

# **Consultation on Proposals for an Offence of Wilful Neglect or Ill-treatment in Health and Social Care Settings**

**October 2014**

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## **Wilful Neglect/III-treatment Consultation**

1. This consultation outlines and invites views on the Scottish Government's proposals for a new criminal offence of ill-treatment or wilful neglect of those receiving care or treatment in health and social care settings.
2. The Scottish Government's proposal is to create an offence which is similar to those that presently exist in relation to mental health patients and adults with incapacity. The proposed offence would cover the wilful neglect or ill-treatment of anyone receiving care or treatment in a range of care services.

## Introduction

3. People in Scotland receive high quality care and treatment in an array of health and social care situations, the delivery of which is carried out by a variety of dedicated professionals. The vast majority of staff employed in these settings work to the very best of their ability in providing these services, and do so in a manner that respects and protects the dignity and rights of individuals and their families. However, as we know from events elsewhere, for example, at Mid-Staffordshire NHS Foundation Trust, and at Winterbourne View, there can be instances where people receiving care are deliberately mistreated or neglected by those who have been trusted to look after them.
4. Although such incidents of deliberate neglect or mistreatment may be uncommon, we need to ensure that the criminal justice system is able to deal with these cases effectively when they arise.
5. There are existing offences of wilful neglect or ill-treatment in respect of mental health patients (set out in section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and in respect of adults with incapacity (set out in section 83 of the Adults with Incapacity (Scotland) Act 2000). Both of these offences cover distinct groups of people and the purpose of this consultation is to explore extending the scope of the offence of wilful neglect or ill-treatment beyond these groups.
6. The offence that we are proposing to create is not intended to cover instances of genuine error or accident.
7. Other remedies and means of redress, for example under the Human Rights Act 1998, or through formal complaints procedures, will remain available. These will continue to offer an appropriate and accessible route to dealing with situations of concern in which alleged neglect or ill-treatment cannot be attributed to deliberate misconduct.
8. This consultation document outlines five particular areas that we are seeking views on. In summary, these are: the type of care settings which the offence should cover; whether the offence should be based on conduct or outcomes; how the offence should apply to organisations as well as individuals; penalties; and equality issues.

## Defining the Offence

### (A) Which care settings should be covered

9. We believe that the new offence should cover both health and social care settings. The Scottish Government is currently progressing a programme of integration of adult health and social care in order to improve services for people who use them. Integration will increasingly ensure that the provision of health and social care across Scotland is joined-up and seamless. As we move towards more integrated services we therefore consider that the proposed offence should cover both kinds of settings.
10. Our proposal would cover those who work in providing care and treatment in health and social care, including such care or treatment provided in the following settings in both the statutory and third sectors (the list is not exhaustive):
  - NHS hospitals
  - Independent hospitals
  - Primary care services
  - Adult care settings (including care homes, care at home, support services, housing support services, adult placement services, short breaks and respite care, services for people in criminal justice supported accommodation)
  - Hospices
11. Annex A provides a list of the professions that we envisage being covered by the proposed offence.
12. In addition to some of the formal health and social care settings listed, there are also a range of informal arrangements for care where that care is provided on the basis of a family relationship, or friendship. Sometimes people speak about looking after others without realising that they are describing a caring situation.
13. In January 2014, the Scottish Government launched a consultation on legislation to further support carers and young carers across Scotland. Subject to Parliamentary approval, the proposed legislation would introduce a range of measures that will aim to make a meaningful difference to carers to improve their health and wellbeing and to ensure they have a life alongside caring. The Scottish Government will publish its response to the consultation in Autumn 2014.

14. Given the nature of unpaid caring where it is not carried out by virtue of a contract of employment or other contract or as a volunteer, we do not feel that it would be appropriate for the offence to cover the types of care situation where there is no legal obligation or contract in place. Moreover, the care is being provided in a person's home, not in a health or social care setting. If however, a cared-for person is neglected or mistreated by the unpaid carer then the existing offences in statute would apply.

