

Children and Young Persons (Savings and Transitional) Regulation 2000

[2000-698]



New South Wales

Status Information

Currency of version

Historical version for 5 January 2009 to 6 February 2011 (accessed 30 June 2024 at 21:45)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 5 January 2009

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Children and Young Persons (Savings and Transitional) Regulation 2000



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Children and Young Persons (Savings and Transitional) Regulation 2000*.

2 Commencement

This Regulation commences on 18 December 2000.

3 Definitions

In this Regulation:

accreditation criteria has the same meaning as it has in the principal Regulation.

the new Act means the *Children and Young Persons (Care and Protection) Act 1998*.

the old Act means the *Children (Care and Protection) Act 1987*.

the principal Regulation means the *Children and Young Persons (Care and Protection) Regulation 2000*.

transitional designated agency means a designated agency accredited by force of clause 22A.

4 Notes

The explanatory note and table of contents do not form part of this Regulation.

Part 2 General provisions

5 General savings

Except as otherwise provided by this Regulation, nothing in this Regulation affects the application of section 30 of the *Interpretation Act 1987*.

6 Aboriginals and Torres Strait Islanders

If any thing was commenced to be done or omitted under a provision of the old Act but not completed before the repeal of the provision in relation to a child or young person who was not an Aboriginal or Torres Strait Islander under the old Act but who is an Aboriginal or Torres Strait Islander under the new Act, the thing is to be completed:

- (a) under the old Act (except as provided by paragraph (b)), as if the child or young person is an Aboriginal or Torres Strait Islander, and
- (b) in accordance with the Aboriginal and Torres Strait Islander principles in Part 2 of Chapter 2 of the new Act.

7 Temporary care arrangements

- (1) A temporary care arrangement in force under section 14 of the old Act immediately before the repeal of that section is taken to be a temporary care arrangement under section 151 of the new Act and continues for the remainder of the period for which the arrangement was made or renewed.
- (2) An application for the review of a temporary care arrangement under section 14 (9) of the old Act that has not been determined before the repeal of that provision is taken to be an application for the review of a temporary care arrangement under section 152 (6) of the new Act.
- (3) A child or young person who, immediately before the repeal of section 16 of the old Act, was in the custody of the Director-General pursuant to that section is taken to be a child or young person of whom the Director-General has the care responsibility pursuant to section 154 of the new Act.

8 Custody

A person who had the custody of a child or young person in accordance with an order made under section 72 (1) (c) (ii) of the old Act immediately before the repeal of the provision is taken to have those aspects of parental responsibility that are referred to in:

- (a) section 79 (2) (a) of the new Act, and
- (b) section 157 of the new Act.

9 Wards

A child or young person who was a ward or a protected person under a provision of the old Act immediately before the repeal of the provision is taken to be a child or young person under the parental responsibility of the Minister.

10 Notification of child abuse

- (1) Despite its repeal, section 22 of the old Act continues to apply so as to enable a

notification to be made to the Director-General that a child or young person was abused before the repeal of that section.

- (2) A notification under section 22 of the old Act that has not been dealt with before the repeal of that section, or that is made as referred to in subclause (1), is taken to be:
 - (a) except as provided by paragraph (b), a report under section 24 of the new Act, or
 - (b) if the report has been made by a person to whom section 27 (1) of the new Act applies, a report under section 27 of the new Act,and is to be treated in all respects accordingly under the new Act.
- (3) An investigation under section 22 (7) of the old Act that has not been completed before the repeal of that subsection is taken to be an investigation under section 30 of the new Act, and is to be treated in all respects accordingly under the new Act.
- (4) Section 29 of the new Act applies to a notification under section 22 of the old Act that has been dealt with before the repeal of section 22 of the old Act.

11 Medical examination of abused children

A notice served under section 23 (1) of the old Act, a requirement of which has not been complied with before the repeal of that provision, is taken, but only for the purpose of enabling the medical examination of the child or young person to whom the notice relates, to be a notice served under section 173 (1) of the new Act.

12 Care responsibility for children and young persons

If a person had the care of a child or young person under a provision of the old Act immediately before its repeal, the person is taken to have the care and protection of the child or young person under, and for the purposes of, the new Act.

