



# Criminal Justice and Courts Act 2015

## 2015 CHAPTER 2

### PART 1

#### CRIMINAL JUSTICE

##### *Offences involving ill-treatment or wilful neglect*

#### **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
    - (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,

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*Status: This is the original version (as it was originally enacted).*

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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.