RCGP SCOTLAND

Adults with Incapacity Amendment Act: consultation

Consultation response from RCGP Scotland

Part one: principles of Adults with Incapacity Act

Q1) Do you agree that the principles of the AWI Act should be updated to require all practicable steps to be taken to ascertain the will and preferences of the adult before any action is taken under the AWI Act?
RCGP Scotland welcomes the opportunity to respond to this consultation. As the membership body for general practitioners in Scotland, we exist to promote and maintain the highest standards of patient care. RCGP Scotland is supportive of these aims. They align with RCGP Scotland's ambition to deliver the highest standards of general medical practice and excellence in patient care.
Q2) Do you agree that in the AWI Act we should talk about finding out what that adult's will and preferences are instead of their wishes and feelings?
The College agrees that the AWI Act should refer to the adult's 'will and preferences' rather than 'wishes and feelings' as this is congruent with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and accounts for the adult's short- and long-term choices.
Q3) Do you agree that any intervention under the AWI Act should be in accordance with the adult's rights, will and preferences unless not to do so would be impossible in reality?
RCGP Scotland agrees that any intervention under the AWI Act should be in accordance with the adult's rights, will and preferences. However, we recognise that it will not always be possible to do so, particularly in cases where the adult's expressed will and preferences do not fully protect their rights, freedoms, and interests.
Q4) Do you agree that the principles should be amended to provide that all support to enable a person to make their own decisions should be given, and shown to have been unsuccessful, before interventions can be made under the Adults with Incapacity Act?
The College agrees that a person should be supported to make their own decisions, and when shown to have been unsuccessful, only then interventions can be made under the AWI Act.

It is the College's view that the conditions must be created to allow practitioners to make every effort to offer all available support to an individual before making intervention under the AWI Act. This must mean that GPs have adequate time in consultations with patients to allow for meaningful discussion and to complete any necessary administrative requirements. Furthermore, the College emphasises the need for GPs to have an adequate amount of Protected Learning Time within their working week to undergo high-quality training to allow them to provide the support that may be required by an adult affected by the AWI Act.
Q5) Do you agree that these principles should have precedence over the rest of the principles in the AWI Act?
The College agrees that an adult's will and preferences should take precedence over the rest of the principles in the AWI Act.
Q6) Do you have any suggestions for additional steps that could be put in place to ensure the principles of the AWI Act are followed in relation to any intervention under the Act?
RCGP Scotland believes patients should have access to skilled advocacy, unless this is not practicable (e.g. in emergency situations) to assist with independent supported decision making based on their previous will and preferences. For patients affected by the AWI Act, accessing skilled advocacy requires the development of a skilled advocacy workforce to work alongside the adults concerned.
Q7) Do you agree with the change of name for attorneys with financial authority only?
RCGP Scotland agrees with this changing the term 'continuing attorney' to 'financial attorney' as it provides clarity.
Q8) Do you agree with our proposals to extend the power of direction of the sheriff?
N/A.
Q9) Do you agree with our proposal to amend the powers of investigation of the OPG to enable, where appropriate, an investigation to be continued after the death of the adult?
RCGP Scotland agrees with the proposal to amend the powers of investigation of the OPG to allow for investigations to continue after the death of the adult. This ensures that the risk of misappropriation of funds in an adult's estate is minimised.

Q10) Do you agree that the investigatory responsibility between OPG and local authority should be split in the manner outlined above?
N/A.
Q11) Will these changes provide greater clarity on the investigatory functions of OPG and local authority?
N/A.
Q12) Will this new structure improve the reporting of concerns?
N/A.

Part two: training for attorneys

Q13) Do you agree with the proposals for training for attorneys ?
RCGP Scotland agrees with the proposals for training for attorneys. However, consideration should be given to equity of access to training, and efforts made to mitigate for digital exclusion, low levels of health literacy and English as a second language. We note that there may be a significant period of time for some people between being appointed as an attorney and acting in that capacity. We believe it is important for individuals willing to be an attorney to be able to access information, educational resources and training in a wide variety of formats involving opportunities to ask questions and clarify any areas of uncertainty.
Q14) Do you agree that the Office of the Public Guardian should be given power to call for capacity evidence and defer registration of a power of attorney where there is dispute about the possible competency of a power of attorney document?
The College agrees that OPG should be given power to call for capacity evidence and defer registration of a power attorney where there is dispute about the possible competency of a power of attorney document.
Q15) Do you agree that the Office of the Public Guardian should be able to request further information on capacity evidence to satisfy themselves that the revocation process has been properly met?
RCGP Scotland agrees that OPG should be able to request further information on capacity evidence to satisfy themselves that the revocation process has been properly met. We believe such a move will enhance safeguards around the power of attorney.

