

Explanatory Memorandum to the Care and Support (Business Failure) (Wales) (Regulations) 2015

This Explanatory Memorandum has been prepared by the Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Care and Support (Business Failure) (Wales) Regulations 2015 and I am satisfied that the benefits outweigh any costs.

Mark Drakeford

Minister for Health and Social Services

18 November 2015

Part 1: OVERVIEW

Description

The Social Services and Well-being (Wales) Act 2014 (the Act) brings together local authorities' duties and functions in relation to improving the well-being of people who need care and support, and carers who need support. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.

Sections 189-191 of the Social Services & Well-being (Wales) Act impose temporary duties on local authorities in Wales to meet care and support needs of adults, or support the needs of carers, in circumstances where registered providers of care are unable to carry on because of business failure.

Matters of special interest to the Constitutional and Legislative Affairs Committee

No matters of special interest to the Constitutional and Legislative Affairs Committee have been identified.

Legislative background

The powers enabling these Regulations to be made are contained in sections 189-191 of the Act.

This statutory instrument is subject to the negative procedure. It is proposed that the regulations will come into force on 6 April 2016.

Current legislation

Local authorities currently have functions which would generally extend to meeting the needs of those individuals who have suffered a gap in care services because of business failure and have done so effectively.

Proposed Legislation

The statutory framework in this area will consist of three main elements, the Act itself, regulations made under the Act, and (where appropriate) codes of practice and statutory guidance. These three elements work together to form the framework within which social services will operate post April 2016.

Purpose and intended effect of the legislation

The Act (Sections 189 – 193) imposes a duty on local authorities in Wales to provide care and support to adults whose needs were being met by a registered person in Wales who became unable to carry on the establishment or agency following business failure.

The duty does not apply where, immediately before the registered person became unable to carry on or manage the establishment or agency, the adult's needs for care and support were being met (see section 190 of the Act):

- Under arrangements made by a local authority in England
- Under arrangements made by a local authority in Scotland

- Under arrangements made by a health and social care trust in Northern Ireland.

This is because this is dealt with in the Care Act 2014. There are reciprocal arrangements in place for cross border arrangements which were subject to a previous consultation under the Care Act.

Where a registered care provider in Wales becomes unable to carry on the establishment or agency following business failure, the local authority for the area in which the services are provided is under a duty to provide care and support to adults:

Intended effect of the Regulations

The regulations define 'business failure. Regulation 2 sets out the events which constitute 'business failure' for the purposes of the temporary duties on local authorities in Wales.

In relation to a provider, other than an individual registered in Wales, business failure consists of:-

- The appointment of an administrator
- The appointment of a receiver
- The appointment of an administrative receiver
- The passing of a resolution for a voluntary winding up order
- The making of bankruptcy orders where individual members of a partnership present a joint bankruptcy petition
- In relation to an unincorporated charity, the charity trustees becoming unable to pay their debts as they fall due.
- All members of a partnership being adjudged bankrupt; or
- A voluntary arrangement being approved under the Insolvency Act 1986.

In relation to a provider who is an individual registered in Wales, 'business failure' consists of the individual being adjudged bankrupt or proposing or entering into an individual voluntary arrangement under Part 8 of the 1986 Act or Part 8 of the 1989 Order or being subject of a debt relief order.

Under the Act, the temporary duties are triggered where a registered provider becomes unable to carry on or manage an establishment or agency because of business failure if the provider's inability to do so follows business failure.

The Care and Support (Business Failure) (wales) Regulations 2015 include debt relief orders as part of the definition of business failure. These apply in relation to placements made by Welsh authorities only.

Consultation

A 4 week consultation on these regulations ran between 17 September to 15 October. We received a total of 6 responses.

The inclusion of debt relief orders in the definition of business failure was welcomed. A number of comments will be forwarded to policy leads for the Regulation and Inspection Bill who are developing market oversight arrangements.

The report and a list of respondents can be found at:

<http://gov.wales/consultations/healthsocialcare/care-and-support/?status=closed&lang=en>

Impact

A separate impact assessment has not been prepared for these regulations. They are not expected to represent an additional cost burden for either the public or private sector. This is because they interpret 'business failure' for the purposes of duties imposed under the Act itself. Local authorities currently have functions which would generally extend to meeting the needs of those individuals who have suffered a gap in care services because of business failure and have done so effectively. Further, the duties under the Act are temporary insofar as they only require authorities to meet needs for so long as they consider necessary. The Act also enables authorities to recover the costs incurred in meeting needs.

Children's Rights Impact Assessment

These measures do not apply to children's services and no children's Rights Impact assessment has been undertaken.