

2014 No. 2839

SOCIAL CARE

The Care and Support (Cross-border Placements) (Business Failure Duties of Scottish Local Authorities) Regulations 2014

Made - - - - - *20th October 2014*

Laid before Parliament *28th October 2014*

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 39(8) and 125(7) and (8) of, and paragraphs 1(6) and (7), 2(9) and (10) and 4(5) and (6) of Schedule 1 to, the Care Act 2014(a).

In accordance with paragraph 11 of Schedule 1 to the Care Act 2014, the Secretary of State has obtained the consent of the Welsh Ministers, the Scottish Ministers and the Northern Ireland Department(b) to the making of these Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Care and Support (Cross-border Placements) (Business Failure Duties of Scottish Local Authorities) Regulations 2014.

(2) These Regulations come into force—

- (a) immediately after paragraph 1(6) of the Schedule comes fully into force(c) in so far as they relate to a case within paragraph 1(3) (cross-border placements from England to Scotland) of the Schedule;
- (b) in so far as they relate to a case within paragraph 2(3) or (4) of the Schedule (cross-border placements from Wales to Scotland)—
 - (i) on the date that Part 4 of the Social Services and Well-being (Wales) Act 2014(d) comes fully into force, or
 - (ii) if later, immediately after paragraph 2(9) of the Schedule comes fully into force(e); and
- (c) immediately after paragraph 4(5) of the Schedule comes fully into force(f) in so far as they relate to a case within paragraph 4(3) of the Schedule (cross-border placements from Northern Ireland to Scotland).

(a) 2014 c.23 (“the Act”). The powers to make regulations are exercisable by the Secretary of State – *see* section 125(1). Pending the commencement of Part 4 of the Social Services and Well-being (Wales) Act 2014 (2014 anaw 4), paragraphs 1, 2 and 4 of Schedule 1 to the Act have effect with the modifications set out in paragraph 14 of that Schedule.

(b) *See* paragraph 12(9) of Schedule 1 to the Act as to the meaning of “the Northern Ireland Department”.

(c) Paragraph 1(6) was commenced for the purposes of making regulations by S.I. 2014/2473.

(d) 2014 anaw 4.

(e) Paragraph 2(9) was commenced for the purposes of making regulations by S.I. 2014/2473.

(f) Paragraph 4(5) was commenced for the purposes of making regulations by S.I. 2014/2473.

(3) In these Regulations—

“the 1968 Act” means the Social Work (Scotland) Act 1968(a);

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985(b);

“the 1986 Act” means the Insolvency Act 1986(c);

“the 2010 Act” means the Public Services Reform (Scotland) Act 2010(d);

“care provider” means a person registered under section 59 of the 2010 Act in respect of a care service;

“care service” has the meaning given in section 47 of the 2010 Act (care services);

“company” means an entity, other than a partnership, in respect of which a winding up order may be made in accordance with the procedures for winding up set out in the 1986 Act (with or without modification);

“local authority” means a local authority for the purposes of the 1968 Act(e);

“partnership” does not include a limited liability partnership (within the meaning of the Limited Liability Partnerships Act 2000(f));

“relevant adult” means an adult in respect of whom relevant arrangements have been made;

“relevant arrangements” means arrangements for the provision of accommodation within paragraph 1(3), 2(3) or (4) or (as the case may be) 4(3) of the Schedule;

“relevant care provider” means the care provider with whom relevant arrangements have been made;

“the Schedule” means Schedule 1 to the Care Act 2014.

Regulations 3 to 5 – application

2. Regulations 3 to 5 apply to a case within paragraph 1(3), 2(3) or (4) or 4(3) of the Schedule.

Temporary duty on local authority in Scotland

3.—(1) In the circumstances specified in paragraph (2)—

(a) the duties on local authorities specified in regulation 5 are to apply in the case of a relevant adult; and

(b) the discharge of any such duties is to continue for so long as the local authority discharging the duty considers necessary.

(2) The circumstances referred to in paragraph (1) are that—

(a) the relevant care provider is unable to continue to provide the care service in respect of which relevant arrangements have been made; and

(b) such inability arises following any of the events specified in regulation 4.

Circumstances in which a local authority is required to discharge specified duties

4.—(1) In relation to a care provider which is a company, the events specified for the purposes of regulation 3(2)(b) are—

(a) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the 1986 Act submits a report to the court under section 2 (procedure where nominee is not the

(a) 1968 c.49.

