



National Health Service and Community Care Act 1990

1990 CHAPTER 19

PART III **E+W+S**

COMMUNITY CARE: ENGLAND AND WALES

General provisions concerning community care services

^{F1}46 Local authority plans for community care services. **E+W**

.....

Textual Amendments

F1 S. 46 omitted (6.4.2016) by virtue of [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **125**

47 Assessment of needs for community care services. **E+W**

- (1) Subject to subsections (5) and (6) below, where it appears to a local authority that any person for whom they may provide or arrange for the provision [^{F2}of services under section 117 of the Mental Health Act 1983 ^{F3}...] may be in need of any such services, the authority—
 - (a) shall carry out an assessment of his needs for those services; and
 - (b) having regard to the results of that assessment, shall then decide whether his needs call for the provision by them of any such services.
- (2) If at any time during the assessment of the needs of any person under subsection (1)
 - (a) above it appears to a local authority [^{F4}in England] that he is a disabled person, [^{F5}(and ^{F6}..., that he is under 18)] the authority—

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- (a) shall proceed to make such a decision as to the services he requires as is mentioned in section 4 of the ^{M1}Disabled Persons (Services, Consultation and Representation) Act 1986 without his requesting them to do so under that section; and
- (b) shall inform him that they will be doing so and of his rights under that Act.

(3) If at any time during the assessment of the needs of any person under subsection (1) (a) above, it appears to a local authority—

- ^{F7}(za) that there may be a need for the provision of services to that person pursuant to arrangements made under the National Health Service Act 2006 by such integrated care board as may be determined in accordance with regulations (including such arrangements made by it in the exercise of functions of another person by virtue of any provision of that Act),]
- (a) that there may be a need for the provision to that person by such ^{F8}... [^{F9}Health Authority] as may be determined in accordance with regulations of any services under ^{F10}... [^{F11} the National Health Service (Wales) Act 2006], or
- (b) that there may be a need for the provision to him of any services which fall within the functions of a local housing authority (within the meaning of the ^{M2}Housing Act 1985) which is not the local authority carrying out the assessment,

the local authority shall notify that ^{F12}... [^{F13}integrated care board], [^{F9}Health Authority] or local housing authority and invite them to assist, to such extent as is reasonable in the circumstances, in the making of the assessment; and, in making their decision as to the provision of the services needed for the person in question, the local authority shall take into account any services which are likely to be made available for him by that ^{F12}... [^{F13}integrated care board], [^{F9}Health Authority] or local housing authority.

- (4) The Secretary of State may give directions as to the manner in which an assessment under this section is to be carried out or the form it is to take but, subject to any such directions and to subsection (7) below, it shall be carried out in such manner and take such form as the local authority consider appropriate.
- (5) Nothing in this section shall prevent a local authority from temporarily providing or arranging for the provision of [^{F14}services mentioned in subsection (1)] for any person without carrying out a prior assessment of his needs in accordance with the preceding provisions of this section if, in the opinion of the authority, the condition of that person is such that he requires those services as a matter of urgency.
- (6) If, by virtue of subsection (5) above, ^{F15}... services have been provided temporarily for any person as a matter of urgency, then, as soon as practicable thereafter, an assessment of his needs shall be made in accordance with the preceding provisions of this section.

^{F16}(7)

(8) In this section—

“disabled person” has the same meaning as in that Act; and

“local authority” [^{F17}means a county council in England, a district council for an area in England for which there is no county council, the council of a county or county borough in Wales, a London borough council or the Common Council of the City of London].

