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WELSH STATUTORY INSTRUMENTS

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**2017 No. 1326 (W. 299) (C. 121)**

**SOCIAL CARE, WALES**

The Regulation and Inspection of Social Care  
(Wales) Act 2016 (Commencement No. 5, Savings,  
Transitory and Transitional Provisions) Order 2017

Made - - - - 21 December 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<sup>(1)</sup>, 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. 5, Savings, Transitory and Transitional Provisions) Order 2017.

(2) In this Order—

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

“the 2000 Act” (“*Deddf 2000*”) means the Care Standards Act 2000<sup>(2)</sup>;

“CSA provider” (“*darparwr DSG*”) means a person who, immediately before the principal appointed day, is registered with the Welsh Ministers under Part 2 of the 2000 Act as a person who carries on a relevant establishment or agency;

“principal appointed day” (“*prif ddiwrnod penodedig*”) has the meaning given in article 2(4);

“relevant establishment or agency” (“*sefydliad perthnasol neu asiantaeth berthnasol*”) means an establishment or agency of one of the following descriptions—

- (a) a care home,
- (b) a children’s home,
- (c) a children’s home providing accommodation for the purpose of restricting liberty,
- (d) a residential family centre, or
- (e) a domiciliary care agency;

“the Part 2 provisions” (“*darpariaethau Rhan 2*”) has the meaning given in article 5(4);

“transition service” (“*gwasanaeth trosiannol*”) has the meaning given in article 3;

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(1) 2016 anaw 2.  
(2) 2000 c. 14.

“transition period” (“*cyfnod trosiannol*”) has the meaning given in article 4(2).

(3) In this Order the terms, “children’s home”, “children’s home providing accommodation for the purpose of restricting liberty”, “residential family centre” and “domiciliary care agency” have the meanings given in sections 1 and 4 of the 2000 Act and the term “care home” has the meaning given in section 3 of the 2000 Act except when it appears in the term “care home service” which has the meaning given in paragraph 1 of Schedule 1 to the Act.

### **Appointed days for commencement of provision relating to regulated services**

2.—(1) 1 February 2018 is the appointed day for the coming into force of section 6 of the Act to the extent set out in paragraph (2).

(2) Section 6 of the Act is commenced to the extent that it applies to a person who wants to provide one of the services specified in paragraphs (a) to (c) and (h) of section 2(1) of the Act.

(3) 2 April 2018 is the appointed day for the coming into force of the following provisions of the Act—

- (a) section 1,
- (b) section 2, except for paragraphs (d) to (g) of subsection (1), and paragraphs 1 to 3 and 8 of Schedule 1,
- (c) sections 3 to 5,
- (d) sections 7 to 31,
- (e) chapters 3, 4 and 5 of Part 1,
- (f) section 58,
- (g) chapter 8 of Part 1,
- (h) section 185 and Part 1 of Schedule 3 (minor and consequential amendments) to the extent set out in the Schedule to this Order.

(4) 2 April 2018 is referred to in this Order as the principal appointed day.

### **Meaning of transition service**

3. A “transition service” is a relevant establishment or agency in respect of which a person is registered under Part 2 of the 2000 Act immediately before the principal appointed day and—

- (a) in the case of a care home or children’s home, the home is specified in an application made before the relevant date under section 6 of the Act as a place at which a care home service is to be provided;
- (b) in the case of a children’s home providing accommodation for the purpose of restricting liberty, the home is specified in an application made before the relevant date under section 6 of the Act as a place at which a secure accommodation service is to be provided;
- (c) in the case of a residential family centre, the centre is specified in an application made before the relevant date under section 6 of the Act as a place at which a residential family centre service is to be provided;
- (d) in the case of a domiciliary care agency, the area in which the agency provides services is specified in an application made before the relevant date under section 6 of the Act as a place in relation to which a domiciliary support service is to be provided.

### **Transitional disapplication of section 5 of the Act**

4.—(1) Section 5 of the Act (requirement to register) does not apply to a CSA provider during the transition period.

