

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 offence should cover all areas where there is a duty of care (not simply a duty TO care) this covers private and public sectors.

The Shadow Integration Board (SIB) do not think this should be restricted to only adult services, as suggested by the question.

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

Yes No

The SIB agree that informal care arrangements should be excluded from this legislation – the current legislation e.g. MH Act, AWI, CYP Act all have provision within them that would cover the informal care setting.

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

All formal services should be covered by the legislation.

It is inconceivable that any society should think their children as less worthy of protection than adults.

Even though there are current safeguards within children's legislation, there are also safeguards within adult legislation – the proposal, as we understand it is to enhance these protections; in that regard children must be included under the protection of any new legislation.

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, it should cover all settings where there is a duty to care, and or a duty of care.

The issue of payment, or otherwise, for the care being provided is irrelevant.

Of significance – where care is being provided under Self Directed Support funding the same duty and standards of care should be applied i.e. the person(s) delivering the care have a duty to care and not wilfully neglect or ill treat another vulnerable person.

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

Yes, to do otherwise would reduce the offence to one of happenstance – the intention of neglect should not be linked to the outcome, it is the wilfulness that is the determining factor.

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

Yes No

The SIB agrees that the offence should apply equally to organisations as well as to individuals.

Wilful neglect, leading to ill treatment, may occur as a result of the way that organisations manage their activities (workload, rosters, staffing) amounting to a breach of their duty to care – examples include:

- Insufficient staffing levels to carry out essential care
- allocating sufficient time to staff to complete essential elements of care
- lack of personal privacy due to environment

Currently it has to be proven that a sufficiently senior individual was wilful in their actions and acted in the capacity of a 'directing mind' within the organisation, this would reverse the assumption and require the organisation to ensure sufficient staffing/resources/practices to keep individuals safe – we consider this to be a positive step in ensuring organisations take their responsibilities to care seriously.

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

Yes No

As described in the answer above – where the organisation fails to ensure sufficient resources (people and environment) or where insufficient time is not allocated for ‘tasks’ or where staff are insufficiently trained to safely carry out care duties.

Of note – this should be where a pattern of poor resources, poor environment, training exists not simply where this occurs as a one off event. In circumstances of a one off event the organisation should be able to demonstrate it took appropriate safeguarding steps.

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

Yes, we consider that there is no reason why there should be a difference.

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

Yes, the court should have options including prison, unlimited fine and/or the ability to close an establishment.

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?

People with protected characteristics should be subject to the same safeguards applied – there should be no specific issues.