

SCHEDULE 1
PROTECTION OF THE INDIVIDUAL

PART 8

POWERS TO PURCHASE CARE HOME SERVICES AND CARE AT HOME PROVIDERS

Power of local authority to purchase distressed care home or care at home service provider

- 18 (1) A local authority may acquire (by agreement)—
- (a) a relevant provider of care home services,
 - (b) a relevant provider of care at home services, or
 - (c) any asset or liability of a provider mentioned in paragraph (a) or (b),
- in the circumstances described in paragraph 20.
- (2) This paragraph is without prejudice to sections 69 and 70 of the Local Government (Scotland) Act 1973 (subsidiary powers and acquisition of land by agreement).

Power of health body to purchase distressed care home service provider

- 19 (1) A health body may, on behalf of the Scottish Ministers, acquire (by agreement)—
- (a) a relevant provider of care home services, or
 - (b) any asset or liability of such a provider,
- in the circumstances described in paragraph 20.
- (2) A health body must comply with a direction given by the Scottish Ministers in relation to the functions conferred on it under this paragraph.
- (3) The power under sub-paragraph (2) to give a direction includes the power to vary or revoke an earlier direction under that sub-paragraph.
- (4) A direction given under this paragraph must—
- (a) be in writing, and
 - (b) be published in such manner as the Scottish Ministers consider appropriate.
- (5) This paragraph is without prejudice to section 79 of the National Health Service (Scotland) Act 1978 (purchase of land and moveable property).

Circumstances in which powers under this Part may be exercised

- 20 (1) This paragraph describes the circumstances in which the powers conferred by paragraph 18 or 19 may be exercised in relation to a relevant provider of care home services or care at home services (“the provider”).
- (2) The circumstances are that, for a reason relating to coronavirus—
- (a) the provider is in serious financial difficulty,
 - (b) the local authority or, as the case may be, the health body is satisfied that there is a threat to the life, health or wellbeing of the persons receiving the services, or
 - (c) the provider has recently ceased to provide the services.

Status: This is the original version (as it was originally enacted).

- (3) For the purposes of sub-paragraph (2)(a), a provider is to be regarded as being in serious financial difficulty if it notifies SCSWIS of an insolvency event under regulation 6A, 6B or 6C of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 ([S.S.I. 2011/210](#)).
- (4) As soon as practicable after receiving notification of such an insolvency event, SCSWIS is to inform—
- (a) any local authority and Health Board in whose areas the services are being provided,
 - (b) the Common Services Agency, and
 - (c) Healthcare Improvement Scotland,
- that such notification has been received.
- (5) For the purposes of being satisfied as to the threat described in sub-paragraph (2) (b)—
- (a) in a case where the proposed acquisition is by a local authority, it must consult—
 - (i) SCSWIS,
 - (ii) any other local authority in whose area the services are being provided,
 - (iii) any Health Board in whose area the services are being provided,
 - (iv) the Common Services Agency,
 - (v) Healthcare Improvement Scotland,
 - (vi) such other persons or bodies as it considers appropriate (if any),
 - (b) in a case where the proposed acquisition is by a health body, it must consult—
 - (i) SCSWIS,
 - (ii) any local authority in whose area the services are being provided,
 - (iii) any Health Board in whose area the services are being provided,
 - (iv) the Common Services Agency,
 - (v) Healthcare Improvement Scotland,
 - (vi) such other persons or bodies as it considers appropriate (if any).

Interpretation

21 In this Part—

“asset” includes any right or interest in land or moveable property,

“care home service” has the meaning given by paragraph 2 of schedule 12 of the Public Services Reform (Scotland) Act 2010,

“care at home service” means the provision of—

- (a) domiciliary services (within the meaning of section 94 of the Social Work (Scotland) Act 1968), or

- (b) a support service consisting wholly or mainly of providing personal care in the home of the person receiving the care,

“Health Board” means a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978, and “area”, in relation to a Health Board, means the area for which the Board is constituted,

“health body” means a Health Board, the Common Services Agency or Healthcare Improvement Scotland,

Status: This is the original version (as it was originally enacted).

“personal care” has the meaning given by paragraph 20 of schedule 12 of the Public Services Reform (Scotland) Act 2010,

“relevant provider of care home services” means a person or body providing care home services other than a local authority or a health body,

“relevant provider of care at home services” means a person or body providing care at home services other than a local authority or a health body,

“SCSWIS” means Social Care and Social Work Improvement Scotland,

“support service” has the meaning given by paragraph 1 of schedule 12 of the Public Services Reform (Scotland) Act 2010.