

Written submission from Scottish Action for Mental Health 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?

While we welcome the opportunity to provide our views on the proposed regulations, the extremely limited time provided by the Committee means we are only able to provide limited – and general – reflections on the new duties arising from the proposed regulations.

Our views are informed by our experience during the Covid-19 pandemic of delivering mental health care and support – including in our care home settings – where we witnessed the serious negative impacts on mental health and wellbeing arising from restrictions on social interaction with family and friends.¹

We broadly support the proposed Essential Care Supporter role, recognising the positive mental health and wellbeing benefits that access to an Essential Care Supporter could bring to residents, including during periods where visits from others to care home residents are suspended.

We have several concerns about the additional duties the regulation places on care home providers. The draft regulation will require providers to: Identify an Essential Care Supporter; consult with the resident, their representatives, their friends and family; as well as undertake due diligence ensuring the proposed Essential Care

¹ Scottish Covid 19 Inquiry [Witness Statement provided by Alexander Cumming on behalf of Scottish Action for Mental Health \(SAMH\), dated 29/01/2024](#)

Supporter does not present a risk of harm to the care home resident. While we agree providers will have an important role in this process, we believe this should be a shared responsibility between care home providers and local authority care managers. The regulations should be amended to reflect this. Care managers are likely to have a fuller understanding of the resident's personal and social circumstances, particularly at the start of a care package. Care managers are also likely to be better placed to determine any potential risk that an identified Essential Care Supporter may pose, particularly for new care home residents.

If the regulations come into effect as currently drafted, clear guidance for providers outlining what is "reasonable cause" under regulation 2(2)(b), in relation to determining any risk of harm, must be produced.

In general we believe there is a need – across all the regulations – for clear guidance, co-produced by the care home sector and people with lived experience of staying in a care home setting, clearly outlining how to implement the new duties.

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?

[No response.]

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 welcome the balance provided by draft regulations 4 and 5 and agree with the high threshold to suspend visits – i.e. only in cases where suspension is essential to prevent serious risk to the life, health or wellbeing of the residents or others in the care home. We also welcome the duty on care home providers (regulation 5) to facilitate 'essential visits' even in the event of a suspension, where not doing so would likely cause serious harm to residents' health or wellbeing.

We agree with 5(2) that there should be a presumption that the suspension of visits to a resident by the resident's Essential Care Supporter is likely to cause serious harm to the resident's health or wellbeing. This will ensure that at a minimum visits from the Essential Care Supporter can continue.

Greater clarity in regulation 4 and 5 and any accompanying guidance is required to define what constitutes an "essential visit" and if this is only intended to mean visits from the Essential Care Supporter, or if it includes visits from family or friends beyond the designated Essential Care Supporter.

Providers must be given robust guidance and support around decisions to suspend visits and the facilitation of essential visits in such circumstances. Careful consideration and guidance – co-produced by care home providers – will also be required to ensure care home staff's health and wellbeing will be protected when facilitating essential visits during a period of wider suspension of visiting.

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

We agree with the duty to review decisions to suspend visits following a written request, but believe this duty must be accompanied by appropriate guidance and templates to support providers to undertake a review.

We also believe there may be value through amending the regulation to introduce an additional expectation on providers requiring them to proactively review a decision to suspend visiting at regular intervals. As with other duties this would require appropriate support and guidance for providers.

It is our clear view that all additional costs arising from the new duties, including for additional staffing capacity, should be borne by the Scottish government and commissioning bodies (e.g. local authorities), not social care providers themselves. Therefore, contracts for commissioned services should reflect and account for any additional costs arising from this and other duties in the proposed regulations.

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

We agree that there must be robust notification and reporting processes around the suspension of visits. As with other duties arising from these regulations is essential that care home providers are supported to comply through provision of adequate guidance and reporting templates. As stated in answer to question 4, It is our clear view that all additional costs arising from the new duties, including for additional staffing capacity, should be borne by the Scottish government and commissioning bodies (e.g. local authorities), not social care providers themselves. Therefore, contracts for commissioned services should reflect and account for any additional costs.

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

[No response.]