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Textual Amendments

- F2** Words in s. 47(1) substituted (1.4.2015) by [The Care Act 2014 and Children and Families Act 2014 \(Consequential Amendments\) Order 2015 \(S.I. 2015/914\)](#), art. 1(2), [Sch. para. 51\(2\)](#) (with arts. 1(3), 3)
- F3** Words in s. 47(1) omitted (6.4.2016) by virtue of [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [126\(a\)](#)
- F4** Words in s. 47(2) inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [126\(b\)\(i\)](#)
- F5** Words in s. 47(2) inserted (1.4.2015) by [The Care Act 2014 and Children and Families Act 2014 \(Consequential Amendments\) Order 2015 \(S.I. 2015/914\)](#), art. 1(2), [Sch. para. 51\(3\)](#) (with arts. 1(3), 3)
- F6** Words in s. 47(2) omitted (6.4.2016) by virtue of [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [126\(b\)\(ii\)](#)
- F7** S. 47(3)(za) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 9 para. 3](#); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F8** Words in s. 47(3)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 59\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F9** Words in s. 47(3) substituted (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, s. 2(1)(3), [Sch. 1 Pt. II para. 81](#) (with [Sch. 2 paras. 6, 16](#))
- F10** Words in s. 47(3)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 59\(c\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F11** Words in s. 47(3) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 2, 8(2), [Sch. 1 para. 130](#)
- F12** Words in s. 47(3) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 59\(d\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F13** Words in s. 47(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 4 para. 37](#); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F14** Words in s. 47(5) substituted (1.4.2015) by [The Care Act 2014 and Children and Families Act 2014 \(Consequential Amendments\) Order 2015 \(S.I. 2015/914\)](#), art. 1(2), [Sch. para. 51\(4\)](#) (with arts. 1(3), 3)
- F15** Words in s. 47(6) omitted (1.4.2015) by virtue of [The Care Act 2014 and Children and Families Act 2014 \(Consequential Amendments\) Order 2015 \(S.I. 2015/914\)](#), art. 1(2), [Sch. para. 51\(5\)](#) (with arts. 1(3), 3)
- F16** S. 47(7) omitted (6.4.2016) by virtue of [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [126\(c\)](#)
- F17** Words in s. 47(8) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [126\(d\)](#)

Commencement Information

- I1** S. 47 wholly in force at 1.4.1993 see s. 67(2) and S.I. 1992/2975, art. 2(2), [Sch.](#)

Marginal Citations

- M1** 1986 c. 33.
M2 1985 c. 68.

48 Inspection of premises used for provision of community care services. **E+W**

- (1) Any person authorised by the Secretary of State may at any reasonable time enter and inspect any premises [^{F18}(other than regulated premises)] in which [^{F19}services under section 117 of the Mental Health Act 1983, or services under Part 1 of the Care Act

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2014 to meet adults' needs for care and support, are or are proposed to be provided by a local authority in England, or^[F20] services under Part 4 of the Social Services and Well-being (Wales) Act 2014] are or are proposed to be provided by a local authority^[F21] in Wales], whether directly or under arrangements made with another person.

^[F22](1A) In subsection (1) “ regulated premises ” means—

- (a) in relation to England, premises used for the carrying on of a regulated activity within the meaning of Part 1 of the Health and Social Care Act 2008 by a person who is registered under Chapter 2 of that Part in respect of the activity; and
 - (b) in relation to Wales, premises in respect of which a person is registered under Part 2 of the Care Standards Act 2000^[F23] or Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2)].
- (2) Any person inspecting any premises under this section may—
- (a) make such examination into the state and management of the premises and the facilities and services provided therein as he thinks fit;
 - (b) inspect any records (in whatever form they are held) relating to the premises, or any person for whom^[F24] services mentioned in subsection (1)] have been or are to be provided there; and
 - (c) require the owner of, or any person employed in, the premises to furnish him with such information as he may request.
- (3) Any person exercising the power to inspect records conferred by subsection (2)(b) above—
- (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question; and
 - (b) may require—
 - (i) the person by whom or on whose behalf the computer is or has been so used; or
 - (ii) any person having charge of or otherwise concerned with the operation of the computer, apparatus or material,
 to give him such reasonable assistance as he may require.
- (4) Any person inspecting any premises under this section—
- (a) may interview any person residing there in private—
 - (i) for the purpose of investigating any complaint as to those premises or the^[F25] services mentioned in subsection (1) that are] provided there, or
 - (ii) if he has reason to believe that^[F26] any of those services] being provided there for that person are not satisfactory; and
 - (b) may examine any such person in private.
- (5) No person may—
- (a) exercise the power conferred by subsection (2)(b) above so as to inspect medical records; or
 - (b) exercise the power conferred by subsection (4)(b) above,
- unless he is a registered medical practitioner and, in the case of the power conferred by subsection (2)(b) above, the records relate to medical treatment given at the premises in question.

