



# Care Act 2014

## 2014 CHAPTER 23

### PART 1

#### CARE AND SUPPORT

##### *Provider failure*

#### **48 Temporary duty on local authority**

- (1) This section applies where a person registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (a “registered care provider”) in respect of the carrying on of a regulated activity (within the meaning of that Part) becomes unable to carry on that activity because of business failure.
- (2) A local authority must for so long as it considers necessary (and in so far as it is not already required to do so) meet those of an adult’s needs for care and support and those of a carer’s needs for support which were, immediately before the registered care provider became unable to carry on the regulated activity, being met by the carrying on of that activity in the authority’s area by the provider.
- (3) A local authority is accordingly required to meet needs under subsection (2) regardless of—
  - (a) whether the relevant adult is ordinarily resident in its area;
  - (b) whether the authority has carried out a needs assessment, a carer’s assessment or a financial assessment;
  - (c) whether any of the needs meet the eligibility criteria.
- (4) Where a local authority is meeting needs under subsection (2), it is not required to carry out a needs assessment, a carer’s assessment or a financial assessment or to determine whether any of the needs meet the eligibility criteria.
- (5) A local authority may make a charge for meeting needs under subsection (2) (except in so far as doing so involves the provision of information or advice); and a charge

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under this subsection may cover only the cost that the local authority incurs in meeting the needs to which the charge applies.

- (6) Subsection (5) does not apply if section 49 (cross-border cases) applies (see subsection (3) of that section).
- (7) If the relevant adult is not ordinarily resident in the area of the local authority which is required to meet needs under subsection (2), that authority—
- (a) must, in meeting needs under that subsection which were being met under arrangements made by another local authority, co-operate with that authority (in so far as it is not already required to do so by section 6);
  - (b) must, in meeting needs under that subsection which were being met under arrangements all or part of the cost of which was paid for by another local authority by means of direct payments, co-operate with that authority (in so far as it is not already required to do so by section 6);
  - (c) may recover from the other local authority mentioned in paragraph (a) or (b) (as the case may be) the cost it incurs in meeting those of the adult's or carer's needs referred to in the paragraph in question.
- (8) Any dispute between local authorities about the application of this section is to be determined under section 40 as if it were a dispute of the type mentioned in subsection (1) of that section.
- (9) “The relevant adult” means—
- (a) in a case involving an adult's needs for care and support, that adult;
  - (b) in a case involving a carer's needs for support, the adult needing care.

#### **49 Section 48: cross-border cases**

- (1) This section applies where, in a case within section 48, immediately before the registered care provider became unable to carry on the regulated activity, some or all of the adult's needs for care and support or the carer's needs for support were being met by the carrying on of that activity by the provider under arrangements made—
- (a) by a local authority in Wales discharging its duty under section 35 or 40, or exercising its power under section 36 or 45, of the Social Services and Well-being (Wales) Act 2014,
  - (b) by a local authority in Scotland discharging its duty under section 12 or 13A of the Social Work (Scotland) Act 1968 or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003, or
  - (c) by a Health and Social Care trust under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 or section 2 of the Carers and Direct Payments Act (Northern Ireland) 2002.
- (2) This section also applies where, in a case within section 48—
- (a) immediately before the registered care provider became unable to carry on the regulated activity, some or all of the adult's needs for care and support or the carer's needs for support were being met by the carrying on of that activity by the provider, and
  - (b) all or part of the cost of the accommodation or other services provided by the provider to meet those needs was paid for by means of direct payments made—

- (i) under section 50 or 52 of the Social Services and Well-being (Wales) Act 2014,
  - (ii) as a result of a choice made by the adult pursuant to section 5 of the Social Care (Self-directed Support) (Scotland) Act 2013, or
  - (iii) by virtue of section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002.
- (3) The local authority which is required to meet needs under section 48(2)—
  - (a) must, in meeting needs under section 48(2) which were being met by the authority which made the arrangements referred to in subsection (1), co-operate with that authority;
  - (b) must, in meeting needs under section 48(2) which were being met by the provision of accommodation or other services all or part of the cost of which was paid for by an authority by means of direct payments as referred to in subsection (2), co-operate with that authority;
  - (c) may recover from the authority referred to in paragraph (a) or (b) (as the case may be) the cost it incurs in meeting those of the adult’s or carer’s needs referred to in the paragraph in question;
  - (d) may recover from the adult or carer the cost it incurs in meeting those of the adult’s or carer’s needs other than those referred to in paragraph (a) or (b) (as the case may be).
- (4) Any dispute between a local authority and a local authority in Wales, a local authority in Scotland or a Health and Social Care trust about the application of section 48 or of this section is to be resolved in accordance with paragraph 5 of Schedule 1.
- (5) “Local authority in Wales” and “local authority in Scotland” each have the meaning given in paragraph 12 of Schedule 1.
- (6) The references in paragraphs (a) and (b) of subsection (3) to an authority are references to a local authority in Wales, a local authority in Scotland or a Health and Social Care trust (as the case may be).

