

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

This extends the same protection to everyone as currently exists for mental health patients and those with incapacity. The principles of quality care should apply to everyone and in all settings, in accordance with Scottish Government policy of reducing avoidable harm.

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 that the offence should not cover informal arrangements. This is a very difficult question as we do know there can be deliberate harm in informal settings which we cannot condone but it would be difficult to have any enforceable arrangements for informal settings where there is no formal agreement of what specific tasks should be taking place. In addition the proposals could give leave carers at risk of vexatious complaints and might discourage unpaid care.

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

As the professional body for pharmacists we are not in a position to comment on specifics relating to social care service but in principle children should be given the same protection from providers as adults.

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

Yes No

The organisation should have this protection embedded in its working practices which any volunteer must adhere to.

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

Agree. No measure of deliberate neglect or mistreatment is acceptable and we feel that the criminal law should reflect this.

The proposal should cover any act of wilful neglect regardless of the level of harm suffered, this would be variable and very difficult to measure. It is the deliberate act of neglect of a duty of care which is pertinent to this and the proposal should encourage a culture of reporting before harm is suffered.

We do however have some concerns as to how wilful or deliberate neglect will be defined and proven and it is important that genuine mistakes and errors are not part of this process. There needs to be a culture of openness and learning from genuine mistakes and errors to continually improve systems and processes which impact on patient safety.

For the pharmacy profession there is a singular problem of concern which has not yet been resolved, where a genuine dispensing error can result in a criminal prosecution due to the wording of the Medicines Act 1968. We are aware that there is work progressing, albeit slowly, through Westminster to address this but until resolved, pharmacists require reassurance and need to be confident that these new proposals will not impose further workplace pressure.

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

Yes No

Agree. It is essential that provider organisations have appropriate governance, management and review structures that promote a zero tolerance of wilful neglect in both the culture and behaviour of the organisation and the people who work for it. Organisations will need to show that they have taken action when incidents occur to review procedures and minimise risk of re-occurrence.

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

Yes No

There should be a responsibility on organisations to ensure safe working practices. Consideration will need to be given to the systems and processes in place that ensure a commitment to improving patient care while fostering a culture of openness and learning from mistakes. It will be important that organisations do not blame individual employees for harm where there have been wider system failures. Proper processes for reporting and whistle blowing are essential to reduce avoidable harm.

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

This would give consistency.

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

As a professional body we do not believe this is within our remit.

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?

We do not anticipate any negative issues arise from this protective initiative.