

# CARE ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – Care and Support

##### Provider failure

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

303. This section places a duty on local authorities in England to ensure that adults' needs for care and support (or needs for support in the case of an adult who is a carer) continue to be met when there is a business failure of a provider of care and support who is registered with the Care Quality Commission and the provider becomes unable to carry on the regulated care activity in question as a result.
304. *Subsection (2)* requires that the local authority in whose area the failed care provider was meeting needs by carrying on the regulated activity must meet the needs which the provider was meeting immediately before becoming unable to carry on that activity for so long as the authority considers necessary. This subsection also makes clear that the duty to meet needs applies so far as the authority is not already required to do so such as where needs were being met by the provision of services paid for by an individual, or where another local authority was paying for services to meet the needs of an individual (or was making direct payments in respect of those needs). There is no need to apply the duty where the local authority is already required to meet needs because such a requirement does not change simply because there is a business failure of the provider who was meeting the needs.
305. *Subsection (3)* makes clear that the duty in subsection (2) applies regardless of whether the adult is ordinarily resident in the area of the local authority to whom the duty in subsection (2) applies and even if the adult does not have eligible needs and the authority has not carried out a needs, carer's or financial assessment. *Subsection (4)* makes clear that where the local authority is meeting needs under subsection (2), it is not required to carry out any of the assessments referred to in section 9 (needs assessment), 10 (carer's assessment) or 17 (financial assessment) or to determine whether any of the needs meet eligibility criteria. The effect of this is to suspend the provisions of sections 9 to 13 and 17 for the temporary period during which the local authority is meeting needs under section 48. This ensures that the temporary duty to meet needs applies regardless of the results of the relevant assessments so that the provision of a substitute service is not delayed and individuals are not left without the care they need.
306. *Subsection (5)* allows the local authority to charge for needs it meets under subsection (2) except where it meets needs by providing information and advice. It limits charges to the costs incurred in meeting needs.
307. *Subsection (6)* provides that subsection (5) does not apply if section 49 applies (i.e. if the failed service provider was meeting some or all of the adult's needs for care and support or a carer's needs for support under arrangements, or in return for payment made with direct payments, made by a local authority in Wales or Scotland or a Health and Social Care trust in Northern Ireland under the legislative provisions referred to

in section 49(1)). This is because in such a case there is provision in section 49(3) for local authorities to recover costs.

308. *Subsection (7)* applies where the individual whose needs the failed provider was meeting is not ordinarily resident in the area of the local authority which has the temporary duty to meet needs and was having their needs met under arrangements made by another local authority in England or was having the care paid for by direct payments provided by such an authority. It requires the local authority which has the temporary duty to meet needs to co-operate with the other local authority in meeting those needs and allows the local authority with the temporary duty to recover from the other authority the cost it incurs in meeting those needs during the temporary period.
309. *Subsection (8)* applies the ordinary residence dispute resolution procedure in section 40 to any disputes between local authorities about the application of section 48 (for example as to the duration of the period for which there is a duty to meet needs).