Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill

Scottish Social Services Council

This response is from the Scottish Social Services Council (SSSC). The SSSC is a Non Departmental Public Body (NDPB) and was established by the Regulation of Care (Scotland) Act 2001. We are responsible for registering people who work in social services, regulating their education and training and the collation and publication of data on the size and nature of the sector’s workforce. We are also the Scottish partner in Skills for Care and Development, the Sector Skills Council for the care sector in the UK.

Our work increases the protection of people who use services by ensuring that the workforce is properly trained, appropriately qualified and effectively regulated. We aim to protect people who use services, raise standards of practice, strengthen and support the professionalism of the workforce and improve the outcomes and experience of people who use social services. The social service workforce provides care and support for some of the most vulnerable people in Scottish society. These workers often deal with complex care needs and make a real difference to peoples’ lives. The social service workforce employs more than 189,000 people in Scotland (Scottish Social Services Council, 2014).

Our vision is that our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce. Our purpose is to raise standards and protect the public through regulation, innovation and continuous improvement in workforce planning and development for the social service workforce.

Our response focuses on the proposed duty of candour and offence of wilful neglect or ill-treatment (question 4 onwards).

4. Do you support the proposed duty of candour?

We welcome the proposed duty. The development of a culture of candour within health and social services is desirable. There are a number of initiatives which contribute to this aim. For example, The Codes of Practice for Social Services Workers and Employers describe the standards of conduct and practice within which they should work.

The Code of Practice for Employers of Social Service Employers notes that employers:

- must have “systems in place to enable social service workers to report inadequate resources or operational difficulties which might impede the delivery of safe care and working with them and relevant authorities to address these issues”
- must establish and promote “procedures for social service workers to report dangerous, discriminatory, abusive or exploitative behaviour and practice and (for) dealing with these reports promptly, effectively and openly.”
The Code of Practice for Social Service Workers notes that workers must:

- use “established processes and procedures to challenge and report dangerous, abusive, discriminatory or exploitative behaviour and practice”
- “bring to the attention of your employer or the appropriate authority resource or operational difficulties that might get the in the way of the delivery of safe care”
- inform “your employer or an appropriate authority where the practice of colleagues may be unsafe or adversely affecting standards of care.”

The SSSC is currently reviewing the Codes of Practice for Social Service Workers and Employers. We are gathering views from a range of people including employers, frontline workers, carers and people who use services. The codes will be amended to reflect the implications arising from the proposed duty.

5. Do you support the proposal to make wilful neglect or ill-treatment of patients a criminal offence?

We welcome the proposal. We note that the offence, as proposed in the Bill, will apply to adult health and social care services. We believe that the offence should apply to workers and organisations providing social care services for children, including residential care, early years, day care of children and childminders.

6. Is there anything you would add/remove/change in the Bill with regards to these provisions?

Duty of candour

We welcome the provisions detailing what must happen for the responsible person to follow the duty of candour procedure. We believe that these are sufficiently clear to be followed by staff in the event of an “unintended or unexpected incident”.

There will be a need for both organisations and workers to ensure that staff have the support, knowledge and skill required to comply with the duty of candour. Social service workers must be accountable and take responsibility for maintaining and improving their knowledge and skills, as set out in the Codes of Practice for Social Service Workers and Employers.

We welcome the plans for guidance that would support integration with existing processes and emphasise the requirements for support, training and identification of learning and improvement actions. Successful introduction of the duty would require work to consider how best to integrate the
requirements on organisations and workers into existing frameworks and processes.

**Ill-treatment and wilful neglect**

We welcome the decision for the offence to apply to care workers and volunteers who are volunteering on behalf of a voluntary organisation. We also welcome the decision to exclude unpaid carers. Some people will have multiple roles. For example, some people will be in a paid role and providing unpaid care. There will be a need to consider the particular circumstances for these people.

We welcome the broad scope of the care provider offence, which we hope will deter organisations from ignoring their responsibilities deliver high quality services. We would suggest other penalties for organisations found to have committed the offence:

- disqualification from providing a care service
- disqualification of an individual from holding a directorship
- interdict a charity from representing itself or a person from representing the charity as being established under the law of Scotland
- interdict a person from acting or representing itself as acting on behalf of a charity or body by providing that certain breaches may result in sanctions under other relevant legislation e.g. Charities and Trustee Investment (Scotland) Act 2005.

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**References**