

Consultation Response

Survey – Anne's Law Draft Regulations

October 2025



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Mental Health and Disability sub-committee welcomes the opportunity to consider and respond to the Scottish Government consultation: *Survey - Anne's Law Draft Regulations*.¹ The sub-committee has the following comments to put forward for consideration.

Identification of Essential Care Supporters - Regulation 2

1. Do you agree or disagree with these statements?

The process for consulting residents, representatives, and family or friends is clearly described within the regulations

Disagree

The criteria (number 2 above) for deciding who can be an Essential Care Supporter are appropriate

Disagree

2. Is there anything else you think care home providers should think about when they are identifying an Essential Care Supporter?

We have some concerns regarding how the proposed wording of Regulation 2 may work in practice.

The regulations place a duty on the provider to identify an Essential Care Supporter for 'every resident'.

Some residents will have capacity to choose an Essential Care Supporter- it is unclear whether the provisions of proposed Regulation 2(2) would allow the provider to over-ride a capacitous decision in this regard.

Some residents will lack capacity, and may have an attorney or guardian with appropriate powers appointed under Adults with Incapacity (AWI) legislation.

¹https://forms.office.com/Pages/ResponsePage.aspx?id=R3T3DoMQ7E24nyfHZQdoQDx3FYi_MrdDvLE_WsZmPvFUMEU5WThMWFewS1RLSUhXS1BEWjRXV0w3Wi4u

Whilst proposed Regulation 2(2)(a) refers to the wishes of a 'representative', it is unclear whether this means such an attorney or guardian, and again whether a decision of a representative with appropriate powers can be overridden by the provider.

Proposed Regulation 2 requires the provider to identify 'at least one individual' as an Essential Care Supporter for each resident, but it is unclear how this would operate where the resident wished to have more than one Supporter or more than one person puts themselves forward.

We are extremely concerned that proposed Regulation 2(2)(b) appears to incorporate a best interests test- we would welcome clarity on how it is intended that this will operate alongside existing AWI legislation, which rejects a best interests test in favour of a principles-based approach and the concept of benefit to the adult.

Right To Visit: General - Regulation 3

3. Do you agree or disagree with this statement?

The duty for care home providers to facilitate visits is clearly described within the regulations

Disagree

Suspension of Visiting - Regulation 4

4. Do you agree or disagree with these statements?

The circumstances in which visiting can be suspended is clearly described within the regulations

Disagree

The duty to lift visiting suspensions as soon as possible is clearly described within the regulations

Disagree

Essential Visits - Regulation 5

5. Do you agree or disagree with these statements?

The types of Essential Visits are clearly described within the regulations

Neutral

It makes sense to class these visits as 'essential' within the regulations

Neutral

6. If you don't think the visits listed in the regulations should be classed as Essential Visits, what types of visits should be?

We have no specific comments.

Review of Decision to Suspend Visiting - Regulation 6

7. Do you agree or disagree with these statements?

The grounds for requesting a review are clearly described within the regulations

Disagree

The grounds for requesting a review are appropriate

Disagree

The review requirements for the review request to be in writing is reasonable

Neutral

8. If you think there should be any other grounds on which a request could be made please list them here

We note that proposed Regulation 6 would provide for review of a decision to suspend visiting. In our response to the previous consultation on Anne's Law,² we noted that "It is not sufficient to simply state a right in law. Any new legislation must provide an effective mechanism to allow adults living in care homes to secure their rights. This may be via action by the Care Inspectorate or other body empowered to enforce the law, by mediation, by access to the courts or by a combination of these mechanism[s]." During Stage 3 consideration of the Care Reform (Scotland) Bill, we highlighted that the Bill as amended at Stage 2 did not contain detail of a process of review or redress if a care home were to be perceived to have unreasonably refused a visit under these provisions.³ Whilst the Bill was amended at Stage 3 to include a requirement to notify the Care Inspectorate (SCSWIS) when the provider suspends internal or external visit,⁴ it is unclear whether the Care Inspectorate has the power to overturn such a decision. There also appears to be no process to appeal to a judicial body against a suspension of visits. We would welcome clarification on how the requirements of Article 6 ECHR will be met in these circumstances.

We would also welcome clarification on how the Care Inspectorate will gather and track data relating to suspension of visiting, in order that any wider trends or safeguarding concerns can be identified and addressed.

² <https://www.lawscot.org.uk/media/z0ybtgrg/21-11-02-ppc-annes-law-consultation.pdf>

³ <https://www.lawscot.org.uk/media/dc4o1fdw/25-06-10-care-reform-s-bill-stage-3-briefing.pdf>

⁴ Care Reform (Scotland) Act 2025, section 14 inserting new section 78D of the Public Services Reform (Scotland) Act 2010

9. Following a request to review a decision to suspend visiting, how long should the care home have to respond with a conclusion?

Don't know

Notification of Decision to Suspend Visiting - Regulation 7

10. Do you agree or disagree with these statements?

The requirement to notify the Care Inspectorate (SCSWIS) and Chief Social Work Officer when visits are suspended is clearly described within the regulations

Disagree

The requirement to notify the Care Inspectorate and Chief Social Work Officer is appropriate

Neutral

About You

11. Who are you responding as?

On behalf of an organisation

12. If you are responding on behalf of an organisation, please enter the organisation's name here:

Law Society of Scotland

13. What type of organisation are you responding on behalf of?

Other: Professional body

Final thoughts

14. Is there anything else you'd like to say about how the regulations are written or how they might work in practice?

We have previously stated that in our view, the aim of Anne's Law should be to allow adults living in care homes to effectively claim their existing rights, and to ensure that those rights are restricted only in exceptional circumstances and in a way that is proportionate and non-discriminatory in accordance with national and international human rights law.⁵

In respect of Regulation 3, we note that the proposed wording leaves silent the costs of facilitating inward visits- clarity is required.

In respect of Regulation 4, suspending visits by relatives raises issues in terms of Article 8 of the European Convention on Human Rights (right to family and private

⁵ <https://www.lawscot.org.uk/media/dc4o1fdw/25-06-10-care-reform-s-bill-stage-3-briefing.pdf>



life), and suspending visits *by* residents (i.e. leaving the care home) raises Article 8 and potentially Article 5 (deprivation of liberty) issues. People living in adult care homes should be able to exercise their human rights in accordance with national and international law to the same extent as those who do not live in adult care homes.

We recognise that the rights impacted are likely to be qualified, not absolute, and their exercise needs to be balanced with the wider interests of public safety and the protection of individual and community health. Restrictions on qualified rights require to be necessary to achieve a legitimate aim, and proportionate to that aim. We note that, in terms of the proposed Regulation 4, visits may only be suspended “if the provider has reasonable cause to believe that it is essential to do so to prevent a serious risk to the life, health or wellbeing”, and we would welcome clarification as to how this will be assessed in line with established human rights principles.

We are disappointed that consultation on the proposed Care Home Services (Visits to and by Residents) (Scotland) Regulations 2026 appears to have been carried out over a limited time period, and outwith the usual Scottish Government consultation process and platform. This may have limited awareness of, and engagement with, the survey. As we have highlighted above, we consider that these Regulations do raise important issues in relation to the fundamental rights of individuals and as such it is essential that they are clear and work in practice, without unintended consequences. We would welcome an opportunity to discuss further.

For further information, please contact:

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