with the request unless the person considers that doing so would—

- (a) be incompatible with the person’s own duties, or
- (b) otherwise have an adverse effect on the exercise of the person’s functions.

(2) If a local authority requests that a person mentioned in subsection (4) provides it with information it requires for the purpose of the exercise of any of its functions mentioned in subsection (5), the person must comply with the request unless the person considers that doing so would—

- (a) be incompatible with the person’s own duties, or
- (b) otherwise have an adverse effect on the exercise of the person’s functions.

(3) A person who decides not to comply with a request under subsection (1) or (2) must give the local authority which made the request written reasons for the decision.

- (4) The persons are—
- (a) a local authority in England;
  - (b) a local housing authority in England;
  - (c) the National Health Service Commissioning Board;
  - (d) any clinical commissioning group, Special Health Authority, NHS Foundation Trust, or NHS trust in England established under section 25 of the National Health Service Act 2006;
  - (e) any other persons—
    - (i) as regulations may specify, or
    - (ii) of a description as regulations may specify.

- (5) The functions are—
- (a) the local authority’s functions under section 14F of the Children Act 1989 (special guardianship support services);
  - (b) any of the local authority’s functions in relation to safeguarding and promoting the well-being of children and young persons, in particular those with needs for care and support, and their families and others;
  - (c) any of the local authority’s functions in relation to looked-after and accommodated children;
  - (d) any of the local authority’s functions in relation to young persons entitled to support under sections 105 to 115.

(6) Regulations under subsection (4)(e) may not specify the following persons without consent of the Secretary of State—

- (a) a Minister of the Crown, or
- (b) the governor of a prison or secure training centre (or in the case of a contracted out prison or secure training centre, its director).

(7) In this section “local housing authority” (“*awdurdod tai lleol*”) means a local housing authority within the meaning of the Housing Act 1985.”

**313.** In section 166(2)(b)(ii) (partnership arrangements) for “NHS trust” substitute “NHS Trust”.

**314.** In section 190 (provider failure: exception to temporary duty), in paragraph (d) of subsection (1), omit sub-paragraph (i).

**315.** In section 193 (recovery of costs between local authorities)—

- (a) in subsection (3) after “another local authority” insert “or local authority in England”;
- (b) in subsection (4) after “another local authority” insert “or local authority in England”;
- (c) in subsection (6)—
  - (i) for “subsection (7)” substitute “subsection (7) or (8)”;
  - (ii) after “under section 164(1) or (2)” insert “, or under section 27(2) of the Children Act 1989 (co-operation between authorities),”;
  - (iii) after “the local authority” insert “or local authority in England”;

(d) after subsection (7) insert—

“(8) Where a local authority (“authority A”) complies with any request under section 27(2) of the Children Act 1989 (co-operation between authorities) from a local authority in England (“authority B”) in relation to a person—

- (a) whose responsible authority (within the meaning of Part 3 of that Act) is authority B for the purposes of section 23B or 23C of that Act, or
- (b) whom authority B are advising or befriending or to whom it is giving assistance by virtue of section 24(5)(a) of that Act,

authority A may recover from authority B any reasonable expenses incurred by it in exercising its functions under sections 105 to 115 of this Act in respect of that person.”

**316.** In section 194 (ordinary residence)—

- (a) after subsection (4) insert—

“(4A) A person who is being provided with accommodation under section 117 of the Mental Health Act 1983 (after-care) is to be treated for the purposes of this Act as ordinarily resident in the area of the local authority, or the local authority in England, on which the duty to provide that person with services under that section is imposed.”;

- (b) omit subsection (4A) from the English text<sup>(2)</sup>.

**317.** In section 195 (disputes about ordinary residence and portability of care and support) after subsection (1) insert—

“(1A) Where the dispute is one to which section 30(2C) of the Children Act 1989 applies (questions of whether child ordinarily resident in England or Wales), then subsection (1) does not apply.”