(2) Subject to paragraph (4), the “transition period” for a CSA provider is the period beginning with the principal appointed day and ending on the earlier of—

- (a) the relevant date as specified in paragraph (3); or
- (b) the date on which an application to register in respect of a transition service is finally determined.

(3) Subject to article 5, the relevant date is—

- (a) 30 June 2018 for a CSA provider who is registered in respect of a care home, children’s home, children’s home providing accommodation for the purpose of restricting liberty or residential family centre;
- (b) 31 August 2018 for a CSA provider who is registered in respect of a domiciliary care agency but who is not also registered in respect of an establishment of a type mentioned in subparagraph (a).

(4) Where an establishment or agency in respect of which a CSA provider is registered becomes a transition service because it is specified in an application to register under section 6 of the Act so as to bring it within the definition of a transition service in article 3, the transition period referred to in paragraph (2) is extended to the date when the application is finally determined.

(5) Reference in this article to the time when an application under section 6 of the Act is finally determined includes—

- (a) the expiry of any time allowed under section 18(2) of the Act for the making of representations against a notice of proposal;
- (b) the expiry of any time allowed for bringing an appeal under section 26(1) of the Act against a notice issued under section 19(4) of the Act;
- (c) the determination or abandonment of any such appeal.

#### **Postponement of relevant date for relevant establishment or agency subject to cancellation process**

5.—(1) Where, on the relevant date specified in article 4(3), a relevant establishment or agency is subject to a cancellation process the relevant date is postponed until the date 6 weeks after the date when the cancellation process is finally determined.

(2) A relevant establishment or agency is subject to a cancellation process if a notice of proposal to cancel under section 17(4)(a) of the 2000 Act has been given to the CSA provider prior to the relevant date which is specified in article 4(3) and the process is not finally determined by that date.

(3) A cancellation process is finally determined when—

- (a) any appeal to the First-tier Tribunal against the cancellation is determined or abandoned;
- (b) a notice of decision under section 19(3) of the 2000 Act has been served and the 28 day period within which an appeal can be made to the First-tier Tribunal has expired; or
- (c) the CSA provider is notified that the notice of proposal has not been upheld or has been withdrawn.

#### **Savings during the transition period**

6.—(1) During the transition period a CSA provider’s registration under the 2000 Act will continue and, notwithstanding any consequential amendments to the 2000 Act made by Part 1 of Schedule 3 to the Act which would otherwise exclude their application, the Part 2 provisions will continue to apply to—

- (a) a CSA provider,

- (b) the Welsh Ministers,
- (c) the First-tier Tribunal,
- (d) a Magistrates' Court,

as if those consequential amendments had not been made.

(2) Section 16 of the Interpretation Act 1978<sup>(3)</sup> (general savings) applies in respect of the disapplication of the provisions of the 2000 Act to relevant establishments or agencies as it would if Part 2 of the 2000 Act were repealed.

(3) Where a CSA provider's registration is subject to conditions immediately before the principal appointed day, those conditions will apply to the registration during the transition period.

(4) The Part 2 provisions are—

- (a) sections 14, 14A, 15, 17(4) to (6), 18, 19(3) to (6), 20A, 20B, 21, 22B, 23(1), 23(4), 24, 24A, 25(2), 26, 28, 29, 30, 30A, 31, 32, 36, 37 of the 2000 Act;
- (b) such of the following regulations as apply to the establishment or agency in respect of which the CSA provider's registration is maintained—
  - (i) the Care Homes (Wales) Regulations 2002<sup>(4)</sup>,
  - (ii) the Children's Homes (Wales) Regulations 2002<sup>(5)</sup>,
  - (iii) the Registration of Social Care and Independent Health Care (Wales) Regulations 2002<sup>(6)</sup>,
  - (iv) the Residential Family Centres (Wales) Regulations 2003<sup>(7)</sup>,
  - (v) the Domiciliary Care Agencies (Wales) Regulations 2004<sup>(8)</sup>,
  - (vi) regulation 9(1) and regulation 12 of the Children (Secure Accommodation) (Wales) Regulations 2015<sup>(9)</sup>,
  - (vii) the Care Standards Act 2000 (Notification) (Wales) Regulations 2011<sup>(10)</sup>;
- (c) such of the National Minimum Standards made pursuant to section 23(1) of the 2000 Act as apply to the establishment or agency in question.

