

2016 No. 216 (W. 85)

**CHILDREN AND YOUNG
PERSONS, WALES**

The Social Services and Well-being
(Wales) Act 2014 (Consequential
Amendments) and Care Planning,
Placement and Case Review
(Miscellaneous Amendments)
(Wales) Regulations 2016

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made as a result of the commencement of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”).

The 2014 Act replaces, in relation to Wales, the provision formerly made by Part 3 of and Schedule 2 to the Children Act 1989 (“the 1989 Act”).

The powers within the 2014 Act have been exercised (in the main using the powers within Part 6 of that Act (looked after and accommodated children)) to make the Care Planning, Placement and Case Review (Wales) Regulations 2015 (“the 2015 Regulations”). The 2015 Regulations make provision about care planning and associated matters for looked after children, that is, for children who are looked after by a local authority (whether or not they are in the care of that authority by virtue of a care order under section 31 of the 1989 Act).

These Regulations make consequential and incidental amendments to secondary legislation required as a consequence of the commencement of the 2014 Act and the making of the 2015 Regulations in exercise of the powers within Part 6 of the 2014 Act. The secondary legislation which is amended by these Regulations makes provision (in the main) about care planning, placement decisions and the review of cases of certain children (those looked after by a local authority, accommodated by voluntary organisations, or placed in a private children’s home).

The effect of the amendments made in these Regulations is that the earlier secondary legislation, which makes provision about care planning and associated matters for children, will apply only in relation to children who are provided with accommodation by a voluntary organisation and to children who are placed in private children's homes and will make reference to the appropriate provision made by the 2014 Act.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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(Wales) Regulations 2016

Made 19 February 2016

Laid before the National Assembly for Wales
24 February 2016

Coming into force 6 April 2016

The Welsh Ministers, in exercise of the powers conferred by the provisions in the Schedule make the following Regulations⁽¹⁾:

Title and commencement

1.—(1) The title of these Regulations is the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) and Care Planning, Placement and Case Review (Miscellaneous Amendments) (Wales) Regulations 2016.

(2) These Regulations come into force on 6 April 2016.

Amendment of the Refuges (Children’s Homes and Foster Placements) Regulations 1991

2.—(1) The Refuges (Children’s Homes and Foster Placements) Regulations 1991⁽²⁾ are amended as follows.

(2) In regulation 2(1) (interpretation)—

⁽¹⁾ See section 197(1) of the Social Services and Well-being (Wales) Act 2014 (anaw 4) for the definition of “specified” and “regulations”.
⁽²⁾ S.I. 1991/1507.

- (a) in the appropriate place insert—
 - “remand order” means an order of the court made under section 92 or section 102 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(1);□, and
 - (b) in the definition of “responsible person”, after the words “emergency protection order” insert “, remand order”.
- (3) In regulation 4(1) (withdrawal of a certificate), for sub-paragraph (c) substitute—
- (c)where a foster parent providing a refuge fails to comply with any provision contained in—
 - (i) an agreement to which the foster parent is a party concerning matters to which paragraphs 4 to 11 and 15 of Schedule 5 to the Fostering Services (Wales) Regulations 2003(2) apply, or
 - (ii) an agreement to which the foster parent is a party concerning matters to which paragraphs 4 to 8 of Schedule 6 to the Fostering Services (Wales) Regulations 2003, or paragraphs 1(2) and (5), and 3(7) and (10) of Schedule 3 to the Care Planning, Placement and Case Review (Wales) Regulations 2015(3) (as the case may be) apply, or
 - (iii) regulations 24 or 26 of the Care Planning, Placement and Case Review (Wales) Regulations 2015 (in respect of an emergency or temporary placement);□.

Amendment of the Children’s Homes (Wales) Regulations 2002

3.—(1) The Children’s Homes (Wales) Regulations 2002(4) are amended as follows.

(2) In regulation 18(1)(d) (education, employment and leisure activity), after “Review of Children’s Cases (Wales) Regulations 2007(5)” insert “, the Care Planning, Placement and Case Review (Wales) Regulations 2015,”.

