



Royal College
of Nursing
Scotland

**RCN Scotland's response to the Scottish Government
consultation on the**

Adults with Incapacity Amendment Act

30 July 2024

**This response was originally submitted using
a Scottish Parliament online form**

Introduction

The Royal College of Nursing (RCN) is the world's largest nursing union and professional body. It is the leading national and international authority in representing the nursing profession. We represent over half a million nurses, student nurses, midwives, nursing associates and nursing support workers in the UK and internationally.

The RCN has over 49,500 members in Scotland. We campaign on issues of concern to nursing staff and patients, influence health policy development and implementation, and promote excellence in nursing practice.

Background

This consultation is about proposed changes to the Adults with Incapacity (Scotland) Act 2000 (the AWI Act). One of the key drivers for change is the recommendations of the Scottish Mental Health Law Review, chaired by Lord Scott (the SMHLR or 'the Scott review'). Scott reported and made recommendations in late 2022. RCN made submissions to the main Scott review consultation and to a subsequent consultation on additional proposals. The proposals in the consultation that have specific implications for the nursing profession and/or workforce are relatively minor, but they nevertheless cover matters on which RCN considers it appropriate to comment.

We have not responded to every question and have only provided responses to the questions which relate to nursing.

Consultation questions and RCN Scotland responses

Authority To Medically Treat Adults with Incapacity

Q36 - Do you agree that the existing section 47 certificate should be adapted to allow for the removal of an adult to hospital for the treatment of a physical illness or diagnostic test where they appear to be unable to consent to admission?

RCN Scotland response:

Yes.

Q37 - Do you consider anyone other than GPs, community nurses and paramedics being able to authorise a person to be conveyed to hospital? If so, who?

RCN Scotland response:

Any suitably trained registered nurse should be able to authorise, not only “community nurses.” “Trained” means trained as per the Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland) Regulations 2007 as amended by the Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland) Amendment Regulations 2012.

The phrase ‘community nurses’ has two meanings. One is a broad definition, as used, for example, by the Queen’s Nursing Institute Scotland (QNIS): “Community nursing can be broadly described as any nursing care provided outside of an acute hospital.” <https://www.qnis.org.uk/what-is-community-nursing/>. The other is as used by the Nursing and Midwifery Council (NMC) to stipulate certain categories of specialist nursing practitioners. Either way, using the phrase “community nurses” here is unnecessarily limiting. It could lead to confusion and, if used in legislation, would create two classes of registered nurse with different powers under the law, which would work against the interest of the person with incapacity. It might be thought that no nurse working in a hospital would need the power to convey a patient to hospital because if the nurse was in that position, it could be assumed that the nurse and the patient were already in a hospital. But that is not a reasonable assumption. The registered nurse in question, despite usually working in hospital and so not being a “community nurse”, may not physically be in the hospital when they were required to make the decision. And even if they were, the nurse and patient may not be in the right kind of hospital to access the necessary treatment of a physical illness or diagnostic test. For example, not every hospital in Scotland has an MRI scanner.

Clarifying the provision of palliative care under Part 5 of the AWI Act where a welfare proxy disagrees with proposed treatment

Q47 - Do you agree that section 50(7) should be amended to allow treatment to alleviate serious suffering on the part of the patient?

RCN Scotland response:

Yes.

Q48 - Would this provide clarity in the legislation for medical practitioners?

RCN Scotland response:

Yes.

We have answered questions 47 and 48, not because this change would be a major concern for RCN members but because it would provide for an additional basis on which medical treatment authorised by section 47(2) may potentially be given, during a live appeal to the Court concerning that treatment. The two existing bases for the giving of treatment in that circumstance are for (1) the preservation of the life of the adult or (2) the prevention of serious deterioration in his medical condition. A nurse may have been involved in the original authorisation of treatment in any particular case and may be involved in the case on an ongoing basis. We are of the view that this potential involvement gives us a locus to comment.



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