**318.** After section 195 insert—

**“Offences committed by bodies or partnerships**

**195A.**—(1) Where a body corporate is guilty of an offence under this Act, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity,

that person is guilty of the offence as well as the body corporate, and is liable to be proceeded against and punished accordingly.

(2) For the purposes of this section “director” (“*cyfarwyddwr*”) in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Proceedings for an offence alleged to have been committed under this Act by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation.

(4) Any fine imposed on an unincorporated body on its conviction of an offence under this Act is to be paid out of the funds of that body.

(5) If an unincorporated body is charged with an offence under this Act, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates’ Courts Act 1980 (c. 43) have effect as if a corporation had been charged.

(6) Where an offence under this Act committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of, any officer of the body or any member of its

(2) Section 194(4A) is inserted by section 75(10) of the Care Act 2014 (c. 23) and was enacted in English only.

governing body, that person as well as the body is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) Where an offence under this Act committed by a partnership or a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.”

**319.** In section 197 (general interpretation and index of defined expressions)—

(a) in subsection (1) for the definition of “local authority foster parent” substitute—

““local authority foster parent” (*“rhiant maeth awdurdod lleol”*) means a person authorised as such in accordance with regulations made by virtue of—

(a) sections 87 and 93;

(b) paragraph 12F of Schedule 2 to the Children Act 1989 (regulations providing for approval of local authority foster parents);”;

(b) for subsection (2)(b) substitute—

“(b) a reference to a child looked after by a local authority in England has the same meaning as a reference in section 22 of the Children Act 1989 to a child who is looked after by a local authority in England;”.

**320.** In Schedule 1, in paragraph 3 (contribution orders) at the end insert—

“(12) A contribution order in relation to a child, if it would otherwise still be in force, ceases to have effect when the child reaches the age of 18.”

**321.** In Schedule 1, in paragraph 4 (enforcement of contribution orders)—

(a) omit sub-paragraphs (1) and (2);

(b) in sub-paragraph (3) after “any other local authority” insert “or a local authority in England”.

**322.** Omit Schedule A1 from the English text(3).

**323.** Before Schedule 1 insert the following—

“Schedule A1

Direct Payments: After-care Under the Mental Health Act 1983

### **General**

1. Section 50 (direct payments to meet an adult’s needs), 51 (direct payments to meet a child’s needs) and 53 (direct payments: further provision) apply in relation to section 117 of the Mental Health Act 1983 but as if the following modifications were made to those sections.

### **Modifications to section 50**

2. For subsection (1) of section 50 substitute—

“(1) Regulations may require or allow a local authority to make payments to an adult to whom section 117 of the Mental Health Act 1983 (after-care) applies that are equivalent to the cost of providing or arranging for the provision of after-care services for the adult under that section.”

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(3) Schedule A1 is inserted by section 75(9) of and Part 2 of Schedule 4 to the Care Act 2014 (c. 23) which was only enacted in English.

3. In subsection (3) of that section—
  - (a) in paragraph (a), for “who has needs for care and support (“A”)” substitute “in respect of the provision to the adult (“A”) of after-care services under section 117 of the Mental Health Act 1983”, and
  - (b) in paragraph (c)(i), for “of meeting A’s needs” substitute “of discharging its duty towards A under section 117 of the Mental Health Act 1983”.
4. In subsection (4) of that section—
  - (a) in paragraph (a), for “who has needs for care and support (“A”)” substitute “to whom section 117 of the Mental Health Act 1983 applies (“A”)", and
  - (b) in paragraph (d)(i) for “of meeting A’s needs” substitute “of discharging its duty towards A under section 117 of the Mental Health Act 1983”.
5. In subsection (5) of that section—
  - (a) in paragraph (a), for “A’s needs for care and support” substitute “the provision to A of after-care services under section 117 of the Mental Health Act 1983”, and
  - (b) in paragraph (b), for “towards the cost of meeting A’s needs for care and support” substitute “equivalent to the cost of providing or arranging the provision to A of after-care services under section 117 of the Mental Health Act 1983”.
6. In subsection (6)(b) of that section, for “A’s needs for care and support” substitute “the provision to A of after-care services under section 117 of the Mental Health Act 1983”.

