

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

NB : ALL our responses (below) are specific to the proposal (Question 3) that the new offence cover social care services for children.

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

N/A

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

Yes No

Comments

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

Yes, but should not include foster carers or kinship carers who are not employees or (usually) paid carers. *

* See the section below taken from the ADCS response to the consultation in England for a contrary view. They also took the contrary view on the question of having a threshold of harm.

Scope of the offence

5.0 We agree that the offence should apply equally to children, young people and adults who are NHS patients. Moreover, we believe that the principles could be applied more widely to include all formal health care settings used by children and young people (including services used by children and adults) in the public and private sectors.

5.1 We do not support the offence being extended to other children's services – they are not analogous with adult social care services. We believe there are sufficient existing criminal offences which address ill-treatment, neglect (wilful or otherwise) and child cruelty. We must also be mindful of the roles and responsibilities of professional bodies and/or regulators, which oversee the conduct of practitioners working in registered and/or regulated professions, who in addition to individual employers can take appropriate disciplinary action against a practitioner for misconduct.

5.2 These offences are set out in a comprehensive legislative framework for protecting children and young people and keeping them safe from harm in both formal and informal children's social care settings. This legislative framework includes, but is not limited to, Sections 17 & 47 of The Children Act 1989, Section 1 of The Children and Young Persons Act 1933 (we acknowledge that in respect of the latter, hospitals may not fall within the scope of the provision - hence we support the extension of the provision of the proposed new criminal offence being applied equally to children, young people and adults in healthcare settings). Furthermore, provisions in Section 5 of The Domestic Violence, Crime and Victims Act 2004, as amended created a new offence of causing or allowing the death of or serious harm caused to a child or vulnerable adult. This offence is applicable in informal settings, including a child's home.

5.3 In addition to the existing criminal offences which address ill-treatment, wilful neglect and child cruelty, we strongly believe that sufficient other safeguards exist in respect of the protection and safety of children and young people

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

Yes No

If they are paid as part of a contracted service to provide care, the offence should apply.

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

No, the degree of harm suffered must be relevant as it would be for other offences against the person.

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

Yes No

This might be difficult in practice. Organisations are made up of individuals. An approach similar to that of corporate manslaughter may be more appropriate - which focuses on the way the activities of an organisation are managed and organised, amounting to a gross breach of a relevant duty of care.

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

Yes No

Comments

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

Comments

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

Comments

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?

Comments