

# CARE ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 – Care and Support**

##### **Miscellaneous**

##### *Section 78 – Guidance, etc.*

472. This section provides a power for the Secretary of State to issue guidance to local authorities about how they exercise their functions under this Part of the Act. It has been drafted with the intention that this guidance will have the same legal effect as guidance issued under section 7 of the Local Authority Social Services Act 1970. Like section 7, the provision requires local authorities to “act under the general guidance of the Secretary of State”. The Courts have interpreted this to mean that local authorities must “follow the path charted by the Secretary of State’s guidance, with liberty to deviate from it where the local authority judges on admissible grounds that there is good reason to do so, but without freedom to take a substantially different course” (*R v Islington LBC ex parte Rixon* [1997] 1 CCLR 119 at 123).
473. *Section 7* continues to apply in relation to guidance about the exercise of all other social services functions.
474. *Subsection (2)* requires the Secretary of State to consult relevant persons including stakeholders before issuing guidance under this section. *Subsection (3)* requires the Secretary of State when issuing guidance or making regulations under this Part to have regard to the general duty of local authorities to promote individual well-being.