15. We believe that the proposed offence should cover all formal situations where health care is provided for children, for example in NHS hospitals and independent hospitals. However, the range of social care services provided for children is different to those delivered for adults. We would like to hear your views on the types of social care services for children that you think should or should not be covered by our proposals.

16. We would also like to hear your views on whether the offence should cover people providing care or treatment on a voluntary basis on behalf of a voluntary organisation.

#### QUESTIONS:

**Do you agree with our proposal that the new offence should cover all formal health and adult social care settings, both in the private and public sectors?** HSWA covers

**Do you agree with our proposal that the offence should not cover informal arrangements, for example, one family member (generally termed unpaid carer, or carer) caring for another?** Agree

**Should the new offence cover social care services for children, and if so which services should it cover? Please list any children's services that you think should be excluded from the scope the offence and explain your view.** HSWA covers

**Should the offence apply to people who are providing care or treatment on a voluntary basis on behalf of a voluntary organisation, whether on a paid or unpaid basis?** See HSWA  
The legislation already exists with the Health and Safety at Work etc Act 1974 and this is comprehensive. The problem has been that the Scottish Government has failed to recognise this, implement the law through DHSC and NHS Scotland, the Care Inspectorate, or regulate it since it abolished the in. The government is itself wilfully negligent by its omissions. As such it is liable to enforcement action and prosecution. This is not pre-1974.

**(B) Basing the offence on conduct or outcomes**

17. We believe that the offence should be based on the conduct of the individual or organisation rather than based on any harm caused as a result of their actions.
18. No measure of deliberate neglect or mistreatment is acceptable and we feel that the criminal law should reflect this. If a threshold of harm was set out in legislation then this could give rise to a situation where two people were subjected to the same ill-treatment or neglect by the same care worker but because one was more seriously harmed than the other, a prosecution could only be brought in respect of the more seriously harmed individual. Furthermore, setting a harm threshold may give rise to uncertainty about when the offence would apply.
19. Neither of the offences in the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000 define a required level of harm and therefore to establish one in constructing the new offence would create an inconsistency.
20. Therefore, we propose that the offence should apply where someone has wilfully neglected or ill-treated another in the settings described, regardless of the harm caused by that neglect or ill-treatment. We would like to hear your views on whether or not this is the most suitable approach to take.

**QUESTION:**

**Do you agree with our proposal that the new offence should concentrate on the act of wilfully neglecting, or ill-treating an individual rather than any harm suffered as a result of that behaviour?**      Yes HSWA already does this

### **(C) Applying the offence to organisations**

21. In order to establish an offence that can be consistently applied across health and social care settings we are considering whether or not the new offence should apply to organisations providing care or treatment, as well as individuals.

22. In terms of existing legislation, the offence of wilful neglect/ill-treatment in section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003 can apply to organisations, as well as individuals, in specific circumstances. We believe that it is appropriate for the new offence to apply to organisations too but we would like to hear your views on how you think this should be applied.

#### **QUESTION:**

**Do you agree with our proposal that the offence should apply to organisations as well as individuals? HSWA already applies to both.**

**How, and in what circumstances, do you think the offence should apply to organisations? See HSWA and MHSWR 1999**



## **(D) Penalties**

23. We propose that the penalties for the new offence should reflect those currently set out in legislation for the existing offences relating to mental health patients and adults with incapacity. Both of these offences attract the same penalties:

- On summary conviction: imprisonment for a maximum term of 12 months<sup>1</sup>, or to a fine not exceeding the statutory maximum (currently £10,000) or both
- On conviction on indictment: imprisonment for a maximum term of 2 years or to a fine (of an unlimited amount), or both

24. In respect of individuals, we do not consider there to be any clear reasons to depart from the penalties already established for wilful neglect/ill-treatment.

25. In respect of organisations there may be other penalties which could be considered. We are keen to hear if you think the proposed penalties are sufficient and if you think that organisations should be subject to penalties other than fines.

