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Health, Social Care and Sport Committee

The Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026 [draft]



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Health, Social Care and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Social Care.

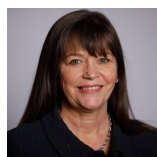


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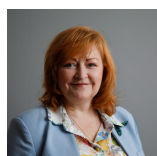
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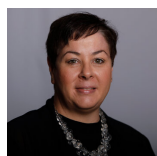
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Introduction

1. This report sets out the Health, Social Care and Sport Committee's consideration of the following Scottish Statutory Instrument (SSI) at its meeting on 17 February 2026 - [The Care Home Services \(Visits to and by Care Home Residents\) \(Scotland\) Regulations 2026 \[draft\]](#).
2. The instrument, laid in draft, is subject to the affirmative procedure – which means it cannot be made unless it has been approved by a resolution of the Parliament.
3. The minutes of the meeting have been published on the Committee's webpages. The Official Report of the meeting will also be published on the Committee's webpages.

The Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026 [draft]

4. The instrument imposes new duties and responsibilities relating to visiting arrangements on providers of care home services for adults in the form of regulations under section 78(2) of the Public Services Reform (Scotland) Act 2010 as required following modifications made by section 14 of the Care Reform (Scotland) Act 2025.

5. The [Policy Note](#) accompanying the instrument further explains:

” This instrument imposes new duties on adult care home providers in the form of regulations.

The purpose of the regulations is to ensure that people living in adult care homes can connect with the people who are important to them. This includes the importance of staying connected with loved ones when visiting restrictions are both being considered, and are in place, in the care home.

The regulations impose a duty on providers to identify at least one Essential Care Supporter (ECS) for every person living in an adult care home, if that is their wish and there is a person(s) identified who is willing and able to be an ECS.

Providers will have a duty to facilitate visits to and by their residents. Suspension of such visits is only permitted where providers have reasonable cause to believe that doing so is essential to prevent a serious risk to life, health or wellbeing.

Even in such circumstances where suspension of visits is permitted, providers must continue to facilitate certain visits if the provider has cause to believe that, before the suspension of visits is lifted, as resident will have died or undergone significant deterioration in physical or mental condition. Providers must also continue to facilitate certain visits if they have reasonable cause to believe that the suspension is likely to cause serious harm to the resident's health or wellbeing and that harm would outweigh the serious risks that justifies the suspension.

6. The Policy Note further states:

” There is also a presumption that restricting access to an ECS is likely to cause serious harm to the resident’s health and wellbeing. This is intended to balance the safety of residents with their rights, ensuring that suspensions are proportionate and justified. Where a decision has been taken to suspend visits, the provider will have a duty to review that decision upon receipt of a valid request to do so.

Furthermore, where a decision has been taken to suspend visits, the provider will have a duty to notify (a) the resident, or where appropriate their representative, and their ECS(s), (b) Social Care and Social Work Improvement Scotland (‘Care Inspectorate’) and (c) the chief social work officer of the local authority in whose area the care home is located, as soon as it is practicable to do so.

7. The Policy Note concludes:

” The regulations set out that care home providers are required to take into account the supporting code of practice that will be published under section 78E of the Public Services Reform (Scotland) Act 2010 when carrying out the duties set out in these regulations.

8. The Policy Note includes a summary of consultation undertaken on the instrument and the anticipated financial effects.

9. The following impact assessments have been carried out:

- [Data Protection Impact Assessment \(DPIA\)](#)
- [Business and Regulatory Impact Assessment \(BRIA\)](#)
- [Child Rights and Wellbeing Impact Assessment \(CRWIA\)](#)
- [Equalities Impact Assessment \(EQIA\)](#)
- [Island Communities Impact Assessment \(ICIA\)](#)

Delegated Powers and Law Reform Committee Consideration

10. The Delegated Powers and Law Reform (DPLR) Committee is required to consider every instrument laid before the Parliament and decide whether to draw it to the attention of the Parliament on any of the “reporting grounds” set out in Rule 10.3 of the Parliament’s standing orders.

11. The DPLR Committee considered the instrument on 10 February 2026 and reported on it in its [17th Report, 2026](#). The DPLR Committee made no recommendations in relation to the instrument but, in relation to regulation 8, welcomed that the Scottish Government now intends to publish the Code of Practice in advance of the requirement coming into force, and highlighted to the lead committee its [correspondence with the Scottish Government](#) on this point.

Health, Social Care and Sport Committee consideration

12. The Health, Social Care and Sport Committee is required to consider and report on the instrument.
13. The Committee issued a call for written views in January 2026 and received 16 responses:
 - [Aberdeen City HSCP](#)
 - [Glasgow City Council](#)
 - [North Ayrshire HSCP](#)
 - [Ella Macbain - Older People's Residential Services Manager](#)
 - [Care Inspectorate](#)
 - [Inverclyde HSCP](#)
 - [West Lothian IJB](#)
 - [Argyll and Bute HSCP](#)
 - [South Lanarkshire Council](#)
 - [Law Society of Scotland](#)
 - [Scottish Care](#)
 - [NHS Lanarkshire](#)
 - [Age Scotland](#)
 - [Scottish Action for Mental Health](#)
 - [Dumfries and Galloway HSCP](#)
 - [East Dunbartonshire HSCP](#)
14. The Scottish Government also conducted a consultation on the draft regulations and [published a summary of the findings](#) on 21 January 2026.
15. The Committee took evidence on the instrument from the Minister for Social Care and Mental Wellbeing and supporting officials at its meeting on [17 February 2026](#).
16. In his opening statement, the Minister stated that the regulations have been shaped through engagement with people who live and work in care homes and further acknowledged the campaigning of various stakeholder groups.

