

PE2061/O: Require solicitors to ensure capacity of vulnerable individuals by having a medical professional co-sign legal documents

Scottish Government written submission, 3 July 2025

The committee are asking:

1. why the proposed Adults with Incapacity Bill, initially included in the Scottish Government's legislative programme in September 2024, was not included in the most recent legislative programme, announced in May 2025
2. what legislative steps it will take to address the responses to the Adults With Incapacity Amendment Act consultation, in light of the above.

The Scottish Government's response:

1. The Scottish Government consulted on proposed changes to the Adults with Incapacity (AWI) (Scotland) Act 2000 between July and October 2024. More than 160 responses were received. Whilst it was clear from these that there is strong support for modernising the AWI legislation, respondents raised concerns regarding resourcing implications for the system and the need for a more detailed policy development to support detailed consideration by partners in relation to implementation. The Scottish Government remains fully committed to modernising the AWI legislation, to reflect international standards on human rights in particular. However, in light of the consultation feedback, additional time is required to ensure that any legislative proposals are robust, workable and deliver the best outcomes for the vulnerable individuals at the heart of the AWI system, as well as those working to protect and support them. For this reason, the proposed Bill was not included in the May 2025 legislative programme.
2. To progress this work, Scottish Government officials have been asked to establish an AWI Expert Working Group. This Group will provide advice and collaborate on the detailed policy and operational considerations necessary to inform and support future legislative change in this area. In parallel, a Minister-led Oversight Group will be established to monitor and drive progress. Invitations for both groups have been issued ahead of summer recess, with initial meetings to take place in September 2025. These steps are intended to ensure that the next phase of legislative development is informed by expert input and grounded in practical delivery considerations, while maintaining momentum toward reform.

Mental Health Law and Incapacity Unit, The Scottish Government