13 Provision of care by the Director-General

A child or young person to whom section 12A, 62 (1) or 62A (1) of the old Act applied immediately before its repeal is taken to be a child or young person under the care responsibility of the Director-General for the purposes of the new Act.

14 Ordinary medical and dental treatment

Treatment that could have been, but was not, given to a child under section 20 of the old Act pursuant to a consent granted in accordance with that section at any time before its repeal may be given to the child as if that section had not been repealed.

15 Special medical treatment

Treatment that could have been, but was not, given to a child under section 20B of the old Act pursuant to a consent granted in accordance with that section by the Supreme Court

at any time before the repeal of that section may be given to the child as if that section had not been repealed.

Part 3 Children's Court proceedings

16 Existing proceedings

If proceedings under the old Act in the Children's Court or the District Court have been commenced but not completed before the repeal of Division 4 of Part 5 of the old Act, the proceedings are to be continued and completed under the old Act in all respects as if the old Act (or any relevant provision of the old Act) had not been repealed.

17 Orders, requirements and directions of the Children's Court, and undertakings, under the old Act

An order, requirement or direction of the Children's Court under a provision of the old Act, or an undertaking given in accordance with a provision of the old Act, that was in force immediately before the repeal of the provision is not affected by the repeal of the provision but continues in force according to its terms, except to such extent (if any) as may be provided by this Regulation.

18 Right of appeal to District Court

Section 81 of the old Act continues to apply to an order of the Children's Court:

- (a) made before the repeal of that section, or
- (b) made as referred to in clause 17,

as if section 81 of the old Act had not been repealed.

19 Orders for supervision under sec 72 (1) (c) (i) of the old Act

An order in force under section 72 (1) (c) (i) of the old Act immediately before the repeal of that provision is taken:

- (a) to be an order in force under section 76 of the new Act, and
- (b) to be in force for:
 - (i) the unexpired balance of the period (if any) for which the order was expressed to be in force, or
 - (ii) 12 months from the commencement of section 76 of the new Act,whichever is the lesser.

20 Enforcement of undertakings

A failure or breach in relation to any matter to which a provision of section 79 or 84 of the

old Act applied immediately before the repeal of the provision may be dealt with under section 73 (5) of the new Act, whether the failure or breach occurred before or after the repeal of the provision.

21 Rescission and variation of orders

An order of the Children’s Court made under a provision of the old Act that was in force immediately before the repeal of the provision may be rescinded or varied under section 90 of the new Act as if it were a care order.

22 Application of old Act to orders under new Act

- (1) For the purposes of the application of the provisions of the old Act that are not repealed on or before the commencement of this Regulation to orders that are made under the new Act after that commencement, an order under a provision of the new Act specified in Column 1 of the following Table is taken to be an order under the provision of the old Act (if any) specified opposite in Column 2 of the Table.

Column 1		Column 2	
<i>Children and Young Persons (Care and Protection) Act 1998</i>		<i>Children (Care and Protection) Act 1987</i>	
Section	Order	Section	Order
38 (3)	Order (by consent) allocating parental responsibility to the Minister	72 (1) (c) (iii)	Order by declaring a child to be a ward
38 (3)	Order (by consent) allocating parental responsibility from one parent to the exclusion of the other	72 (1) (c) (ii)	Order granting custody to one parent only
38 (3)	Order (by consent) allocating parental responsibility to one or both parents and a third party	72 (1) (c) (ii)	Order granting custody to parents and a third party jointly
38 (3)	Order (by consent) allocating parental responsibility to another suitable person	72 (1) (c) (ii)	Order placing a child in the custody of a person
46	Emergency care and protection order	77	Order for care of children during adjournments
48	Order for the removal of a child or young person from premises or place specified in the order	59	Order for the removal of a child from premises specified in the order