(3) In regulation 20(2)(g) (health needs of children), after “Review of Children’s Cases (Wales)

(1) 2012 c. 10.
 (2) S.I. 2003/237 (W. 35).
 (3) S.I. 2015/1818 (W. 261).
 (4) S.I. 2002/327 (W. 40).
 (5) S.I. 2007/307 (W. 26).

Regulations 2007” insert “, the Care Planning, Placement and Case Review (Wales) Regulations 2015,”.

Amendment of the Fostering Services (Wales) Regulations 2003

4.—(1) The Fostering Services (Wales) Regulations 2003(1) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in the appropriate place insert—

□“the 2014 Act” (*“Deddf 2014”*) means the Social Services and Well-being (Wales) Act 2014;

“the 2015 Regulations” (*“Rheoliadau 2015”*) means the Care Planning, Placement and Case Review (Wales) Regulations 2015;”;

(b) for the definition of “foster parent” substitute the following—

□“foster parent” (*“rhiant maeth”*) means a person who is approved as a foster parent—

(a) under these Regulations, and

(b) except in regulations 24 to 33, includes a person with whom a child is placed under regulation 26 of the 2015 Regulations (temporary approval of a relative, friend or other person connected with a child) or regulation 28 of those Regulations (temporary approval of a particular prospective adopter as a foster parent);”;

and

(c) for the definition of “placement” substitute the following—

□“placement” (*“lleoliad”*) means any placement of a child with foster parents made by—

(a) a local authority under section 81 of the 2014 Act, or

(b) a voluntary organisation under section 59(1)(a) of the 1989 Act,

which is not a placement for adoption and, except in Part V, includes a placement arranged by an independent fostering agency acting on behalf of a local authority, and references to a child who is placed are to be construed accordingly;□.

(3) In regulation 3(3)(b)(ii) (statement of purpose and children’s guide), for “section 26(3) of the 1989 Act” substitute “section 174(1) of the 2014 Act”.

(1) S.I. 2003/237 (W. 35).

(4) In regulation 30 (case records relating to foster parents and others)—

- (a) in paragraph (2), omit sub-paragraph (e); and
- (b) for paragraph (4) substitute the following—

□(4) A local authority must maintain a case record for each person with whom a child is placed under regulation 26 of the 2015 Regulations (temporary approval of a relative, friend or other person connected with a child) or under regulation 28 of those Regulations (temporary approval of a particular prospective adopter as a foster parent) which must include in relation to that person—

- (a) a record in relation to the placement, including the name, age and sex of each child placed, the date on which the placement began and, if the placement has been terminated, the date and circumstances of the termination; and
- (b) the information obtained in relation to the enquiries carried out under regulation 26(2) or regulation 28 (as appropriate) of the 2015 Regulations.□.

(5) For regulation 31 (register of foster parents) substitute the following—

□**Register of foster parents**

31. The fostering services provider must maintain a register (a “register of foster parents”) and enter in it the following particulars in relation to each foster parent—

- (a) the name, address, date of birth and sex of each foster parent and, in the case of a local authority fostering service, of each person with whom it has placed a child under regulation 26 or regulation 28 of the 2015 Regulations,
- (b) the date of approval and of each review of approval (as the case may be), and
- (c) the current terms of the approval (if any).□.

(6) In regulation 32(2) (retention and confidentiality of records), for “regulation 38(2)” substitute “regulation 26 or regulation 28 of the 2015 Regulations”.

(7) In regulation 33 (general duty of responsible authority)—

- (a) in the opening words, for “A responsible authority” substitute “A voluntary organisation”;

