STATUTORY INSTRUMENTS

2015 No. 301

SOCIAL CARE

The Care and Support (Business Failure) Regulations 2015

Made - - - - 11th February 2015
Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 52(12) and 125(7) and (8) of the Care Act 2014(**1**).

In accordance with section 125(4)(f) of the Care Act 2014, a draft of these Regulations was laid before Parliament and was approved by a resolution of each House of Parliament.

In accordance with section 125(9) of the Care Act 2014, the Secretary of State has consulted the Welsh Ministers and the Department for Health, Social Services and Public Safety in Northern Ireland before making these Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Care and Support (Business Failure) Regulations 2015.

(2) Subject to paragraph (3), these Regulations come into force on the day on which section 52(12) of the Act comes fully into force(**2**).

(3) Insofar as these Regulations make provision for the purposes of—

(a) section 50 of the Act(**3**), and

(b) section 52 of the Act insofar as it relates to section 50,

they come into force for those purposes on the day on which section 50 of the Act comes fully into force.

(4) In these Regulations—

"the Act" means the Care Act 2014;

"the 1986 Act" means the Insolvency Act 1986(**4**);

(**1**) 2014 c.23 ("the Act"). The powers to make regulations are exercisable by the Secretary of State, *see* section 125(1).
(**2**) Section 52(12) was commenced on 1 October 2014 for the purposes of making regulations by S.I. 2014/2473.
(**3**) Section 50 concerns duties on local authorities in Wales to meet adults' needs for care and support or carers' needs for support in specified circumstances.
(**4**) 1986 c.45.

"the 1989 Order" means the Insolvency (Northern Ireland) Order 1989(**5**);

"a members' voluntary winding up" means a winding up where a statutory declaration has been made under section 89 of the 1986 Act or article 75 of the 1989 Order(**6**);

"a provider" means—

(a) a registered care provider(**7**),

(b) a person registered under Part 2 of the Care Standards Act 2000(**8**) in respect of an establishment or agency, or

(c) a person registered under Part 3 of the Health and Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(**9**) in respect of an establishment or agency;

"the relevant amount" means the amount specified in section 123(1)(a) of the 1986 Act (definition of inability to pay debts) or article 103(1)(a) of the 1989 Order (definition of inability to pay debts; the statutory demand) as the case may be.

Business failure

2.—(1) For the purposes of sections 48 and 50 to 52 of the Act—

(a) business failure has the meaning given in paragraphs (2) to (5); and

(b) a provider is to be treated as unable to carry on a regulated activity(**10**) or to carry on or manage an establishment or agency because of business failure if the provider's inability to do so follows business failure.

(2) Where a provider is not an individual, business failure means that, in respect of that provider—

(a) the appointment of an administrator (within the meaning given by paragraph 1(1) of Schedule B1 to the 1986 Act(**11**) or paragraph 2(1) of Schedule B1 to the 1989 Order(**12**)) takes effect;

(b) a receiver is appointed;

(c) an administrative receiver as defined in section 251 of the 1986 Act(**13**) or article 5 of the 1989 Order is appointed;

(d) a resolution for a voluntary winding up is passed other than in a members' voluntary winding up;

(e) a winding up order is made;

(f) an order by virtue of article 11 of the Insolvent Partnerships Order 1994 (joint bankruptcy petition by individual members of insolvent partnership)(**14**) is made;

(**5**) S.I. 1989/2405 (N.I. 19).
(**6**) *See*S.I. 2001/1090 and 2012/3013 as to the application of section 89 to Limited Liability Partnerships and Charitable Incorporated Organisations respectively. As to the application of section 89 to co-operative and community benefit societies, *see* section 123 of the Co-operative and Community Benefit Societies Act 2014 (c.14), and as to the application of article 75 of the 1989 Order to industrial and provident societies in Northern Ireland, *see* section 64 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c.24), as substituted by S.I. 2009/1941.
(**7**) *See* section 48(1) of the Act for the meaning of "registered care provider".
(**8**) 2000 c.14.
(**9**) S.I. 2003/431 (N.I. 9).
(**10**) *See* section 8 of the Health and Social Care Act 2008 (c.14) for the meaning of "regulated activity".
(**11**) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40). As to the application of Part 2 of the 1986 Act to co-operative and community benefit societies, *see*S.I. 2014/229 as amended by S.I. 2014/1822.
(**12**) Schedule B1 was inserted by S.I. 2005/1455 (N.I. 10).
(**13**) There are amendments to section 251 but none is relevant.
(**14**) S.I. 1994/2421.