49 (2)	Order vesting care responsibility in designated agency pending care proceedings	77	Order for care of children during adjournments
53	Examination and assessment orders		No equivalent order
69	Interim care orders	77	Order for the care of children during adjournments
70	Interim care orders	77	Order for the care of children during adjournments
73	Order with undertakings given by person having parental responsibility	72 (1) (b) (i)	Order with undertakings given by person responsible
73	Order with undertakings given by child or young person	72 (1) (b) (ii)	Order with undertakings given by child
73	Order with undertakings given by person having parental responsibility and child or young person	72 (1) (b) (iii)	Order with undertakings given by person responsible and child
74	Consent order directing a person or organisation to provide support services		No equivalent order
75	Order for child or young person to attend a therapeutic or treatment program		No equivalent order
76	Order placing a child or young person under the Director-General's supervision (not to exceed 12 months, but may be extended at a later date)	72 (1) (c) (i)	Order placing a child under the supervision of an officer
79 (1) (a) (i)	Order allocating parental responsibility to one parent to the exclusion of the other	72 (1) (c) (ii)	Order granting custody to one parent only
79 (1) (a) (ii)	Order allocating parental responsibility to one or both parents and a third party	72 (1) (c) (ii)	Order granting custody to parents and a third party jointly

79 (1) (a) (iii)	Order allocating parental responsibility to another suitable person	72 (1) (c) (ii)	Order placing a child in the custody of a person
79 (1) (b)	Order allocating parental responsibility to the Minister	72 (1) (c) (iii)	Order declaring a child to be ward
86	Contact order		No equivalent order
90	Rescission and variation of care orders	75	Order rescinding or varying a care order
118 (1)	Order (by consent) giving effect to an alternative parenting plan allocating parental responsibility to another person, other than the Minister	72 (1) (c) (ii)	Order placing a child in the custody of a person
118 (1)	Order (by consent) giving effect to an alternative parenting plan allocating parental responsibility to the Minister	72 (1) (c) (iii)	Order declaring a child to be a ward
119	Registration of an alternative parenting plan involving allocation of parental responsibility to a person other than the Minister	72 (1) (c) (ii)	Order placing a child in the custody of a person
119	Registration of an alternative parenting plan allocating parental responsibility to the Minister	72 (1) (c) (iii)	Order declaring a child to be a ward
124	Compulsory assistance order (not yet commenced)		No equivalent order
131	Orders associated with a compulsory assistance order (not yet commenced)		No equivalent order
176 (6)	Order that a child or young person be subject to a special medical examination without consent (not yet commenced)	21 (6)	Order that a child be subject to a special medical examination without consent

(2) An order made by the Children’s Court under section 79 (1) (a) (ii) or (iii) of the new Act is taken to include an order under section 72 (1) (c) (i) of the old Act.

- (3) Section 19 of the old Act applies to a child or young person in respect of whom:
 - (a) an order is made under the new Act that places the child or young person in the care of another person, or
 - (b) a temporary care arrangement is made under section 151 of the new Act.
- (4) A child or young person for whom the Minister acquires parental responsibility under the new Act is taken to be a ward for the purposes of the application, in accordance with this clause, of the provisions of the old Act to the child or young person.

Part 3A Out-of-home care

Division 1 General

22A Interim accreditation as designated agency

- (1) This clause applies to the following bodies or organisations that, immediately before 15 July 2003, were providing out-of-home care to a child or young person, or arranging for the provision of such care:
 - (a) a government department,
 - (b) a residential child care centre licensed under the old Act,
 - (c) a residential child care centre referred to in clause 34 of the *Children (Care and Protection) Regulation 1996* (being a centre funded through the Department's Substitute Care Program),
 - (d) an authorised private fostering agency authorised under the old Act,
 - (e) a private fostering agency funded through the Department's Substitute Care Program,
 - (f) any other body or organisation funded through the Department or the Department of Ageing, Disability and Home Care to provide the out-of-home care.
- (2) For the purposes of the new Act, a body or organisation to which this clause applies is taken to be accredited as a designated agency under the new Act, this Regulation and the principal Regulation during the transition period of the body or organisation, but only in respect of the kind of out-of-home care it was providing immediately before 15 July 2003.
- (3) The transition period of a body or organisation to which this clause applies is the period that began on 15 July 2003 and that ends:
 - (a) if the body or organisation has made an application for accreditation—when the decision on the application takes effect, or

- (b) if the body or organisation has made an application for accreditation and the application is withdrawn—when the application is withdrawn, or
 - (c) if the body or organisation’s accreditation is cancelled—when the cancellation takes effect, or
 - (d) on 14 July 2013,
- whichever occurs first.