He told the Committee that the regulations deliver on the intention of Parliament set out in section 14 of the Care Reform (Scotland) Act 2025 and that, if approved, the

regulations would establish in law that care homes must allow and support visiting. He further stated:

” Our intention is to safeguard residents’ ability to maintain family life and meaningful contact. These regulations achieve that in a way that is compatible with the European Convention on Human Rights, ensuring that any limits are lawful, necessary and proportionate, and that rights are balanced in a carefully considered, person-centred way.

The Minister went on to highlight that the regulations recognise Essential Care Supporters (ECS) as being the most important to the resident - which, he argued was the "heart of Anne's Law" for many. He continued:

” By establishing a legal presumption that restricting access to an Essential Care Supporter is likely to cause serious harm, they significantly strengthen the position of such a person by providing legal protection for their vital role.

Finally, in reference to responses to the Government's consultation and the Committee's call for written views, the Minister acknowledged there was a general desire to see clear, practical guidance. He confirmed that the Code of Practice would be available before the regulations come into force and would set out how the regulations will work in practice.

17. Members then queried whether, under the regulations, designation of an Essential Care Supporter would become a statutory right for residents or would remain at the discretion of providers. The Minister drew the Committee's attention to Regulation 2 which imposes a duty on providers to identify at least one ECS for every person living in an adult care home if that is their wish and if there is a person(s) identified who is willing and able to be an ECS.

Concerning circumstances where an ECS was unable to visit (in a scenario where no visits at all were possible), supporting officials explained that, in reaching a such a decision, consideration would need to be given to the balance of potentially competing rights. They indicated it would be for the provider to take that decision but went on to say that this would not be done in isolation - but would rely on advice from the local health protection team and social work. They further emphasised that the Code of Practice would set out the range of advice that a provider would need to source in that scenario. The Minister and officials argued that, in their view, the Code would be flexible enough to cater for all potential scenarios.

18. Members then asked how facilitation of visits would work in practice, given that Regulation 3 does not explicitly define terms such as "external visits". The Minister reiterated his view that the Code of Practice would help to clarify such terms within the regulations. He told the Committee that a lot of work had been done to ensure the regulations would provide a suitable legal framework, but that the way in which they would be operationalised in practice would be reflected in the Code of Practice.

Officials also informed the Committee that the Care Inspectorate would carry out inspections to assess compliance with the Code of Practice and would be able to take enforcement action against the provider if issues with compliance were identified.

19. Asked how consistency would be ensured in decision-making regarding the

suspension of visits, the Minister stated that it would be for the provider to respond to the specific events and context leading to the decision to suspend visiting. Officials further stated that such decisions would be taken by drawing upon a range of advice and expertise from health and social care professionals, and that avenues for accessing such advice would be set out in the Code of Practice.

The Minister argued that the regulations were not intended to exist in a vacuum, but should be viewed in the context of long established legal frameworks and a culture of established working relationships involving a range of bodies.

20. On the review process outlined in Regulation 6, Members asked whether reviews could be proactive as well as reactive and whether a judicial appeal route would be available. The Minister responded that the Code of Practice would provide more detail, particularly regarding time-sensitive cases, before highlighting existing processes around complaints that can be made to the Care Inspectorate regarding care providers.
21. Members then queried how quickly notifications must be issued and whether the Minister could commit to introducing clear timescales for notifications to ensure consistency. The Minister again responded that this would be something picked up by the Code of Practice, with officials confirming that timescales for "ideal" scenarios would be set out in the Code of Practice. However, they went on to reiterate that, in keeping with the rest of Anne's Law, the Code of Practice would recognise the importance of taking the full circumstances of a specific case into consideration.

Officials confirmed that the target deadline for issuing notifications currently envisaged within the Code of Practice was within 24 hours but noted that this was subject to ongoing consultation, meaning that timescales could vary.

Asked whether notifications would be extended to wider Multi-Disciplinary Teams (MDTs) and agencies, officials informed the Committee that, based on feedback, the Chief Social Work Officer had now been added to the list of those to be notified, which they argued, in practice, would mean that other teams within the local authority who have oversight of the care home would also be notified, such as the commissioning and contracts team.

The Minister also confirmed that, according to the regulations, there is a requirement for Scottish Ministers to review the operation of Anne's Law after 2 years and to review the Code of Practice after 5 years.

22. Members noted that the regulations would allow the suspension of visits where a provider has reasonable cause to believe it is essential to prevent serious risk. In this context, the Minister was asked which specific human rights criteria providers would be expected to apply and how the Minister would ensure the imposition of visiting restrictions were a genuine last resort.

The Minister responded by highlighting the importance of achieving an appropriate balance in consideration of the right to private and family life on the one hand, and the right to life on the other. He stated that the Code of Practice would provide more detailed consideration of these matters, including the provision of support. He further argued that, under the regulations, a situation where no visits were allowed would be "extremely rare" and would need to be an "extreme set of circumstances".

Members sought a commitment from the Minister to strengthen review mechanisms that would limit the level of discretion given to social care providers, to ensure the rights of residents were consistently maintained and that residents were adequately consulted. The Minister responded that, as set out in the regulations, there was a clear expectation that best practice in communication and engagement would be observed. He also highlighted the duties placed on Ministers to report on how new responsibilities placed on care home providers have been put into operation, adding that monitoring and engagement would be carried out on an ongoing basis.

23. Following the evidence session, the Minister moved motion S6M-20536:

That the Health, Social Care and Sport Committee recommends that the Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026 [draft] be approved.

24. The motion was agreed to.

25. The Health, Social Care and Sport Committee recommends to the Scottish Parliament that the Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026 be approved.

