

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

We agree that the new offence should cover all formal health and adult social care settings, both in the private and public sectors
A clear definition of wilful neglect in relation to current legislation would help us to respond effectively.

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: There is some difference in opinion but overall we agree that the act should not cover informal arrangements such as family members.
On a related issue, in the context of an increasing number of young and old age carers a national carers charter may be helpful. This would help as this group is the least well supervised and monitored.

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 This should cover any involvement of professional regulated health and social care staff, and non-statutory orgs with legal requirements over care and child protection. Any service or organisation with a legal requirement should be covered.

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 We agree the offence applies to people who are providing care or treatment on a voluntary basis on behalf of a voluntary organisation.
A clear definition of wilful neglect and deliberate ill treatment will help to clarify what falls within new legislation and what might be covered by existing legislation.

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 We agree that the offence should cover the act of wilfully neglecting, or ill-treating an individual rather than the outcome or harm caused.

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

Yes No

Comments We agree it should be applied to organisations. In the wake of the Rotherham enquiry and other high profile organisations it would be important to have this in place but how that would be implemented would need to be clearly set out. If an organisation receives this offence it would reflect the need for significant systemic change.

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

Yes No

Comments The offence should be applied where organisations have failed to provide staff with appropriate training opportunities, where there are no governance pathways in place, and where staff appraisal & personal development plans have been neglected/ inadequately carried out.

It should apply where there are inadequate systems of providing and monitoring patient care. For example; ineffective supervision structures, lack of effective disciplinary structures, lack of access to appropriate training and the maintenance of such training for staff; inadequate staffing levels or inappropriately qualified staff performing tasks beyond their experience; inadequate health and safety procedures. It should apply where organisations have failed to act on information of poor practice which could have been improved to prevent wilful neglect and deliberate ill treatment.

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 We agree with adopting the standard from other legislation.

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

Opinion is divided related to penalties:

Overall the opinion is:

We do not agree that fining the organisation will be the best way to change the organisations practice. We believe that a monitored commitment to staff development and training (at all levels) to change practice and improve understandings of what went wrong should be considered.

We question whether further legislation is required. There is a need to consider how the proposed legislation fits with the existing wide range of legal frameworks that organisations and professions have to adhere to.

It is possible that one of the unintended consequences of this legislation will be to make organisations even more risk averse and they may further restrict the types of support activities they are willing to offer, creating gaps in the services people need in order to maintain independent living. We already see this in the older people population where home care services are unable/unwilling to give medication to people who are unable to lift the tablets to their own mouth.

The legislation will not address the issues associated with culture change and investing in staff which often lie at the heart of poor practice.

Another strand of opinion sees a role for penalties but emphasizes a wider range of options:

In terms of penalties it would be better to have a range of options: including fines, leadership change, removal of certain official status to be re-earned back, timescales to implement changes, further scrutiny/investigation at later stage, work with the victims/representatives/reparation work of some sort.

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 There is no direct impact on equalities but the legislation may provide further protection for those who are vulnerable.