

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Care and Support

Provider failure

302. Sections 48 to 52 set out duties on local authorities in England and Wales and on Health and Social Care trusts in Northern Ireland to meet specified care and support needs of people in their area in the event that a care provider becomes unable to do so because of business failure. In the event of business failure in Scotland, local authorities are required to perform the duties provided for under Part 2 of the Social Work (Scotland) Act 1968 and as specified in regulations under Schedule 1. This would include duties in relation to individuals whose needs are being met under arrangements made by authorities in other countries of the UK.

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).

Section 49 – Section 48: cross-border cases

310. This section applies in the cases mentioned in subsections (2) and (3) and imposes certain duties and confers certain powers on local authorities in England in such cases.
311. *Subsection (1)* sets out that section 49 applies where, in cases falling within section 48, the service provider whose business has failed was meeting an individual's needs under arrangements 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 paragraphs (a) to (c) of subsection (1).
312. *Subsection (2)* sets out that section 49 applies where the failed service provider was meeting the individual's needs 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 subparagraphs (i) to (iii) of paragraph (b) of subsection (2).
313. *Subsection (3)* provides that the local authority in England must, in meeting needs under section 48, cooperate with the authority or trust which made the arrangements or the direct payments and may recover from that authority or trust the cost it incurs in respect of meeting needs which were being met pursuant to those arrangements or purchased with the direct payments. It also allows the authority in England to recover the cost of meeting other needs from the adult – for example needs which the service provider was meeting under separate arrangements made by the adult.
314. *Subsection (4)* provides that any dispute between a local authority in England and an authority in Wales or Scotland or a trust in Northern Ireland must be resolved in accordance with the dispute resolution procedure in paragraph 5 of Schedule 1.

Section 50 – Temporary duty on local authority in Wales

315. This section places a duty on local authorities in Wales 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 a service provider who is registered under Part 2 of the Care Standards Act 2000 becomes unable to carry on or manage their establishment or agency because of business failure. It only applies in relation to needs which the failed

service provider was meeting by providing accommodation or services which were paid for with direct payments, or pursuant to arrangements, made by a local authority in England or Scotland or a Health and Social Care trust in Northern Ireland.

316. *Subsections (1) and (2)* make clear that the duty applies where a person who is registered as mentioned becomes unable to carry on or manage their establishment or agency because of business failure and immediately before that was providing the adult with accommodation or other services in Wales, under arrangements made by a local authority in England or Scotland or a Health and Social Care trust in Northern Ireland under the legislative provisions referred to in subparagraphs (i) to (iii) of paragraph (b) of subsection (1), or which were paid for with direct payments made by such an authority or trust under the legislative provisions referred to in subparagraphs (i) to (iii) of paragraph (b) of subsection (2). *Subsection (3)* requires the local authority in Wales in whose area the service was being provided or the accommodation situated to meet the needs which the failed provider was meeting for so long as the authority considers necessary.
317. *Subsection (4)* requires the local authority in Wales, in meeting the adult's needs, to cooperate with the authority or trust which made the arrangements or the direct payments as referred to in subsections (1) or (2) and allows the local authority in Wales to recover the costs it incurs in meeting the needs from that authority or trust.
318. *Subsection (5)* provides that any dispute about the application of this section is to be resolved in accordance with the dispute resolution procedure in paragraph 5 of Schedule 1.

Section 51 – Temporary duty on Health and Social Care trust in Northern Ireland

319. This section places a duty on a Health and Social Care trust in Northern Ireland which is of equivalent effect to that which applies to a local authority in Wales under section 50. It applies where a person who is registered under Part 3 of the Health and Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 in respect of an agency or establishment becomes unable to carry on or manage their establishment or agency because of business failure and only in relation to accommodation or other services which were paid for with direct payments, or provided under arrangements, made by a local authority in England, Wales or Scotland.
320. *Subsection (3)* requires the trust in whose area the service was being provided or the accommodation situated to meet the needs which the failed provider was meeting for so long as the trust considers necessary.
321. *Subsection (4)* requires the trust, in meeting the adult's needs, to cooperate with the authority which made the arrangements or the direct payments as referred to in *subsections (1) or (2)* and allows it to recover the costs it incurs in meeting the needs from that authority.
322. *Subsection (5)* provides that any dispute about the application of this section is to be resolved in accordance with the dispute resolution procedure in paragraph 5 of Schedule 1.

Section 52 – Sections 48 and 51: supplementary

323. This section makes supplementary provision in relation to the duties on local authorities and Health and Social Care trusts set out in sections 48 to 51.
324. *Subsection (1)* sets out that an authority is subject to the duty to meet needs under sections 48(2), 50(3) or 51(3) as soon as it becomes aware of the business failure in question.
325. *Subsection (2)* makes clear that the provisions of section 8 on how to meet needs apply to meeting needs under section 48(2) (thus for example an English local authority can

meet needs in any of the ways set out in section 8 and does not have to meet the needs in the way in which they were being met by the failed service provider).

326. *Subsection (3)* makes clear that the provision in the Welsh legislative equivalent of section 8 on how to meet needs applies to meeting needs under section 50(3). There is no such provision for Northern Ireland because there is no provision equivalent to section 8 in Northern Irish legislation.
327. *Subsection (4)* requires that an authority in deciding how it will meet an adult's needs for care and support must involve the adult, their carer, and any person whom the adult asks to be involved, or, if the adult lacks capacity, any person whom the authority considers to be interested in the adult's welfare. *Subsection (5)* makes similar provision for involvement of carers. *Subsection (6)* requires authorities, in involving adults or carers, to take reasonable steps to reach agreement with them about how they should meet needs.
328. *Subsection (7)* makes clear that the restrictions specified in sections 21 to 23 on meeting needs (exception for persons subject to immigration control, exception for provision of health services and exception for provision of housing etc.) apply in relation to the duties on English local authorities to meet needs under section 48(2).
329. *Subsection (8)* applies similar restrictions in Welsh legislation in cases where a local authority in Wales is meeting needs under section 50(3).
330. *Subsection (9)* applies in cases where a failed provider in England is providing the adult with NHS continuing healthcare which is commissioned by a clinical commissioning group which is not in the area of the local authority on which the duty under section 48 falls. It makes clear that the definition of "relevant partner" in sections 6 and 7, which concern cooperation between local authorities and relevant partners, is to be treated as including that clinical commissioning group, even though it is not in the area of the local authority.
331. *Subsection (11)* makes clear that a local authority in England may request from the failed provider, or such other person involved in the provider's business, information that it considers it necessary to have in order to comply with the temporary duty under section 48(2).
332. *Subsection (12)* requires that regulations make provision to interpret references to business failure or to being unable to do something because of business failure.
333. *Subsections (13) and (14)* make transitory provision in relation to references to Welsh or Scottish legislation to deal with the period before that legislation comes into force.