Q16) Do you agree that the Office of the Public Guardian should be given the power to determine whether they need to supervise an attorney, give directions or suspend an attorney on cause shown after an investigation rather than needing a court order?
The College agrees that OPG should be given power to determine whether they need to supervise an attorney, give directions or suspend an attorney on cause shown after investigation rather than needing a court order. This change should save court time and further strengthen safeguards.
Q17) Should we extend the class of persons that can certify a granter's capacity in a power of attorney?
RCGP Scotland agrees that there should be an extension to the class of persons that can certify a granter's capacity in a power of attorney scenario. Currently, the restrictions on who can grant a power of attorney is a significant rate limiting step in achieving the aim of increasing the use of power of attorney as a legal instrument.
Q18) Do you agree that paralegal should be able to certify a granter's capacity in a power of attorney?
The College agrees that paralegals should be able to certify a granter's capacity in a power of attorney.
Q19) Do you agree that a clinical psychologist should be able to certify a granter's capacity in a power of attorney?
RCGP Scotland agrees that a clinical psychologist should be able to certify a granter's capacity to grant a power of attorney document. However, the College recognises that patients currently face long waiting lists when seeking an appointment with a clinical psychologist and we are concerned that this may further impact on the capacity of the clinical psychologist workforce.
Q20) Which other professionals can certify a granter's capacity in a power of attorney?
The College believes that consideration should be given as to whether mental health nurses, mental health officers (with the requisite training), or specialist nurses working in neurological fields such as dementia or stroke care, could certify a granter's capacity in power of attorney.
Q21) Do you agree that attorneys, interveners and withdrawers (under Part 3) should have to comply with an order or demand made by the Office of the Public Guardian in relation to property and financial affairs in the same way as guardians?
RCGP Scotland agrees that attorneys, interveners and withdrawers should have to comply with an order or demand made by OPG in relation to property and financial affairs in the same way as guardians.

Q22) Do you agree that the Public Guardian should have broader powers to suspend powers granted to a proxy under the Adults with Incapacity Act whilst they undertake an investigation into property and financial affairs?
The College agrees that the Public Guardian should have broader powers to suspend powers granted to a proxy under the AWI Act whilst under investigation as this would improve safeguards.
Q23) Do you agree that the Mental Welfare Commission and local authority should have broader powers to suspend powers granted to a proxy under the Adults with Incapacity Act whilst they undertake an investigation into welfare affairs?
The College agrees with this proposal for the same reason given in answer to question 22.

Part three: access to funds

The College did not respond to any questions in part 3 of the consultation as they were not considered to be relevant to General Practitioners.

Part four: management of residents' finances

The College did not respond to any questions in part 4 of the consultation as they were not considered to be relevant to General Practitioners.

Part five: changes to section 47 certificates and associated matters

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?
RCGP Scotland agrees that the existing section 47 certificate should be adapted to allow for specific provision related to the removal of an adult to hospital for the treatment of a physical illness or diagnostic test where they appear unable to consent to admission. However, the College emphasises that this change would create a significant additional administrative burden during situations which are time pressured. Often these admissions will be made from a patient's home without access to GP IT systems so paper certificates would also have to be acceptable along with electronic certificates which should be embedded within GP IT systems. If newly adapted section 47 certificates are developed it should be done so with input from GPs and other healthcare professionals so that the language used is clearly understood so to minimise confusion and ensure that the process is acceptable for frontline staff.

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?
RCGP Scotland recognises GPs and paramedics as being easily defined professional groups- having protected titles and maintaining registration. We would like to see more clarity on the definition of a 'community nurse'; this umbrella term could include districts nurses, midwives, health visitors, advanced nurse practitioners, and specialist community nurses e.g. palliative care. A definition clearly outlining who falls under the community nurse term would avoid confusion on who can authorise a person to be conveyed to hospital.
Q38) Do you agree that if the adult contests their stay after arriving in hospital that they should be assisted to appeal this?
The College agrees that adults should be assisted to appeal any conveyance to hospital.
Q39) Who could be responsible for assisting the adult in appealing this in hospital?
It is the College's view that an adult appealing their conveyance to hospital should be supported by someone with adequate knowledge of the medical and legal issues. It may be the case that the development of new roles may be necessary to enable this.
Q40) Do you agree that the lead medical practitioner responsible for authorising the section 47 certificate can also then authorise measures to prevent the adult from leaving the hospital?
RCGP Scotland agrees that the lead medical practitioner responsible for authorising the section 47 certificate should also be able to authorise measures to prevent the adult leaving the hospital provided it is necessary, in the best interest of the patient, and in keeping with the principles of the AWI Act.
Q41) Do you think the certificate should provide for an end date which allows an adult to leave the hospital after treatment for a physical illness has ended?
The College agrees that the section 47 certificate should provide an end date to allow an adult to leave the hospital after treatment for physical illness has ended. However, there must also be some inbuilt flexibility as an adult may be conveyed to hospital with an unknown illness requiring extensive diagnostics and/or treatment, and it may not be possible to say how long these procedures will take. In such a scenario, it would likely default to 28 days to 'buy time' for diagnostic and/or treatment to take place, minimising any administrative burden.
Q42) Do you think that there should be a second medical practitioner (i.e. one that has not certified the section 47 certificate treatment) authorising the measures to prevent an adult from leaving the hospital?