### **QUESTION:**

**Do you agree that the penalties for this offence should be the same as those for the offences in section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and section 83 of the Adults with Incapacity (Scotland) Act 2000?**

They should be what the HSWA says

**Should the courts have any additional penalty options in respect of organisations? If so, please provide details of any other penalty options that you think would be appropriate.** HSWA applies to organisations and individuals

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<sup>1</sup> Maximum term of imprisonment of 12 months, as provided for in section 45 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007

## **(E) Equality considerations**

26. The Scottish Government's Quality Strategy for NHS Scotland asserts our aim of delivering safe, effective and person-centred care. To do so we need to understand the needs of each person who uses health and social care services. Therefore, in the development of our proposed offence we will ensure that we identify any equality impacts for people with a protected characteristic (as defined by the Equality Act 2010).
27. We are undertaking an Equality Impact Assessment (EQIA) which will allow us to fully explore these issues. The results of the EQIA will be published on the Scottish Government's website when completed.
28. This consultation provides an opportunity to obtain stakeholders' views on any possible equality impacts, including impacts on those with protected characteristics. The responses to our consultation will assist in our development of the EQIA.

### **QUESTION:**

**What issues or opportunities do the proposed changes raise for people with protected characteristics (age; disability; gender reassignment; race; religion or belief; sex; pregnancy and maternity; and sexual orientation) and what action could be taken to mitigate the impact of any negative issues?**

**(F) Responding to this consultation paper**

29. We are inviting written responses to this consultation paper by 2 January 2015.

30. **Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:**

[wilfulneglectconsultation@scotland.gsi.gov.uk](mailto:wilfulneglectconsultation@scotland.gsi.gov.uk)

or by post to:

Dan Curran  
The Quality Unit  
Scottish Government  
GER, St Andrew's House  
EDINBURGH  
EH1 3DG

31. If you have any queries contact Dan Curran on 0131 2444894.

32. We would be grateful if you would use the consultation questionnaire provided or could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

33. This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>

34. The Scottish Government has an email alert system for consultations, <http://register.scotland.gov.uk> This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

## **Handling your response**

35. We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** enclosed with this consultation paper as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.
36. All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

## **Next steps in the process**

37. Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library (see the attached Respondent Information Form), these will be made available to the public in the Scottish Government Library by 21 January 2015 and on the Scottish Government consultation web pages by 30 January 2015. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

## **What happens next?**

38. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on creating an offence of wilful neglect/ill-treatment. We aim to issue a report on this consultation process by Easter 2015.

## **Comments and complaints**

39. If you have any comments about how this consultation exercise has been conducted, please send them to the address given in the section 'Responding to this consultation paper'.

## **(G) The Scottish Government Consultation Process**

40. Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.
41. The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.
42. Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).
43. All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: Scottish Government consultations (<http://www.scotland.gov.uk/consultations>)
44. The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:
- indicate the need for policy development or review
  - inform the development of a particular policy
  - help decisions to be made between alternative policy proposals
  - be used to finalise legislation before it is implemented

45. Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

**46. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.**

## **Annex A — Professions which would be covered by the offence**

**Please note: this list is not exhaustive and we would welcome comments on it**

### **Health Professionals**

- Chiropractors
- Dentists, dental nurses, dental technicians clinical dental technicians, dental hygienists, dental therapists orthodontic therapists
- Doctors
- Optometrists, dispensing opticians, student opticians and optical businesses;
- Osteopaths;
- Professions regulated by the Health and Care Professions Council (HCPC) (which includes arts therapists, biomedical scientists, chiropodists / podiatrists, clinical scientists, dieticians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists/orthotists, radiographers, and speech and language therapists)
- Pharmacists and pharmacy technicians
- Nurses and midwives

### **Social Care Professionals**

Social care workers who work in providing services in the following: care homes, care at home, support services, housing support services, adult placement services, short breaks and respite care, services for people in criminal justice supported accommodation

## Annex B — Partial Business and Regulatory Impact Assessment

### Title of Proposal

Offence of Wilful Neglect or Ill- treatment in Health and Social Care Settings

### Purpose and intended effect

- **Background**

People in Scotland receive high quality care and treatment in an array of health and social care situations, the delivery of which is carried out by a variety of dedicated professionals. The vast majority of staff employed in these settings work to the very best of their ability in providing these services. However, as we know from the events elsewhere, for example, at Mid-Staffordshire NHS Foundation Trust, and at Winterbourne View, there can be instances where people receiving care are deliberately mistreated or neglected by those who have been trusted to look after them.

