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WELSH STATUTORY INSTRUMENTS

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**2019 No. 864 (W. 156) (C. 21)**

**SOCIAL CARE, WALES**

The Regulation and Inspection of Social Care  
(Wales) Act 2016 (Commencement No. 6,  
Savings and Transitional Provisions) Order 2019

Made - - - -

10 April 2019

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. 6, Savings and Transitional Provisions) Order 2019.

(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>;

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

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

“relevant agency” (“*asiantaeth berthnasol*”)—

(a) means an agency of one of the following descriptions—

(i) a voluntary adoption agency;

(ii) an adoption support agency;

(iii) a fostering agency, and

(b) includes, for the purposes of this Order, an adult placement scheme<sup>(3)</sup>;

“relevant service” (“*gwasanaeth perthnasol*”)—

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(1) 2016 anaw 2.

(2) 2000 c. 14.

(3) The Adult Placement Schemes (Wales) Regulations 2004 (“the 2004 Regulations”) modify the 2000 Act so as to apply Part 2 of that Act to adult placement schemes and make provision in relation to such schemes.

- (a) means a service of one of the following descriptions in respect of which a person is registered under Chapter 2 of Part 1 of the Act—
    - (i) a care home service;
    - (ii) a secure accommodation service;
    - (iii) a residential family centre service; or
    - (iv) a domiciliary support service, and
  - (b) that person is also a CSA provider;
- “the Part 2 provisions” (“*darpariaethau Rhan 2*”) has the meaning given in article 7(4);  
 “transition service” (“*gwasanaeth trosiannol*”) has the meaning given in article 3;  
 “transition period” (“*cyfnod trosiannol*”) has the meaning given in article 4(2).

(3) In this Order the terms, “voluntary adoption agency”, “adoption support agency”, and “fostering agency” have the meanings given in section 4 of the 2000 Act and the term “adult placement scheme” has the meaning given in regulation 2 of the Adult Placement Schemes (Wales) Regulations 2004(4).

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

2.—(1) 29 April 2019 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 (d) to (g) of section 2(1) of the Act.

(3) 29 April 2019 is the appointed day for the coming into force of the following provisions of the Act—

- (a) paragraphs (1)(d) to (g) of section 2, and paragraphs 4 to 7 and 9 of Schedule 1;
- (b) section 56(1) (reports by local authorities and general duty of the Welsh Ministers) in so far as it inserts section 144C (general duty of the Welsh Ministers) into the 2014 Act(5);
- (c) section 57 (reviews, investigations and inspections), and
- (d) section 185 and Part 1 of Schedule 3 (minor and consequential amendments) to the extent set out in the Schedule to this Order.

(4) 29 April 2019 is referred to in this Order as “the appointed day”.

### **Meaning of transition service**

3.—(1) Subject to paragraph (2) a “transition service” is—

- (a) a relevant agency in respect of which a person is registered under Part 2 of the 2000 Act immediately before the appointed day and—
  - (i) in the case of a voluntary adoption agency or an adoption support agency, the area in which the agency provides adoption services is specified in an application made before the relevant date under section 6(6) or 11(1)(a)(i)(7) of the Act as a place in relation to which an adoption service is to be provided;

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(4) [S.I. 2004/1756 \(W. 188\)](#).

(5) The phrase “2014 Act” is defined in section 189 of the Act as the [Social Services and Well-being \(Wales\) Act 2014](#) (anaw 4).

(6) Section 6 of the Act requires a person who wants to provide a regulated service to make an application for registration to the Welsh Ministers.

(7) Section 11(1)(a)(i) of the Act requires a person who is already registered as a provider of a regulated service, within the meaning of the Act, to apply to the Welsh Ministers for the variation of that provider’s registration if the provider wants to provide a regulated service which the provider is not already registered to provide. In the case of this Order, such a person

- (ii) in the case of a fostering agency, the area in which the agency provides fostering services is specified in an application made before the relevant date under section 6 or 11(1)(a)(i) of the Act as a place in relation to which a fostering service is to be provided;
- (iii) in the case of an adult placement scheme, the area in which the scheme provides services is specified in an application made before the relevant date under section 6 or 11(1)(a)(i) of the Act as a place in relation to which an adult placement 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 (3), the “transition period” for a CSA provider is the period beginning with the appointed day and ending on the earlier of—

- (a) the relevant date as specified in paragraph (4); or
- (b) the date on which an application to register or vary registration in respect of a transition service is finally determined.

