

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

Formal care is provided in a range of settings by a range of statutory and non-statutory organisations including the private and voluntary sectors. The rights of the person receiving care must be at the centre of all that we do and upheld at all times. Therefore the new offence must be applicable across all settings where formal care is being provided.

Appendix A should be expanded to include Counsellors, Therapists and Support Workers within Health

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

Agree that family members providing care through a sense of kinship duty should not be prosecuted via this new offence. The existing domestic violence or abuse legislation adequately covers this group of people.

There are occasions where families informally contract with individuals (Non family members) to deliver care to a relative. In these circumstances the new offence should apply.

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

All formal care regardless of provider should be included such as Childrens Homes and Foster Care.

Kinship care should be excluded for the same reasons as outlined in section 14 of the consultation document. The existing legislation adequately covers this Group of people.

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

All non-kinship relationships should be included regardless of setting or provider. This may in turn inhibit the amount or number of people willing to become involved in providing such services. However, the historical abuses which have emerged require the new offence to be applicable within all sectors including voluntary organisations.

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

The principle of parity with similar offences currently applicable within the Mental Health (Care And treatment) (Scotland) Act 2003 and the Adults With Incapacity (Scotland) Act 2000 should be applied.

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

Yes No

As per response to question 5 there should be parity with Mental Health and Adult With Incapacity legislation.

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

Yes No

Organisations are responsible for the recruitment and selection of individuals, defining the role and ensuring appropriate checks and balances are in place to ensure care is of an acceptable standard and to identify individuals who may deliberately cause harm to people in their care. This should include failure to do act as a result of whistle blowing.

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

As per response to question 5 there should be parity with Mental Health and Adult With Incapacity legislation.

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

Penalties applied to organisation must be of a significantly greater amount to reflect the gravity of the offenses. £10,000 has proportionately more impactful to an individual than it is to an organisation. Organisation should be censured by a proportionally representative amount which will underline the gravity of the offence committed.

10. What issues or opportunities do the proposed changes raise for people with protected characteristics () and what action could be taken to mitigate the impact of any negative issues?

The offence should apply to everyone regardless of age; disability; gender reassignment; race; religion or belief; sex; pregnancy and maternity; and sexual orientation.

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Yes No

Formal care is provided in a range of settings by a range of statutory and non-statutory organisations including the private and voluntary sectors. The rights of the

person receiving care must be at the centre of all that we do and upheld at all times. Therefore the new offence must be applicable across all settings where formal care is being provided.

Appendix A should be expanded to include Counsellors, Therapists and Support Workers within Health

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

Agree that family members providing care through a sense of kinship duty should not be prosecuted via this new offence. Common Law and the existing domestic violence or abuse legislation adequately covers this group of people.

There are occasions where families informally contract with individuals (Non family members) to deliver care to a relative. In these circumstances the new offence should apply.

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

All formal care regardless of provider should be included such as Childrens Homes and Foster Care.

Informal Kinship care should be excluded for the same reasons as outlined in section 14 of the consultation document. The existing legislation adequately covers this Group of people.

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

All non-kinship relationships should be included regardless of setting or provider. This may in turn inhibit the amount or number of people willing to become involved in providing such services. However, the historical abuses which have emerged require the new offence to be applicable within all sectors including

voluntary organisations.

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

The proposals would benefit from a definition. The absence of a definition whilst allowing for a wide range of actions to fall within the scope of the offence unhelpfully may allow too broad an interpretation. Whether the offence covers acts both of omission and commission and whether it is the actions of the perpetrator/organisation or the impact on the individual which takes precedence should be made clearer.

It is considered that thresholds for enforcement of an offence of wilful neglect in the absence of a definition will prove challenging for police and prosecutors. In such circumstances prosecution may on the one hand follow where wilful neglect has been evidenced but fortunately with little impact on the individual and on the other hand a similar offence arises but with more damaging outcomes/impact on individuals. We are of the view that conduct rather than the outcome should be the main driver for prosecution if the introduction of the offence is to serve as a deterrent but aspects are relevant.

Other than in the case of emotional or psychological impacts of neglect all other types of neglect would be covered by common law offences. The impact of harm would influence the disposal applied should guilt be found. The difficulty faced in deciding on prosecution is that of defining thresholds for action to be taken and whether action should be taken on conduct of the offender or on outcomes. The former is more likely to serve as an active deterrent.

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

Yes No

As per response to question 5 there should be parity with Mental Health and Adult With Incapacity legislation.

Examples may include: poor organisational culture, governance and recruitment approaches; misallocation of resources; lack of training which contribute to neglect which are outside of an individual staff member's control.

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

Yes No

Organisations are responsible for the recruitment and selection of individuals, defining the role and ensuring appropriate checks and balances are in place to ensure care is of an acceptable standard and to identify individuals who may deliberately cause harm to people in their care. This should include failures to act as a result of whistle blowing or inadequately addressing complaints.

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

As per response to question 5 there should be parity with Mental Health and Adult with Incapacity legislation. We are of the view that penalties should reflect the both the prevailing circumstances behind the neglect and seriousness of harm arising for the individual(s) affected.

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

Penalties applied to organisation must be of a significantly greater amount to reflect the gravity of the offenses. £10,000 has proportionately more impact on an individual than it would to an organisation. Organisation should be censured by a proportionally representative amount which will underline the gravity of the offence committed.

The application of punitive actions through the various professional and service regulatory bodies would also have to be factored in when considering application of penalties.

10. What issues or opportunities do the proposed changes raise for people with protected characteristics and what action could be taken to mitigate the impact of any negative issues?

The offence should apply to everyone regardless of age; disability; gender reassignment; race; religion or belief; sex; pregnancy and maternity; and sexual orientation.

To date a low number of prosecutions have been brought under existing mental health legislation. An individual's level of capacity and their ability to present themselves as a reliable witness is deterring prosecutions being brought forward at an early stage in the prosecution process. Research into reasons for offences against people with disabilities or mental health issues being deflected would be beneficial in helping to address this issue.