

# **Written submission from West Lothian Integration Joint Board on the Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026, 6 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?**

Partially.

The regulation clearly covers situations where a resident has capacity to make and communicate an informed choice regarding their Essential Care Supporter, and in these circumstances the resident's autonomy is appropriately respected.

However, Regulation 2(2)(a) refers to decisions being made by a "representative" where a resident lacks capacity. It is unclear whether this term is intended to refer to a legally recognised proxy decision-maker (for example, a welfare guardian or holder of power of attorney), or whether it could include a broader range of representatives without formal legal authority.

This distinction is important. In many cases, a legally appointed proxy decision-maker may not live locally and may not be the person who provides day-to-day emotional or practical support to the resident. The regulation would benefit from clearer alignment with existing legal frameworks for decision-making where capacity is lacking, and from recognising that the most appropriate Essential Care Supporter may not always be the legal decision-maker.

Regulation 2 requires the identification where possible of at least one Essential Care Supporter, which must be in accordance with the resident's wishes or (where appropriate) those of their representative. While it does not explicitly guarantee the level of involvement of the resident, their family or significant others in the process, it is expected that this process will be covered in more detail in the Code of Practice, once finalised.

## **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.

While Regulation 3(1)(a) clearly establishes the internal right to receive visitors within the care home, Regulation 3(1)(b) introduces the requirement to facilitate visits outwith the care home without sufficient clarity about the scope of that duty.

In particular, the regulation does not specify:

- The extent of the care home’s responsibility for practical arrangements such as transport, staffing, or escorting residents;
- Responsibilities for care tasks, medication administration, or clinical oversight during external visits.
- Whether there are limitations on venues, duration, or frequency of visits
- What level of supervision is required and how risk should be assessed

Without further clarity, “facilitation” could be interpreted very narrowly (for example, simply assisting with making arrangements) or very broadly (implying active logistical and staffing responsibilities). Clearer parameters would help providers, residents, families, and commissioners understand what can reasonably be expected and avoid inconsistent practice.

“Facilitation” is not clearly defined in the regulation and could be open to differing interpretations. The Code of Practice is expected to expand upon this by defining facilitation and providing examples of what this means in practice, such as supporting residents to arrange visits, ensuring the environment is suitable, accommodating accessibility needs, or supporting a resident to get ready for a trip out.

## **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?**

The intent of the regulations is welcome, but further clarity would strengthen assurance.

Regulation 4(1) allows suspension of visiting “only if the provider has reasonable cause to believe that it is essential” to prevent serious risk. However, the term “reasonable cause” is open to subjective interpretation and may vary between providers, managers, or individual staff teams.

More explicit criteria or reference to agreed standards (for example public health guidance or risk assessment thresholds) would improve consistency and transparency.

It is positive and reassuring that the regulations explicitly require providers to lift suspensions at the earliest opportunity. This provides important reassurance to residents and families that suspensions are not intended to be open-ended or precautionary by default.

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

Yes.

The provisions relating to review on receipt of a valid request are clear, detailed, and proportionate. They set out a transparent process that supports accountability and provides residents and their supporters with a meaningful route to challenge or seek reconsideration of suspension decisions.

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

The notification requirements appear broadly proportionate and clearly identify who must be informed when visiting is suspended.

However, the regulations focus primarily on family members and friends. It is unclear whether consideration has been given to notification of:

- Social work staff involved in the resident's care and support
- Relevant health professionals (for example community nurses or allied health professionals)
- Individuals who may not be family or friends but who play an essential caring role
- Clarification on whether health or social care professionals can be recognised as Essential Care Supporters for notification purposes would be helpful.

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

From an international human rights perspective, the regulations appear broadly compliant provided they are implemented as intended.

If suspension of visiting is genuinely a last resort, applied only after all reasonable alternatives to safely facilitate contact have been exhausted, and lifted at the earliest safe opportunity, then the approach is consistent with human rights principles.

This should be supported by a robust assessment of the risks of not facilitating visits, alongside the risks associated with continuing them. Maintaining meaningful contact through alternative means, such as technology, during any suspension is also essential.

Overall, proportionality, necessity, and time-limited application are key to ensuring compliance with human rights obligations.