

General comments

We were very surprised that the "Consultation on Proposals for an Offence of Wilful Neglect or Ill-treatment in Health and Social Care Settings" fails in any part, including the background introduction, to make any reference whatsoever to the Adult Support and Protection (Scotland) Act 2007 (ASPA). This is really a serious omission.

Anybody wilfully neglected in a care home is certain to be "an adult at risk" as per Part 1, 3 (1) and(2) of the Adult Support and Protection (Scotland) Act 2007 and as such the subject of local authority "inquiries" and quite probably an adult protection case conference, and possibly joint police social work, or joint social work/care inspectorate inquiries. A failure to co-operate with such inquires or anyone obstructing the inquiries of a council officer may be committing an imprisonable offence under Part 1 Section 49 of ASPA. This fact is very relevant to the proposed new legislation, and yet has not been mentioned.

The new proposed legislation seemingly has not been assessed for its compatability with the adult protection legislation. Prior to any legislation being drafted it is recommended that such an assessment is undertaken; indeed a mention of this draft legislation at the National Adult Protection Policy Forum would be a welcome development.

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

Yes – it should also consider any facilities run by the third sector that provide care for patients under the new health and social care arrangements.

We are unsure though how this could be implemented/policed to include care in people's own homes.

Agree with replicating the mental health model.

We agree that this would be most appropriate. However, we see no reason why private and public care providers operating in the provision of care services in the community (ie in people's own homes) would be exempt from the proposed legislation.

Additionally we are concerned that the list of health and social care professionals in Annex A may have unintended consequences. We believe that all people carrying out a caring role should be covered. If an attempt to limit "professionals" to a specifically designated group is made, then it is possible that the majority of the workforce and especially company owners may be excluded.

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 do not agree that any group of “adults at risk” or indeed any individual should receive less protection from wilful neglect than any other group. We do not accept that care at home or indeed care provided on an unpaid basis should be excluded from this legislation. The recent introduction of Self Directed Support could have opened the door to increasing amounts of neglect and also of financial abuse. The proposed legislation provides an opportunity for “more vulnerable” adults to receive increased protection and we would be in favour of this opportunity being taken.

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

Areas such as special schools and any third sector organisations such as children’s hospices.

Agree that there is already lots of guidance/legislation about children and if included this may become overly complicated.

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

Yes No

Yes, this is particularly important if third sector organisations are going to share responsibility for delivery of care under health and social care integration.

The same point as before applies to this question. We can see no good argument in favour of the denial of legal protection to “adults at risk” because they happen to live in one particular setting rather than another. Our experience of implementing the Adult Support and Protection (Scotland) Act 2007 is that our most vulnerable citizens are abused and exploited (including neglected wilfully) in all settings and by paid and unpaid carers.

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 consequences for someone already mentally or physically impaired of wilful neglect may be impossible to assess in most cases. It is therefore appropriate for the act of wilful

neglect to be the thing that the new offence would concentrate on in order that the new Act would in fact be used.

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

Yes No

If private voluntary or public bodies provide residential, hospital or home care services of such a low standard or with such poor funding that it is inevitable that the recipients of services will suffer from neglect then it is quite appropriate for the organisations concerned to face action under the criminal law. Indeed this may be essential to prevent organisations “hiding” behind individual employees struggling to provide care services in financially impossible circumstances.

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

Yes No

In the event that there is evidence there has been a failure to monitor staff performance or create clear expectations of the way individuals should be treated.

Where an organisation has :

- Failed to provide sufficient resources to enable care to be provided in a non neglectful way.
- Failed to employ sufficient numbers of effective staff.
- Failed to employ staff with appropriate qualifications.

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

In respect to organisations, courts should be given greater discretion to administer justice given the circumstances of each case. For example a large organisation successfully prosecuted and having been found to have made significant profits through the provision of neglectful services should be subject to far greater financial penalties than the £10,000 available to punish an individual under section 315 of the Mental Health Act.

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 ✓

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?

There could be circumstances in which a practitioner could be accused of wilful neglect as a result of choices that have to be made that would compromise their physical capability (eg lifting someone) protected characteristics or beliefs (eg close physical contact with member of opposite gender).

Some ethnic communities are known or believed to be much more likely to “keep” their particularly fragile and very elderly community members at home and within their communities for longer periods than the “indigenous” Scottish population.

With this in mind any suggestion that the offence of wilful neglect should be confined to people living in institutional settings could be said to discriminate against more vulnerable people from ethnic minorities.