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- (6) Any person exercising the power of entry under subsection (1) above shall, if so required, produce some duly authenticated document showing his authority to do so.
- (7) Any person who intentionally obstructs another in the exercise of that power shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) In this section “local authority” [^{F27} has the same meaning as in section 47].

Textual Amendments

- F18** Words in s. 48(1) substituted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), **art. 8(a)**
- F19** Words in s. 48(1) inserted (1.4.2015) by [The Care Act 2014 and Children and Families Act 2014 \(Consequential Amendments\) Order 2015 \(S.I. 2015/914\)](#), art. 1(2), **Sch. para. 52(2)(a)** (with arts. 1(3), 3)
- F20** Words in s. 48(1) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **127(a)**
- F21** Words in s. 48(1) inserted (1.4.2015) by [The Care Act 2014 and Children and Families Act 2014 \(Consequential Amendments\) Order 2015 \(S.I. 2015/914\)](#), art. 1(2), **Sch. para. 52(2)(b)** (with arts. 1(3), 3)
- F22** S. 48(1A) inserted {1.10.2010} by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), **art. 8(b)**
- F23** Words in s. 48(1A)(b) inserted (2.4.2018) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2018 \(S.I. 2018/195\)](#), regs. 2(1), **15**
- F24** Words in s. 48(2)(b) substituted (1.4.2015) by [The Care Act 2014 and Children and Families Act 2014 \(Consequential Amendments\) Order 2015 \(S.I. 2015/914\)](#), art. 1(2), **Sch. para. 52(3)** (with arts. 1(3), 3)
- F25** Words in s. 48(4)(a)(i) substituted (1.4.2015) by [The Care Act 2014 and Children and Families Act 2014 \(Consequential Amendments\) Order 2015 \(S.I. 2015/914\)](#), art. 1(2), **Sch. para. 52(4)** (with arts. 1(3), 3)
- F26** Words in s. 48(4)(a)(ii) substituted (1.4.2015) by [The Care Act 2014 and Children and Families Act 2014 \(Consequential Amendments\) Order 2015 \(S.I. 2015/914\)](#), art. 1(2), **Sch. para. 52(5)** (with arts. 1(3), 3)
- F27** Words in s. 48(8) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **127(b)**

Commencement Information

- I2** S. 48 wholly in force at 1.4.1991 see s. 67(2) and [S.I. 1990/2218](#), art. 2, **Sch.**

49 Transfer of staff from health service to local authorities. **E+W**

- (1) In connection with arrangements relating to community care services made by virtue of this Part of this Act, the Secretary of State may make regulations with respect to the transfer to employment by a local authority of persons previously employed by a National Health Service body.
- (2) Regulations under this section may also make provision with respect to the return to employment by a National Health Service body of a person to whom the regulations previously applied on his transfer (whether from that or another National Health Service body) to employment by a local authority.

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- (3) Without prejudice to the generality of subsections (1) and (2) above, regulations under this section may make provision with respect to—
- (a) the terms on which a person is to be employed by a local authority or National Health Service body;
 - (b) the period and continuity of a person’s employment for the purposes of [^{F28}the Employment Rights Act 1996];
 - (c) superannuation benefits; and
 - (d) the circumstances in which, if a person declines an offer of employment made with a view to such a transfer or return as is referred to in subsection (1) or subsection (2) above and then ceases to be employed by a National Health Service body or local authority, he is not to be regarded as entitled to benefits in connection with redundancy.
- (4) In this section—
- (a) “local authority” and “community care services” have the same meaning as in section 46 above; and
 - (b) “National Health Service body” means a ^{F29}... ^{F30}... [^{F31}Health Authority [^{F32}, Local Health Board] or Special Health Authority] or a National Health Service trust.
- (5) Regulations under this section may make different provision with respect to different cases or descriptions of case, including different provision for different areas.

