

1 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

HSE agrees that the new offence should apply in all formal health and adult social care settings, in both the public and private sectors. This would then extend legal protection to everyone using health and social care services, not just adults with incapacity, as at present.

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

Yes No

HSE agrees that only formal health and social care arrangements should be included but that it should be clearly defined under what circumstances a provider of care would be covered by the offence.

3 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

HSE considers that the new offence should cover those persons or organisations that ill-treat or wilfully neglect children, and adults, who are patients or service users.

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

Yes No

If the treatment or care is being provided by voluntary organisations on a formal basis, then HSE agrees that they should be covered by the offence.

5 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

HSE agrees. This approach is consistent with the Health and Safety at Work etc Act 1974. It avoids the difficulty of proving that the behaviour in question led to specific harm. It is also consistent with existing legislation for adults with incapacity.

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

Yes No

HSE agrees that the offence should apply to organisations as well as individuals.

Under s37 of the Health and Safety at Work etc Act 1974, Directors can be held to account if an offence was committed due to their neglect (or with their connivance or consent). This penalty, which is in addition to the responsibility of the organisation corporately, applies where there is some additional blame or failing which can be ascribed to that individual. The Scottish Government may wish to consider an equivalent approach that could apply to both organisations as well as individuals within that organisation.

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

Yes No

The offence already applies to organisations providing care to adults with incapacity. It should apply to all health and social care organisations where there is evidence of systemic management failure to prevent wilful neglect or ill treatment.

8 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

HSE agrees, for the reasons set out in the consultation.

9 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

No comment

10 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?

No comment