Although such incidents of deliberate neglect or mistreatment may be uncommon, we need to ensure that the criminal justice system is able to deal with these cases effectively when they arise.

There are existing offences of wilful neglect or ill-treatment in respect of mental health patients (set out in section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and in respect of adults with incapacity (set out in section 83 of the Adults with Incapacity (Scotland) Act 2000). Both of these offences intentionally relate to narrowly defined groups of people and we feel that there is good reason to extend the offence of wilful neglect or ill-treatment beyond these groups.

- **Objective**

The Scottish Government's proposal is to create an offence which is similar to those that presently exist in relation to mental health patients and adults with incapacity. The proposed offence would cover the wilful neglect or ill-treatment of anyone receiving care or treatment in a range of health and care services.

- **Rationale for Government intervention**

No measure of deliberate neglect or mistreatment is acceptable and we feel that the criminal law should reflect this. Only certain groups are currently protected under the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000). In order to ensure consistency and address a current gap in legislation the Scottish Government considers it should introduce a criminal offence of wilful neglect or ill-treatment beyond these groups to cover all individuals receiving care in a formal health or social care setting. The Government has five objectives that underpin its core purpose. This legislation will contribute to the National Objectives of Healthier Scotland, through



improving health care quality, and Safer and Stronger.

It will also contribute to two of the 16 national outcomes:

- we live longer, healthier lives,
- we live our lives safe from crime, disorder and danger

### **Consultation**

The legislation will be developed in a collaborative way involving colleagues from across and outwith the Scottish Government.

- **Within Government**

We are working with colleagues across the Scottish Government to develop this legislation. This includes, but is not restricted to, the following teams: Primary Medical Services; Integration and Reshaping Care; Children's Rights and Wellbeing; and Criminal Law and Licensing. This approach ensures that current Scottish Government policy will be reflected in the on-going development of this legislation and will ensure that all appropriate stakeholders and stakeholder groups can offer comment of these proposals.

- **Public Consultation**

The formal consultation will run for a period of 12 weeks from 10 October 2014.

- **Business**

We will identify relevant organisations to meet with during the consultation period and update this section at Final BRIA stage.

### **Options**

Option 1: Do nothing

Under option 1 the situation would remain as it is at present. The offences outlined within the Mental Health (Care and Treatment) (Scotland) Act 2003 and in respect of adults with incapacity in the Adults with Incapacity (Scotland) Act 2000 would remain but there would be no expansion of protection to wider patient groups.

Option 2 : create an offence of Wilful Neglect or Ill-treatment in Health and Social Care.

Under option 2 there would be a new offence of wilful neglect which would cover all formal health and social care settings, both in the private and public sectors.

### **Sectors and groups affected**

The new offence would cover all care in delivered in the following settings and services:

- NHS hospitals
- Independent hospitals
- Hospices
- Primary care services
- Adult care homes
- NHS ambulance services
- Independent ambulance services

The legislation would apply to all providers of health and social care services and

patients in all these settings would be afforded the protection of this legislation. This in turn, means that all parts of the justice system including the police and the Crown Office and Procurator Fiscal Service (COPFS) could be affected.

### **Benefits**

Option 1: there would be no action and therefore no additional benefits. There is a potential disbenefit that patients not covered by the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Adults with Incapacity (Scotland) Act 2000 could be at increased risk of suffering wilful neglect or ill-treatment.

Option 2: this would provide consistency for patients, irrespective of their mental capacity or mental health. All patients in all formal health and social care settings would be afforded the protection of legislation.

The legislation and associated sanctions may have a deterrent effect. The prevention of ill treatment would then result in benefits for both individuals and society. Should incidents of wilful neglect and/or ill-treatment occur then the legislation would ensure that those responsible were held fully accountable.

It is not possible to quantify the benefits from deterrent effect, increased consistency and accountability.

