

PROPOSALS FOR THE CREATION OF AN OFFENCE OF WILFUL NEGLECT OR ILL-TREATMENT WITH REGARD TO SERVICES FOR CHILDREN UNDER THE AGE OF 18 – FURTHER ENGAGEMENT

CONSULTATION QUESTIONS RESPONSE FROM SOCIAL WORK SCOTLAND

1 Do you agree that the definition of a child set out at paragraph 9 should be used to determine who is a victim of the new offence?

Yes No

Comments

2 Do you agree that the new offence should be defined as occurring where health or social care is delivered to children?

Yes No

Comments

We can see that the Scottish Government are keen to extend the Wilful Neglect legislation to children, but we do not believe it is necessary. Existing regulation and legislation such as the Children and Young Persons (Scotland) Act 1937 section 12 (Cruelty to Persons under Sixteen) is sufficient to protect children and to prosecute those who wilfully neglect, ill-treat or abandon a child under 16 whatever the setting. We recognise that this does not fit with the updated definition of a child as contained in the Children and Young People Act (2014).

3 Do you agree that the new offence should concentrate on the act of wilfully neglecting, or ill-treating a child rather than any harm suffered as a result of that behaviour?

Yes No

Comments

We agree that no measure of deliberate neglect or mistreatment is acceptable however we believe that current legislation along with governance and registration arrangements are sufficient to address situations when they arise.

4 Do you agree with the definition of Care Worker, as outlined in the provisions of the Bill, as per paragraph 15? Please explain your view.

Yes No

Comments

No comments

5 Do you think there are any workers missing from the definition at paragraph 15 who should be included? Please provide a list

Comments

If schools were to be included in the legislation, the list would need to be reviewed to include teachers, learning assistants and school staff who might administer medication or meet the personal care needs of a child in the school. We would also add foster carers, kinship carers and personal assistants who are also family members.

6 Do you agree that the offence should apply not only to individuals, but also to organisations providing services for children?

Yes x No

Comments

Should the legislation be passed we would agree that it should be consistent with the legislation as it applies to adults and should therefore apply to both individuals and organisations.

7 Do you think there are any care providers missing from the definition above who should be included? Please provide a list

See point 5. Teachers, learning assistants, foster carers, kinship carers and personal assistants who are family members.

8 Do you agree that the offence should include all services which are delivered within a social care setting for children?

Yes x No

Comments

Should the legislation be passed we would agree that it should include all services which are delivered within a social care setting for children.

9 Are there any services listed at paragraph 19 which you believe should be excluded from the scope of the offence? Please provide a list below.

Comments

No

10 Why do you think these services should not be covered by the offence?

Comments

N/A

11 Are there any additional services which are not listed at paragraph 19 which you think should be included in the scope of the offence? Please provide a list below.

Consideration should be given to the inclusion of early years provision and other educational services including schools; foster care households, kinship care households and family homes where a family member is a personal assistant should also be included.

12 Why do you think these services should be covered by the offence?

Comments

Wilful neglect and ill-treatment is a risk in any setting where children spend time:

1. Schools are not included as a place where health or social care is delivered to children yet many children do receive care in school such as children with additional needs and disability. Schools is also a place where children are cared for in the absence of parents or other carers.
2. Foster care households should also be considered. Although we agree that in foster care the intention is to create a family environment (and the legislation would not apply in households), there are short term or emergency placements in foster care and we should question why the resulting legislation would not apply in these situations.
3. The Scottish Government has put kinship care on an equal footing to foster care and for the same reasons kinship care should also be covered.
4. Family members can be appointed as personal assistants under the Self-Directed Support legislation. In this situation there are both family members and paid carers and the legislation should apply there too.

13 Do you agree that the proposed offence should cover all children's healthcare services, including those which are specific to children's healthcare?

Yes x No

Comments

14 Do you agree that the scope of the offence should not extend to informal care arrangements?

Yes No x

Comments

Wilful neglect and ill-treatment is a risk in any setting where children spend time including informal care arrangements.

15 Do you agree that the penalties for individuals laid out at paragraph 24 should be applied to the new offence? Please explain your view.

Yes No

Comments

No comments

16 Do you agree that the penalties for organisations laid out at paragraph 25 should be applied to the new offence? Please explain your view.

Yes No

Comments

No comments

17 Do you think that extending the adult provision on wilful neglect and ill – treatment in the Bill to children will interface effectively with existing legislation? Please explain your view.

Yes No

Comments

We believe that there is a significant amount of regulation and scrutiny around services for children in Scotland, particularly where there are concerns of neglect or ill-treatment. We are confident that cases of wilful neglect or ill-treatment of a child by any individual can be prosecuted using existing legislation where this is appropriate and in the best interests of the child.

We are concerned at adding additional duties to comply with additional legislation onto already stretched staff when we do not see an additional benefit for children as we believe there is adequate legislation already in place to allow any crime to be prosecuted.

18 Do you have any other comments which you wish to make?

Comments

Should the legislation be passed it is essential that there is clarity regarding the definition of wilful neglect or ill-treatment in order that the stated principle that the offence is 'not intended to cover instances of genuine error or accident' is upheld.

It should also be noted by ministers that practitioners are often faced with situations that are complex and the tone of the legislation does not appear to promote a supportive and empowering approach to practice and may contribute to a culture of fear and punishment. This may lead to more risk-averse and defensive practice and decision making. This should be addressed within any definition of wilful neglect or ill-treatment to ensure that difficult decisions can be made on the basis of sound assessment and professional judgement rather than fear of prosecution.