(3) Where an 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, or to vary under section 11(1)(a)(i), the transition period referred to in paragraph (2) is extended to the date when the application is finally determined.

(4) Subject to articles 5 and 6, the relevant date is 31 August 2019.

(5) Reference in this article to the time when an application under section 6 or 11(1)(a)(i) is finally determined includes—

- (a) 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;
- (b) the determination or abandonment of any appeal.

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

5.—(1) Where, on the relevant date specified in article 4(4), a relevant 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 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 specified in article 4(4) 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.

### **Postponement of relevant date for relevant service subject to cancellation process**

6.—(1) Where, on the relevant date specified in article 4(4), a relevant service 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 service is subject to a cancellation process if, prior to the relevant date specified in article 4(4), an improvement notice under section 16(2) of the Act has been given to the provider of the relevant service with a view to cancelling the registration under section 15 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 17(2), (3)(a) or (5) of the 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 provider of the relevant service is notified under section 17(1) or (4) of the Act.

### **Savings during transition period**

7.—(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>(8)</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 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, 23(1), 23(4), 24, 24A, 25(2), 26, 28, 29, 30, 30A, 31, 32, 36, and 37 of the 2000 Act;
- (b) such of the following regulations as apply to the agency in respect of which the CSA provider's registration is maintained—
  - (i) the Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003<sup>(9)</sup>;
  - (ii) the Adoption Support Agencies (Wales) Regulations 2005<sup>(10)</sup>;
  - (iii) the Fostering Services (Wales) Regulations 2003<sup>(11)</sup>;

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<sup>(8)</sup> 1978 c. 30.

<sup>(9)</sup> S.I. 2003/367 as amended by S.I. 2005/3341, S.I. 2007/603 and S.I. 2013/235.

<sup>(10)</sup> S.I. 2005/1514 (W. 118) as amended by S.I. 2006/3251 (W. 295) and S.I. 2013/235.

<sup>(11)</sup> S.I. 2003/237 (W. 35) as amended by S.I. 2004/1016 (W. 113), S.I. 2005/3302, S.I. 2006/3251 (W. 295), S.I. 2010/746 (W. 75), S.I. 2012/2404, 2016/216 (W. 85) and 2016/481.

- (iv) the Adult Placement Schemes (Wales) Regulations 2004(12);
- (v) the Care Standards Act 2000 (Notification) (Wales) Regulations 2011(13);
- (c) such of the National Minimum Standards made pursuant to section 23(1) of the 2000 Act as apply to the agency in question.

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

8.—(1) Where the 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, as the case may be, in relation to the application are modified so that the 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 the bringing of an appeal under section 21 of the 2000 Act; or
  - (b) 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 or issuing a notice for urgent suspension under section 20B of the 2000 Act;
  - (c) an application for urgent cancellation under section 20A of the 2000 Act.

**Transitional modifications of the Act in relation to providers of relevant services subject to enforcement measures**

9.—(1) This article applies to the provider of a relevant service where the provider is also the provider of a transition service, having submitted an application under section 11(1)(a) of the Act before the relevant date in respect of a relevant agency.

(2) Where the Welsh Ministers take enforcement measures against the provider of a relevant service under the Act, the function of determining the application set out in section 12(1) of the Act is modified so that the Welsh Ministers may postpone determining the application until any process related to the enforcement measure is completed.

- (3) For the purposes of paragraph (1) the completion of an enforcement measure includes—
  - (a) the expiry of any time allowed for the bringing of an appeal under section 26 of the Act; or
  - (b) the period until any such appeal has been determined or abandoned.
- (4) In this article “enforcement measures” means—
  - (a) issuing an improvement notice under section 16(2) of the Act or a notice of decision following a proposal under that section;
  - (b) an application for urgent cancellation or variation under section 23 of the Act; or
  - (c) issuing a decision notice under section 25 of the Act.

