

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

The new offence should cover care settings in both the private and public sector.

There appears to be no reason for disparity in applying the offence to the private or public sector.

It should reduce risk of harm/abuse occurring in all settings and could improve care standards.

It should apply to care at home services especially as it is preferred that people are now supported in their own home wherever possible. This should be included in Sec 10.

There are concerns about creating a list of professional (annex A) If this list of professionals is limited then some professionals that have not been considered will be excluded. A definition of what is meant by professional would be preferred. In annex A this has been done for social care professional but not health professionals. We would question the reason behind this disparity. We believe that all paid people carrying out a caring role should be covered.

This legislation should reference the Adult Support and Protection Scotland Act 2007 as any adult in receipt of care services and is neglected in very probably an adult at risk as defined by the above legislation. It should also probably link to any guidance/legislation that comes from the current Scottish Government consultation ‘Statutory Duty of Candour’.

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

Yes No

There is concern that including informal care by family members would negatively impact on family wishing to take on a caring role. It may also prevent carers asking for help when they struggling to provide appropriate care. Although intentional harm can be caused by family members in a caring role there is already legislation to prosecute if this is in the best interest. It is unlikely that the perpetrator in this situation is caring for a number of individuals and therefore they will not be a risk to others.

Carers employed under SDS should be included. They have a contract of employment and therefore are legally obliged under their contract to provide a level of care and support.

There are some complex arrangements with regard how people are placed as a carer. For example through SDS or payment through attendance allowance. With the move to personalisation not all people providing a caring role are employed through a contract but they are also not an informal carer. These grey areas need to be considered when drafting legislation.

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

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 a contract in place to provide care and support. The contract can be with the individual or an 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

New legislation should mirror that of legislation that already exists in Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000.

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

Yes No

It is possible where concerns are raised about the conduct of an individual; this is due of failings of the wider organisation. There continues to be cases of institutional harm, where it is the practice of the organisation that causes individuals to provide care which causes harm. There are also cases where a culture of poor

care exists and problems raised with managers are not addressed. Issues such as; poor training, low numbers of staff, poor procedures and/or a tolerance of poor care by qualified staff may lead to wilful neglect/ill treatment. This is clearly the responsibility of the senior managers or owners of the care home or care at home service to address.

Clear links to the Care Inspection process and Contract Monitoring processes would be required in order to obtain a full picture of incidents and concerns.

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

Yes No

- Where concerns have been raised, acknowledged and no attempts have been made to rectify situations that are placing people in harm. For example such issues as inadequate training and support for staff, low staffing, poor care practices.
- Where service users' calls for help or evidence of distress are not responded to or are responded to in an aggressive or punitive manner.
- Where restraint or control are used inappropriately or unlawfully.
- Where inadequate attention is given to medical needs.
- Where the organisation does not take appropriate action against an individual that is viewed to be harmful to the people they are caring for.
- Where governance arrangements within the organisation do not address issues of neglect immediately and comprehensively, looking at a whole system response to such issues.

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

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

Options for barring individual/organisation from owning, managing or having an association with care organisations in the future should be explored

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?