

**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

We agree that all formal health and adult social care settings in public and private sectors should be covered. "Formal" suggests that people are specifically employed in these settings to provide health and social care: neglect or ill-treatment in that context should be covered by the offence.

This should align with the Scottish Government principles outline within the 20:20 vision for Health and Social Care.

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

Yes  No

We agree that the offence should not cover informal arrangements. Apart from the difficulties of proving such an offence in the context of an informal arrangement, family relationships are not solely about health and social care.

Whilst we agree with that this should be excluded from the legislation in terms of an offence if there is any evidence of maltreatment this would require to be addressed as many of these care groups are vulnerable adults.

**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

We think the offence should cover care services for children in particular areas such as special schools and any third sector organisations such as children's hospices

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

Yes  No

We do think the offence should apply to people who are providing care or treatment on a voluntary basis, and the voluntary organisations should be covered. Voluntary working suggests a degree of flexibility in when and for how long people work. An individual volunteer may not be able to provide a level of care on an ongoing basis to prevent neglect. Voluntary working can help to meet individuals' needs, but formal care should be in place for those at risk of neglect.

All wilful neglect and ill treatment should be included regardless of whether the carer is

paid or a volunteer.

**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

We agree that the offence should concentrate on the act rather than any harm suffered. It is the act itself and not the outcome which should be taken into consideration. Within the Pharmacy profession there is a singular problem of concern which has not yet been resolved, where a genuine dispensing error can result in a criminal prosecution due to the wording of the Medicines Act 1968. We are aware that there is work progressing, albeit slowly, through Westminster to address this but until resolved, pharmacists require reassurance and need to be confident that these new proposals will not impose further workplace pressure.

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

Yes  No

We agree that the offence should apply to organisations. Discussed further below. Organisations have a responsibility to ensure all staff have appropriate background checks carried out and that performance is reviewed regularly with feedback from service users.

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

Yes  No

In the same way that PVG is only a back-up to good supervision of staff, organisations should be aware of and accountable for the care provided by their staff. Where systems and processes within an organisation could contribute to neglect or ill-treatment, the organisations should be accountable. All good organisations should have systems to evidence that good systems of governance are in place and are being applied in practice. They should anticipate and prevent harm through robust systems for risk, patient safety and investigation of near misses. They should be able to demonstrate learning and sustainable change from adverse events, complaints and feedback.

**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

The penalties should be the same.

**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

No Comment

**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 changes should offer older people and those with disabilities who utilise health and social care on a long-term basis more confidence that neglect or ill-treatment is unacceptable.

The proposed changes may adversely impact on the morale of care home staff unless the introduction is sensitively handled.