22B Requirements for progressive achievement by transitional designated agencies

- (1) The object of this clause is to enable a transitional designated agency, by 14 July 2013, to progressively satisfy the accreditation criteria that apply to the agency and be accredited under clause 36A of the principal Regulation.
- (2) The transitional designated agency must meet the minimum standards or other criteria determined by the Minister, from time to time, on the recommendation of the Children’s Guardian, for the transitional designated agency by the dates determined by the Children’s Guardian.
- (3) The Children’s Guardian is to keep the dates determined by it under review and may change any date from time to time by notice to the designated agency concerned. The Children’s Guardian cannot determine an earlier date without the consent of the designated agency concerned.
- (4) The Children’s Guardian may require the transitional designated agency to furnish to the Children’s Guardian such further information as the Children’s Guardian may reasonably require in order to assess whether the transitional designated agency has complied with subclause (2).
- (5) If a transitional designated agency, not being a department of the Public Service, fails to comply with subclause (2), the Children’s Guardian may require the transitional designated agency, by notice in writing, to show cause within such reasonable period as is specified in the notice (being at least 28 days from the date on which the notice was given), why the transitional designated agency’s application for accreditation should not be refused.
- (6) If the transitional designated agency fails to show cause under subclause (5), to the satisfaction of the Children’s Guardian, the Children’s Guardian may refuse the application.

Note—

Under section 245 (1) (b) of the Act, a decision of the relevant decision-maker is reviewable by the Administrative Decisions Tribunal.

- (7) If the transitional designated agency is a department of the Public Service and fails to comply with subclause (2), the Children’s Guardian must report the failure to the

Minister.

- (8) The principal Regulation does not apply to a transitional designated agency accredited under clause 22A, except as provided by this Division.
- (9) This clause ceases to have effect on 14 July 2013.

22C Application of principal Regulation to applications by transitional designated agency for accreditation

- (1) This clause applies to a transitional designated agency that made, before 14 July 2005, an application under this Regulation to the Children’s Guardian for accreditation as a designated agency and the application has not been determined or withdrawn.
- (2) Any such application by a transitional designated agency is to be dealt with in accordance with the principal Regulation, except as provided by this clause.
- (3) A transitional designated agency may withdraw its application for accreditation at any time.
- (4) A body or agency that applied to the Children’s Guardian for voluntary accreditation between 1 July 2002 and 14 July 2003 by completing an “Application for Accreditation” form issued by the Children’s Guardian is taken to have applied for accreditation as a designated agency.
- (5) An application by an agency referred to in subclause (1) or (3) is taken to be an application for accreditation under the principal Regulation, made in accordance with that Regulation, and clause 35 of that Regulation does not apply to any such application.
- (6) An application for accreditation by a transitional designated agency may not be:
 - (a) taken over under clause 35A of the principal Regulation, or
 - (b) deferred under clause 35B of that Regulation.
- (7) If the Children’s Guardian is satisfied that a transitional designated agency’s application for accreditation should not have been refused, the Children’s Guardian may reinstate the application and the application is taken to have continued in existence as if it had not been refused and the agency is taken to have continued to be a transitional designated agency.
- (8) Clause 36C (Children’s Guardian may set aside decision not to accredit) of the principal Regulation does not apply to an application by a transitional designated agency for accreditation.

22CA Application of principal Regulation to transfer of accreditations of transitional

designated agencies

- (1) An accreditation of a transitional designated agency under clause 22A may be transferred in accordance with the provisions of the principal Regulation.
- (2) If the accreditation of a transitional designated agency is transferred in accordance with clause 37B of the principal Regulation:
 - (a) the transferee is taken to be a transitional designated agency, and
 - (b) the transition period that applied to the transferor applies to the transferee.