#### **Modifications to section 51**

7. For subsection (1) of section 51 substitute—
 

“(1) Regulations may require or allow a local authority to make payments to a person in respect of a child to whom section 117 of the Mental Health Act 1983 (after-care) applies that are equivalent to the cost of providing or arranging the provision of after-care services for the child under that section.”
8. In subsection (3)(a) and (b) of that section, for “who has needs for care and support” (in each place it occurs) substitute “to whom section 117 of the Mental Health Act 1983 applies”.
9. In subsection (5)(a) of that section, for “meeting the child’s needs” substitute “discharging its duty towards the child under section 117 of the Mental Health Act 1983”.

#### **Modifications to section 53**

10. In subsection (1) of section 53—
  - (a) in the opening words, for “50, 51 or 52” substitute “50 or 51”,
  - (b) omit paragraphs (a), (b) and (c),
  - (c) in paragraph (i), for “local authority’s duty or power to meet a person’s needs for care and support or a carer’s needs for support is displaced” substitute “a local authority’s duty under section 117 of the Mental Health Act 1983 (after-care) is discharged”, and
  - (d) in paragraph (k), for “50 to 52” substitute “50 or 51”.
11. Omit subsections (2) to (8) of that section.
12. After subsection (8) of that section insert—
 

“(8A) Regulations made under sections 50 and 51 must specify that direct payments to meet the cost of providing or arranging for the provision of after-care services under section 117 of the Mental Health Act 1983 (after-care) must be made at a rate that the local authority



estimates to be equivalent to the reasonable cost of securing the provision of those services to meet those needs.”

13. In subsection (9) of that section—

- (a) for “, 51 or 52” substitute “or 51”, and
- (b) for “care and support (or, in the case of a carer, support)” substitute “after-care services”.

14. In subsection (10) of that section, for “care and support (or, in the case of a carer, support) to meet needs” substitute “after-care services”.

324. In Schedule 2—

- (a) in the second column of the entry relating to the Public Health (Control of Disease) Act 1984, for “Part 2” substitute “Part 4”;
- (b) in the first column of the entry relating to the Disabled Persons (Services, Consultation and Representation) Act 1986, for “Sections 1 to 3 and 5(5)” substitute “Sections 1, 2 and 5(5)”;
- (c) for the entry relating to the Children Act 1989 substitute—

**“Children Act 1989**

The whole Act in so far as it confers functions on a local authority in Wales within the meaning of the Act except—

- (a) Part 3 and Schedule 2 (local authority support for children and families);
- (b) section 36 and paragraphs 12 to 19(1) of Schedule 3 (education supervision orders).

Welfare reports; consent to application for residence order in respect of child in care; functions relating to special guardianship orders; family assistance orders; care and supervision; protection of children; functions in relation to community homes, voluntary homes and voluntary organisations, private children’s homes, and private arrangements for fostering children; inspection of children’s homes on behalf of the Welsh Ministers; research and returns of information.”;

(d) after the entry relating to the Children Act 1989 insert—

<b>“National Health Service and Community Care Act 1990</b>  Section 47	Assessment of needs for services under section 117 of the Mental Health Act 1983.”;
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(e) in the entry relating to the Children and Families (Wales) Measure 2010, after the entry relating to section 66 insert—

“Section 67

The provision of relevant care services within the meaning of that section.”

**Transitional and saving provisions**

325. The Schedule (which contains transitional and saving provisions) has effect.

## **General**

**326.** These Regulations do not affect the operation of article 3(1) or (3) of the Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015**(4)**.