

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

It makes sense that all formal health and adult social care settings are covered. There should be no distinction between the private and public sector – people should be treated the same regardless of the sector within which they are receiving care.

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

Yes No

We agree with the Scottish Government that the nature of unpaid caring (not least the lack of contractual arrangements) make it distinct from formal health and social care settings. We would therefore not agree that it should be covered in the proposal. However, we would note that wilful neglect can take place in such informal settings and, consequently, this should be dealt with under existing legislation.

We would also wish to note that this is a complex debate and one which requires further exploration and discussion.

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

We would require further information before being able to reach a considered view but we can, initially, see no impediment to the new offence covering social care services for children.

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

Yes No

We do believe that the offence should apply to people who are providing care or treatment on a voluntary basis on behalf of a voluntary organisation because many of these voluntary organisations receive statutory funding on the basis that they are set up to provide appropriate services to people who are both vulnerable and, potentially, at risk of harm. These agencies are responsible for how they recruit,

train and supervise their volunteers.

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

We believe that the harm caused should not be defined within the proposal as that leads to subjective judgements and discussions regarding thresholds. The issue should be the act of commission or omission not the effect of that act. We also agree that consistency is required with what is already in place in relation to the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000.

However, the effect of the harm might be seen as an aggravation of the offence.

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

Yes No

We believe it important that organisations take corporate responsibility for the actions of their individual employees/volunteers. It is also noted that issues of organisational culture can develop and that, by focusing on individuals only, patterns of behaviour across organisations can be missed or not given sufficient attention.

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

Yes No

We have set out above the issues that may arise in relation to a culture of an organisation but there may also be issues in relation to people operating under management guidance or instruction or issues in relation to lack of training that leads to an offence. In such cases, it may be more appropriate for any offence to be applied to the organisation rather than the individual.

It is not clear whether it is envisaged that an offence could attach to the organisation arising from issues of vicarious liability for employee actions, or liability attaching in circumstances where there is a principal/agent arrangement. That might apply where an organisation engages an agent or contractor to perform specific obligations on their behalf.

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

We believe there should be consistency with existing legislation and, broadly, the current penalties appear to be proportionate.

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

We would require more information regarding any proposals before reaching any view.

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?

The proposal presents an opportunity to, in theory, ensure people with protected characteristics receive enhanced protection and are therefore less at risk of hate crime or other form of crime.