22CB Conditions on accreditation of transitional designated agencies

- (1) The Children's Guardian may impose conditions on an accreditation of a transitional designated agency under clause 22A in accordance with the principal Regulation, except as provided by this clause.
- (2) A condition may be imposed under clause 39 (2) of the principal Regulation on the accreditation of a transitional designated agency only if:
 - (a) the Children's Guardian has, on reasonable grounds, a concern that an act or omission of the transitional designated agency (including, but not limited to, an act or omission of its principal officer) may adversely affect the safety, welfare or well-being of a child or young person or class of children or young persons, and
 - (b) the Children's Guardian has, given a notice in accordance with subclause (3) to the transitional designated agency, and
 - (c) the transitional designated agency has not addressed the concern specified in that notice within the period specified under subclause (3) (c), and
 - (d) having considered any notification given by the transitional designated agency as referred to in subclause (3) (d), the Children's Guardian is of the opinion that imposition of a condition is appropriate.
- (3) The notice is to be in writing and must contain the following matters:
 - (a) particulars of the concern that the Children's Guardian has,
 - (b) a request that the transitional designated agency address the concern by the date specified in the notice (being at least 28 days from the date on which the notice was given),
 - (c) notice that a specified condition may be imposed on the transitional designated agency's accreditation if the agency does not address the concern before the date specified in the notice,
 - (d) notice that the transitional designated agency may, no later than 28 days from

the date on which the notice was given, notify the Children's Guardian in writing that:

- (i) the agency believes that there is no reasonable grounds for the Children's Guardian's concern, or
 - (ii) that the period specified under paragraph (b) does not give the agency a reasonable time to address the concern, or
 - (iii) that the condition proposed pursuant to the notice is unreasonable and set out the grounds for this belief.
- (4) Any condition imposed under clause 39 (2) of the principal Regulation on the accreditation of a transitional designated agency must be in substantially the same terms as the condition proposed under subclause (3) (c).
- (5) A condition may not be imposed under clause 39 (3) of the principal Regulation on the accreditation of a transitional designated agency.

22CD Action against accreditation of transitional designated agency

- (1) The Children's Guardian may take action under clause 40 of the principal Regulation in relation to an accreditation of a transitional designated agency under clause 22A, except as provided by this clause.
- (2) The Children's Guardian may not suspend or cancel the accreditation of a transitional designated agency on the grounds set out in clause 40 (2) (f) or (g) of the principal Regulation.
- (3) If the accreditation of a transitional designated agency is suspended, the transition period for the agency is not extended by the suspension.
- (4) The accreditation of a transitional designated agency may not be shortened under clause 40 of the principal Regulation.

22D Deemed authorisation as authorised carer authorised by designated agency

- (1) This clause applies to the following persons:
 - (a) a person in whose care a child or young person was placed by an authorised private fostering agency under the old Act and who, immediately before the commencement of this clause, had the care of that child or young person,
 - (b) a person in whose care a child or young person was placed by a private fostering agency funded through the Department's Substitute Care Program under the old Act and who, immediately before the commencement of this clause, had the care of that child or young person,
 - (c) a person who, immediately before the commencement of this clause, cared for a

child or young person at a licensed residential child care centre under the old Act,

- (d) a person in whose care a child or young person was placed by, or with the written approval of, the Minister or the Director-General under the old Act and who, immediately before the commencement, had the care of that child or young person,
 - (e) a person in whose custody a ward or protected person was placed by the Minister under section 91 (1) (d) or (f) of the old Act and who, immediately before the commencement of this clause, had the custody of that ward or protected person.
- (2) A person to whom this clause applies is taken to be an authorised carer authorised by a designated agency under section 137 (1) (b) of the new Act.
 - (3) The designated agency that is taken to have authorised the person as an authorised carer is:
 - (a) in the case of a person referred to in subclause (1) (a) or (b)—the private fostering agency who placed the child or young person in the care of the person, or
 - (b) in the case of a person referred to in subclause (1) (c)—the licensed residential child care centre, or
 - (c) in the case of a person referred to in subclause (1) (d) or (e)—the Department.
 - (4) In this clause, **ward** and **protected person** have the same meanings as in the old Act.

22E Interim authorisation as authorised carer for holder of fostering authority

- (1) This clause applies to a person who, immediately before the commencement of this clause, held a fostering authority under section 43 of the old Act.
- (2) A person to whom this clause applies is taken to be an authorised carer authorised by a designated agency under section 137 (1) (b) of the new Act.
- (3) However, if the fostering authority held by the person specified the child or young person to whom it applied, the person is taken to be an authorised carer only in relation to that child or young person, and the person ceases to be an authorised carer in relation to that child or young person:
 - (a) when the child or young person leaves the care of that person, or
 - (b) 2 years after the commencement of this clause, or
 - (c) when the child or young person reaches 18 years of age,whichever is the sooner.