## **50 Temporary duty on local authority in Wales**

- (1) This section applies where a person registered under Part 2 of the Care Standards Act 2000 in respect of an establishment or agency—
  - (a) becomes unable to carry on or manage the establishment or agency because of business failure, and
  - (b) immediately before becoming unable to do so, was providing an adult with accommodation or other services in Wales under arrangements made—
    - (i) by a local authority meeting an adult’s needs for care and support or a carer’s needs for support under this Part,
    - (ii) by a local authority in Scotland discharging its duty under section 12 or 13A of the Social Work (Scotland) Act 1968 or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003, or
    - (iii) by a Health and Social Care trust under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 or section 2 of the Carers and Direct Payments Act (Northern Ireland) 2002.
- (2) This section also applies where a person registered under Part 2 of the Care Standards Act 2000 in respect of an establishment or agency—

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- (a) becomes unable to carry on or manage the establishment or agency because of business failure, and
  - (b) immediately before becoming unable to do so, was providing an adult with accommodation or other services in Wales all or part of the cost of which was paid for by means of direct payments made—
    - (i) under this Part of this Act,
    - (ii) as a result of a choice made by the adult pursuant to section 5 of the Social Care (Self-directed Support) (Scotland) Act 2013, or
    - (iii) by virtue of section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002.
- (3) The local authority in Wales in whose area the accommodation is situated or the services were provided must for so long as it considers necessary meet those of the adult’s needs for care and support or the carer’s needs for support which were being met by the registered person by the provision of the accommodation or other services.
- (4) A local authority in Wales which is required to meet needs under subsection (3)—
- (a) must, in meeting needs under that subsection which were being met by the authority which made the arrangements referred to in subsection (1)(b), co-operate with that authority;
  - (b) must, in meeting needs under subsection (3) which were being met by the provision of accommodation or other services all or part of the cost of which was paid for by an authority by means of direct payments as referred to in subsection (2)(b), co-operate with that authority;
  - (c) may recover from the authority referred to in paragraph (a) or (b) (as the case may be) the cost it incurs in meeting those of the adult’s or carer’s needs referred to in the paragraph in question.
- (5) Any dispute about the application of this section is to be resolved in accordance with paragraph 5 of Schedule 1.
- (6) “Local authority in Wales” and “local authority in Scotland” each have the meaning given in paragraph 12 of Schedule 1.
- (7) The references in paragraphs (a) and (b) of subsection (4) to an authority are references to a local authority, a local authority in Scotland or a Health and Social Care trust (as the case may be).

## **51 Temporary duty on Health and Social Care trust in Northern Ireland**

- (1) This section applies where a person registered under Part 3 of the Health and Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 in respect of an establishment or agency—
- (a) becomes unable to carry on or manage the establishment or agency because of business failure, and
  - (b) immediately before becoming unable to do so, was providing an adult with accommodation or other services in Northern Ireland under arrangements made—
    - (i) by a local authority meeting an adult’s needs for care and support or a carer’s needs for support under this Part,

- (ii) by a local authority in Wales discharging its duty under section 35 or 40, or exercising its power under section 36 or 45, of the Social Services and Well-being (Wales) Act 2014, or
  - (iii) by a local authority in Scotland discharging its duty under section 12 or 13A of the Social Work (Scotland) Act 1968 or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (2) This section also applies where a person registered under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 in respect of an establishment or agency—
  - (a) becomes unable to carry on or manage the establishment or agency because of business failure, and
  - (b) immediately before becoming unable to do so, was providing an adult with accommodation or other services in Northern Ireland, all or part of the cost of which was paid for by means of direct payments made—
    - (i) under this Part of this Act,
    - (ii) under section 50 or 52 of the Social Services and Well-being (Wales) Act 2014, or
    - (iii) as a result of a choice made by the adult pursuant to section 5 of the Social Care (Self-directed Support) (Scotland) Act 2013.
- (3) The Health and Social Care trust in whose area the accommodation is situated or the services were provided must for so long as it considers necessary meet those of the adult’s needs for care and support or the carer’s needs for support which were being met by the registered person by the provision of the accommodation or other services.
- (4) A Health and Social Care trust which is required to meet needs under subsection (3)—
  - (a) must, in meeting needs under that subsection which were being met by the authority which made the arrangements referred to in subsection (1)(b), co-operate with that authority;
  - (b) must, in meeting needs under subsection (3) which were being met by the provision of accommodation or other services all or part of the cost of which was paid for by an authority by means of direct payments as referred to in subsection (2)(b), co-operate with that authority;
  - (c) may recover from the authority referred to in paragraph (a) or (b) (as the case may be) the cost it incurs in meeting those of the adult’s or carer’s needs referred to in the paragraph in question.
- (5) Any dispute about the application of this section is to be resolved in accordance with paragraph 5 of Schedule 1.
- (6) “Local authority in Wales” and “local authority in Scotland” each have the meaning given in paragraph 12 of Schedule 1.
- (7) The references in paragraphs (a) and (b) of subsection (4) to an authority are references to a local authority, a local authority in Wales or a local authority in Scotland (as the case may be).