Textual Amendments

- F28** Words in s. 49(3)(b) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 45(3)(b)** (with ss. 191-200, 202)
- F29** Words in s. 49(4)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 60(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F30** Words in s. 49(4)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 60(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F31** Words in s. 49(4)(b) substituted (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, s. 2(1) (3), **Sch. 1 Pt. II para. 82** (with Sch. 2 paras. 6, 16)
- F32** Words in s. 49(4)(b) inserted (10.10.2002 for W. and otherwise in force immediately before the National Health Service Act 2006 (c. 41) (which Act came into force on 1.3.2007 in accordance with s. 227(1) (subject to s. 277(2)-(5) of that Act))) by National Health Service Reform and Health Care Profession Act 2002 (c. 17), ss. 6(2), 42(3), **Sch. 5 para. 34**; S.I. 2002/2532, art. 2, **Sch.**; S.I. 2006/1407, art. 1(1), **Sch. 1**. Pt. 2 {para. 12(c)}

Commencement Information

- I3** S. 49 wholly in force at 10.12.1992 see s. 67(2) and S.I. 1992/2975, **art. 2(1)(a)**.

50 Powers of the Secretary of State as respects social services functions of local authorities. **E+W**

After section 7 of the ^{M3}Local Authority Social Services Act 1970 (local authorities to exercise social services functions under guidance of the Secretary of State) there shall be inserted the following sections—

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“7A Directions by the Secretary of State as to exercise of social services functions.

- (1) Without prejudice to section 7 of this Act, every local authority shall exercise their social services functions in accordance with such directions as may be given to them under this section by the Secretary of State.
- (2) Directions under this section—
 - (a) shall be given in writing; and
 - (b) may be given to a particular authority, or to authorities of a particular class, or to authorities generally.

7B Complaints procedure.

- (1) The Secretary of State may by order require local authorities to establish a procedure for considering any representations (including any complaints) which are made to them by a qualifying individual, or anyone acting on his behalf, in relation to the discharge of, or any failure to discharge, any of their social services functions in respect of that individual.
- (2) In relation to a particular local authority, an individual is a qualifying individual for the purposes of subsection (1) above if—
 - (a) the authority have a power or a duty to provide, or to secure the provision of, a service for him; and
 - (b) his need or possible need for such a service has (by whatever means) come to the attention of the authority.
- (3) A local authority shall comply with any directions given by the Secretary of State as to the procedure to be adopted in considering representations made as mentioned in subsection (1) above and as to the taking of such action as may be necessary in consequence of such representations.
- (4) Local authorities shall give such publicity to any procedure established pursuant to this section as they consider appropriate.

7C Inquiries.

- (1) The Secretary of State may cause an inquiry to be held in any case where, whether on representations made to him or otherwise, he considers it advisable to do so in connection with the exercise by any local authority of any of their social services functions (except in so far as those functions relate to persons under the age of eighteen).
- (2) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to an inquiry under that section.

7D Default powers of Secretary of State as respects social services functions of local authorities.

- (1) If the Secretary of State is satisfied that any local authority have failed, without reasonable excuse, to comply with any of their duties which are social services

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functions (other than a duty imposed by or under the Children Act 1989), he may make an order declaring that authority to be in default with respect to the duty in question.

- (2) An order under subsection (1) may contain such directions for the purpose of ensuring that the duty is complied with within such period as may be specified in the order as appear to the Secretary of State to be necessary.
- (3) Any such direction shall, on the application of the Secretary of State, be enforceable by mandamus.

7E Grants to local authorities in respect of social services for the mentally ill.

The Secretary of State may, with the approval of the Treasury, make grants out of money provided by Parliament towards any expenses of local authorities incurred— (a) in connection with the exercise of their social services functions in relation to persons suffering from mental illness; or (b) in making payments in accordance with directions given by the Secretary of State to voluntary organisations which provide care and services to persons who are, have been, or are likely to become dependant upon alcohol or drugs.”

Commencement Information

I4 S. 50 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/2218, art. 2, Sch.

Marginal Citations

M3 1970 c. 42.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4A(1)(c) and word added by [S.I. 2006/1056 Sch. para. 5\(a\)\(ii\)](#) (This amendment comes into force on the day on which 2005 asp 13, s. 20 comes into force, see art. 1(2)(b))