

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 formal care settings in both the private and public sector for the reasons as follows:

It would be equitable for the new offence to cover all types of settings across both sectors

It would be important that individuals in all settings would have equal access to the protection afforded by the creation of this new offence. Moreover, integration of health and social care will bring jointly commissioned or provided services.

It should provide a criminal course of action for individuals who have experienced wilful neglect in any setting, and by anyone providing paid care. Attention should be paid to ensure that the specific list appended at ANNEX A does not exclude some of the workforce. Care that is provided within individuals own home environments should be included this being a preferred option for many people with both care and health needs.

Carers employed as part of Personalised Support should also be in the scope of this legislation

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

Yes No

Many individuals rely on the care provided by neighbours, friends and family members. Sometimes that care cannot meet all needs and carers in that situation must be able to freely identify shortfalls in the care of the individual and to seek assistance. It is important that there is no fear associated with doing this. There are criminal measures available where carers cause harm or assault. Adult Support and Protection measures can also assist where carer behaviour is untoward.

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

The new offence should cover social care services for children including fieldwork and residential staff.

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 requires to be clarity in relation to this question. If a voluntary organisation is engaging either staff or volunteers as part of a contract to provide care to an individual the offence should apply, potentially to the individual providing care and the 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

It is very helpful that the offence focuses on neglectful actions as it relieves the onus to prove that harm resulted or the onus to show that the neglect caused ensuing harm
There will at times be evidence of wilful neglect when there is no actual harm, this may be particularly relevant to organisations behaving in a way that is wilfully neglectful.

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

Yes No

There are situations where both individuals and organisations are at fault. Neglectful actions on the part of an individual may reflect the cultures, practices or failings of the organisational context they are working in

It is helpful that there is provision for the offence to apply to organisations. Where poor care exists and neglect occurs due to unacceptable staffing levels, training or basic lack of appropriate systems this would be appropriate. Particular consideration may apply to organisations where there is neglect associated with a desire for profit or fiscal gain. Failure to properly implement inspection requirements and recommendations and where neglect then ensues as a consequence may indicate wilful neglect, and dictates a need to consider how the offence would link with Care Inspectorate powers.
Where an organisation has failed to address and rectify poor, abusive or neglectful practice this offence could apply

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

Yes No

This list from the Social Work Scotland response is comprehensive with one addition (in bold). In some instances it would be important to differentiate the circumstance warranting a non- criminal corrective action from the Care Inspectorate or Contract Management activity versus the circumstance that would warrant criminal intervention.

- Where a pattern of inadequate nutrition, fluids, heat, privacy, access to social activity, cleanliness, attention to personal hygiene is present.
- 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 or manual handling practices are used inappropriately or unlawfully.
- Where inadequate attention is given to medical needs.
- Where any failure in the service including inadequate training, low staffing levels or poor care practices which have the potential to cause harm or have caused harm which are brought to the attention of adult support and protection services, Police Scotland and/or the Care Inspectorate and are not addressed within a reasonable period.
- Where breaches in basic care standards have the potential to cause or have caused significant harm.
- 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 complaints have been received and no appropriate action has been instigated to prevent recurrence of the issues raised. **Any other form of failure to address known concerns of inadequate or poor practice including a failure to properly investigate these**
- Where there is evidence of an inadequate approach 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

Financial penalties should be more flexible where organisation has made large profits from the provision of neglectful care

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

As above

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?

Any individuals or groups who are more likely to receive informal and unpaid care only (e.g. some ethnic groups) may be disadvantaged by the exclusion of care by relatives / informal carers in the scope of the offence.