

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

It is important that any new offence introduced is applied consistently across settings and clear definitions of settings (and “wilful neglect” and “ill-treatment”) will be important in applying this offence.

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

Yes No

Although neglect may take place as a result of a failure to provide adequate informal care, it is hard to see what would be achieved by considering this as an offence or what clear definitions could be put in place to bring “informal care” within the scope of this offence. Other offences may apply in such circumstances and adult support and protection procedures are likely to be more appropriate in ensuring ongoing support to all concerned to ensure that this does not happen again. It is unfortunate that this proposal does not mention or acknowledge the place of adult support and protection in reporting and managing harm.

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

Consistency of application is important but further information about the way that existing legislation covers offences against children should be considered alongside this proposal.

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

Yes No

Where there is any clear agreement or contract for someone to provide care or treatment on a voluntary basis on behalf of a voluntary organisation it would appear sensible for the offence to apply, but again, clear definitions would be required.

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

It would not be practical or acceptable to develop a threshold of harm to be used to define such an offence. It is also possible that unacceptable conduct will not (by chance) result in harm. It is therefore essential that the offence is based on conduct rather than outcome.

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

Yes No

“Wilful neglect” or “ill-treatment” may be as a result of the behaviour of an individual or more widely as a result of inadequate systems or processes with individuals doing their best within such constraints. It will be important to distinguish between such circumstances in considering evidence if this offence is applicable.

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

Yes No

It should apply to organisations who are commissioned to provide treatment, care or support and who fail to do so adequately. Their failure may be through either action or inaction, examples could be:

- Shortcomings in providing care or treatment are identified but not addressed appropriately and within short timescales
- Concerns are identified about individual staff and are not addressed appropriately and within short timescales
- Inadequate policies and procedures exist for safe treatment or the safe delivery of care
- Staff are expected to undertake tasks outwith their competence and without appropriate training
- Inadequate levels of staffing are provided for the safe treatment or care of individuals

Identifying and dealing with such issues also need discussion and clear lines of responsibility agreed with regulatory and registration bodies

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

Such consistency is important

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

Issues of registration and de-registration for individuals need consideration with appropriate professional bodies. This will need careful interface with SDS approaches and the employment of personal assistants

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?

It is unlikely that this proposal would have a negative impact on people with protected characteristics. Introducing this offence would provide additional safeguards for those at present not covered by the MHCTA and AWIA.