(5) Reference to the regulations in paragraph (4)(b) is to the regulations as amended immediately before the principal appointed day<sup>(11)</sup>.

### **Transitory modification of references to “adult placement service” in definitions of “care home service” and “domiciliary support service”**

7. Until the coming into force of section 2(1)(f) of the Act—

- (a) paragraph 1(2)(e) of Schedule 1 to the Act is to be read as if, for the phrase “providing accommodation for an adult arranged as part of an adult placement service” there were substituted “where accommodation is provided by an adult placement carer approved by an adult placement scheme provider who is registered under Part 2 of the Care Standards Act 2000”;

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(3) 1978 c. 30.

(4) S.I. 2002/324 (W. 37).

(5) S.I. 2002/327 (W. 40).

(6) S.I. 2002/919 (W. 107).

(7) S.I. 2003/781 (W. 92).

(8) S.I. 2004/219 (W. 23).

(9) S.I. 2015/1988 (W. 298).

(10) S.I. 2011/105 (W. 24).

(11) The Care Homes (Wales) Regulations 2002 have been amended by S.I. 2003/947 (W. 128), S.I. 2003/1004 (W. 144), S.I. 2004/1314 (W. 159), S.I. 2006/3251 (W. 295) and S.I. 2011/1016 (W. 153). The Children's Homes (Wales) Regulations 2002 have been amended by S.I. 2006/3251 (W. 295), S.I. 2007/311 (W. 28) and S.I. 2017/51 (W. 22). The Domiciliary Care Agencies (Wales) Regulations 2004 have been amended by S.I. 2006/3251 (W. 295) and S.I. 2013/225 (W. 22).

- (b) paragraph 8(2)(b)(i) of Schedule 1 to the Act is to be read as if, for the phrase “accommodation arranged as part of an adult placement service is provided” there were substituted “accommodation is provided by an adult placement carer approved by an adult placement scheme provider who is registered under Part 2 of the Care Standards Act 2000”.

#### **Transitory modification of sections 189 to 191 of the Social Services and Well-being (Wales) Act 2014**

**8.**—(1) Until the coming into force of paragraphs (d) to (g) of section 2(1) of the Act, and in the circumstances set out in paragraph (2), sections 189 to 191 of the Social Services and Well-being (Wales) Act 2014<sup>(12)</sup> are to be read as if the amendments to those sections made by paragraphs 33 to 35 of Schedule 3 to the Act had not been made.

(2) The circumstances referred to in paragraph (1) are that the business failure relates to a service of a type specified in paragraphs (d) to (g) of section 2(1) of the Act and that the service is of a type which continues to be regulated as an establishment or agency under Part 2 of the 2000 Act.

#### **Transitional modification of the Act in relation to CSA providers for whom regulation continues under the 2000 Act**

**9.**—(1) Where Welsh Ministers take enforcement measures against a CSA provider in respect of a transition service under the 2000 Act during the transition period, the requirements of section 7(1) and (2) of the Act in relation to the application are modified so that Welsh Ministers are not required to grant or refuse the application in respect of the place which is the subject of the enforcement measures until any process related to the enforcement measure is completed.

(2) For the purposes of paragraph (1) the completion of an enforcement measure includes—

- (a) the expiry of any time allowed for making representations under section 17 of the 2000 Act;
- (b) the expiry of any time allowed for the bringing of an appeal under section 21 of the 2000 Act; or
- (c) the period until any such appeal has been determined or abandoned.

(3) In this article “enforcement measures” means—

- (a) issuing a notice of proposal under section 17(4)(a) of the 2000 Act or a notice of decision following a proposal under that section;
- (b) suspension under section 14A of the 2000 Act;
- (c) an application for urgent cancellation under section 20A of the 2000 Act.

