

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

There seems to be no reason to exclude particular settings from these proposals.

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

Yes No

Unpaid carers frequently provide as much care as ‘formal’ services but are not always seen as equal partners in care or as experts in providing care. Whilst recognising that some people with support needs are neglected or mistreated in their own homes, we do not feel it would be reasonable for this proposed offence to cover unpaid caring situations, especially as incidents of neglect or mistreatment in this kind of caring situation are already covered under existing laws. There is no formal contract with unpaid carers and it would be detrimental to family relationships to try to formalise the relationship. Carers must have the freedom to choose how much they are willing and able to care and the people they care for must also have the choice to choose an alternative form of care if it suits their needs better. Carers also require support in order to maintain a safe and healthy caring role, and we would like to see further recognition of this need for support so that carers who are struggling with managing their caring responsibilities can be provided with help at the earliest possible stage.

The consultation document states in paragraph 14 that as this kind of caring situation takes place in the home and not in a health and social care setting, the offence should not cover this type of care situation. However, care at home services would be covered – and by definition this type of care also takes place in the home. In the current policy and service delivery context of Reshaping Care for Older People, and wider integrated health and care services, it is confusing to define home-based services in this way. In the future many more formal health and care services will take place in the home, and it is important to view these services in the same way as those that take place in more familiar health and care settings. All formal health and care services should be covered by this proposed offence, whether they take place in a home setting or in traditional health and social care settings.

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 social care services provided to children should be included in the scope of the offence, including early years provision and education for children with disabilities and long term conditions.

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

Yes No

This is difficult to answer as it is not clear how voluntary providers are defined & whether there would be a risk of inadvertently including unpaid carers in this category. Friends and neighbours who are caring for someone may not recognise or identify themselves as unpaid carers and may think of themselves as volunteers. It must be made clear exactly who is included in this category.

Some carers' centres and services provide support to carers and their families in the form of respite and sitting services or befriending services; although these are (usually) voluntary organisations, the services may be provided by paid staff or by volunteers. It is essential that carers' organisations who run these types of services are made aware of the introduction of a new offence of wilful neglect or ill-treatment, so that they can train and inform their staff and volunteers.

People who are providing care or treatment on a voluntary basis on behalf of a voluntary organisation will still have some kind of formal arrangement or contract in place with the person who is being treated or cared for, to define what services are offered, when services will take place etc. This seems to place them in a similar category to 'formal' health and care services and indicates that they should be treated as such for the purposes of this offence. We would suggest that more clarity is needed about how voluntary organisations and services provided by volunteers are defined within this proposed offence.

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

Yes – we support all the points made in the consultation paper regarding this matter. Attempting to measure the harm caused to an individual could lead to huge inconsistencies in how this offence would apply. Consistency is needed in prosecuting similar ill-treatment or wilful neglect by an individual, irrespective of

what harm the victims suffer.

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

Yes No

Yes. This ensures consistency with the other legislation and also ensures that organisations are responsible for providing training to their staff and are following correct disciplinary, misconduct and support procedures.

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

Yes No

It should apply to organisations when the failure of the organisation to provide adequate training, supervision or other control over its activities or the tasks carried out by its staff has led to or caused the neglect or ill treatment. However, this may be difficult to prove in real life situations.

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 ensure 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

We have no comments to make on this question.

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?

There is significant positive impact on disabled people, children and older people, all of whom are further protected by these proposals.