(b) 1985 c.66.

(c) 1986 c.45.

(d) 2010 asp 8.

(e) See section 1(2) of the Social Work (Scotland) Act 1968 as to the local authorities for the purposes of that Act.

(f) 2000 c.12.

- liquidator or administrator) of that Act(a) which states that in the nominee’s opinion meetings of the company and its creditors should be summoned to consider the proposal;
- (b) the directors of the company lodge with the court documents and statements in accordance with paragraph 7(1) of Schedule A1 (moratorium where directors propose voluntary arrangement) to the 1986 Act(b);
 - (c) an administrative receiver within the meaning of section 251 of the 1986 Act(c) is appointed in relation to the company;
 - (d) the company enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to the 1986 Act(d);
 - (e) a resolution is passed for a voluntary winding up of the company without a declaration of solvency under section 89 of the 1986 Act;
 - (f) a meeting of creditors is held in relation to the company under section 95 (creditors’ meeting which has the effect of converting a members’ voluntary winding up into a creditors’ voluntary winding up) of the 1986 Act(e);
 - (g) an order for the winding up of the company is made by the court under Part 4 or 5 of the 1986 Act;
 - (h) an administration order is made by the court in respect of the company by virtue of any enactment which applies Part 2 (administration orders) of the 1986 Act (with or without modification);
 - (i) a notice from an administrator under paragraph 83(3) of Schedule B1 (moving from administration to creditors’ voluntary liquidation) to the 1986 Act in relation to the company is registered by the registrar of companies in accordance with paragraph 83(4) of that Schedule;
 - (j) the company moves from administration to winding up pursuant to an order of the court under rule 2.132 (conversion of administration to winding up - power of court) of the Insolvency Rules 1986(f);
 - (k) an administrator or liquidator of the company, being the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the 1986 Act (company voluntary arrangements), summons meetings of the company and of its creditors, to consider the proposal, in accordance with section 3(2) (summoning of meetings) of the 1986 Act.
- (2) In relation to a care provider who is an individual, the events specified for the purposes of regulation 3(2)(b) are—
- (a) the individual is adjudged bankrupt or sequestration of the individual’s estate has been awarded under section 12 of the 1985 Act(g);
 - (b) the nominee in relation to a proposal for a voluntary arrangement under Part 8 of the 1986 Act submits a report under section 256(1) or 256A(3) of that Act(h) which states that in the nominee’s opinion a meeting of the creditors of the debtor (being the individual) should be summoned to consider the debtor’s proposal;

(a) Section 2 was amended by paragraphs 1 and 3 of Schedules 1 and 2 to the Insolvency Act 2000 (c.39) (“the 2000 Act”).

(b) Schedule A1 was inserted by paragraphs 1 and 4 of Schedule 1 to the 2000 Act.

(c) Section 251 was amended by S.I. 2009/1941.

(d) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40).

(e) Section 95 was amended by S.I. 2009/864 and 2010/18.

(f) S.I. 1986/1925. Rule 2.132 was substituted by S.I. 2003/1730 and amended by S.I. 2010/686.

(g) Section 12 was amended by section 4(2) to (5) of the Bankruptcy (Scotland) Act 1995 (c.36), sections 14(8), 27(2) and (3) of, and paragraph 10 of Schedule 1 and paragraph 1 of Schedule 6 to, the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”) and section 9(3) of the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6) and is prospectively amended (from a date to be appointed) by section 11(4)(a) and 47 of, and paragraph 9 of Schedule 3 and paragraph 1 of Schedule 4 to, the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11).

(h) Section 256 was amended by paragraphs 1 and 6 of Schedule 3 to the 2000 Act. There are other amendments to section 256 but none is relevant. Section 256A was inserted by paragraphs 1 and 7 of Schedule 3 to the 2000 Act. Subsection (3) was amended by paragraphs 1 and 4 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and by S.I. 2010/18.

- (c) a deed of arrangement made by or in respect of the affairs of the individual is registered in accordance with the Deeds of Arrangement Act 1914(a);
- (d) the individual executes a trust deed for the individual's creditors or enters into a composition contract.