## **52 Sections 48 to 51: supplementary**

- (1) An authority becomes subject to the duty under section 48(2), 50(3) or 51(3) as soon as it becomes aware of the business failure.

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- (2) Section 8 (how to meet needs) applies to meeting needs under section 48(2) as it applies to meeting needs under section 18.
- (3) Section 34 of the Social Services and Well-being (Wales) Act 2014 (how to meet needs) applies to meeting needs under section 50(3) as it applies to meeting needs under section 35 of that Act.
- (4) In deciding how to meet an adult’s needs for care and support under section 48(2), 50(3) or 51(3), an authority must involve—
  - (a) the adult,
  - (b) any carer that the adult has, and
  - (c) any person whom the adult asks the authority to involve or, where the adult lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the adult’s welfare.
- (5) In deciding how to meet a carer’s needs for support under section 48(2), 50(3) or 51(3), an authority must involve—
  - (a) the carer, and
  - (b) any person whom the carer asks the authority to involve.
- (6) In carrying out the duty under subsection (4)(a) or (5)(a), an authority must take all reasonable steps to reach agreement with the adult or carer about how it should meet the needs in question.
- (7) Sections 21 to 23 (exceptions to duty to meet needs) apply to meeting needs under section 48(2) as they apply to meeting needs under section 18.
- (8) Sections 46 to 49 of the Social Services and Well-being (Wales) Act 2014 (exceptions to, and restrictions on, duty to meet needs) apply to meeting needs under section 50(3) as they apply to meeting needs under section 35 of that Act.
- (9) Where an adult whose case comes within section 48 is being provided with NHS continuing healthcare under arrangements made by a clinical commissioning group no part of whose area is in the local authority’s area, the group is to be treated as a relevant partner of the authority for the purposes of sections 6 and 7.
- (10) “NHS continuing healthcare” is to be construed in accordance with standing rules under section 6E of the National Health Service Act 2006.
- (11) Where a local authority considers it necessary to do so for the purpose of carrying out its duty under section 48(2), it may request the registered care provider, or such other person involved in the provider’s business as it considers appropriate, to provide it with specified information.
- (12) Regulations must make provision as to the interpretation for the purposes of sections 48, 50 and 51 and this section of references to business failure or to being unable to do something because of business failure; and the regulations may, in particular, specify circumstances in which a person is to be treated as unable to do something because of business failure.
- (13) Pending the commencement of Part 4 of the Social Services and Well-being (Wales) Act 2014—
  - (a) a reference in section 49 or 51 to making arrangements to meet needs under section 35 or 36 of that Act is to be read as a reference to making arrangements or providing services under—

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- (i) Part 3 of the National Assistance Act 1948,
  - (ii) section 45 of the Health Services and Public Health Act 1968,
  - (iii) section 117 of the Mental Health Act 1983, or
  - (iv) Schedule 15 to the National Health Service (Wales) Act 2006;
- (b) a reference in section 49 or 51 to making arrangements to meet needs under section 40 or 45 of that Act is to be read as a reference to providing services as referred to in section 2 of the Carers and Disabled Children Act 2000;
  - (c) a reference in section 49 or 51 to making direct payments under section 50 or 52 of that Act is to be read as a reference to making direct payments by virtue of section 57 of the Health and Social Care Act 2001;
  - (d) subsection (8) is to be read as if there were substituted for it—
    - “(8) Sections 21(1A) and (8) and 29(6) of the National Assistance Act 1948 apply to meeting needs under section 50(3) as they apply to the exercise of functions under sections 21 and 29 of that Act by a local authority in Wales (within the meaning given in paragraph 12 of Schedule 1).”
- (14) Pending the commencement of section 5 of the Social Care (Self-directed Support) (Scotland) Act 2013—
- (a) sections 49(2)(b)(ii) and 50(2)(b)(ii) are to be read as if there were substituted for each of them—
    - “(ii) under section 12B of the Social Work (Scotland) Act 1968,” and
  - (b) section 51(2)(b)(iii) is to be read as if there were substituted for it—
    - “(iii) under section 12B of the Social Work (Scotland) Act 1968.”