### **Costs**

Option 1: there would be no action and therefore no cost to government or to providers of health and social care services. There is a potential cost to patients not covered by the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Adults with Incapacity (Scotland) Act 2000 who could be at increased risk of suffering wilful neglect or ill- treatment.

Option 2: the offence should not create sizable additional costs or liabilities on individual practitioners and/or providers beyond what is normally expected of quality of care. However we know that, very occasionally, there will be examples of behaviour that can be classed as wilful neglect or ill-treatment. It is these rare occurrences that the legislation seeks to both deter and address.

### Number of cases.

It is difficult to estimate the number of cases that might be brought forward under any new legislation.

Number of patients affected:

Within NHSScotland the number of patients treated in acute specialities in 2012/13 was 698,369<sup>2</sup>. Laing and Buisson estimate that across the UK, 1.64 million patients were admitted for surgical procedures in independent hospitals . Pro rata by population this suggests around 136,000 patients in Scotland. However we know that private health insurance coverage is lower in Scotland than across many parts of the UK and compared with the UK average (8.5% vs. 12%) . An estimate of 95,000 is therefore likely to be more realistic and may still be an overestimate. This gives an estimate of 794,000 inpatients across the public and private sector.

The Care home census of 2013 showed nearly 36,600 individuals resident at the time. These are mainly elderly, over 65 years, but this number includes adults of working age. Excluding those with mental health problems or learning disability leaves 33,687. Around 50,400 of those aged over 65, and 10,500 younger adults received a care home service in 2012-13.<sup>3</sup> Again, around 4,500 of the younger adults have mental health or learning disabilities: excluding them gives a total across residential and home care of approx. 90,000 individuals.

It is acknowledged that many of the above individuals may also access hospital services in the course of a year so this may be an overestimate.

GP services, dentists, A&E attendances and ambulance journeys have been excluded from this estimate (which may counter the previous overestimate) as it is considered that there is a lower risk of wilful neglect, mainly due to the relatively short time that would be spent in those care settings although the legislation will cover these.

So although not exhaustive this initial estimate suggests that around 884,000 additional users of health and social care services in Scotland would be covered by extending the legislation.

In terms of the potential number of additional cases that might be generated there is very little evidence on which to base an estimate. There have been very few prosecutions under the Mental Health (Care and Treatment) (Scotland ) Act 2003 and none under the Adults with Incapacity (Scotland) Act 2000.

Scottish Government:

There will be costs associated with the provision of information on the new legislation. The Government would need to consider whether it wished to undertake a public education campaign to make people aware of any change in the law. There would also potentially be costs involved in providing literature/guidance for care

<sup>2</sup> <http://www.isdscotland.org/Health-Topics/Hospital-Care/Inpatient-and-Day-Case-Activity/>

<sup>3</sup> <http://www.scotland.gov.uk/Topics/Statistics/Browse/Health/Data/HomeCare/HSCDHomecare>

providers including care homes and the range of health professionals.

#### SG/NHS Boards/providers

The Scottish Government and NHS Education for Scotland (NES) would need to consider if it was necessary to introduce any additional staff training.

#### Justice system

Should there be additional cases identified under the extension of the legislation then there could be costs for the police, Crown Office and Procurator Fiscal Service (COPFS) and defendants. Unless the number of cases proved to be substantial it is assumed that these would have minimal impact on the justice system and could be incorporated into normal workloads.

#### Defendants

Should prosecutions result from the legislation defendants, unless they are eligible for legal aid, may incur the costs of mounting a defence. We are not, at present, able to quantify these.

#### **Scottish Firms Impact Test**

This proposal is designed to reinforce a culture of safety and quality for patients in Scotland in all health and social care settings. There have, to date, been no consultations with Scottish firms who may be affected. The consultation which this document accompanies actively seeks the views of businesses who may be affected by these proposals and who the consultation document has been forwarded to..

#### **Competition Assessment**

1. Will the proposal directly limit the number or range of suppliers?

The proposal will not directly affect the number or range of suppliers of health and/or social care. The legislation will apply to all health and care settings and all formal care givers.