(3) In relation to a care provider which is a partnership, the events specified for the purposes of regulation 3(2)(b) are—

- (a) an order for the winding up of the partnership is made by the court under any provision of the 1986 Act (as applied by an order under section 420 (insolvent partnerships) of that Act(b));
- (b) sequestration is awarded on the estate of the partnership under section 12 of the 1985 Act or the partnership grants a trust deed for its creditors;
- (c) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the 1986 Act (as applied by an order under section 420 of that Act) submits a report to the court under section 2 (procedure where nominee is not the liquidator or administrator) of that Act which states that in the nominee's opinion meetings of the members of the partnership and the partnership's creditors should be summoned to consider the proposal;
- (d) the members of the partnership lodge with the court documents and statements in accordance with paragraph 7(1) of Schedule A1 (moratorium where directors propose voluntary arrangement) to the 1986 Act (as applied by an order under section 420 of that Act);
- (e) the partnership enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to the 1986 Act (as applied by an order under section 420 of that Act).

(4) In relation to any other care provider, the event specified for the purpose of regulation 3(2)(b) is an award of sequestration of the provider's estate made under section 12 of the 1985 Act or the Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011(c).

Specified duties

5.—(1) The duties specified for the purposes of regulation 3(1)(a) are the duties under sections 12 and 13A of the 1968 Act (social welfare services and residential accommodation with nursing)(d) in so far as the discharge of the duties would involve meeting the relevant adult's needs by taking the following steps—

- (a) providing or securing the provision of accommodation; or
- (b) providing, maintaining and making such arrangements as a local authority considers appropriate and adequate for the provision of suitable accommodation where nursing is provided for persons who are or appear to be in need of such accommodation by reason of infirmity, age, illness or mental disorder, dependency on drugs or alcohol or being substantially handicapped by any deformity or disability.

(2) In paragraph (1), "needs" means, in relation to an adult, the needs of the adult which were being met by the relevant care provider under relevant arrangements immediately before the

(a) 1914 c.47.

(b) Section 420 was amended by paragraphs 185 and 191 of Schedule 4 to the Constitutional Reform Act 2005 (c.4) and by S.I. 2002/1037. As to orders under section 420, see S.I. 1994/2421 as amended by S.I. 1994/2421, 1996/1308, 2001/767, 2002/1308, 2005/1516 and 2006/622.

(c) S.S.I. 2011/237 as amended by S.S.I. 2013/362.

(d) 1968 c.49. Section 12 was amended by paragraph 10(5) of Schedule 9 to the National Health Service and Community Care Act 1990 (c.19) ("the 1990 Act"), paragraph 15(11) of Schedule 4 to the Children (Scotland) Act 1995 (c.36), section 120(1) of the Immigration and Asylum Act 1999 (c.33) ("the 1999 Act") and section 3 of the Community Care and Health (Scotland) Act 2002 (asp 5) ("the CCHSA 2002"), and is prospectively amended (from a date to be appointed) by section 46(1) of the Nationality, Immigration and Asylum Act 2002 (c.41) ("the 2002 Act"). Section 13A was inserted by section 56 of the 1990 Act and amended by section 120(2) of the 1999 Act, section 72 of, and paragraph 4(3) of Schedule 3 to, the Regulation of Care (Scotland) Act 2001 (asp 8), paragraph 1(4) of Schedule 2 to the CCHSA 2002 and by S.S.I. 2011/211, and is prospectively amended (from a date to be appointed) by section 46(2) of the 2002 Act.

provider became unable to continue to provide the care service in question as mentioned in regulation 3(2)(a).

Signed by authority of the Secretary of State for Health.

20th October 2014

Norman Lamb
Minister of State
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

Schedule 1 to the Care Act 2014 makes provision to ensure that where a local authority in England, Wales or Scotland, or a Health and Social Care trust in Northern Ireland makes arrangements for the provision to an adult of residential accommodation in another of those territories, in general, this does not result in the transfer of that authority's responsibility for that adult. The relevant provisions are to be found in paragraphs 1 to 4 of Schedule 1.

These Regulations make provision to specify circumstances in which, in the case of arrangements for the provision of accommodation in Scotland, specified duties of Scottish local authorities under Part 2 of the Social Work (Scotland) Act 1968 ("the 1968 Act") are nonetheless to apply in the case of the adult concerned.

Regulation 3 sets out that the circumstances are that the care provider with whom the arrangements have been made is unable to continue to provide the care service in respect of which those arrangements have been made and this inability arises following any of the events set out in regulation 4. The duties are to continue to be discharged for so long as the local authority considers necessary.

Regulation 5 sets out the duties under the 1968 Act which are to apply.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via careactconsultation@dh.gsi.gov.uk or Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

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