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(12) S.I. 2004/1756 as amended by S.I. 2005/3302, S.I. 2006/3251 (W. 295), S.I. 2006/878 (W. 83), S.I. 2010/2585 (W. 217), S.I. 2012/2404, S.I. 2014/107 and 2016/481. References to adult placement schemes, and the application of the provisions in the 2000 Act to those schemes, should be read in conjunction with the modifications contained in the 2004 Regulations.

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

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

10. Where, on the appointed day, the 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 agency and the application was received prior to 29 April 2019, they may treat the application as if it was one made under section 6 or 11(1)(a) of the Act, as the case may be, and may require any further information which is required by section 6 or 11(1)(a), as the case may be, or by the Regulated Services (Registration) (Wales) Regulations 2017(14), to enable them to determine the application.

### **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 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 or section 11(1)(a) as the case may be.

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

12. Where the Welsh Ministers have issued a notice of decision to cancel the registration of a manager of an agency under section 19(3) of the 2000 Act and, before the 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 disapplication of section 5 of the Act for existing providers of services**

- 13.—(1) This article applies to a person who, immediately before the appointed day—
- (a) provides a service in Wales of a sort which, after the appointed day, requires the person to be registered as the provider of an adoption service but who is not registered under Part 2 of the 2000 Act as a person carrying on an adoption society merely because the undertaking which provides or arranges the provision of the services is a branch of an adoption society, which is registered under Part 2 of the 2000 Act and is located in England;
  - (b) provides a service in Wales of a sort which, after the appointed day, requires the person to be registered as the provider of an adoption service but who is not registered under Part 2 of the 2000 Act as a person carrying on an adoption support agency merely because the adoption support agency is an unincorporated body;
  - (c) provides a service in Wales of a sort which, after the appointed day, requires the person to be registered as the provider of an advocacy service but who immediately before the appointed date was not required to be so registered;
  - (d) provides a service in Wales of a sort which, after the appointed day, requires the person to be registered as the provider of an adoption service, a fostering service or an adult placement service but who is not registered under Part 2 of the 2000 Act as a person

carrying on an adoption support agency, a fostering agency or an adult placement scheme merely because the person providing the service is not located in Wales.

(2) Where a person to whom paragraph (1) applies, makes an application to register as the provider of an adoption service, fostering service, advocacy service or adult placement service, as the case may be, under section 6 of the Act before 31 August 2019, section 5 of the Act does not apply to that person as regards the provision of the adoption service, fostering service, advocacy service or adult placement service in relation to 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(3) and (5).

10 April 2019

*Julie Morgan*  
Deputy Minister for Health and Social Services,  
under authority of the Minister for Health and  
Social Services, one of the Welsh Ministers

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## SCHEDULE

Article 2(3)(d)

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

- (a) paragraph 4(c), (e) and (f),
- (b) paragraph 5,
- (c) paragraphs 12 to 15,
- (d) paragraphs 17 to 20,
- (e) paragraphs 21 to 23,
- (f) paragraph 24,
- (g) paragraph 28(b) and (c).

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## EXPLANATORY NOTE

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

This is the sixth Commencement Order made by the Welsh Ministers under the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”).

Article 2 and the Schedule bring into force provisions of the Act relating to the regulation of certain social care service providers.

Section 6 of the Act is brought into force on 29 April 2019 to allow applications for registration to be made in respect of an adoption service, a fostering service, an adult placement service or an advocacy service. 29 April 2019 is the coming into force date for the provisions of Part 1 as they apply to persons providing an adoption service, a fostering service, an adult placement service or an advocacy service. Article 2 also commences relevant consequential amendments in Part 1 of Schedule 3 to the Act.

Articles 3 to 13 make savings 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 a relevant agency which is included in an application for registration under the Act. A relevant agency is a voluntary adoption agency, an adoption support agency, an adult placement scheme or a fostering agency which is carried on by a person registered under Part 2 of the 2000 Act immediately before the appointed day (29 April 2019). A “transition service” also includes a relevant agency whose provider is already registered under the Act as a care home service, a secure accommodation service, a residential family centre service or a domiciliary support service. In such a case, the provider which is already registered under the Act will need to vary its registration in order to provide an adoption service, a fostering service, an adult placement service or an advocacy service.