#### **Provision for applications under the 2000 Act which are in the process of being determined on the principal appointed day**

**10.** Where, on the principal appointed day, Welsh Ministers have not completed the determination of an application for registration under section 12 of the 2000 Act as a provider of a relevant establishment or agency and the application was received prior to 1 February 2018, they may treat the application as if it was one made under section 6 of the Act and may require any further information which is required by section 6, or by the Regulated Services (Registration) (Wales) Regulations 2017<sup>(13)</sup>, to enable them to determine the application.

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<sup>(12)</sup> 2014 anaw 4.

<sup>(13)</sup> S.I. 2017/1098 (W. 278).

### **Transitional provision in relation to applications by CSA providers to vary or remove conditions of registration in the transition period**

**11.**—(1) This paragraph applies where, during the transition period, a CSA provider makes an application under section 15(1)(a) of the 2000 Act to vary or remove a condition of registration for an establishment or agency which is a transition service.

(2) Where paragraph (1) applies, notwithstanding the requirements of section 15(4) (requirement to notify applicant on decision to grant application) and section 17(5) (requirement to notify applicant of decision to refuse an application) of the 2000 Act, the Welsh Ministers are not required to determine the application under section 15(1)(a) of the 2000 Act and may instead consider it as part of the CSA provider's application under section 6 of the Act.

### **Provision about managers subject to notice of decision to cancel issued before the principal appointed day**

**12.** Where Welsh Ministers have issued a notice of decision to cancel the registration of a manager of an establishment or agency under section 19(3) of the 2000 Act and, before the principal appointed day, the manager has brought an appeal against the decision under section 21 (appeals to the Tribunal) of the 2000 Act, the registration of the manager will continue, for the purposes of the appeal, until the appeal is determined or abandoned.

### **Transitional provision relating to the death of a service provider**

**13.**—(1) Paragraph (2) applies where—

- (a) a person registered under Part 2 of the 2000 Act (establishments and agencies) in respect of the carrying on of a relevant establishment or agency has died before the principal appointed day;
- (b) the Welsh Ministers have been notified in writing of that death; and
- (c) immediately before the principal appointed day a personal representative is carrying on the establishment or agency without being registered in respect of it in accordance with—
  - (i) regulation 43(3) of the Care Homes (Wales) Regulations 2002;
  - (ii) regulation 39(3) of the Children's Homes (Wales) Regulations 2002;
  - (iii) regulation 30(3) of the Residential Family Centres (Wales) Regulations 2003;
  - (iv) regulation 29(3) of the Domiciliary Care Agencies (Wales) Regulations 2004.

(2) Where this paragraph applies—

- (a) the personal representative is entitled to provide a regulated service without being registered in respect of it to the extent that the registered provider, immediately before his or her death, was entitled to carry on that activity at a registered establishment or agency by virtue of his registration under Part 2 of the 2000 Act; and
- (b) the person is so entitled for the period specified in paragraph (3).

(3) The period referred to in paragraph (2) is—

- (a) subject to paragraph (4), where before the principal appointed day the personal representative has carried on the establishment or agency for less than 28 days and no extension to that period has been granted under the regulations specified in paragraph (1)(c), the remainder of the 28 day period starting from the date on which they took over the carrying on of the establishment or agency; or
- (b) where, before the principal appointed day, the personal representative has been granted an extension under the regulations specified in paragraph (1)(c) the period ending on the date on which that extension expires.

(4) The Welsh Ministers may extend the period specified in paragraph (3)(a) by such further period, not exceeding one year, and must notify any such determination to the personal representative in writing.

(5) The personal representative of the deceased registered provider must ensure a person is appointed to take full-time day to day charge for the provision of the regulated service during any period in which, in accordance with this article, they are carrying on the regulated service without being registered in respect of it.

#### **Transitional disapplication of section 5 of the Act for existing providers located outside Wales applying to register under the Act**

**14.**—(1) This article applies to a person who, immediately before 1 February 2018, provides a service in Wales of a sort which, after the principal appointed day, would require the person to be registered as the provider of a domiciliary support service but who is not registered under Part 2 of the 2000 Act as a person carrying on a domiciliary care agency merely because the undertaking which provides or arranges the provision of the services is not located in Wales.

