



Criminal Justice and Courts Act 2015

2015 CHAPTER 2

PART 1

CRIMINAL JUSTICE

Offences involving ill-treatment or wilful neglect

20 Ill-treatment or wilful neglect: care worker offence

- (1) It is an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully to neglect that individual.
- (2) An individual guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both);
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both).
- (3) “Care worker” means an individual who, as paid work, provides—
 - (a) health care for an adult or child, other than excluded health care, or
 - (b) social care for an adult,including an individual who, as paid work, supervises or manages individuals providing such care or is a director or similar officer of an organisation which provides such care.
- (4) An individual does something as “paid work” if he or she receives or is entitled to payment for doing it other than—
 - (a) payment in respect of the individual’s reasonable expenses,
 - (b) payment to which the individual is entitled as a foster parent,
 - (c) a benefit under social security legislation, or
 - (d) a payment made under arrangements under section 2 of the Employment and Training Act 1973 (arrangements to assist people to select, train for, obtain and retain employment).

- (5) “Health care” includes—
- (a) all forms of health care provided for individuals, including health care relating to physical health or mental health and health care provided for or in connection with the protection or improvement of public health, and
 - (b) procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition,
- and “excluded health care” has the meaning given in Schedule 4.
- (6) “Social care” includes all forms of personal care and other practical assistance provided for individuals who are in need of such care or assistance by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs or any other similar circumstances.
- (7) References in this section to a person providing health care or social care do not include a person whose provision of such care is merely incidental to the carrying out of other activities by the person.
- (8) In this section—
- “adult” means an individual aged 18 or over;
- “child” means an individual aged under 18;
- “foster parent” means—
- (a) a local authority foster parent within the meaning of the Children Act 1989,
 - (b) a person with whom a child has been placed by a voluntary organisation under section 59(1)(a) of that Act, or
 - (c) a private foster parent within the meaning of section 53 of the Safeguarding Vulnerable Groups Act 2006.
- (9) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (2)(b) to 12 months is to be read as a reference to 6 months.
- (10) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (2) (b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.

21 Ill-treatment or wilful neglect: care provider offence

- (1) A care provider commits an offence if—
- (a) an individual who has the care of another individual by virtue of being part of the care provider’s arrangements ill-treats or wilfully neglects that individual,
 - (b) the care provider’s activities are managed or organised in a way which amounts to a gross breach of a relevant duty of care owed by the care provider to the individual who is ill-treated or neglected, and
 - (c) in the absence of the breach, the ill-treatment or wilful neglect would not have occurred or would have been less likely to occur.
- (2) “Care provider” means—
- (a) a body corporate or unincorporated association which provides or arranges for the provision of—
 - (i) health care for an adult or child, other than excluded health care, or

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

- (ii) social care for an adult, or
 - (b) an individual who provides such care and employs, or has otherwise made arrangements with, other persons to assist him or her in providing such care, subject to section 22.
- (3) An individual is “part of a care provider’s arrangements” where the individual—
 - (a) is not the care provider, but
 - (b) provides health care or social care as part of health care or social care provided or arranged for by the care provider,including where the individual is not the care provider but supervises or manages individuals providing health care or social care as described in paragraph (b) or is a director or similar officer of an organisation which provides health care or social care as described there.
- (4) A “relevant duty of care” means—
 - (a) a duty owed under the law of negligence, or
 - (b) a duty that would be owed under the law of negligence but for a provision contained in an Act, or an instrument made under an Act, under which liability is imposed in place of liability under that law,but only to the extent that the duty is owed in connection with providing, or arranging for the provision of, health care or social care.
- (5) For the purposes of this section, there is to be disregarded any rule of the common law that has the effect of—
 - (a) preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct, or
 - (b) preventing a duty of care being owed to a person by reason of that person’s acceptance of a risk of harm.
- (6) A breach of a duty of care by a care provider is a “gross” breach if the conduct alleged to amount to the breach falls far below what can reasonably be expected of the care provider in the circumstances.
- (7) In this section—
 - (a) references to a person providing health care or social care do not include a person whose provision of such care is merely incidental to the carrying out of other activities by the person, and
 - (b) references to a person arranging for the provision of such care do not include a person who makes arrangements under which the provision of such care is merely incidental to the carrying out of other activities.
- (8) References in this section to providing or arranging for the provision of health care or social care do not include making payments under—
 - (a) regulations under section 57 of the Health and Social Care Act 2001 (direct payments for community services and carers);
 - (b) section 12A of the National Health Act 2006 (direct payments for health care);
 - (c) section 31 or 32 of the Care Act 2014 (direct payments for care and support);
 - (d) regulations under section 50 of the [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#) (direct payments to meet an adult’s needs).
- (9) In this section—

“Act” includes an Act or Measure of the National Assembly for Wales;

“adult”, “child”, “excluded health care”, “health care” and “social care” have the same meaning as in section 20.