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 agency will not be liable under section 5 until the relevant date (31 August 2019) but, provided



they have submitted an application to register, or to vary their registration, 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 a relevant agency is subject to cancellation under the 2000 Act 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. Similar provision is made in article 6 in relation to a relevant service which is subject to cancellation under the Act. A relevant service is a care home service, a secure accommodation service, a residential family centre service or a domiciliary support service, which is provided by a person who also provides a relevant agency.

Article 7 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 29 April 2019.

Article 8 allows the Welsh Ministers to postpone consideration of an application to register under the Act where the transition service is one which is subject to one of the specified enforcement measures under the 2000 Act, until after the outcome of the process which relates to the enforcement measure. Similar provision is made in article 9 in relation to a relevant service (where the provider of the relevant service also provides a transition service) which is subject to one of the specified enforcement measures under the Act.

Article 10 allows the 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, or an application to vary registration under section 11(1)(a) of the Act, and to request any additional information to enable them to do so.

Article 11 allows the 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 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 for persons who have been providing adoption services, fostering services, adult placement services or advocacy services in Wales prior to 29 April 2019 but have been unable to register under the 2000 Act either because their business is a branch of an English-registered agency but is based in Wales (in the case of a voluntary adoption agency); they are precluded from registration as unincorporated bodies (in the case of an unincorporated adoption support agency); they are not currently required to register (in the case of an advocacy service); or their business is located outside Wales (in the case of a fostering agency, an adoption support agency or an adult placement scheme). Where these providers make an application to register under section 6 of the Act by 31 August 2019 they will be able to continue to provide services and will not be liable to prosecution under section 5 of the Act.

#### **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:

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Part 1		
Section 1	2 April 2018	2017/1326 (W. 299) (C. 121)
Section 2, (except for paragraphs (d) to (g) of subsection (1), and paragraphs 1 to 3 and 8 of Schedule 1)	2 April 2018	2017/1326 (W. 299) (C. 121)
Sections 3 to 5	2 April 2018	2017/1326 (W. 299) (C. 121)
Sections 7 to 31	2 April 2018	2017/1326 (W. 299) (C. 121)
Sections 32 to 55	2 April 2018	2017/1326 (W. 299) (C. 121)
Section 56(1) (partially)	4 September 2017	2017/846 (W. 206) (C. 71)
Section 56(2)	4 September 2017	2017/846 (W. 206) (C. 71)
Section 58	2 April 2018	2017/1326 (W. 299) (C. 121)
Section 64	2 April 2018	2017/1326 (W. 299) (C. 121)
Part 2 (sections 65 and 66)	3 April 2017	2017/309 (W. 80) (C. 29)
Part 3		
Section 67 (partially)	11 July 2016	2016/713 (W. 191) (C. 51)
Section 68 (partially)	11 July 2016	2016/713 (W. 191) (C. 51)
Section 73(1) and (2) (partially)	11 July 2016	2016/713 (W. 191) (C. 51)
Section 75 (partially)	11 July 2016	2016/713 (W. 191) (C. 51)
In so far as it is not already in force, Part 3 and Schedule 2	3 April 2017	2017/309 (W. 80) (C. 29)
Part 4 (sections 79 to 111)	3 April 2017	2017/309 (W. 80) (C. 29)
Part 5 (sections 112 to 116)	3 April 2017	2017/309 (W. 80) (C. 29)
Part 6 (sections 117 to 164)	3 April 2017	2017/309 (W. 80) (C. 29)
Part 7 (sections 165 to 173)	3 April 2017	2017/309 (W. 80) (C. 29)
Part 8 (sections 174 and 175)	3 April 2017	2017/309 (W. 80) (C. 29)
Part 9 (sections 176 to 182)	3 April 2017	2017/309 (W. 80) (C. 29)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
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 1 of Schedule 3	2 April 2018	<a href="#">2017/1326 (W. 299) (C. 121)</a>
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>

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