

CARE STANDARDS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II Establishments and Agencies

Offences

96. *Sections 24 to 30* set out the offences under this Part of the Act. The registration authority will be the prosecuting authority in respect of these offences, using the powers of entry and inspection under *section 31* and *section 32* to gather evidence.
97. The registration authority will have two possible routes for enforcement action where a provider is not fulfilling their obligations: they can prosecute, or they can take action that may ultimately lead to cancellation of registration (see sections 14 and 20). It is intended that both courses of action could be pursued at the same time, if necessary. If convicted of an offence under this Part the registered person would be liable to the prescribed fine, as per the *standard scale*[#], or in some cases, imprisonment. Similar provisions for offences, including those with regard to proceedings and offences by bodies corporate, were made under the Registered Homes Act 1984 in Part IV (sections 46 to 53).

Section 24 Failure to comply with conditions

98. Where the conditions of registration are not adhered to without reasonable excuse, the registration authority may prosecute.

Section 25 Contravention of regulations

99. *Subsection (1)* provides that regulations made under this Part may provide that a failure to comply with the regulations will be an offence. It is intended that the regulations will provide that the registration authority may serve a notice in respect of a breach of a regulatory requirement, requiring it to be remedied within a specified period. If at the end of that period the breach has not been remedied, the person shall be guilty of an offence. *Subsection (2)* provides the fine shall not exceed level 4 on the standard scale.

Section 26 False descriptions of establishments and agencies.

100. *Section 26* makes it an offence for a person to describe any premises as a particular kind of establishment or agency when it is not registered as such. This would catch, for example, an unscrupulous hotel proprietor who tried to pretend his hotel was a nursing home. It would also catch registered persons who misrepresent the nature of their establishment, by claiming it is suitable for a particular category of resident when it is not. The penalty on summary conviction is a fine not exceeding level 5 on the standard scale.

¹ *There are five levels to the standard scale for fines as defined in section 75 of the Criminal Justice Act 1982. A court may impose a fine up to the maximum for the prescribed level. Currently the levels are: level 1 = £200; level 2 = £500; level 3 = £1,000; level 4 = £2,500 and level 5 = £5,000.*

Section 27 False statements in applications

101. This section makes it an offence for an applicant knowingly to make a false or misleading statement in applications to the registration authority. The penalty will be a fine of up to level 4 on the standard scale. The application forms will inform people of this offence, which should act as a strong incentive for people to complete their applications accurately.

Section 28 Failure to display certification of registration

102. *Section 28* makes it an offence not to display a certificate of registration. The penalty on summary conviction is a fine not exceeding level 2 on the standard scale.

Section 29 Proceedings for offences

103. *Section 29* provides that proceedings in respect of offences under Part II may not be taken by any person, without the consent of the Attorney General, other than the Commission or, in the context of his default powers the Secretary of State; or the National Assembly for Wales. *Subsection (2)* extends the time allowed for proceedings to be brought in respect of offences under this Part. The usual limit for the prosecution of summary offences is six months after the offence is committed. However, in some cases, offences may only come to light after an inspection or whistleblowing. *Subsection (2)* therefore provides for a six month time limit from when the offence comes to light, with an overall time limit of three years from the commission of the offence.

Section 30 Offences by bodies corporate

104. *Subsection (2)* provides that if an offence under Part II is proved to have been committed with the consent or connivance of an officer of a body corporate then he as well as the company are guilty of the offence. Individual officers of a body corporate who are complicit in an offence under this Part of the Act, will not be able to escape prosecution simply because the body corporate is liable: both may be liable to prosecution.