



Welsh Government

Consultation Document

Implementation of the Social Services and Well-being (Wales) Act 2014

Regulations in relation to Part 11 of the Act – The draft Care and Support (Business Failure) (Wales) Regulations 2015

Date of issue: 17 September 2015

Action required: Responses by 15 October 2015

Overview

The purpose of this consultation is to seek your views on the draft Care and Support (Business Failure) (Wales) Regulations 2015.

How to respond

You can respond to this consultation by completing, by midnight on the closing date, the consultation response form at the back of this document and returning it to us by post to:

Sustainable Social Services Implementation
Branch
Social Services Directorate
Welsh Government
Crown Buildings
Cathays Park
Cardiff
CF10 3 NQ

Alternatively the consultation response form is available on our website www.gov.wales/consultations/?lang=en and can be returned to us, by midnight on the closing date, via e-mail to: sswbimplementation@wales.gsi.gov.uk

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

sswbimplementation@wales.gsi.gov.uk

Sustainable Social Services Implementation
Branch
Social Services Directorate
Welsh Government
Crown Buildings
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CF10 3 NQ

Email: sswbimplementation@wales.gsi.gov.uk

Telephone: 029 20 82 6498

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

This consultation

The purpose of this consultation is to seek your views on the draft Care and Support (Business Failure) (Wales) Regulations 2015. The Welsh Government has previously consulted in 2014 on the Care and Support (Business Failure) Regulations 2015.

Where are we now?

The Social Services and Well-being (Wales) Act 2014 (the Act) received Royal Assent on 1 May 2014. The Act forms the basis for a new statutory framework for social care in Wales.

The focus now turns to achieving implementation of the Act. The Welsh Ministers have made it clear that they wish the core elements of the new statutory framework to be in place for April 2016, when the Act will be implemented.

The statutory framework will consist of three main elements; the Act itself, regulations made under the Act, and codes of practice/statutory guidance. These three elements work together to form the framework within which social services will operate from April 2016.

The regulations, codes and statutory guidance have been under development through a consultative process with key stakeholders and are now presented to stakeholders across Wales for their input.

The evidence for change

The evidence for change was set out in *Sustainable Social Services: A Framework for Action* and in the consultation on the Social Services (Wales) Bill, which set out the key principles of the Bill.

Social Services are at the heart of Welsh public life. They support 150,000 young, old and disabled people every year to achieve their potential and help make them safe. Many of these services are delivered in partnership with others, including housing, health and education services. Society is changing and social services must change in response. There has been and will continue to be shifts in the public's expectations of social services, as a result of demographic change and changes in our society. Social services need to alter and to respond to all of these.

Furthermore, demand is rising across social services, yet the financial outlook for all public services is difficult. Whilst we have protected social services expenditure, we need to make a more fundamental change than just pursuing the obvious efficiency measures if we are to make social services sustainable. Our White Paper *Sustainable Social Services for Wales: A Framework for Action* sets out a programme of change to meet these challenges based on the following nine principles:

- A strong voice and real control

- Supporting each other
- Safety
- Respect
- Recovery and restoration
- Adjusting to new circumstances
- Stability
- Simplicity
- Professionalism

These have been informed by discussion with stakeholders and debates in the National Assembly for Wales and elsewhere since *Sustainable Social Services for Wales* was published. They sit alongside the evidence of the Independent Commission on Social Services in Wales, the Law Commission review of adult social care legislation, our Review of Safeguarding and the advice and deliberations of the National Leadership Group, Partnership Forum and Citizen's Panel. All this forms the backbone of our case for change.

Further information and related documents

This evidence, and the process of considering it through the National scrutiny process on the Bill, has informed and shaped the contents of the Act. The next stage, the development of the regulations and codes of practice or statutory guidance, has been informed by key strategic inputs such as *More than just words*, our Strategic Framework for Welsh Language Services in Health, Social Services and Social Care, and *Enabling Wales*, and by evidence sourced through technical groups consisting of key stakeholders. These groups have looked at the Act's provisions, and the policy underpinning these, in detail, and provided advice to officials on how the regulations and codes of practice should be framed in order to achieve the aims of the Act and, through this, the requirements of *Sustainable Social Services: A Framework for Action*. This process has secured a range of valuable input which Welsh Government officials have drawn upon to develop the draft regulations, codes of practice and statutory guidance covered in the consultation on tranche one and in this consultation.

