

REGULATION OF CARE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Commentary on sections

Part 1: the Commission and Care Services

Offences

Section 21: Offences in relation to registration under Part 1

80. This section sets out offences under Part 1 of the Act. Subsection (1) makes it an offence for a person to describe any service as a care service for the purposes of this Act when it is not registered as such. This would catch, for example, an unscrupulous hotel owner who tried to pretend their hotel was a care home. If convicted of an offence under this subsection, the person would be liable to a fine not exceeding level 5 on the standard scale (£5000 at present) or up to three months imprisonment, or both.
81. Subsection (2) makes it an offence not to display a certificate of registration in a prominent place. The penalty on summary conviction is a fine not exceeding level 2 on the standard scale (£500 at present).
82. Subsection (3) provides that an individual or body, other than an adoption agency, making arrangements for the adoption of a child would be prosecuted under the Adoption (Scotland) Act 1978 rather than this Act. This will ensure that there is not duplication of powers under this Act and the Adoption Act.

Section 22: False statements in applications under Part 1

83. This section makes it an offence to knowingly give information which is false or misleading in a material respect when making an application for registration, or for variation or removal of a condition. The penalty is a fine not exceeding level 4 on the standard scale (£2500 at present).

Section 23: Offences by bodies corporate etc.

84. This section provides that if an offence under Part 1 is committed with the consent or connivance of an officer of a body corporate, a local authority, a partnership, or an unincorporated association, or if that officer has turned a blind eye or been negligent, then the officer as well as the organisation are guilty of the offence. Individual officers of a body corporate, partners of a partnership, or persons managing or controlling an unincorporated association who are complicit in an offence under the Part will not be able to escape prosecution simply because the organisation is liable: both they and it may be liable to prosecution.