

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Criminal Justice

Offences involving ill-treatment or wilful neglect

Section 25: Care provider: liability for ancillary and other offences

264. *Subsection (1)* expressly excludes secondary liability for the new ill-treatment or wilful neglect: care provider offence. It means that an individual cannot be convicted of aiding, abetting, counselling or procuring the commission of the care provider offence, or of encouraging or assisting in the commission of that offence. The intention here is to ensure that the care provider offence focuses on the behaviours and actions (or failures to act) by the care provider organisation as a whole, rather than creating a route for the focus to be diverted towards a single individual within the care provider's management hierarchy. This does not though affect an individual's direct liability for the ill-treatment or wilful neglect: care worker offence.
265. *Subsections (2) to (5)* clarify that a conviction for the care provider offence would not preclude a care provider being convicted under legislation creating an offence relating to health care or social care, or a health and safety offence, on the same facts if this were in the interests of justice. It would therefore also be possible to convict an individual on a secondary basis for such an offence under such legislation under provisions such as sections 91 and 92 of the Health and Social Care Act 2008, or section 37 of the Health and Safety at Work etc. Act 1974. This does not impose any new liabilities on individuals but ensures that existing liabilities are not reduced as an unintended consequence of the new care provider offence.