

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF/MD/0711/14

David Rees AM
Chair of the Health and Social Care Committee
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4 September 2014

Dear David,

Supplementary Legislative Consent Motion (LCM) for the Criminal Justice and Courts Bill – offence of Wilful Neglect or Ill-treatment

Thank you for the letter addressed to Gwenda Thomas AM regarding clarification on issues relating to the supplementary LCM. As I will be leading the debate I thought it appropriate to respond to your queries.

Since I laid the LCM on 24th June 2014, the First Minister outlined the legislative priorities for the Assembly over the next year. Within this announcement, on 15th July, the First Minister announced a Bill to develop the regulatory and inspection regime to protect and promote the wellbeing of people in Wales in most need of care and support.

The issue of the overlap between the subject matter of these offences and the forthcoming Regulation and Inspection Bill was not covered in the Legislative Consent Memorandum and I hope it will assist the committee to outline the view which the Deputy Minister for Social Services and I have taken.

As far as social care workers are concerned, provision for an offence of this nature would be within the scope of the forthcoming Regulation and Inspection Bill. The Bill is concerned with the regulation of social care providers and the social care workforce. It is limited solely to social care; the offence created in the UK Government's Bill applies to both health and social care.

There is no opportunity to legislate in relation to healthcare workers in this Assembly term. Even if such an opportunity arises in the next Assembly is even less certain and in any event it would mean that the creation of the offence in relation to healthcare workers would be several years away. Additionally, if the offences were to be created in two separate bills – one for health and one for social care – there is no guarantee that the offences would be created in identical terms.

For these reasons the Deputy Minister and I consider it is right for the provisions in the UK Bill creating these offences to apply to Wales as well as England, subject to the Assembly's agreement. I have therefore laid a LCM before the Assembly, requesting its consent to the creation of the offence in relation to both healthcare workers and social care workers through the UK Government's Criminal Justice and Courts Bill.

In response to your other queries:

Delivering Safe Care, Compassionate Care sets out the Welsh Government's response to the Robert Francis report into the events in the Mid Staffordshire NHS Foundation Trust. It demonstrates our commitment to deliver safe and compassionate care to all who use our services. The Welsh Government aims to ensure we have a culture which focuses, at all times, on the needs and rights of patients. *Delivering Safe Care, Compassionate Care* talks about the need to develop an intolerance of unacceptable care. Creating an offence of this kind therefore complements Welsh Government policy.

In *Sustainable Social Services*, published in 2011, the Deputy Minister for Social Services set out the principles for social care going forward. A key principle was safety, articulated as: "We all, whether young or older, have a right to be protected from avoidable harm and from neglect."

The creation of this offence will contribute to meeting this principle, and the underlying policy aims that flow from it, by making it clear that wilful neglect will not be tolerated in our social care system. It will form part of a wider legislative framework that protects citizens from abuse and neglect in social care. In both health and social care it will send out a message and will provide a deterrent to those working in health and social care that they can be held to account through a criminal process.

The Department of Health consultation on behalf of England and Wales drew out the fact that care workers in excluded health care settings will still be subject to section 1 of the Children and Young Persons Act 1933. This section makes it a criminal offence for any person who has responsibility for any child or young person under 16, to wilfully assault, ill-treat, neglect, abandon, or expose that child in a manner likely to cause the child unnecessary suffering or injury to health.

The Department of Education (England) took the view that it was unnecessary to extend the scope of the offence beyond formal healthcare settings as a care worker providing healthcare in one of the excluded children's services and settings could be held to account in the event of them ill-treating or wilfully neglecting their patient, as the potential application was limited and there are already adequate safeguards in those circumstances.

The exclusion of local authorities from the scope of the care provider offence is not a blanket exclusion, but only in relation to the exercise of their education functions, their function of securing sufficient childcare in their area under part 2 of the Childcare Act 2006, or in relation to the exercise of their social services functions as regards children. This includes where services that could amount to healthcare are included as part of an integrated package of services set up by the local authority or its agent, tailored to the needs of a particular child.

This exclusion is included at the request of the Department of Education (England), in order to provide consistency with regard to children's non-health settings and services and to exclude liability in circumstances where there is merely an element of healthcare in arrangements made by a local authority in the exercise of its social services functions. A local authority can however be liable under the care provider offence in relation to the exercise of its functions regarding adult social care, safeguarding vulnerable adults, etc.

I trust this clarifies the important points you have raised.

Best wishes

Mark Drakeford.

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