- (b) in paragraph (a), for “(as the case may be section 22(3) or” substitute “section”; and
 - (c) in the heading, for “responsible authority” substitute “voluntary organisation”.
- (8) In regulation 34 (making of placements)—
- (a) for the opening words of paragraph (1) substitute—
 - (1) A voluntary organisation may only place a child with a foster parent if—□;
 - (b) in paragraph (1)(a)(i), for “responsible authority” substitute “voluntary organisation”;
 - (c) in paragraph (2)(d), for “regulation 40” substitute “regulation 29 of the 2015 Regulations (independent fostering agencies – discharge of authority functions)”; and
 - (d) in paragraph (3), for “responsible authority” substitute “voluntary organisation”.
- (9) In regulation 35 (supervision of placements)—
- (a) for “responsible authority”, in each place it occurs, substitute “voluntary organisation”;
 - (b) for “authority”, in each place it occurs, substitute “organisation”; and
 - (c) omit paragraph (2).
- (10) In regulation 36 (termination of placements)—
- (a) for “responsible authority”, in each place it occurs, substitute “voluntary organisation”; and
 - (b) in paragraph (1), for “(as the case may be) section 22(3) or” substitute “section”.
- (11) In regulation 37(1) (short term placements), for “responsible authority” substitute “voluntary organisation”.
- (12) Omit regulation 38 (emergency and immediate placements by local authorities).
- (13) In regulation 39 (placements outside Wales), omit paragraph (2).
- (14) Omit regulation 40 (independent fostering agencies – discharge of local authority functions).
- (15) In regulation 42B(1) (compliance notification), for “the 1989 Act and the 2000 Act” substitute “the 1989 Act, the 2000 Act and the 2014 Act”.
- (16) In Schedule 6 (matters and obligations in foster placement agreements)—
- (a) for “responsible authority”, in each place it occurs, substitute “voluntary organisation”; and
 - (b) for “authority”, in each place it occurs, substitute “organisation”.

Amendment of the Adoption Agencies (Wales) Regulations 2005

5.—(1) The Adoption Agencies (Wales) Regulations 2005⁽¹⁾ are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in the appropriate place, insert—

““looked after” means—

(a) looked after (“*derbyn gofal*”) by a local authority in Wales in accordance with section 74(1) of the Social Services and Well-being (Wales) Act 2014⁽²⁾, or

(b) looked after by a local authority in England in accordance with section 22(1) of the 1989 Act⁽³⁾; and

(b) for the definition of “social services functions” substitute—

□“social services functions” (“*swyddogaethau gwasanaethau cymdeithasol*”) means functions within the meaning of section 143 of and Schedule 2 to the Social Services and Well-being (Wales) Act 2014;□.

(3) In regulation 12(2) (requirement to open child’s case record), after “under the 1989 Act” insert “, or the Social Services and Well-being (Wales) Act 2014 (as the case may be)”.

(4) After regulation 12 insert—

“Duties of adoption agency when a child is to be placed in accordance with section 81(11) of the Social Services and Well-being (Wales) Act 2014

12A.—(1) This regulation applies where a decision has been made to place a child in accordance with regulation 28 of the Care Planning, Placement and Case Review (Wales) Regulations 2015⁽³⁾ (temporary approval of a particular prospective adopter as a foster parent).

(2) The adoption agency must—

(a) notify the prospective adopter in writing of the decision to place the child with the prospective adopter; and

(b) explain the decision to the child in an appropriate manner, having regard to the child’s age and understanding.

(3) For the purposes of this regulation “placed” (“*lleoli*”) means placed in accordance

(1) S.I. 2005/1313 (W. 95).

(2) 2014 anaw 4.

(3) S.I. 2015/1818 (W. 261).

with section 81 of the Social Services and Well-being (Wales) Act 2014 where a local authority is satisfied, in accordance with section 81(11) of that Act, that the child ought to be placed for adoption with a particular prospective adopter who has been granted temporary approval as a foster parent.□.

(5) In regulation 14 (requirement to provide counselling and information for, and ascertain the wishes and feelings of, the parent or guardian of the child and others)—

(a) after paragraph (1)(b)(iii), omit “and” and insert—

□(iv) the legal implications of a child being placed in accordance with section 81 of the Social Services and Well-being (Wales) Act 2014 with a particular prospective adopter who has been granted temporary approval as a foster parent following consideration in accordance with section 81(11) of that Act; and□; and

(b) in paragraph (3)(a), for “and (iii)” substitute “(iii), and (iv)”.

