

# REGULATION AND INSPECTION OF SOCIAL CARE (WALES) ACT 2016

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 – Regulation of Social Care Services**

##### *Chapter 7: Sections 59-63 – Market oversight*

110. Sections 189 to 191 of the 2014 Act (as amended by Schedule 3 to this Act) place duties on local authorities to meet the needs of people receiving service provision from a person who is registered as a service provider under this Act but becomes unable to provide the regulated service due to business failure.
111. [Sections 59 to 63](#) of this Act are a series of provisions aimed at identifying those providers of regulated services that provide a service which, if it were to fail, would have an impact on the care and support market in Wales and would be the trigger point for the local authority duties to be exercised under sections 189 to 191 of the 2014 Act.
112. [Sections 59 to 62](#) are in similar terms to the market oversight provisions (sections 53-57) in the Care Act 2014 which apply to England. Section 59 requires the Welsh Ministers to establish criteria in regulations that will be used to identify providers who will be the subject of the market oversight provisions in the Act. Where the criteria apply to a particular provider, section 61 requires the Welsh Ministers to assess the financial sustainability of the provider's business. Where there is found to be a significant risk to that business, the powers in section 61(3) permit the Welsh Ministers to require the service provider to develop a plan for how those risks will be mitigated or eliminated and to arrange directly or require the provider to arrange for an independent review of the business.
113. Subsection (6) of section 61 provides a power to Welsh Ministers to make regulations enabling them to obtain from certain persons information which may be helpful in assessing the financial sustainability of the provider. The type of information that the Welsh Ministers may need is likely to be information which relates to the finances of the service provider or which relates to the financial position of the particular entity – if the service provider is financially dependent on such an entity. The type of person that may be prescribed in the regulations may include companies within the same group as the provider and companies that hold a significant ownership stake in the provider.
114. The requirement for the Welsh Ministers to prepare and publish a national market stability report in section 63 has no direct equivalent in the Care Act 2014. The information contained in such a report is not limited to information about providers who are subject to the market oversight provisions; it is a report providing a picture of where there is ample provision of particular services and where there are or are likely to be a shortfall in the provision of particular types of services. The report must include an assessment of the effect of commissioning of services by local authorities in the exercise of their social services functions. Section 63(2) requires that this report

*These notes refer to the Regulation and Inspection of Social Care  
(Wales) Act 2016 (c.2) which received Royal Assent on 18 January 2016*

is prepared in consultation with SCW given that SCW has as its main objective the protection, promotion and maintenance of the safety and well-being of the public in Wales (see section 68 for details about Social Care Wales objectives).