2. Will the proposal indirectly limit the number or range of suppliers?

The proposal will not indirectly affect the number or range of suppliers of health and/or social care. The legislation will apply to all health and care settings and all formal care givers. It does not constitute a barrier to entry into the market.

3. Will the proposal limit the ability of suppliers to compete?

The legislation will apply to all health and care settings and all formal care givers. Much of the activity covered will be within NHSScotland. It will have no impact on competition within the health and social care sector.

4. Will the proposal reduce suppliers' incentives to compete vigorously?

The legislation will apply to all health and care settings and all formal care givers.

Much of the activity covered will be within NHSScotland. Suppliers within the private sector will all be equally affected. There will be no impact on their ability to compete.

**Test run of business forms**

No new forms for business are anticipated.

**Legal Aid Impact Test**

As part of the Bill development process we will liaise with the Scottish Government Access to Justice Team to gauge whether any proposed legislation will affect Legal Aid. This will be detailed within the final BRIA.

**Enforcement, sanctions and monitoring**

It is proposed that the penalties for this offence should be the same as those for the offences in section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and section 83 of the Adults with Incapacity (Scotland) Act 2000.

The consultation is seeking views on this, in particular whether the courts should have any additional penalty options in respect of organisations.

**Implementation and delivery plan**

October 2014 – launch of consultation process.

- **Post-implementation review**

A review process will be considered as the legislation is developed.

**Summary and recommendation**

Option 2 is the option on which the Scottish Government wishes to consult.

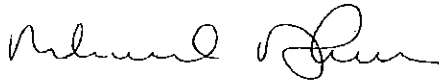
- **Summary costs and benefits table**

This will be detailed in the full BRIA, following consultation and accompanying the Bill and financial memorandum.

**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact will be assessed with the support of businesses in Scotland.

**Signed:**



**Date: 10<sup>th</sup> October 2014**

**Michael Matheson  
Minister for Public Health**

**Scottish Government Contact point:**  
[WilfulNeglectConsultation@scotland.gsi.gov.uk](mailto:WilfulNeglectConsultation@scotland.gsi.gov.uk)

## Annex C — Summary of Consultation Questions

**Do you agree with our proposal that the new offence should cover all formal health and adult social care settings, both in the private and public sectors? Please explain your views.**

Yes  No

Comments Not required as covered by existing Health and Safety at Work etc Act 1974

**Do you agree with our proposal that the offence should not cover informal arrangements, for example, one family member caring for another?**

Yes  No

Comments

**Should the new offence cover social care services for children, and if so which services should it cover? Please list any children's services that you think should be excluded from the scope the offence and explain your view.**

Yes  No

Comments Not required, HSWA covers . Promote & enforce existing law

**Should the offence apply to people who are providing care or treatment on a voluntary basis on behalf of a voluntary organisation?**

Yes  No

Comments See HSWA application, depends on employment status and business.

**Do you agree with our proposal that the new offence should concentrate on the act of wilfully neglecting, or ill-treating an individual rather than any harm suffered as a result of that behaviour?**

Yes  No

Comments HSWA applies to the neglect rather than the harm, hazard & risk based

**Do you agree with our proposal that the offence should apply to organisations as well as individuals?**

Yes  No

Comments Yes, HSWA & starting with the Scottish Government who are guilty of the greatest wilful neglect for not implementing HSWA and HRA, & not regulating compliance.

**How, and in what circumstances, do you think the offence should apply to organisations?**

Yes  No

Comments See HSWA. s7, 36, 37 applies to ministers by virtue of s48

**Do you agree that the penalties for this offence should be the same as those for the offences in section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and section 83 of the Adults with Incapacity (Scotland) Act 2000?**

Yes  No

Comments See HSWA. Cannot have conflict in legislation. HSWA precedent

**Should the courts have any additional penalty options in respect of organisations? If so, please provide details of any other penalty options that you think would be appropriate.**

Yes  No

Comments see HSWA

**What issues or opportunities do the proposed changes raise for people with protected characteristics (age; disability; gender reassignment; race; religion or belief; sex; pregnancy and maternity; and sexual orientation) and what action could be taken to mitigate the impact of any negative issues?**

Comments