(2) Where a person to whom paragraph (1) applies, makes an application to register as the provider of a domiciliary support service under section 6 of the Act before 2 April 2018, section 5 of the Act does not apply to that person as regards the provision of the domiciliary support service for the places specified in the application until the application is finally determined.

(3) Reference in paragraph (2) to an application being finally determined has the same meaning as in article 4(4) and (5).

#### **Transition period for nurses agencies in respect of which an application is made to register as a domiciliary support service**

**15.** Where a person is registered as a person carrying on a nurses agency under the 2000 Act immediately before the principal appointed day and the area in which the agency provides services is specified in an application made before the principal appointed day under section 6 of the Act as a place in relation to which a domiciliary support service is to be provided then the person is to be treated as if the person was a CSA provider so that—

- (a) there is a transition period from the principal appointed day until the day when the application is finally determined within the meaning of article 4(5);
- (b) article 4(1) applies during the transition period;
- (c) article 5 applies during the transition period;
- (d) the Nurses Agencies (Wales) Regulations 2003(14) continue to apply to the person during the transition period.

21 December 2017

*Huw Irranca-Davies*  
Minister for Children and Social Care, under  
authority of the Cabinet Secretary for Health and  
Social Services, one of the Welsh Ministers

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## SCHEDULE

Article 2(3)(h)

The following provisions of Part 1 of Schedule 3 to the Act come into force in accordance with article 2(3)—

- (a) paragraphs 1 to 3,
- (b) paragraph 4(a) and (b),
- (c) paragraph 4(d),
- (d) paragraph 4(g) to (i),
- (e) paragraphs 6 to 11,
- (f) paragraph 16,
- (g) paragraphs 25 to 27,
- (h) paragraph 28(a),
- (i) paragraph 29,
- (j) paragraphs 31 to 36.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Article 2 and the Schedule bring into force provisions of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) relating to the regulation of certain social care service providers.

Section 6 of the Act is brought into force on 1 February 2018 to allow applications for registration to be made in advance of the main coming into force date for Part 1 of the Act. 2 April 2018 is the coming into force date for the provisions of Part 1 as they apply to persons providing care home services, secure accommodation services, residential family centre services and domiciliary support services. Article 2 also commences relevant consequential amendments in Part 1 of Schedule 3 to the Act. 2 April 2018 is referred to in the Order as “the principal appointed day”.

Articles 3 to 15 make savings, transitory and transitional provisions to deal with the periods within which a person registered under Part 2 of the Care Standards Act 2000 (“the 2000 Act”) must apply to the Welsh Ministers to register and during which they will be exempt from the requirement to be registered under the Act and will continue to be regulated under Part 2 of the 2000 Act.

Article 3 provides a definition of a “transition service” to describe relevant establishments and agencies which are included in applications for registration under the Act. Relevant establishments and agencies are care homes, children’s homes, children’s homes providing accommodation for the purpose of restricting the liberty of children, residential family centres and domiciliary care agencies and which are carried on by a person registered under Part 2 of the 2000 Act immediately before the principal appointed day.

Article 4 disapplies, for a transition period, section 5 of the Act. Section 5 makes it an offence to provide a regulated service without being registered under the Act. A person carrying on a relevant establishment or agency will not be liable under section 5 until the relevant date which applies to the type of establishment or agency but, provided they have submitted an application to register under



the Act before the relevant date, the transition period is extended to the time when that application is determined.

Article 5 provides that where an establishment or agency is subject to cancellation but the process is not determined on the date by which an application would normally have to be made to register under section 6 of the Act, then the date is put back to a date 6 weeks after the cancellation process is determined. The effect therefore is to extend the transition period.

Article 6 saves relevant provisions of Part 2 of the 2000 Act so that the provisions of Part 2, and regulations made under Part 2, continue to apply to those whose activity is governed by them during the transition period. The savings apply to providers, to the registration authority, to the First-tier Tribunal and to Magistrates' Courts but not to managers. The registration of a manager registered under Part 2 of the 2000 Act ends therefore on 2 April 2018.

Article 7 makes a transitory modification to the definitions of "care home service" and "domiciliary support service" in Schedule 1 which contain references to "adult placement services" because commencement of Part 1 of the Act for "adult placement services" is not part of this phase of commencement.

