

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

As harm is perpetrated across all formal health and social care settings, the offence should cover all these settings in order to protect those most at risk of harm, making organisations and staff who are providing the care more accountable for their actions and service provision. There appears to be a definite gap within legislation available for use to cover such circumstances.

Consideration should be given to defining 'formal health setting' and 'social care setting' so there is no room for ambiguity.

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

Yes No

Whilst it is accepted that in informal care arrangements culpability may be difficult to attribute, there will be many cases where one family member is clearly undertaking a caring role and, where they deliberately and wilfully neglect or ill-treat an adult at risk or who is vulnerable, then they should be held criminally accountable.

Including informal arrangements in the legislation has the potential to raise public awareness to the hidden harm, perpetrated in this type of setting.

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

Through decades of awareness raising, GIRFEC and the development of legislation and frameworks, child protection in Scotland ensures that the "safety of the child is paramount". To include social care services and residential establishments for children will enhance and strengthen child protection measure available. It will also make organisations and staff who are providing care more accountable for their actions and service provision. Consideration should also be given to including educational establishments within the terms of the proposed legislation.

Linking adult protection with child protection through this legislation will offer the opportunity to further raise the awareness of adult protection making the abuse of adults at risk more visible and making it as unacceptable as the abuse of children.

It is also recognised that certain criminal acts committed against children in health and social care settings could be dealt with under the provisions of Section 12 of the Children and Young Persons (Scotland) Act 1937 and therefore careful consideration needs to be given to the impact of any new legislation. However this act is clearly over 70 years old and perhaps the time is right to review its effectiveness in the 21st Century.

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

Yes No

Any person who has agreed or is contracted to provide care or treatment on a voluntary basis on behalf of a voluntary organisation, should be held accountable for their conduct and where this amounts to wilful neglect or ill treatment they should be subject to the same legislative provisions as statutory providers of care and treatment. This would ensure that adults at risk of harm who are wilfully neglected or ill treated have recourse to justice irrespective of the care or health setting they find themselves in or whether the perpetrator of that abuse is providing care or treatment on a voluntary or employed basis.

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 offence should concentrate on the act of wilfully neglecting or ill-treating the individual as this focuses on the intent of the perpetrator and in particular at the person's actions or lack of action as opposed to whether any actual harm was inflicted. It is accepted that it may be difficult to determine thresholds of 'harm' in these situations and when action should be taken.

Consideration must be given to the definition of terms as "wilful neglect", "deliberate neglect", "mistreatment" and "ill-treatment" appear interchangeable throughout the proposal. This needs to be considered further to ensure a consistent interpretation and response. Harm caused should be considered as an aggravating factor in any charge.

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

Yes No

Other legislation exists where organisations can be held accountable for the criminal action of an employee. Holding organisations to account for their

employees' behaviour in certain circumstances, increases corporate responsibility and leads to improved service delivery to service users ensuring they are being cared for according to their needs and that staff are aware of how this care must be undertaken. Being faced with the potential of criminal charges being brought for wilful neglect or ill-treatment of service users will prompt organisations to ensure staff are properly trained and supported to provide and maintain high standards and good practices.

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

Yes No

If it is clear that there is a gross breach of a duty by staff within an organisation to provide a standard of acceptable care or treatment and that behaviour amounts to wilful neglect or ill-treatment and is systemic or falls far below what can reasonably be expected by the organisation then an offence against the organisation should be considered. This should also include situations where staff have been inadequately trained or supervised. Organisations should be held to account for the arrangement of working practices, staff training, governance, complaints procedures and proactivity to check that all reasonable measures are in place to prevent wilful neglect.

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

Whilst it is acknowledged that both the Mental Health (Care and Treatment) (Scotland) Act 2003, and the Adults with Incapacity (Scotland) Act 2000 provide the maximum available term of imprisonment following conviction on summary, arguably a maximum to two years imprisonment following conviction on indictment is too lenient given the potential devastating consequences on already vulnerable members of society. That said, there needs to be consistency across related legislation containing similar offences to ensure fairness to all victims irrespective of their circumstances.

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

Consideration could be given to organisations being prohibited from delivering care services, removed from professional bodies, having assets seized or financial penalties imposed on them. Further to this, individual sanctions could be imposed on managers who are found to be negligent, if appropriate.

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?

The proposed legislation extends existing legislation to cover persons receiving care and treatment in care settings many of whom will have protected characteristics, however if subject to wilful neglect or ill treatment currently those responsible may not be liable to criminal prosecution. This legislation therefore offers an opportunity to address this imbalance and contribute to equality and access to justice.

The opportunities for people with protected characteristics to raise concerns or complain about wilful neglect or ill-treatment could be limited. Good practice from other areas such as the mandatory issue of complaints information, confidential advice lines, lay visiting, should be employed in an attempt to uncover neglect or ill-treatment.

The proposed changes will raise the expectation that people with protected characteristics should, rightly, be treated equally and fairly and will increase their access to justice. Training and awareness raising will be needed to ensure that people are not discriminated against.

General Comments

On the whole, the members of the national Police Scotland Adult Support and Protection Working Group applaud the Scottish Government for this positive move forward and welcome legislation which further supports adults who are at risk of harm. Although consideration should be given to the following:

Consultation such as this gives the criminal justice system the ideal opportunity to ensure legislation is fit for purpose, up to date and easy to enforce. Evidence on the effectiveness of any previous or similar legislation should be gathered and any learning identified in respect of these pieces of legislation, should be considered. In current legislation where wilful neglect or ill-treatment is a criminal offence, proving neglect or ill-treatment can be challenging at times through a lack of clear definition. Setting clear thresholds of conduct may assist in determining wilful neglect or ill-treatment.

The group is disappointed to see that no mention has been made of the Adult Support and Protection (Scotland) Act 2007 and would like to be assured that this legislation has also been taken into consideration during talks on the proposal.

Concerns have been highlighted in respect of Annex A and the naming of professionals which would be covered by the offence. Whilst acknowledging that the consultation states that the list is not exhaustive, we feel that any list of this type has the potential to exclude professionals who are in a position where they can ill-treat an individual, thereby not being covered by the legislation.