

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

Some clarification would be required to support this proposal – namely, clarification of the terms “formal” and “setting” being used in this context, especially in relation to the developing processes available through Self Directed Support where care can be commissioned, contracted and funded through public funding but managed by an individual within their own home.

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

Yes No

Other legislation is in place to cover informal arrangements. As with the question above there would need to be clarity around the definition of “informal”, giving clear guidance on support purchased through benefits e.g. Attendance Allowance, Carer’s Allowance etc. and Self Directed Support and whether these are classed as formal or informal

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

This is already covered by other legislation.

We agree that ill-treatment and wilful neglect of children in formal or informal health and social care settings should be illegal. We believe however that the existing regulation and legislation such as the Children and Young Persons (Scotland) Act 1937 section 12 (Cruelty to Persons under Sixteen) is sufficient to protect children and to prosecute those who wilfully neglect, ill-treat or abandon a child under 16 whatever the setting.

We therefore believe the new offence should NOT apply to

- the provision of any non-health children’s services such as :- children’s social care (fostering, children’s residential care, and social work), services for children with disabilities (which may or may not be described as health services), early years provision and education
- the provision of health care for children in settings or services, such as schools or children’s homes.

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

Yes No

There needs to be absolute clarity around the wording – highlighting “*on behalf* of a voluntary organisation”

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

Although there may be times when it is difficult to evidence wilful neglect when there is no actual harm, it is important to concentrate on the act of wilful neglect as opposed to assuming that this can only be addressed following an act where someone suffered harm due to an event. This could include individual actions as well as actions by the organisation through lack of training, proper processes, supervision, inadequate response to complaints etc.

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

Yes No

Often where concerns are raised about the conduct of an individual, this is symptomatic of failings within the wider organisation. It is important therefore not to assume that the neglect is solely due to the actions of an individual. Clear links to the Care Inspection process would need to be developed with information sharing protocols between the Inspection process and Contract Monitoring processes in order to obtain a full picture of incidents and concerns relating to all aspects of failed duty of care.

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

Yes No

Where there is evidence that the organisation has breached its duty of care through lack of appropriate systems to evaluate and monitor care being provided.
Where poor quality of care has been identified and remedial action has not been implemented.
Where complaints have been received and no appropriate action has been instigated to prevent recurrence of the issues raised.
Where there is evidence of an inadequate attitude to safe care at all levels within the

organisation.

Where governance arrangements within the organisation do not address issues of neglect immediately and comprehensively, looking at a whole system response to such issues.

This could apply to any level within the organisation including senior managers who have a significant role in decision making about how the care is managed and organised.

Suggest a need to look at similar frameworks in place in respect of other offences such as Corporate Manslaughter.

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

Yes, this would give a level of 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

Possible option of de-registration from professional bodies.

Barring of individuals from running or owning companies.

There would need to be an interface with existing professional bodies including SSSC, NMC etc. as well as PVG, the Care Inspectorate and Health Improvement Scotland.

Suggest similar legislation to England where a “publicity order” makes the concerns public.

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?

This could be seen as a positive development to provide a level of protection to vulnerable people not currently covered by other mental health legislation.