



Health and Social Care (Community Health and Standards) Act 2003

2003 CHAPTER 43

PART 2

STANDARDS

CHAPTER 9

COMPLAINTS

113 Complaints about health care

- (1) The Secretary of State may by regulations make provision about the handling and consideration of complaints made under the regulations about—
 - (a) the exercise of any of the functions of an English NHS body or a cross-border SHA;
 - (b) the provision of health care by or for such a body;
 - (c) the provision of services by such a body or any other person in pursuance of arrangements made by the body under [^{F1}section 75 of the National Health Service Act 2006 or section 33 of the National Health Service (Wales) Act 2006] in relation to the exercise of the health-related functions of a local authority.
 - [^{F2}(d) anything done by the National Health Service Commissioning Board or a clinical commissioning group in pursuance of arrangements made under section 7A of the National Health Service Act 2006.]
- (2) The Assembly may by regulations make provision about the handling and consideration of complaints made under the regulations about—
 - (a) the exercise of any of the functions of a Welsh NHS body;
 - (b) the provision of health care by or for a Welsh NHS body;

Status: Point in time view as at 06/04/2016.

Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Chapter 9. (See end of Document for details)

- (c) the provision of services by a Welsh NHS body or any other person in pursuance of arrangements made by the body under section 31 of the Health Act 1999 in relation to the exercise of the health-related functions of a local authority.
- [^{F3}(d) the provision of redress by or for a Welsh NHS body under the NHS Redress (Wales) Measure 2008.]
- (3) Regulations under this section may provide for a complaint to be considered by one or more of the following—
- (a) an NHS body;
- [^{F4}(b)
- (c) an independent lay person;
- (d) an independent panel established under the regulations;
- (e) any other person or body.
- (4) Regulations under this section may make provision for a complaint or any matter raised by a complaint—
- (a) [^{F5}in the case of regulations under subsection (1),] to be referred to a Health Service Commissioner for him to consider whether to investigate the complaint or matter under the Health Service Commissioners Act 1993 (c. 46) (and to be treated by him as a complaint duly referred to him under section 10 of that Act);
- [^{F6}(aa) in the case of regulations under subsection (2), to be referred to the Public Services Ombudsman for Wales for him to consider whether to investigate the complaint or matter under the Public Services Ombudsman (Wales) Act 2005 (and to be treated by him as a complaint duly referred to him under section 2(3) of that Act);]
- (b) to be referred to any other person or body for him or it to consider whether to take any action otherwise than under the regulations.

Textual Amendments

- F1** Words in s. 113(1)(c) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), **Sch. 1 para. 242** (with Sch. 3 Pt. 1)
- F2** S. 113(1)(d) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 120**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F3** S. 113(2)(d) inserted (7.2.2011) by [NHS Redress \(Wales\) Measure 2008 \(nawm 1\)](#), **ss. 10, 14(3)** (with s. 11(7)); S.I. 2011/211, art. 2, Sch.
- F4** S. 113(3)(b) repealed (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), s. 170(3)(4), Sch. 5 para. 45, **Sch. 15 Pt. 1**; S.I. 2009/462, art. 2(1), Sch. 1 paras. 35(r), 36
- F5** Words in s. 113(4)(a) inserted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, **Sch. 6 para. 75(a)**; S.I. 2005/2800, art. 5(1)(3)
- F6** S. 113(4)(aa) inserted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, **Sch. 6 para. 75(b)**; S.I. 2005/2800, art. 5(1)(3)

Commencement Information

- I1** S. 113 partly in force; s. 113 in force at Royal Assent for certain purposes, see s. 199(1)(4)
- I2** S. 113(1)(3)(4) in force at 1.9.2006 for E. in so far as not already in force by S.I. 2006/1680, **art. 3(a)**
- I3** S. 113(2)(3)(4) in force at 7.2.2011 for W. in so far as not already in force by S.I. 2011/212, **art. 2(a)**

Status: Point in time view as at 06/04/2016.

Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Chapter 9. (See end of Document for details)

114 Complaints about social services^{F7}: England]

- (1) The Secretary of State may by regulations make provision about the handling and consideration of complaints made under the regulations about—
 - (a) the discharge by a local authority in England of any of its social services functions;
 - (b) the provision of services by another person pursuant to arrangements made by such an authority in the discharge of those functions;
 - (c) the provision of services by such an authority or any other person in pursuance of arrangements made by the authority under ^{F8}section 75 of the National Health Service Act 2006 or section 33 of the National Health Service (Wales) Act 2006] in relation to the functions of an NHS body (within the meaning of that section).
- (2) Regulations ^{F9}under this section] may provide for a complaint to be considered by one or more of the following—
 - (a) the local authority in respect of whose functions the complaint is made;
 - ^{F10}(b)
 - (c) an independent panel established under the regulations;
 - (d) any other person or body.
- ^{F11}(3)
- ^{F11}(4)
- (5) Regulations under this section may provide for a complaint or any matter raised by a complaint—
 - (a) ^{F12}... to be referred to a Local Commissioner under Part 3 of the Local Government Act 1974 (c. 7) ^{F13}... for him to consider whether to investigate the complaint or matter under that Part ^{F14}(and for the complaint to be treated as satisfying sections 26A and 26B of that Act)];
 - ^{F15}(b)
 - (c) to be referred to any other person or body for him or it to consider whether to take any action otherwise than under the regulations.
- (6) Regulations under this section may not make provision about complaints capable of being considered as representations under section 24D or section 26 of the Children Act 1989 (c. 41).

Textual Amendments

- F7** Words in s. 114 heading 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), **205(d)**
- F8** Words in s. 114(1)(c) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), **Sch. 1 para. 243** (with Sch. 3 Pt. 1)
- F9** Words in s. 114(2) 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), **205(a)**
- F10** S. 114(2)(b) repealed (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), s. 170(3)(4), Sch. 5 para. 46, **Sch. 15 Pt. 1**; S.I. 2009/462, art. 2(1), Sch. 1 paras. 35(r), 36
- F11** S. 114(3)(4) 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), **205(b)**
- F12** Words in s. 114(5)(a) 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), **205(c)(i)**

Status: Point in time view as at 06/04/2016.

Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Chapter 9. (See end of Document for details)

- F13** Words in s. 114(5)(a) repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, Sch. 6 para. 76(a), [Sch. 7](#); S.I. 2005/2800, art. 5(1)(3)
- F14** Words in s. 114(5)(a) substituted (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), s. 245(5), [Sch. 12 para. 18](#); S.I. 2008/917, art. 2(1)(n) (with art. 6(5))
- F15** S. 114(5)(b) 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), [205\(c\)\(ii\)](#)

Commencement Information

- I4** S. 114 partly in force; s. 114 in force at Royal Assent for certain purposes, see s. 199(1)(4)
- I5** S. 114(1)(2)(5)(6) in force at 1.9.2006 for E. in so far as not already in force by [S.I. 2006/1680](#), [art. 3\(b\)](#)
- I6** S. 114(3)(4) in force at 1.4.2006 for W. so far as not already in force by [S.I. 2005/3285](#), [art. 2\(2\)\(a\)](#)
- I7** S. 114(5) in force at 1.4.2006 for W. so far as not already in force by [S.I. 2005/3285](#), [art. 2\(2\)\(c\)](#)

115 Complaints regulations: supplementary

- (1) Regulations under subsection (1) or (2) of section 113 or under subsection (1) ^{F16}... of section 114 (“the regulations”) may, without prejudice to the generality of the subsection under which they are made, make the following provision.
- (2) The regulations may make provision about—
- the persons who may make a complaint;
 - the complaints which may, or may not, be made under the regulations;
 - the persons to whom complaints may be made;
 - complaints which need not be considered;
 - the period within which complaints must be made;
 - the procedure to be followed in making, handling and considering a complaint;
 - matters which are excluded from consideration;
 - the making of a report or recommendations about a complaint;
 - the action to be taken as a result of the complaint.
- (3) The regulations may require—
- the making of a payment, in relation to the consideration of a complaint under the regulations, by any person or body in respect of whom the complaint is made;
 - any such payment to be—
 - made to such person or body as may be specified in the regulations; and
 - of such amount as may be specified in, or calculated or determined under, the regulations;
 - an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount.
- (4) The regulations may require any person or body who handles or considers complaints under the regulations to make information available to the public about the procedures to be followed under the regulations.
- (5) The regulations may also—
- provide for different parts or aspects of a complaint to be treated differently;
 - require the production of information or documents in order to enable a complaint to be properly considered;

Status: Point in time view as at 06/04/2016.

Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Chapter 9. (See end of Document for details)

- (c) authorise the disclosure of information or documents relevant to a complaint to a person or body—
- (i) who is considering a complaint under the regulations; or
 - (ii) to whom a complaint has been referred;
- and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.
- (6) The regulations may make provision about complaints which raise both matters falling to be considered under the regulations and matters falling to be considered under other statutory complaints procedures, including in particular provision for—
- (a) enabling such a complaint to be made under the regulations; and
 - (b) securing that matters falling to be considered under other statutory complaints procedures are treated as if they had been raised in a complaint made under the appropriate procedures;
- and in this subsection “statutory complaints procedures” means procedures established by or under any enactment.

Textual Amendments

F16 Words in s. 115(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), **206**

Modifications etc. (not altering text)

C1 S. 115 applied by 2006 c. 41, s. 73C(5) (as inserted (27.3.2012 for specified purposes and 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 32**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9))

Commencement Information

I8 S. 115 partly in force; s. 115 in force at Royal Assent for certain purposes, see s. 199(1)(4)

I9 S. 115 in force at 1.9.2006 for E. in so far as not already in force by [S.I. 2006/1680](#), **art. 3(c)**

I10 S. 115(1)(2)(4)-(6) in force at 1.4.2006 for W. so far as not already in force by [S.I. 2005/3285](#), **art. 2(2)(c)**

I11 S. 115(3) in force at 7.2.2011 for W. in so far as not already in force by [S.I. 2011/212](#), **art. 2(b)**

116 Further consideration of representations under the Children Act 1989

F17(1)

F18(2)

F18(3)

Textual Amendments

F17 S. 116(1) repealed (1.4.2007) by [Education and Inspections Act 2006 \(c. 40\)](#), s. 188(3), **Sch. 18 Pt. 5**; [S.I. 2007/935](#), art. 5(ii)

F18 S. 116(2)(3) 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), **207**

Status: Point in time view as at 06/04/2016.

Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Chapter 9. (See end of Document for details)

117 Representations relating to special guardianship support services

- (1) In section 26 of the Children Act 1989 (c. 41) (representations), after subsection (3B) insert—

“(3C) The duty under subsection (3) extends to any representations (including complaints) which are made to the authority by—

- (a) a child with respect to whom a special guardianship order is in force,
- (b) a special guardian or a parent of such a child,
- (c) any other person the authority consider has a sufficient interest in the welfare of such a child to warrant his representations being considered by them, or
- (d) any person who has applied for an assessment under section 14F(3) or (4),

about the discharge by the authority of such functions under section 14F as may be specified by the Secretary of State in regulations.”

- (2) Section 14G of that Act (special guardianship support services: representations) shall cease to have effect.

Commencement Information

I12 S. 117 partly in force; s. 117 in force at Royal Assent for certain purposes, see s. 199(1)(4)

I13 S. 117 in force at 30.12.2005 for W. by S.I. 2005/3285, art. 2(1)

I14 S. 117(1) in force at 17.1.2005 for specified purposes for E. by S.I. 2005/38, art. 2(a)

I15 S. 117(1) in force at 30.12.2005 for E. so far as not already in force by S.I. 2005/2925, art. 8

I16 S. 117(2) in force at 17.1.2005 for E. by S.I. 2005/38, art. 2(b)

118 Complaints about handling of complaints

In section 3 of the Health Service Commissioners Act 1993 (c. 46) (remit of Commissioners), after subsection (1D) insert—

“(1E) Where a complaint is duly made to a Commissioner by or on behalf of a person that the person has sustained injustice or hardship in consequence of maladministration by any person or body in the exercise of any function under section 113 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care), the Commissioner may, subject to the provisions of this Act, investigate the alleged maladministration.”

Commencement Information

I17 S. 118 in force at 1.6.2004 by S.I. 2004/759, art. 8

119 Complaints: data protection

In section 31 of the Data Protection Act 1998 (c. 29) (regulatory activity) at the end insert—

“(6) Personal data processed for the purpose of the function of considering a complaint under section 113(1) or (2) or 114(1) or (3) of the Health and Social Care (Community Health and Standards) Act 2003, or section 24D, 26, 26ZA

Status: Point in time view as at 06/04/2016.

Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Chapter 9. (See end of Document for details)

or 26ZB of the Children Act 1989, are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.”

Commencement Information

I18 S. 119 in force at 1.6.2004 by S.I. 2004/759, art. 7

Status:

Point in time view as at 06/04/2016.

Changes to legislation:

There are currently no known outstanding effects for the Health and Social Care (Community Health and Standards) Act 2003, Chapter 9.