**[Anne’s Law](https://consult.gov.scot/pandemic-response/annes-law-legislation/)**

Scottish Government

November 2021

**This consultation seeks views on the Scottish Government’s proposals for delivering Anne’s Law in primary legislation, to ensure that people who live in adult care homes have rights to see and spend time with the people who are important to them.**

1. **Do you agree with the overall aim that people living in adult care homes have the right to see and spend time with those who are important to them in order to support their health and wellbeing?**

(**Yes**, No, I don’t know)

The negative impact of visiting restrictions over the course of the pandemic on the health and wellbeing of care home residents cannot be overstated. Levels of loneliness have risen, residents may have experienced physical deconditioning, and a noticeable acceleration in conditions such as dementia has been observed. The lasting impact of visiting restrictions will be felt not only by residents, but by their families and friends, and care home staff as well.

We understand the guidance put into place concerning care home visiting attempted to strike a balance between protecting staff and residents from public health harms and combating the detrimental impact of keeping loved ones apart. However, the right to private and family life of care home residents and their families must be respected and protected. It should always be recognised that the care home setting is the resident’s home, and they must be able to receive contact from family and friends if they wish to. As such, we support the proposals to give residents the right in law to receive visits from the people who are most important to them.

It is significant that the vital role played by family and friends in care home residents’ health, wellbeing and quality of life is recognised through these proposals. They are often the ones who know the resident best and will be able to detect changes in their condition which others may not. It is also important that family and friends can satisfy themselves as to the wellbeing of their loved one and raise concerns if required.

1. **What do you think should be the main aims of Anne’s Law?**

Anne’s Law should allow care home residents the right to always receive regular, and in person, visits from designated visitors in order to support their health, wellbeing, and quality of life. The legislation should underpin residents’ rights in law, while respecting the rights and wishes of other residents and staff. We welcome the fact that the provisions within Anne’s Law are being enacted via legislation, rather than solely through guidance, so the requirements can be enforced and deliver much more consistency across the country.

1. **Do you think this should be a right for residents or for the visitor(s)?**

(For resident, for visitor(s), **for both**, I do not think there should be rights for either resident or visitor, and explain why)

The needs and rights of the person who lives in the care home should be the first priority and ensuring that they can have whoever they wish to be their designated visitor, or visitors, is critical to this law. This could be a spouse, partner, child, friend, or other family member. The preference of the care home resident is paramount, and it could look different depending on the individual or change over time as their needs and priorities evolve.

We think it is important to acknowledge that the consultation opens questions about who decides who the designated visitor(s) should be. This is a particularly pertinent issue if the care home resident does not have the mental capacity to legally have their decision recognised, but they may be able to articulate a preference, nonetheless. If they have capacity, then of course, the resident’s wishes must be respected and acted upon. But if capacity is lacking and there is somebody acting legally as Welfare Power of Attorney, then they should be able to register who the designated visitor(s) is. Our hope would be that the Attorney seeks the views of the resident to find out their preference as to who will be best able to support them as it might not be the Attorney in every instance.

The rights of their visitor(s) are also an important consideration, particularly if they are acting as Welfare Power of Attorney or Guardian and have legal responsibilities and rights which would otherwise be impeded by a lack of regular access. In order to do their job and fulfil their legal and personal responsibilities to the person living in a care home, they should have the right by default as a designated visitor. It may be the case that they are unable to visit regularly as they live a considerable distance away, but their access when they need it shouldn’t be impacted.

This question leads us to conclude that one designated visitor isn’t sufficient. While it would neither be practical nor reasonable to have a long list of people with visiting access rights in the scenario such as we have been living through with Covid-19, there will be regular instances where a solo designated visitor, such as the person acting as Power of Attorney, is unable to be present for extended periods of time. This could be due to their own ill health, other caring responsibilities, work, challenges with travel or distance, or they are impacted by “lockdown” restrictions. So having more people who would be available as alternative designated visitors to provide company, care and welfare checks would be prudent.

One example raised with us while seeking views on this consultation was from someone who in the past had been acting as Power of Attorney for a parent living in the Highlands. They themselves lived in the Scottish Borders and would be unable to visit weekly due to work and childcare responsibilities, as well as the vast distance. However, they were responsible for their parent’s welfare and financial affairs. A sibling who lived more locally would have been better placed to be a “designated visitor” if that situation arose, but the Attorney would still need access from time to time to meet their responsibilities.

We should note that Power of Attorney responsibilities could be split between two or more people acting in the welfare and financial roles – there could be more than one in each of these roles – so all would then need access. Thus, demonstrating that a single designated visitor isn’t sufficient.

The balance would then be that if a designated visitor has the right to a daily, or similarly frequent, visit by law then it could be understandably impractical to facilitate more than one of the visitors at any one time. This would be particularly relevant to the situation of a contagious and life-threatening virus as this legislative proposal has originated from.

