

REGULATION AND INSPECTION OF SOCIAL CARE (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Regulation of Social Care Services

Chapter 5: Sections 43-55 – Offences and penalties

94. The offences in the Act that are classified as summary only offences are:
- making a false statement in a document (section 47)
 - a failure to submit an annual return (section 48)
 - a failure to provide information. (section 49)
95. A false statement could be provided verbally or in writing and, similarly, a failure to provide information may occur by failing to provide the information verbally or in writing.
96. The offences in the Act that are classified as either way offences are:
- providing a regulated service without being registered (section 5)
 - a failure to comply with a condition (section 43)
 - false description with intent to deceive (section 44)
 - obstructing an inspector or failing to comply with a requirement imposed by an inspector. (section 50)
97. There is a distinction between the offence in section 5 of providing a regulated service without being registered and the offence in section 44 of pretending to be a service provider or pretending that a place is one at from or in relation to which a regulated service is provided. Section 5 would be engaged if a person was carrying on a regulated service without being registered with the Welsh Ministers. However, an offence under section 44(1)(a) might be committed if a person was pretending to be registered in order to, for example, secure a local authority contract. In relation to section 44(1)(b) the offence applies in the case of a person holding a place out as being one where that person is registered to provide a service when they are not so registered. For example, a person may own two care homes, one in Cardiff and one in Bridgend. That person may be registered to provide a care home service at a place in Cardiff but not at a place in Bridgend. That person would not be committing an offence under section 5 because they would be registered to provide a care home service at a place in Cardiff but they would be committing an offence under section 44(1)(b) because that person would be pretending to be registered to provide a care home service in Bridgend when they were not so registered.

*These notes refer to the Regulation and Inspection of Social Care (Wales) Act 2016 (c.2)
which received Royal Assent on 18 January 2016*

98. The either way offences may attract a prison sentence of up to 2 years if the offence is serious enough to be tried on indictment. An unlimited fine is available to the sentencing Court in all cases.
99. [Sections 45](#) and [46](#) provide powers to the Welsh Ministers to establish further offences in relation to any of the regulatory requirements established in the regulations made in respect of provider and responsible individuals in sections 27 and 28.
100. [Section 52](#) provides a power to the Welsh Ministers to give a penalty notice instead of bringing proceedings for an offence but only in relation to those offences that are prescribed in regulations. Subsection (2) limits the exercise of that regulation making power to certain offences only, namely, false statements in documents, failure to submit an annual return, or a failure to provide information.
101. [Section 55](#) makes it clear that the prosecuting authority for the purpose of Part 1 offences under the Act is the Welsh Ministers or the Counsel General. If any other person seeks to bring proceedings for offences under the Act then they must seek the written consent of the Counsel General to the Welsh Government.