22 Care provider offence: excluded care providers

- (1) A local authority in England is not a care provider for the purposes of section 21 to the extent that it carries out functions to which Chapter 4 of Part 8 of the Education and Inspections Act 2006 applies.
- (2) A person is not a care provider for the purposes of section 21 to the extent that the person carries out a function of a local authority in England mentioned in subsection (1) in respect of which either of the following has effect—
 - (a) a direction under section 15(6)(a) of the Local Government Act 1999 (power of Secretary of State to direct functions of a best value authority to be carried out by another person);
 - (b) a direction under section 497A(4) or (4A) of the Education Act 1996 (power of Secretary of State to direct certain functions to be carried out by another person).
- (3) Where a body corporate has entered into arrangements with a local authority in England under Part 1 of the Children and Young Persons Act 2008 (social work services for children and young persons), the body is not a care provider for the purposes of section 21 to the extent that it carries out relevant care functions of that authority (as defined in that Part of that Act) under those arrangements.
- (4) A local authority in Wales is not a care provider for the purposes of section 21 to the extent that it—
 - (a) carries out functions under Part 2 of the Childcare Act 2006;
 - (b) carries out the education functions of the authority (as defined in section 579(1) of the Education Act 1996);
 - (c) carries out the social services functions of the authority (as defined in the Local Authority Social Services Act 1970), so far as relating to a child.
- (5) A person is not a care provider for the purposes of section 21 to the extent that the person carries out a function of a local authority in Wales mentioned in subsection (4) in respect of which any of the following has effect—
 - (a) a direction under section 29(6)(a) of the Local Government (Wales) Measure 2009 (nawm 2) (power of Welsh Ministers to direct certain functions of a Welsh improvement authority to be carried out by another person);
 - (b) a direction under section 25 or 26 of the [School Standards and Organisation \(Wales\) Act 2013 \(anaw 1\)](#) (powers of Welsh Ministers to direct education functions to be carried out by another person);
 - (c) a direction under section 154 or 155 of the [Social Services and Well-Being \(Wales\) Act 2014 \(anaw 4\)](#) (powers of Welsh Ministers to direct social services functions to be carried out by another person).
- (6) A registered adoption society or registered adoption support agency is not a care provider for the purposes of section 21 to the extent that it provides adoption support services (as defined in section 2(6) of the Adoption and Children Act 2002).
- (7) In this section, “local authority” means—
 - (a) in England, a county council, a metropolitan district council, a non-metropolitan district council for an area for which there is no county council, a

London borough council, the Council of the Isles of Scilly and (in its capacity as a local authority) the Common Council of the City of London, and

(b) in Wales, a county council or a county borough council.

(8) In this section—

“child” has the same meaning as in section 20;

“registered adoption society” means an adoption society (as defined in section 2 of the Adoption and Children Act 2002) which is a voluntary organisation (as defined in that section) and in respect of which a person is registered under Part 2 of the Care Standards Act 2000;

“registered adoption support agency” means an adoption support agency (as defined in section 8 of the Adoption and Children Act 2002) in respect of which a person is registered under Part 2 of the Care Standards Act 2000.

23 Care provider offence: penalties

(1) A person guilty of an offence under section 21 is liable, on conviction on indictment or summary conviction, to a fine.

(2) A court before which a person is convicted of an offence under section 21 may make either or both of the following orders—

(a) a remedial order;

(b) a publicity order;

(whether instead of or as well as imposing a fine).

(3) A “remedial order” is an order requiring the person to take specified steps to remedy one or more of the following—

(a) the breach mentioned in section 21(1)(b) (“the relevant breach”);

(b) any matter that appears to the court to have resulted from the relevant breach and to be connected with the ill-treatment or neglect;

(c) any deficiency in the person’s policies, systems or practices of which the relevant breach appears to the court to be an indication.

(4) A “publicity order” is an order requiring the person to publicise in a specified manner—

(a) the fact that the person has been convicted of the offence;

(b) specified particulars of the offence;

(c) the amount of any fine imposed;

(d) the terms of any remedial order made.

(5) A remedial order—

(a) may be made only on an application by the prosecution which specifies the terms of the proposed order,

(b) must be made on such terms as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to its terms by the prosecution or by or on behalf of the person convicted, and

(c) must specify a period within which the steps specified in the order must be taken.

(6) A publicity order must specify a period within which the requirements specified in the order must be complied with.

- (7) A person who fails to comply with a remedial order or a publicity order commits an offence and is liable, on conviction on indictment or summary conviction, to a fine.
- (8) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, subsections (1) and (7) have effect as if they provided for a fine on summary conviction not exceeding the statutory maximum.

24 Care provider offence: application to unincorporated associations

- (1) For the purposes of sections 21 and 23, an unincorporated association is to be treated as owing whatever duties of care it would owe if it were a body corporate.
- (2) Proceedings for an offence under those sections alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).
- (3) In relation to such proceedings, rules of court relating to the service of documents have effect as if the unincorporated association were a body corporate.
- (4) In proceedings under section 21 or 23 brought against an unincorporated association, the following apply as they apply in relation to a body corporate—
 - (a) section 33 of the Criminal Justice Act 1925 (procedure on charge of offence against corporation);
 - (b) Schedule 3 to the Magistrates' Courts Act 1980 (provision about corporation charged with offence before a magistrates' court).
- (5) A fine imposed on an unincorporated association on its conviction of an offence under section 21 or 23 is to be paid out of the funds of the association.

25 Care provider offence: liability for ancillary and other offences

- (1) An individual cannot be guilty of—
 - (a) aiding, abetting, counselling or procuring the commission of an offence under section 21, or
 - (b) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) by reference to an offence under section 21.
- (2) Where, in the same proceedings, there is—
 - (a) a charge under section 21 arising out of a particular set of circumstances, and
 - (b) a charge against the same defendant of a relevant offence arising out of some or all of those circumstances,the defendant may, if the interests of justice so require, be convicted of both offences.
- (3) A person convicted of an offence under section 21 arising out of a particular set of circumstances may, if the interests of justice so require, be charged with a relevant offence arising out of some or all of those circumstances.
- (4) "Relevant offence" means an offence under an Act, or an instrument made under an Act, dealing with—
 - (a) health and safety matters, or
 - (b) the provision of health care or social care.

(5) In this section—

“Act” includes an Act or Measure of the National Assembly for Wales;

“health care” and “social care” have the same meaning as in section 20.