

**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

In terms of the Integration of adult health & social care and the increase in partnership working with 3rd and Independent sector, it is essential that that the new offence covers all care settings. It is also recognised that the majority of residential care for older adults and vulnerable children and adults is provided by the Independent sector and voluntary services should also be included in the scope of this offence.

Has to be consistent and inclusive. Can't have a two tier system, particularly with the Integration agenda

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

Yes No

It would be inappropriate to include informal arrangements where there is no formal requirement to provide care. Concerns arising through these relationships would be expected to be dealt with through existing Child Protection and Adult Support and Protection legislation and procedures.

Informal arrangement. Carers are often in a difficult place themselves and the offence may indicate a lack of support/service provision.

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 of the offence and explain your view.

Yes No

There should be no differentiation within Children's Services as this may create a loophole for possible prosecution.

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

Yes No

There is a corporate responsibility on Voluntary agencies to protect vulnerable people.

People providing care on behalf of a voluntary organisation should be included. There would be an expectation in relation to the standards of care and treatment provided that the organisation would have a responsibility to ensure people working on their behalf have been appropriately trained and receive appropriate support and supervision.

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

A wilful act has the potential to cause harm even if a specific incident does not cause harm. The wilful act in itself may be indicative of an individual's general behaviour and not a single incident. Actual physical harm can be relatively straightforward to evidence but psychological/emotional harm is more subjective. It is important that the focus is on the intent and not the outcome.

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

Yes No

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

Yes No

It is important to include organisations as this would support an organisational position clearly setting out a zero tolerance to any behaviours falling within the scope of the legislation. There was also a view expressed that managers should be included in the list of health professional in Annex A.

Organisations should be held to account for correct procedures training, for employment checking, references, PVG and responding to any reported incidents. They have to ensure and prove that they have done all in their power to ensure the carer is 'fit' to deliver the care and any equipment used is fit for purpose.

If it can be shown that there is an organisational failure to support staff to provide quality care then wilful neglect may be the result of organisational culture and acceptance of the status quo.

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

The financial fine should reflect the income of the person involved, not fixed.

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

Linked to terms of fines and fixed timescales to evidence that changes had been made to procedures and processes as required.

Removal of license to operate (care homes etc), greater scrutiny by Care Inspectorate, closure in extreme cases

Additional penalties if action plan for improvement not implemented

Where the organisation has been found to be lacking, not checked for PVG, trained etc then there should be a financial penalty and an improvement plan agreed and assurance that it is completed. Where an organisation is found to be lacking they should be prosecuted under the existing corporate laws.

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?

This should promote equality rather than raise any issues.