Article 8 makes a transitory modification to sections 189 to 191 of the Social Services and Well-being (Wales) Act 2014 as regards business failure of services whose regulation under the Act has not yet been commenced and which continue to be regulated under the 2000 Act. The modification requires the sections to be read as if the consequential amendments made to them by the Act do not apply.

Article 9 allows Welsh Ministers to postpone consideration of an application to register under the Act where the service is one which is subject to one of the specified enforcement measures, until after the outcome of the process which relates to the enforcement measure.

Article 10 allows Welsh Ministers to treat an outstanding application for registration under the 2000 Act as if it were an application to register under section 6 of the Act and to request any additional information to enable them to do so.

Article 11 allows Welsh Ministers not to determine an application for variation or removal of conditions of registration made by a provider who, in the transition period, is still being regulated under the 2000 Act and instead consider it as part of the provider's application to register under the Act.

Article 12 provides that if a manager of an establishment or agency is subject to a notice of decision to cancel his or her registration and the manager has, before the expiry of the transition period, lodged an appeal to the First-Tier Tribunal, then the manager's registration will continue until the appeal is determined or abandoned.

Article 13 makes provision to deal with circumstances where a relevant establishment or agency, on the principal appointed day, is being carried on by personal representatives following the death of the person who was registered under the 2000 Act.

Article 14 makes provision for persons who have been providing domiciliary care services in Wales prior to 1 February but have not been able to register as a domiciliary care agency because their business is located outside Wales. Where these providers make an application to register under section 6 of the Act by 2 April 2018 they will be able to continue to provide services and will not be liable to prosecution under section 5 of the Act.

Article 15 makes provision for a person registered under the 2000 Act as a person who carries on a nurses agency and where an application is made under section 6 of the Act to register in respect of the undertaking as a domiciliary support service.

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## 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>
Part 1		
Section 56(1) (partially)	4 September 2017	<a href="#">2017/846 (W. 206) (C. 71)</a>
Section 56(2)	4 September 2017	<a href="#">2017/846 (W. 206) (C. 71)</a>
Part 2 (sections 65 and 66)	3 April 2017	<a href="#">2017/309 (W. 80) (C. 29)</a>
Part 3		
Section 67 (partially)	11 July 2016	<a href="#">2016/713 (W. 191) (C. 51)</a>
Section 68 (partially)	11 July 2016	<a href="#">2016/713 (W. 191) (C. 51)</a>
Section 73(1) and (2) (partially)	11 July 2016	<a href="#">2016/713 (W. 191) (C. 51)</a>
Section 75 (partially)	11 July 2016	<a href="#">2016/713 (W. 191) (C. 51)</a>
In so far as it is not already in force, Part 3 and Schedule 2	3 April 2017	<a href="#">2017/309 (W. 80) (C. 29)</a>
Part 4 (sections 79 to 111)	3 April 2017	<a href="#">2017/309 (W. 80) (C. 29)</a>
Part 5 (sections 112 to 116)	3 April 2017	<a href="#">2017/309 (W. 80) (C. 29)</a>
Part 6 (sections 117 to 164)	3 April 2017	<a href="#">2017/309 (W. 80) (C. 29)</a>
Part 7 (sections 165 to 173)	3 April 2017	<a href="#">2017/309 (W. 80) (C. 29)</a>
Part 8 (sections 174 and 175)	3 April 2017	<a href="#">2017/309 (W. 80) (C. 29)</a>
Part 9 (sections 176 to 182)	3 April 2017	<a href="#">2017/309 (W. 80) (C. 29)</a>
Part 10 (sections 183 and 184)	3 April 2017	<a href="#">2017/309 (W. 80) (C. 29)</a>
Part 11		
Section 185 and Schedule 3 in so far as they relate to Part 2 of Schedule 3	3 April 2017	<a href="#">2017/309 (W. 80) (C. 29)</a>
Section 185 and Schedule 3 in so far as they relate to Part 3 of Schedule 3	6 April 2016	<a href="#">2016/467 (W. 149) (C. 28)</a>