<http://wales.gov.uk/topics/health/publications/health/guidance/words/?lang=en>

<http://wales.gov.uk/topics/health/publications/socialcare/reports/advisory/?lang=en>

The proposals

The purpose of this consultation is to seek your views on one specific aspect of the draft **Care and Support (Business Failure) (Wales) Regulations 2015**. The Welsh Government has previously consulted in 2014 on the Care and Support (Business Failure) Regulations 2015. These regulations were made by the Secretary of State in exercise of the powers conferred by the Care Act 2014.

We also consulted on a draft code of practice in relation to business failure. This draft code simply represented our thinking to date. The consultation provided an opportunity to share your views to inform the development of this guidance. We have introduced a Bill on the 'Future of Regulation and Inspection of Care and Support in Wales' and this will include reference to market oversight. The temporary duties on Welsh local authorities in the event of the business failure of a provider of care services will not come into force until April 2016. This code will be finalised as we develop our market oversight regime in Wales as part of the Regulation and Inspection of care and support in Wales under the new Act.

A description of The Care and Support (Business Failure) Regulations 2015 and The Care and Support (Cross-border Placements) (Business Failure Duties of Scottish Local Authorities) Regulations 2014 can be found at the foot of this document.

The Care and Support (Business Failure) (Wales) Regulations 2015

These are the Regulations which are being consulted on in this exercise.

These Regulations will be made by the Welsh Ministers in exercise of the powers conferred by the Act.

The Act 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.

This 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 s.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.

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:

- (a) whose needs for care and support were met under arrangements made by a local authority in England;
- (b) whose needs for care and support were met under arrangements made by a local authority in Scotland;

(c) whose needs for care and support were met under arrangements made by a Health and Social Care trust in Northern Ireland; and

(d) whose needs for care and support were met under arrangements made by a local authority in Wales.

The Care Act 2014 provides for the temporary duties referred to in (a), (b) and (c), and therefore, these duties are triggered when the care provider becomes unable to carry on the establishment following business failure, as defined in the Care and Support (Business Failure) Regulations 2015.

The Act sets out the duty referred to in (d), and therefore, this duty will only arise where the care provider becomes unable to carry on the establishment following business failure, as defined in the Care and Support (Business Failure) (Wales) Regulations 2015.

The Care and Support (Business Failure) (Wales) Regulations 2015 include **debt relief orders** as part of the definitions of business failure. These apply in relation to placements made by Welsh authorities only. If a care provider in Wales becomes unable to carry on the establishment or agency following the making of a debt relief order, the Welsh local authority in which care was provided will not be obliged to provide care and support to users whose needs were being met under arrangements made by an English local authority. The Welsh local authority in which care was provided will be obliged to provide care and support to users whose needs were being met under arrangements made by another Welsh authority.

Given that we have already consulted on the Business Failure regulations as they apply to England, Scotland and Northern Ireland this consultation is confined to the technical issue – the inclusion of debt relief orders within the definition of business failure. This consultation seeks your comments and views on:

- the inclusion of debt relief orders within the definition of business failure as it applies to placements made by Welsh local authorities.

A consultation response form can be found below.

Related Regulations

The Care and Support (Business Failure) Regulations 2015

These regulations were made by the Secretary of State in exercise of the powers conferred by the Care Act 2014.

The Care Act 2014 imposes a duty on local authorities in England to provide care and support to adults whose needs were being met by a

registered care provider who became unable to carry on the regulated activity in the authority's area following business failure.

The Care Act also 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 under arrangements made by a local authority in England, a local authority in Scotland or a Health and Social Care trust in Northern Ireland, where the registered person becomes unable to carry on the establishment or agency in the authority's area following business failure.

Under the Act, a trust in Northern Ireland is under a duty to provide care and support to adults whose needs were being met by a registered person in NI under arrangements made by a local authority in England, a local authority in Scotland or a local authority in Wales, where the registered person becomes unable to carry on the establishment or agency following business failure.

These duties are triggered by the inability of the care provider to carry on the activity following business failure, as defined in the Care and Support (Business Failure) Regulations 2015.

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

These Regulations were made by the Secretary of State in exercise of the powers conferred by the Care Act 2014.

These Regulations impose a duty on local authorities in Scotland to provide care and support to adults whose needs were being met by a care provider in Scotland under arrangements made by a local authority in England, a local authority in Wales, or a Health and Social Care trust in Northern Ireland, where the provider becomes unable to carry on the establishment or agency following business failure.

**Consultation
Response Form**

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

1. We invite your views on the inclusion of debt relief orders within the definition of business failure

2. We have asked a specific question. If you have any related issues which we have not specifically addressed, please use this space to report them

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

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