



Scottish Government
AWIReformconsultation@gov.scot

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Consultation on Adults with Incapacity (Scotland) Act 2000 Proposals for Reform

The Royal College of Nursing (RCN) is the UK's largest professional association and union for nurses with more than 435,000 members, of which over 40,000 are in Scotland. Nurses and health care support workers make up the majority of those working in health and care services and their contribution is vital to the delivery of the Scottish Government's health and care policy objectives. RCN Scotland welcomes the opportunity to respond to the proposals for reform of the Adults With Incapacity (Scotland) Act 2000.

We are responding in the form of a letter as we have drawn out some cross-cutting issues that span across the consultation questions. Our main comments are below, followed by our response to specific sections of the consultation document that are of particular relevance to nursing.

Our main comments are:

The legislation is complex and it is vital that the provisions within it are communicated to practitioners, as well as the general public, in a clear and succinct manner. We would expect to see the development of robust guidelines, to accompany the legislation, which support professionals to understand and utilise the reforms being proposed. We recommend that the guidance includes case studies, which illustrate potential scenarios.

There must be investment in training and development for practitioners, including Registered Nurses and health care support workers, on the implications of the legislation and how they will carry out their roles. For Registered Nurses, this

There must be appropriate capacity and resource to implement the proposals. The impact that th

implications for these current proposals. We understand that there is currently only one training course available, at Edinburgh Napier University. If this proposal is to go ahead, there needs to be consideration to how appropriate training will be delivered to professionals, including Registered Nurses.

In addition, if Registered Nurses are to carry out this role, it must be done in a way that avoids making further demands upon the nursing workload through excessive paperwork and bureaucracy. If this changes the roles and responsibilities of a Registered Nurse, then their job description may need to go through the re-evaluation process. It must also be responsive to immediate patient or client need, particularly in respect of emergency care settings, for example.

Graded guardianship (p.25)

Our members raised a number of issues concerning the proposals for graded guardianship that should be considered:

While members acknowledge that the proposals have the potential to speed up the process for applying for guardianships, there is a reduced level of scrutiny. For example, for Grade 1 guardianships, how do you know that someone has made the application appropriately in the given timeframe? Some members raised that there might be the potential for misuse and for financial mismanagement. For any proposals, there need to be appropriate safeguards and accountability in place.

the complexities of delivering it in practice, especially in care homes where there might be a high number of residents who would be on graded guardianships, and ensuring that staff fully understand the process and implications

the potential conflict of interest if a care home manager is also able to manage a resident's funds to the extent outlined in the proposals

in some circumstances, for example an older person with dementia in a care home, the proposed five year time limit for a grade 2 application, may mean that there is a need to undergo the process repeatedly. However, members acknowledge that there is a wide range of circumstances that the proposals will have to apply to and shorter time limits will be more appropriate for some people

Short term placement (p.61)

We agree that there is a need for a short term placement order within the legislation to allow someone to be moved quickly for their own safety, where they lack the capacity to consent to such a move. There are advantages in not having to refer the order to a Sheriff or tribunal, in terms of ensuring the process is swifter, meaning that individuals are less likely to remain in a setting inappropriate to their needs. We would welcome clarification on how the wishes of carers and families would be included.

Advance directives (p.63)

We support that there should be clarity in the legislation for advance directives, setting out a person's wishes about future healthcare in the event that they become incapable to take decisions about treatment. However, there are a number of issues that need to be considered and addressed:

Who issues the advance directive, and therefore who is accountable?

Where does the advance directive 'sit' and how will it be accessible to all practitioners, including in Out Of Hours?

