

Consultation on Proposals for an Offence of Wilful Neglect or Ill-treatment in Health and Social Care Settings



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

CHILDREN 1ST

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Taylor

Forename

Annie

2. Postal Address

83 Whitehouse Loan

Edinburgh

Postcode EH9 3HH

Phone 0131 446 2310

Email

annie.taylor@children1st.org.uk

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick ONE of the following boxes

Please tick as appropriate

Yes No

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

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

We agree in principle with this proposal but wish to make it clear that the distinction between formal and informal care is not always an easy one to make when working with children's services. Kinship carers, for example, could be caring for children on a completely informal basis; through a private law

arrangement such as a Kinship Care Order; or in a formal way through a decision made by a children's hearing. Depending on their location some carers will receive allowances, others will not. Further consideration will need to be given to the terms 'informal', 'paid' and 'legal obligation' (Page 6).

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

If there is a new offence we believe it should cover social care services for children, as otherwise there would be disparity in the law leaving children, who are always vulnerable due to their age, being left unprotected.

In theory this law should cover all services providing care and protection to children. However we acknowledge that care arrangements for children can be complex, and these complexities need to be given appropriate consideration during the formulation of this legislation. Consideration would need to be given, for example, to what would happen if a Looked After child living with foster carers was wilfully neglected or ill-treated. The care is paid for but is provided in the carer's home. Who would be responsible in this case; the carer or the local authority, or both?

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

Yes No

Those providing care or treatment on a voluntary basis often take on roles that are challenging and require a great deal of responsibility. At CHILDREN 1ST last year 801 volunteers worked with us, 49% of whom worked directly within children and family services. Whilst the most important consideration must always be the wellbeing of those being cared for, it is also imperative that we do not alienate those who would like to volunteer. The emphasis should be on creating the right culture, with wellbeing at the core, and with robust recruitment procedures and appropriate support and supervision available for all staff and volunteers. At CHILDREN 1ST anybody applying to be a volunteer within children and family services attends our Volunteer Training and Assessment Programme (VTAP).

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 level of wilful neglect or ill-treatment is acceptable and the law should reflect

this.

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

Yes No

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

Yes No

We agree that this law should apply to organisations in specific circumstances, for example if an organisation has created and maintained a culture in which wilful neglect and ill-treatment is an acceptable part of practice, or where poor employment policies and procedures, lack of training, support or supervision enable people to be placed at risk. Clearly this would need to be carefully and specifically defined.

It is important to acknowledge, though, that we should be constantly aiming to improve the services we provide in Scotland, and this means focussing not only on sanctions but also on highlighting good practice and enabling a culture of trust, honesty and self-reflection. If this law is to apply to organisations it should also make reference to the types of support, training and guidance that should be made available to staff and volunteers within organisations.

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

It is important that the law is consistent and that people know what it says, and consistent penalties help to support this. N/Just as important as penalties, though, is that this law is linked to other legislation around disclosure checking and PVGs; those who have wilfully neglected or ill-treated someone in their care must be prevented from working with other vulnerable people.

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

N/A

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?

N/A