



Regulation and Inspection of Social Care (Wales) Act 2016

2016 anaw 2

PART 1

REGULATION OF SOCIAL CARE SERVICES

CHAPTER 5

OFFENCES AND PENALTIES

43 Failure to comply with a condition

- (1) It is an offence for a service provider to fail to comply with any condition relating to the provider's registration which is for the time being in force by virtue of this Part.
- (2) But a service provider does not commit an offence under subsection (1) by failing to have a responsible individual designated in respect of a place at, from or in relation to which the provider provides a regulated service if—
 - (a) the time limit prescribed under section 11(2) has not expired (prescribed time limit for applying to designate a new responsible individual), or
 - (b) that time limit has expired but the service provider made the application for variation within the time limit and the Welsh Ministers have not made a decision on it.

44 False descriptions

- (1) It is an offence for a person to, with intent to deceive another—
 - (a) pretend to be a service provider,
 - (b) pretend that a place is one at, from or in relation to which a regulated service is provided, or
 - (c) pretend to be a responsible individual.

Status: This is the original version (as it was originally enacted).

- (2) Any of the following may (among other things) be an act constituting an offence under subsection (1)—
- (a) applying a name to a service or place to give the impression that it is specified in a service provider's registration when it is not;
 - (b) describing a service or place in a manner intended to give that impression;
 - (c) holding a service out to be a regulated service specified in a service provider's registration when it is not;
 - (d) holding a place out to be a place specified in a service provider's registration when it is not;
 - (e) acting in a manner that gives the impression of being a responsible individual when not designated as one.

45 Failure by service provider to comply with requirements in regulations

The Welsh Ministers may by regulations provide that it is an offence for a service provider to fail to comply with a specified provision of regulations made under section 27 or 37(2)(a).

46 Failure by responsible individual to comply with requirements in regulations

The Welsh Ministers may by regulations provide that it is an offence for a responsible individual to fail to comply with a specified provision of regulations made under section 28.

47 False statements

It is an offence for a person to make a statement which the person knows is false or materially misleading in—

- (a) an application for registration as a service provider,
- (b) an application for variation or cancellation of registration,
- (c) an annual return submitted under section 10, or
- (d) responding to a requirement imposed by the Welsh Ministers under section 32(1) (requirement to provide information).

48 Failure to submit annual return

It is an offence for a service provider to fail to submit an annual return to the Welsh Ministers within the time limit prescribed under section 10(4).

49 Failure to provide information

- (1) It is an offence for a person to fail to comply with a requirement imposed on the person by the Welsh Ministers under section 32(1).
- (2) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse for failing to comply with the requirement.

50 Offences related to inspections

- (1) It is an offence for a person to—

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- (a) intentionally obstruct an inspector exercising any function conferred on an inspector by Chapter 3, or
 - (b) fail to comply with any requirement imposed on the person by an inspector exercising such a function.
- (2) It is a defence for a person charged with an offence under subsection (1)(b) to show that the person had a reasonable excuse for failing to comply with the requirement.

51 Penalties upon conviction

- (1) A person guilty of an offence under section 5, 43, 44, 47, 49 or 50 or under regulations made under section 45 or 46 is liable—
- (a) on summary conviction, to a fine, or to imprisonment for a term not exceeding 6 months, or to both;
 - (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both.
- (2) A person guilty of an offence under section 48 is liable on summary conviction to a fine.

52 Penalty notices

- (1) The Welsh Ministers may give a penalty notice to a person if they are satisfied that the person has committed a prescribed offence.
- (2) Only offences under sections 47, 48 or 49 or under regulations made under section 45 or 46 may be so prescribed.
- (3) A penalty notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence to which the notice relates by payment to the Welsh Ministers of a sum specified in the notice in accordance with the terms of the notice.
- (4) Where a person is given a penalty notice, proceedings for the offence to which the notice relates may not be brought before the end of such period as may be specified in the notice.
- (5) If a person who is given a penalty notice pays the sum specified in the notice in accordance with the terms of the notice, the person cannot be convicted of the offence to which the notice relates.
- (6) The Welsh Ministers may by regulations make provision—
- (a) as to the form and content of penalty notices;
 - (b) as to the sum payable under a penalty notice and the time within which it is to be paid (including provision permitting a different sum to be payable in relation to different offences and according to the time by which it is paid);
 - (c) determining the ways in which a sum may be paid;
 - (d) as to the records to be kept in relation to penalty notices;
 - (e) about the circumstances in which a penalty notice may be withdrawn, including provision about—
 - (i) the repayment of any sum paid before a notice is withdrawn, and
 - (ii) the circumstances in which proceedings for an offence may not be brought despite the withdrawal of a notice.

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- (7) Regulations under subsection (6)(b) may not make provision for a sum to be payable under a penalty notice which exceeds two and a half times level 4 on the standard scale.

53 Offences by bodies corporate

- (1) This section applies where an offence under this Part or under regulations made under it is committed by a body corporate.
- (2) A person mentioned in subsection (3) also commits the offence if the offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, that person.
- (3) Those persons are—
- (a) a director, manager, secretary or other similar officer of the body corporate,
 - (b) where a body corporate's affairs are managed by its members, a member, or
 - (c) any person purporting to act in any of those capacities.
- (4) Where a body corporate is a local authority, the reference in subsection (3) to a director, manager or secretary of the body is to be read as a reference to an officer or member of the authority.

54 Offences by unincorporated bodies

- (1) This section applies to offences under this Part and under regulations made under it.
- (2) Proceedings for an offence alleged to have been committed by an unincorporated body may be brought in the name of the body instead of in the name of any of its members and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a body corporate.
- (3) Any fine imposed on an unincorporated body on its conviction of an offence is to be paid out of the funds of that body.
- (4) If an unincorporated body is charged with an offence, section 33 of the [Criminal Justice Act 1925 \(c.86\)](#) and Schedule 3 to the [Magistrates' Courts Act 1980 \(c.43\)](#) have effect as if a body corporate had been charged.

55 Proceedings for offences

- (1) Proceedings in respect of an offence under this Part or regulations made under it may not, without the written consent of the Counsel General to the Welsh Government, be brought by any person other than the Counsel General or the Welsh Ministers.
- (2) Summary proceedings in respect of an offence under this Part or regulations made under it must be brought within the period of 12 months beginning on the date on which sufficient evidence to warrant the proceedings came to the prosecutor's knowledge.
- (3) But no such proceedings may be brought more than three years after the offence is committed.