

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Care and Support

Provider failure

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.

These notes refer to the Care Act 2014 (c.23) which received Royal Assent on 14 May 2014

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.