*Draft Regulations laid before the Scottish Parliament under section 104(2) of the Public Services Reform (Scotland) Act 2010, for approval by resolution of the Scottish Parliament.*

DRAFT SCOTTISH STATUTORY INSTRUMENTS

# 2026 No.

# SOCIAL CARE

# The Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026

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| *Made - - - -* | *2026* |
| *Coming into force - -* | *31st March 2026* |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 78(2) of the Public Services Reform (Scotland) Act 2010(**a**) and all other powers enabling them to do so.

In accordance with section 104(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026 and come into force on 31 March 2026.

(2) In these Regulations—

"the 2010 Act" means the Public Services Reform (Scotland) Act 2010, and

"representative" means any person having legal authority, or the consent of the resident, to act on the resident's behalf.

**Identification of Essential Care Supporter**

**2.**—(1) A provider of a care home service for adults must—

(a) identify for every resident of accommodation provided by the care home service at least one individual as an Essential Care Supporter, unless—

(i) doing so would be contrary to the resident's wishes, or

(ii) nobody can be identified who is able and willing to be the resident's Essential Care Supporter, and

(b) maintain a record of the Essential Care Supporters identified.

(2) A provider of a care home service for adults must apply all the following criteria in determining who is to be identified as a residents' Essential Care Supporter(s)—

(**a**) 2010 asp 8. See sections 78B to 78D which require section 78(2) to be exercised in specific ways. Sections 78B to 78D were inserted by section 14 of the Care Reform (Scotland) Act 2025 (asp 9).

(a) a person identified must be in accordance with the resident's wishes or, where appropriate, those of their representative,

(b) the provider must not have reasonable cause to believe that the person to be identified may cause harm to the resident, and

(c) the provider must be satisfied that the person to be identified is willing to be the resident's Essential Care Supporter.

(3) In order to determine the identity of a resident's Essential Care Supporter, a provider of a care home service for adults must consult—

(a) the resident, or where appropriate, their representative, and

(b) such relatives and friends of the resident as may be set out in the resident's personal plan(**a**).

**Right to visits: general**

**3.**—(1) A provider of a care home service for adults must facilitate visits—

(a) to residents ("internal visits"), and

(b) by residents ("external visits").

(2) Facilitating visits under paragraph (1)(b) does not require a provider of a care home service for adults to—

(a) take or accompany a resident somewhere outwith the accommodation provided by the care home service, or

(b) arrange or pay for someone else to do so.

**Suspension of visiting**

**4.**—(1) A provider of a care home service for adults may suspend visits (either to and by all residents in the care home or to and by specific residents) only if the provider has reasonable cause to believe that it is essential to do so to prevent a serious risk to the life, health or wellbeing of—

(a) in the case of internal visits, any person at the accommodation,

(b) in the case of external visits, the resident, any other person at the accommodation, or persons at the place where the visit would take place.

(2) Where a provider of a care home service for adults has suspended visits in accordance with paragraph (1), the provider must take all reasonable steps to eliminate or substantially mitigate the risk so that the suspension of visits can be lifted as soon as practicable.

**Essential visits**

**5.**—(1) Even in cases where a provider of a care home service for adults has reasonable cause to believe that suspending visits is essential to prevent a serious risk of the kind described in regulation 4(1), the provider must continue to facilitate visits to or by a resident, in accordance with regulation 3, if—

(a) the provider has reasonable cause to believe that—

(i) before the suspension of visits is lifted, the resident will have—

(aa) died, or

(bb) undergone (or begun to undergo) a significant deterioration in physical or mental condition, or

(ii) the suspension of visits is causing, or is likely to cause, serious harm to the resident's health or wellbeing and the harm outweighs the serious risk, and

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(**a**) The requirement for personal plans is set out in regulation 5 of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (S.S.I. 2011/210).

(b) the resident and the person visiting, or being visited by, the resident agree to take any action or precaution that the provider reasonably considers would mitigate the serious risk to any extent (other than a negligible one).

(2) In determining whether the exception in paragraph (1)(a)(ii) is applicable, it is to be presumed 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.

**Review of decision to suspend visiting**

**6.**—(1) Where a provider of a care home service for adults has decided to suspend visits in accordance with regulation 4, the provider must review that decision upon receipt of a valid request as described in paragraph (2).

(2) A request must be in writing and made on one or more of the following grounds—

(a) that a visit should continue because one of the situations described at regulation 5(1)(a) applies,

(b) that there has otherwise been a failure to comply with the code of practice so far as it relates to the suspension of visits, or

(c) that there has been a change of circumstances which requires a review of the decision to suspend visits.

**Notification of decision to suspend visiting**

**7.**—(1) Where a provider of a care home service for adults has decided to suspend visits in accordance with regulation 4, the provider must as soon as practicable notify that decision to—

(a) any resident affected by the suspension, or where appropriate their representative, and their Essential Care Supporter(s),

(b) Social Care and Social Work Improvement Scotland, and

(c) the chief social work officer of the local authority in whose area the care home is located.

**Code of practice on care home residents' right to visits**

**8.** In carrying out the duties imposed by these Regulations, a provider of a care home service for adults must have regard to the code of practice published under section 78E of the 2010 Act(**a**).

*Name*
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

(**a**) Section 78E was inserted by section 14 of the Care Reform (Scotland) Act 2025.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations impose duties on providers of care home services for adults under Part 5 of the Public Services Reform (Scotland) Act 2010 ("the 2010 Act") as modified by section 14 of the Care Reform (Scotland) Act 2025. References to "provider" and "care home service for adults" in these Regulations have the meaning given in section 78F of the 2010 Act.

Regulation 2 imposes a duty on providers of care home services for adults to identify at least one Essential Care Supporter for every resident unless it is contrary to the resident's wishes or there is no-one able or willing to be an Essential Care Supporter for the resident. Included within that regulation is a duty to maintain a record of those Essential Care Supporters identified and the criteria to be applied by a provider in determining who is to be identified as Essential Care Supporters for residents. Regulation 2 also sets out who providers are required to consult in determining and identifying residents' Essential Care Supporters.

Regulation 3 imposes a duty on providers of care home services for adults to facilitate visits to and by residents and expressly states that the duty does not extend to taking or accompanying a resident to make a visit outwith a care home or to arrange or pay for someone else to do so. Regulation 4 sets out the circumstances in which a provider may suspend visiting and regulation 5 sets out the circumstances in which essential visits must be allowed even where a suspension of visiting is in place.

Providers of care home services for adults are required by regulation 6 to review any decision to suspend visiting where they receive a valid request to do so and what constitutes a valid request is set out within that regulation. Regulation 7 sets out who providers must notify when making a decision to suspend visiting. Providers are also required to take into account the code of practice published under section 78E of the 2010 Act when carrying out all of the duties as set out in these Regulations.

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