1. **How can the rights of residents be balanced against the rights of other people in the setting for example other residents, staff, visiting professionals?**

Ensuring the rights of individual residents are weighed up against concerns about the rights of other residents and staff will be an important consideration. It is worth acknowledging the families of some care home residents contacted Age Scotland during the early stages of the pandemic to explain they were worried about care homes opening for visits due to the possibility of infection spreading and were unwilling to take that risk themselves. However, there have been significant advances in the understanding of the Covid-19 virus and important protection mitigations such as PPE, testing and vaccination since then.

Individualised risk assessments, which seek to facilitate visits, could be conducted for each resident to take into account their needs. Looking at residents on a case-by-case basis, rather than enacting blanket bans for the entire care home setting, would allow the rights of residents, staff, and others to be considered. These risk assessments should also review the potential harm to a resident’s health, mental wellbeing, and overall quality of life by visiting being prohibited.

With regards to instances where visiting could be restricted due to virus outbreaks, ensuring the highest application of PPE standards and safe routes in and out of the care home for visitors, minimising contact with others, would offer further protection for all residents.

Care home staff have done an enormous amount of work throughout the coronavirus pandemic, with many going above and beyond to look after those in their care. Their rights must also be respected and upheld, and as such they should always have access to adequate and appropriate PPE to minimise their own exposure to illness.

1. **What do you see as the main benefits, challenges and risks of the proposal to develop legislation to support people living in adult care homes to have the right to see and spend time with those who are important to them?**

Benefits

The proposals will benefit care home residents’ health, wellbeing, and quality of life by giving them the right to see and spend time with family and friends. The proposals will also ensure residents’ human right to a family life is respected. By allowing family and friends access, they will be able to provide additional support and care and pick up on any issues in their loved one or relative’s treatment. The proposals will ensure that families and friends are not kept apart from the resident and have their essential caregiving roles recognised, ensuring that a potentially vulnerable older person isn’t solely supported by those unfamiliar to them. Care home staff will also be able to facilitate visiting which will benefit the residents in their care.

Challenges

One of the main challenges of implementing the proposals will be balancing the need to uphold the right to a family life with the duty to protect the health of residents, staff, and other visitors. Some residents and their families and friends may be more cautious and feel concerned about visiting when facing public health risks, so their concerns will also have to be considered. Family dynamics could pose a challenge in some cases, for instance if a family cannot agree on who the designated visitor or visitors should be, or indeed if there are concerns about the conduct of the only person who is or can be the visitor. The latter example could relate to where there has been inappropriate behaviour, abuse or undue influence exerted. It is possible that some care home providers will remain nervous over the proposals and face operational challenges linked to staffing levels, property configurations and liabilities. However, it is important to note that visiting has been well supported by some homes through the pandemic and learning from them is vital.

Risks

A potential risk will be protecting residents, staff and the wider public from serious infection or health harms in future. However, this could be mitigated against with the highest, and consistent, standards of PPE use and planning, and ensuring that care homes have everything they need from government and health and social care partnerships. Another risk to consider is the negative health impact of not allowing care home residents access to loved ones.

1. **Should the proposals apply only to people who live in an adult care home (residential and nursing) registered with the Care Inspectorate?**

(Yes, **No**, I don’t know)

The right to a designated visitor should also be extended to those under the care of the NHS and those who are either in a hospital setting for a prolonged period of time, or who live in long-term residential facilities operated by the NHS – for example dementia or psychiatric wards and dormitories. Similar to care home residents, the place where these people are living is their home and they should also have their right to a family life upheld.

One example raised with Age Scotland’s helpline in April 2020 was from the daughter of a man living in a dementia ward at Stratheden Hospital in Fife. He was in a dementia ward with eight other older men on a permanent basis. She was unable to visit to check on his wellbeing and found it incredibly hard to get updates from the hospital on his health and care. This caused great distress and frustration. The circumstances seem identical to the residential nature of care homes, and as such should be included.

1. **Please provide any further comments on the proposals**

It is important that Anne’s Law is progressed in a timely manner. While it is critical that all legislation meets the necessary standards of parliamentary scrutiny and process, there is a risk that its implementation will be too far in the future to support those living in care homes today, who have been under the most restrictive conditions in living memory.

Although the proposals suggest that designated visitors would have the same access rights to care homes as staff (subject to their following infection control protocols), Anne’s Law must ensure that these visits can happen on a meaningfully regular basis at a frequency which is determined by the resident and their visitor(s).

Anne’s Law should also outline that virtual visiting is not an acceptable alternative where face-to-face visits are logistically possible. This is due not only to the importance of face-to-face contact, but potential connectivity, technological and skills barriers preventing care home residents from communicating with those who are important to them. For all residents, and particularly those who may be more vulnerable or have limited capacity, a physical visit cannot be replaced by speaking to a screen.

**Want to find out more?**

As Scotland’s national charity supporting people over the age of 50, Age Scotland works to improve older people’s lives and promote their rights and interests. We aim to help people love later life, whatever their circumstances. We want Scotland to be the best place in the world to grow older.

Our Policy, Communications and Campaigns team research, analyse and comment on a wide range of public policy issues affecting older people in Scotland.

Our work is guided by the views and needs of older people themselves.

**Further information**

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