- (4) The Department is taken to be the designated agency that authorised the person as an authorised carer.

22F Child or young person in out-of-home care under order of Children's Court

A child or young person who, immediately before the commencement of this clause, was in the care of a person (other than a person to whom he or she is related) under an order of the Children's Court is taken to be a child or young person in out-of-home care.

22G Review of placements effected by order of Children's Court

- (1) This clause applies to a child or young person who, immediately before the commencement of this clause, was in out-of-home care under an order of the Children's Court.
- (2) A review under section 150 of the new Act of the placement of the child or young person is to be conducted before the anniversary of the making of the final order placing the child or young person in out-of-home care and thereafter within every period of 12 months after that anniversary.
- (3) Nothing in this clause prevents a review of the placement of the child or young person under section 150 (2) (c) or (d).

22H Financial assistance

- (1) A person receiving an allowance by the Director-General under section 19 (2) of the old Act immediately before the commencement of this clause with respect to a child or young person is taken to have been granted financial assistance with respect to that child or young person under section 161 of the new Act.
- (2) A person receiving a payment from the Minister under section 91 (1) (b) or (2) of the old Act immediately before the commencement of this clause with respect to a child or young person is taken to have been granted financial assistance with respect to that child or young person under section 161 of the new Act.

Division 2

22I (Repealed)

Part 4 Miscellaneous

23 Evidence of young children

Section 260 of the new Act extends to the evidence of a medical practitioner given before the commencement of that section.

24 Power of search and removal of abused children

A search warrant issued and in force under section 24 of the old Act immediately before

the repeal of that section is taken to be a warrant issued and in force under section 233 of the new Act.

25 Reciprocity between States and Territories

Any act, matter or thing that, immediately before the repeal of section 95 of the old Act, had effect under that section is taken to have effect under section 255 of the new Act.

Part 5 Provisions consequent on making of Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2008

26 Interpretation

(1) In this Part:

the amending Regulation means the *Children and Young Persons (Care and Protection) Amendment (Out-of-Home Care) Regulation 2008*.

(2) Words and expressions that occur in this Part have the same meanings as they have in the principal Regulation.

27 Review of decisions of Children's Guardian by Administrative Decisions Tribunal

Clause 6B (a) (i) of the principal Regulation, as inserted by the amending Regulation, applies to a condition imposed before the commencement of that provision.

28 Applications for accreditation

Clauses 35A, 35B, 36, 36A and 36B of the principal Regulation, as inserted or substituted by the amending Regulation, apply to applications for accreditation made, but not determined, before the commencement of those clauses.

30 Accreditation criteria

Accreditation criteria approved before the substitution of clause 36 by the amending Regulation that were approved in accordance with clause 36 as in force at the time of the relevant approval are taken to have been approved in accordance with that clause as substituted by the amending Regulation.

31 Granting provisional accreditation

Provisional accreditation may be granted in respect of an application for accreditation whether or not the application was made before the commencement of clause 36A of the principal Regulation, as inserted by the amending Regulation.

32 Setting aside decision not to accredit

(1) Clause 36C of the principal Regulation, as inserted by the amending Regulation,

applies to an application for accreditation determined before the commencement of that clause.

- (2) A notice under clause 36C (1) of the principal Regulation that sets aside a decision not to accredit may provide that the decision to accredit is taken to have had effect on and from the date the decision being set aside took effect, or such later date as may be specified in the notice, even if that date is before the commencement of that clause.

33 Transfer of accreditation

Subdivision 2 of Division 4 of Part 6 of the principal Regulation, as inserted by the amending Regulation, applies to a designated agency accredited before the commencement of that Subdivision.

34 Accreditation—shortening, suspension and cancellation

For the avoidance of doubt, clause 40 of the principal Regulation, as substituted by the amending Regulation, does not apply to any proceedings under that clause if the relevant act or omission referred to in clause 40 (2) occurred before the substitution.

35 Conditions of accreditation

The amendments made to Schedule 4 of the principal Regulation by the amending Regulation apply to an accreditation in force immediately before the commencement of the amendments.