



# National Health Service and Community Care Act 1990

## 1990 CHAPTER 19

### PART III

#### COMMUNITY CARE: ENGLAND AND WALES

##### *General provisions concerning community care services*

#### **46 Local authority plans for community care services.**

(1) Each local authority—

- (a) shall, within such period after the day appointed for the coming into force of this section as the Secretary of State may direct, prepare and publish a plan for the provision of community care services in their area;
- (b) shall keep the plan prepared by them under paragraph (a) above and any further plans prepared by them under this section under review; and
- (c) shall, at such intervals as the Secretary of State may direct, prepare and publish modifications to the current plan, or if the case requires, a new plan.

(2) In carrying out any of their functions under paragraphs (a) to (c) of subsection (1) above, a local authority shall consult—

- (a) any [<sup>F1</sup>Health Authority [<sup>F2</sup>and any Local Health Board]] the whole or any part of whose area] lies within the area of the local authority;
- <sup>F3</sup>(b) .....
- (c) in so far as any proposed plan, review or modifications of a plan may affect or be affected by the provision or availability of housing and the local authority is not itself a local housing authority, within the meaning of the <sup>M1</sup>Housing Act 1985, every such local housing authority whose area is within the area of the local authority;
- (d) such voluntary organisations as appear to the authority to represent the interests of persons who use or are likely to use any community care services

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within the area of the authority or the interests of private carers who, within that area, provide care to persons for whom, in the exercise of their social services functions, the local authority have a power or a duty to provide a service.

- (e) such voluntary housing agencies and other bodies as appear to the local authority to provide housing or community care services in their area; and
- (f) such other persons as the Secretary of State may direct.

(3) In this section—

“local authority” means the council of a county, [<sup>F4</sup>a county borough,]a metropolitan district or a London borough or the Common Council of the City of London;

“community care services” means services which a local authority may provide or arrange to be provided under any of the following provisions—

- (a) Part III of the <sup>M2</sup>National Assistance Act 1948;
- (b) section 45 of the <sup>M3</sup>Health Services and Public Health Act 1968;
- <sup>F5</sup>(c) <sup>F6</sup>... section 192 of, and Schedule 15 to, the National Health Service (Wales) Act 2006]
- (d) section 117 of the <sup>M4</sup>Mental Health Act 1983; and

“private carer” means a person who is not employed to provide the care in question by any body in the exercise of its functions under any enactment.

#### Textual Amendments

- F1** Words in s. 46(2)(a) 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. 80(a)** (with Sch. 2 paras. 6, 16)
- F2** Words in s. 46(2)(a) inserted (W.) (31.3.2003) by The Health, Social Care and Well-being Strategies (Wales) Regulations 2003 (S.I. 2003/154), reg. 7(6), **Sch. para. 4**
- F3** S. 46(2)(b) repealed (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, ss. 2(1)(3), 5, Sch. 1 Pt. II para. 80(b), **Sch. 3** (with Sch. 2 paras. 6, 16)
- F4** Words in definition in s. 46(3) inserted (3.4.1995) by 1994 c. 19, s. 22(4), **Sch. 10 para. 14** (with ss. 54(5)(7), 55(5), Sch. 17 para. 22(1), 23(2)); S.I. 1995/852, art. 4(1), **Sch. 2**
- F5** S. 46(3): definition of "community care services" para. (c) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 129**
- F6** Words in s. 46(3) 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. 50** (with arts. 1(3), 3)

#### Modifications etc. (not altering text)

- C1** S. 46; functions of local authority not to be sole responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 4(1), **Sch. 3**
- C2** S. 46(1)(2) excluded (E.) (9.7.2003) by The Community Care Plans (Disapplication) (England) Order 2003 (S.I. 2003/1716), arts. 1(3), **2(a)**

#### Commencement Information

- I1** S. 46 wholly in force at 1.4.1991 see s. 67(2)(3) and S.I. 1990/2218, art. 2, **Sch. .**

#### Marginal Citations

- M1** 1985 c. 68.
- M2** 1948 c. 29.

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**M3** 1968 c. 46.

