

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 We agree with the proposal that the new offence should cover all formal health and adult social care settings both in the private and public sectors.

The Commission believes that integration of health and social care is necessary to ensure that people receive the individualised care, treatment and support that they need. It would not make sense to separate between health and social care given the current integration agenda.

People receiving care, treatment and support should expect to receive protection from wilful neglect or ill treatment regardless of whether it is a private or public sector provider.

There is already an offence of ill treatment and neglect of mentally disordered persons under Section 315 of the Mental Health (Care & Treatment) (Scotland) Act 2003 and this new offence appears to be modelled on that. We understand that there are very few prosecutions and

not just because ill-treatment is rare. (we are not aware of any prosecutions under Section 83 of the Adults with Incapacity Act)We do not think that currently there is a high level of awareness and understanding of the possibility of prosecution under the Acts and perhaps a mistaken belief that Section 315 only applies to those subject to compulsory powers under the mental health Act. We would hope that work will be planned to not just create the offence but to raise awareness of the offence and ensure protocols exist between key agencies.

Another possible factor that contributes to low rates of prosecution under the mental health act could be police regarding such issues as employment/disciplinary or care/regulatory matters rather than an offence.

There is also a risk that police /criminal investigations can get in the way of necessary safeguarding activity by local authorities and regulators, and that they delay/militate against local services conducting their own reviews and learning lessons.

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 We agree with the proposal that the offence should not cover informal arrangements but be explicit where there is a contract in place.

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

We believe that children should be afforded the same protections and safeguards as adults.

Children's legislation in Scotland seeks to promote the welfare of children. The consultation document itself states that "no measure of deliberate neglect or mistreatment is acceptable and we feel the criminal law should reflect this. " We believe there is no reason why children should receive different standards in relation to being subject to mistreatment or neglect than adults.

All formal health and social care services for children 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 In relation to people providing care or treatment on a voluntary basis or on behalf of a voluntary organisation; although this is on a voluntary basis there should still be a contract in place and volunteers would be expected to meet the same standards as employees. Under Section 315 of the Mental Health (Care & Treatment) (Scotland) Act 2003 the offence of ill-treatment and wilful neglect of a mentally disordered person extends to a volunteer for a voluntary organisation and this legislation should provide the same safeguards. In relation to organisations, it would need to be clear how culpability is identified and assigned.

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 with the proposal that the new offence should concentrate on the Act rather than the harm suffered as a result. Attempting to define the harm suffered as a result of the behaviour would be extremely difficult and may not capture the severity of the offence e.g. the outcome for the adult of wilful neglect may be dependent on many external factors.

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

Yes No

Comments We agree with the proposal that the offence should apply to organisations as well as individuals. Unfortunately it is the case that sometimes there can be institutional neglect and ill-treatment of individuals.

Individuals employed by an organisation can be poorly educated, poorly trained, poorly paid and have little experience to understand the standards of care required of them and managers have a clear responsibility to ensure that their staff have expected standards of conduct.

[Empty box]

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

Yes No

Comments It is essential that the offence applies to both organisations and individuals, organisations cannot be exempt when there are clear cultural deficiencies that have been allowed to develop and tolerated within their organisation.

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 that the penalties for this offence should be the same as those in Section 315 of the Mental Health (Care & Treatment) (Scotland) Act and Section 83 of the Adults with Incapacity Act.

Under Section 315 of the Mental Health Act on conviction of indictment, imprisonment for a term not exceeding two years we feel is adequate.

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 In relation to organisations where there has been a prosecution, the appropriate regulatory bodies (Healthcare Improvement Scotland for Hospitals and Care Inspectorate for Registered Care Services) should investigate. The Care Inspectorate have powers to make requirements of a registered care provider and if necessary to ask the Sheriff to remove registration.

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 Cannot identify any negative impacts including on those with protective characteristics.

Important to address issues of vulnerable witnesses and how they are supported through any prosecution process.