(6) In regulation 38(1) (independent reviewing officers), for “section 26(2A) of the 1989 Act” substitute “section 100 of the Social Services and Well-being (Wales) Act 2014”.

(7) In regulation 46 (modification of the 1989 Act in relation to adoption), omit paragraphs (1) and (2).

(8) After regulation 46 (modification of the 1989 Act in relation to adoption), insert—

□Modification of the Social Services and Well-being (Wales) Act 2014 in relation to adoption

46A.—(1) This paragraph applies where—

- (a) a local authority is authorised to place a child for adoption; or
- (b) a child who has been placed for adoption by a local authority is less than six weeks old.

(2) Where paragraph (1) applies—

- (a) section 6(4)(b) of the Social Services and Well-being (Wales) Act 2014 applies as if the reference to persons with parental responsibility for the child were a reference to any prospective adopter with whom the local authority has placed the child for adoption; and

- (b) section 95 of and paragraph 1 of Schedule 1 to the Social Services and Well-being (Wales) Act 2014 do not apply. □.

(9) In Schedule 5 (information to be given to the prospective adopter), in paragraph 6, omit “by the local authority”.

Amendment of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Wales) Regulations 2006

6.—(1) The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Wales) Regulations 2006⁽¹⁾ are amended as follows.

(2) In regulation 4(2) (other persons to be regarded as forming a single household for the purposes of section 254 of the Act), after “Fostering Services (Wales) Regulations 2003” insert “or the Care Planning, Placement and Case Review (Wales) Regulations 2015⁽²⁾ (as the case may be)”.

Amendment of the Review of Children’s Cases (Wales) Regulations 2007

7.—(1) The Review of Children’s Cases (Wales) Regulations 2007⁽³⁾ are amended as follows.

(2) In regulation 1 (title, commencement, interpretation and application)—

- (a) omit the definition of “IFS team”;
- (b) in the definition of “independent visitor”, for “paragraph 17 of Schedule 2 to the Act” substitute “section 98 of the Social Services and Well-being (Wales) Act 2014”; and
- (c) in the definition of “responsible authority”—
 - (i) omit paragraph (a),
 - (ii) in paragraph (b), omit “who is not looked after by a local authority”, and
 - (iii) in paragraph (c), for “neither looked after by a local authority nor” substitute “not”.

(3) In regulation 2 (duty to review children’s cases), omit “looked after or”.

(4) In regulation 4 (time when each case to be reviewed)—

- (a) in paragraph (1), omit “looked after or”; and
- (b) for paragraph (3), substitute—

⁽¹⁾ S.I. 2006/1715 (W.177).
⁽²⁾ S.I. 2015/1818 (W. 261).
⁽³⁾ S.I. 2007/307 (W. 26).

□(3) Nothing in this regulation prevents the responsible authority from reviewing the case before the time specified in paragraph (1) or (2) and, in particular, they must do so if the independent reviewing officer so directs.□.

(5) In regulation 5(2) (manner in which cases are to be reviewed), omit “looking after or”.

(6) Omit regulation 6A (additional considerations to which responsible authorities are to have regard where IFS team involved).

(7) In regulation 7(1) (health reviews), omit “looked after or”.

(8) In regulation 8 (consultation, participation and notification)—

(a) in paragraph (1), omit sub-paragraph (dd); and

(b) in paragraph (3), omit sub-paragraph (dd).

(9) In regulation 12 (application of regulations to short breaks)—

(a) in paragraph (1), omit “looked after or”; and

(b) in paragraph (3), omit “looked after or”.

(10) In regulation 14 (exception to application of regulations), omit “a local authority or”.

(11) In Schedule 1 (elements to be included in review)—

(a) in paragraph 1, for “looking after the child” substitute “providing the child with accommodation”; and

(b) in paragraph 5—

(i) omit sub-paragraph (b), and

(ii) in sub-paragraph (c), for “the Act” substitute “the Social Services and Well-being (Wales) Act 2014”.