**M4** 1983 c. 20.

#### **47 Assessment of needs for community care services.**

- (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 [<sup>F7</sup>of services under section 117 of the Mental Health Act 1983 (in the case of a local authority in England) or of community care services (in the case of a local authority in Wales)] 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 that he is a disabled person, [<sup>F8</sup>(and, in the case of a local authority in England, that he is under 18)] the authority—
    - (a) shall proceed to make such a decision as to the services he requires as is mentioned in section 4 of the <sup>M5</sup>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—
    - <sup>F9</sup>(za) that there may be a need for the provision to that person, pursuant to arrangements made under the National Health Service Act 2006 by such clinical commissioning group as may be determined in accordance with regulations, of any services (including services that may be provided pursuant to such arrangements by virtue of section 7A of that Act),]
    - (a) that there may be a need for the provision to that person by such <sup>F10</sup>... [<sup>F11</sup>Health Authority] as may be determined in accordance with regulations of any services under <sup>F12</sup>... [<sup>F13</sup>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 <sup>M6</sup>Housing Act 1985) which is not the local authority carrying out the assessment,  
the local authority shall notify that <sup>F14</sup>... [<sup>F15</sup>clinical commissioning group,][<sup>F11</sup>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 <sup>F14</sup>... [<sup>F15</sup>clinical commissioning group,][<sup>F11</sup>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 [<sup>F16</sup>services mentioned in subsection (1)] for any person

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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, <sup>F17</sup>... 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.
- (7) This section is without prejudice to section 3 of the <sup>M7</sup>Disabled Persons (Services, Consultation and Representation) Act 1986.
- (8) In this section—  
     “disabled person” has the same meaning as in that Act; and  
     “local authority” and “community care services” have the same meanings as in section 46 above.

#### Textual Amendments

- F7** 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)
- F8** 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)
- F9** S. 47(3)(za) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 59(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- 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(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F11** 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)
- F12** 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)
- F13** 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**
- F14** 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)
- F15** Words in s. 47(3) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 59(e)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F16** 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)
- F17** 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)

#### Commencement Information

- I2** S. 47 wholly in force at 1.4.1993 see s. 67(2) and S.I. 1992/2975, art. 2(2), **Sch.**

#### Marginal Citations

- M5** 1986 c. 33.  
**M6** 1985 c. 68.  
**M7** 1986 c. 33.

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#### **48 Inspection of premises used for provision of community care services.**

(1) Any person authorised by the Secretary of State may at any reasonable time enter and inspect any premises [<sup>F18</sup>(other than regulated premises)] in which [<sup>F19</sup>services under section 117 of the Mental Health Act 1983, or services under Part 1 of the Care Act 2014 to meet adults' needs for care and support, are or are proposed to be provided by a local authority in England, or] community care services are or are proposed to be provided by a local authority [<sup>F20</sup>in Wales], whether directly or under arrangements made with another person.

[<sup>F21</sup>(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.]

(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 [<sup>F22</sup>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 [<sup>F23</sup>services mentioned in subsection (1) that are] provided there, or
  - (ii) if he has reason to believe that [<sup>F24</sup>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,

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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.

- (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” and “community care services” have the same meanings as in section 46 above.

#### 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) 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)
- F21** 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)**
- F22** 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)
- F23** 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)
- F24** 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)

#### Commencement Information

- I3** 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.

- (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.
- (3) Without prejudice to the generality of subsections (1) and (2) above, regulations under this section may make provision with respect to—

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- (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 [<sup>F25</sup>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 <sup>F26</sup> ... <sup>F27</sup> ... [<sup>F28</sup>Health Authority [<sup>F29</sup>, 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

- F25** 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)
- F26** 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)
- F27** 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)
- F28** 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)
- F29** 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

- I4** 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.

After section 7 of the <sup>M8</sup>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**

**I5** S. 50 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/2218, art. 2, **Sch.**

#### **Marginal Citations**

**M8** 1970 c. 42.

**Status:**

Point in time view as at 01/04/2015.

**Changes to legislation:**

National Health Service and Community Care Act 1990, Cross Heading: General provisions concerning community care services is up to date with all changes known to be in force on or before 03 November 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.