

Written submission from Law Society of Scotland on the Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026, 9 February 2026

Health Social Care and Sport Committee Call for Evidence

Question 1 – Regulation 2 states that the care provider must identify at least one individual as an Essential Care Supporter. Does this regulation provide/guarantee friends and relatives appropriate involvement in the process of identifying an Essential Care Supporter?

In our previous response to the consultation on Anne's Law draft regulations (October 2025)(<https://www.lawscot.org.uk/media/m4mjky1g/25-10-17-mhd-annes-law-survey.pdf>) we highlighted that it was unclear whether the proposed wording of Regulation 2 would allow the provider to over-ride the capacitous decision of a resident or their 'representative' where that representative has legal authority as an attorney or guardian with appropriate powers. In our view, this remains unclear. We consider it a matter of fundamental importance that there is clarity as to how the process set out in Regulation 2(2) and 2(3) is intended to interact with the decision of a resident who has capacity, or with the Adults with Incapacity (Scotland) Act in the case of a resident who lacks capacity. These matters require to be addressed fully in the Code of Practice.

It also remains unclear how Regulation 2 will operate where the resident wished to have more than one Supporter, or more than one person puts themselves forward.

We note that The Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026 as laid do not include the 'best interests' test set out in the draft wording which formed the basis for the 2025 consultation. We welcome this change to the proposals, which we consider will ensure consistency with existing Adults with Incapacity legislation.

Question 2 – Regulation 3 covers the right to visits in general. Does this regulation adequately describe what ‘facilitation’ of visiting does or does not entail?

As per our previous consultation response in respect of Regulation 3, we note that the proposed wording leaves silent the costs of facilitating inward visits- clarity is required.

Question 3 – Do you think that the regulations around suspension of visiting (Regulations 4 and 5) provide adequate assurance to residents and their loved ones that they will have the right to continue to care for and visit residents in the event of a suspension of visiting? For example, during an outbreak of infection?

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 (see, for example, our briefing issued ahead of stage 3 proceedings on the Care Reform (Scotland) Bill: <https://www.lawscot.org.uk/media/dc4o1fdw/25-06-10-care-reform-s-bill-stage-3-briefing.pdf>).

In respect of Regulations 4 and 5, suspending visits by relatives raises issues in terms of Article 8 of the European Convention on Human Rights (right to family and private 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 within the Code of Practice as to how this will be assessed in line with established human rights principles. Similarly, the Code of Practice should clarify how Essential Visits in terms of Regulation 5 will operate in line with established human rights principles, particularly where the rights of both the resident and other persons at the accommodation are engaged.

Question 4 – Do you think the duty to review decisions to suspend on receipt of a valid request is clear and appropriate?

In our response to the previous consultations (<https://www.lawscot.org.uk/media/m4mjky1g/25-10-17-mhd-annes-law-survey.pdf> and <https://www.lawscot.org.uk/media/z0ybtgrg/21-11-02-ppc-annes-law-consultation.pdf>) 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 (<https://www.lawscot.org.uk/media/dc4o1fdw/25-06-10-care-reform-s-bill-stage-3-briefing.pdf>). 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, 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. In our view, this lack of access to independent review raises significant concerns regarding Article 6 ECHR. While we do not wish to obstruct the early passage of these regulations, we would urge that they be amended at an early date to address this gap.

Question 5 – Do you think that the notification processes are appropriate and proportionate?

We have no specific comments.

Question 6 – Do you have any comment on the regulations from an international human rights perspective?

See our comment above in response to Questions 3 and 4.