(12) In Schedule 2 (considerations to which responsible authorities are to have regard)—

(a) omit paragraphs (1), (2) and (7);

(b) in paragraph 5, omit “looking after the child or”; and

(c) in paragraph (10), omit “looked after or”.

(13) Omit Schedule 4 (additional considerations to which local authorities are to have regard where IFS team involved).

Amendment of the Placement of Children (Wales) Regulations 2007

8.—(1) The Placement of Children (Wales) Regulations 2007(1) are amended as follows.

(2) In regulation 2 (interpretation)—

(1) S.I. 2007/310 (W. 27).

- (a) in the appropriate place insert—
 - “looked after by a local authority” (“*derbyn gofal awdurdod lleol*” a “*derbyn gofal gan awdurdod lleol*”) means—
 - (a) looked after by a local authority in Wales accordance with section 74 of the Social Services and Well-being (Wales) Act 2014, or
 - (b) looked after by a local authority in England in accordance with section 22(1) of the 1989 Act;”;
 - (b) omit the definition of “area authority”;
 - (c) omit the definition of “care case”;
 - (d) in the definition of “placement”, omit paragraph (a); and
 - (e) in the definition of “responsible authority”—
 - (i) omit paragraph (a),
 - (ii) in paragraph (b), omit “who is not looked after by a local authority”, and
 - (iii) in paragraph (c), for “who is neither looked after by a local authority nor” substitute “not”.
- (3) In regulation 3 (application of regulations)—
 - (a) in paragraph (1), omit sub-paragraph (a); and
 - (b) in paragraph (2), omit “a local authority or”.
- (4) In regulation 4 (making arrangements)—
 - (a) omit paragraph (3); and
 - (b) in paragraph (4), for “In any other case in which a child is looked after or accommodated but is not in care” substitute “In any case in which a child is accommodated”.
- (5) In regulation 5 (considerations on making and contents of arrangements)—
 - (a) for paragraph (6) substitute—
 - (6) A written record made in accordance with paragraph (3) or (5) must be made available in suitable form to a senior officer of the local authority for the area in which the child is ordinarily resident. ; and
 - (b) in paragraph (8), omit “Except in a care case,”.
- (6) In regulation 6 (notification of arrangements)—
 - (a) in paragraph (1)—
 - (i) for sub-paragraph (a) substitute—
 - (a) any person an indication of whose wishes and feelings have been sought under section 61(2) or section 64(2) of

the Act (consultation prior to decision making in respect of children provided with accommodation by a voluntary organisation or in a private children's home);□,

- (ii) in sub-paragraph (c), omit “, if it is different from the area authority,”,
 - (iii) omit sub-paragraph (e),
 - (iv) in sub-paragraph (g), omit “except in a care case,”, and
 - (v) omit sub-paragraph (h); and
- (b) in paragraph (3), for “paragraph (1)(b) to (h)”, substitute “paragraph (1)(b) to (g)”.
- (7) In regulation 9(2)(e) (establishment of records), omit “local authority or”.
- (8) In regulation 11 (register)—
- (a) omit paragraph (1);
 - (b) for paragraph (2) substitute—
 - (2) A responsible authority must, in respect of every child placed by them, enter into a register to be kept for the purpose the particulars specified in paragraphs (3) and (4).□;
 - (c) in paragraph (3)—
 - (i) in the opening words, for “paragraphs (1) or (2)” substitute “paragraph (2)”,
 - (ii) omit sub-paragraph (d),
 - (iii) for sub-paragraph (f) substitute—
 - (f) whether the child's name is entered on a register maintained under section 18 of the Social Services and Well-being (Wales) Act 2014 (registers of sight-impaired, hearing-impaired and other disabled people);□, and
 - (iv) omit sub-paragraphs (h) and (i); and
 - (d) for paragraph (4) substitute—
 - (4) In the case of a child who has been placed, in respect of whom arrangements have been made for the supervision of the placement to be carried out on behalf of a responsible authority, a note that the arrangements were made and the name of the person with whom the arrangements were made must be entered in the register.□.
- (9) In regulation 12 (access by Welsh family proceedings officers and officers of the service to records and register), for the opening words substitute—
- (12) Every responsible authority must provide a Welsh family proceedings officer of a child or an officer of the service with—□.

(10) Omit regulation 13 (arrangements between local authorities and area authorities).

(11) In Schedule 1 (considerations to which responsible authorities are to have regard)—

- (a) omit paragraphs 1, 2 and 5; and
- (b) in paragraph 6, for “looked after” substitute “provided with accommodation”.

(12) In Schedule 4 (matters to be included in arrangements to accommodate children who are not in care)—

- (a) in paragraph 5, omit sub-paragraph (a);
- (b) omit paragraph 8;
- (c) for paragraph 9 substitute—

□9. The expected duration of arrangements and the steps which should apply to bring the arrangements to an end, including arrangements for rehabilitation of the child with the person with whom the child was living before the arrangements were made or some other suitable person.□; and

- (d) in the heading, omit “who are not in care”.

Mark Drakeford

Minister for Health and Social Services, one of the Welsh Ministers

19 February 2016

SCHEDULE Preamble

Provisions conferring power on the Welsh Ministers which are exercised in the making of these Regulations

<i>Enactment</i>	<i>power conferring</i>
The Social Services and Well-being (Wales) Act 2014 ⁽¹⁾	83(5), 84, 97, 97(4)(a), 97(5), 98(1)(a), 100(1)(b), 100(2)(a), 102(1), 102(2), 196(2) and 198
The Children Act 1989 ⁽²⁾	51(4) ⁽³⁾ , 59(2) ⁽⁴⁾ , 59(3B) ⁽⁵⁾ and 104(4) ⁽⁶⁾
The Adoption and Children Act 2002 ⁽⁷⁾	9(1)(a), 53, 140(7) ⁽⁸⁾ , 140(8) and 142
The Care Standards Act 2000 ⁽⁹⁾	22(7) ⁽¹⁰⁾ , 22(9) ⁽¹¹⁾ , 118(5), 118(6) and 118(7)

⁽¹⁾ 2014 anaw 4.

⁽²⁾ 1989 c. 41 (“the 1989 Act”). The functions of the Secretary of State under the 1989 Act were transferred to the National Assembly for Wales by virtue of the

inclusion of the 1989 Act in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales under these sections have been transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

⁽³⁾ Section 51 of the 1989 Act was amended by the Care Standards Act 2000 (c. 14), Schedule 4, paragraph 14(7).

⁽⁴⁾ Section 59 of the 1989 Act was amended by the Care Standards Act 2000 (c. 14), Schedule 4, paragraph 14(8), by the Children Act 2004 (c. 31), section 49(4), and by the Children and Young Persons Act 2008 (c. 23), Schedule 3, paragraph 23.

⁽⁵⁾ Section 59(3B) was inserted into the 1989 Act by the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016.

⁽⁶⁾ Section 104 of the 1989 Act was amended by the Children and Adoption Act 2006 (c. 20), Schedule 2, paragraph 10(a), and by the Children and Young Persons Act 2008 (c. 23), Schedule 3, paragraph 23. There have been other amendments to section 104 but they are not relevant to these Regulations.

⁽⁷⁾ 2002 c. 38 (“the 2002 Act”). The functions of the National Assembly for Wales under these sections have been transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

⁽⁸⁾ Section 140(7) of the 2002 Act was amended by Children and Families Act 2014 (c. 6), section 7(6).

⁽⁹⁾ 2000 c. 14 (“the 2000 Act”). The functions of the National Assembly for Wales under these sections have been transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006. “Prescribed” and “regulations” are defined in section 121(1) of the 2000 Act.

⁽¹⁰⁾ Amendments have been made to section 22(7) and to section 118 but they are not relevant to these Regulations.

⁽¹¹⁾ The Welsh Ministers are satisfied that the amendments to be made by these Regulations to existing secondary legislation made under section 22 of the 2000 Act do not effect any substantial change in the provision made by that legislation and have therefore not undertaken consultation (in accordance with section 22(9) of the 2000 Act) in relation to the consequential amendments made by these Regulations.