The College agrees that a second medical practitioner can authorise measures to prevent an adult from leaving hospital, but this must be weighed against workforce capacity and competing clinical priorities. Moreover, in such cases, the medical practitioner should wherever practicable consult the adult's family and guardian and/or attorney.
Q43) If yes, should they only be involved if relevant others such as family, guardian or attorney dispute the placement in hospital?
The College agrees that a second medical practitioner should only become involved when a relevant other has disputed an adult's placement in hospital. This will allow the second practitioner to focus on other clinical priorities and only become involved when absolutely necessary.
Q44) Do you agree that there should be a review process after 28 days to ensure that the patient still needs to be made subject to the restriction measures under the new provisions?
RCGP Scotland agrees that there should be a review process after 28 days to ensure that the patient still needs to be made subject to the restriction measures. The college notes that a 28 day review process is congruent with current mental health legislation. However, there may be cases where diagnostics and/or treatment conclude before the 28-day mark, but it is judged that the patient is still unfit to return home and is awaiting placement in a care home. It is unclear to the College how this situation would be resolved under these new proposals and further information clarifying this point would be welcomed.
Q45) Do you agree that the lead clinician can only authorise renewal after review up to maximum of 3 months before Sheriff Court needs to be involved in review of the detention?
The College agrees that the lead clinician can only authorise renewal after review up to a maximum of 3 months before Sheriff Court needs to be involved in the review of the detention.
Q46) What sort of support should be provided to enable the adult to appeal treatment and restriction measures?
Please refer to the answer given to question 39.
Q47) Do you agree that section 50(7) should be amended to allow treatment to alleviate serious suffering on the part of the patient?
The College agrees that section 50(7) should be amended to allow treatment to alleviate serious suffering on part of the patient.

Q48) Would this provide clarity in the legislation for medical practitioners?
RCGP Scotland agrees that this would improve clarity in the scenario where a section 50 dispute resolution has not been completed. However, the College believes that the term 'alleviate serious suffering' could be interpreted variably with different thresholds for intervention by practitioners. It would therefore be helpful for practitioners if additional clarity was provided in the form of clinical scenarios which required a practitioner's intervention to 'alleviate serious suffering'.

Part six: changes to guardianship, interim guardianship and intervention orders

Q49) Do you think the requirement for medical reports for guardianship order should change to a single medical report?
The College agrees with moving to a system where a guardianship order can be obtained with a single medical report. This move would make it easier for adults to access guardianship by removing the current high bar of two reports which some patients may struggle to obtain.
Q50) Do you agree with our suggestion that clinical psychologists should be added to the category of professional who can provide these reports (where the incapacity arises by reason of mental disorder)?
RCGP Scotland agrees with the proposal for clinical psychologists to be added to the category of professionals who can provide these medical reports, while emphasising the current long waiting lists faced by patients trying to access a clinical psychologist, as set out in answer to question 19.
Q51) Do you think the Mental Health Officer form for guardianships can be improved, to make it more concise whilst retaining the same information?
It is the view of the College that the Mental Health Officer form for guardianship can be improved. We recognise the current requirement to ascertain the views of every possible relative is a significant rate limiting factor in obtaining guardianship.
Q52) Do you think the 'person with sufficient knowledge' form can be improved, making it more concise whilst retaining the same information?
N/A.
Q53) Should the person with sufficient interest continue to be the person who prepares the report for financial and property guardianship?
N/A.

Q54) Do you agree with our proposal to replace the second part of the 'person with sufficient knowledge' report with a statutory requirement to complete the OPG guardian declaration form?
N/A.
Q55) Should sheriffs be afforded the same discretion with mental health officer report timings as they are with medical reports?
N/A.
Q56) Do you agree that the best approach to cater for urgent situations is to amend the existing interim guardianship orders?
RCGP Scotland agrees with the suggestion that the best approach to cater for urgent situations is to amend the existing interim guardianship orders.
Q57) Do you agree that an abbreviated mental health officer report together with a single medical report should suffice for a guardianship order to be accepted by the court in the first instance?
The College agrees that an abbreviated mental health officer report together with a single medical report should suffice for a guardianship order to be accepted by the court, while recognising that this will be dependent on the detail of the reports required given the timescales involved.
Q58) Do you agree that there should be a short statutory timescale for the court to consider urgent interim applications of this sort?
RCGP Scotland agrees that there should be a short statutory timescale for the court to consider urgent interim applications. However, the College notes that the rapid completion of reports within tight timescales is likely to be challenging for the clinical and MHO workforces. Consideration should therefore be given as to the length/detail required by reports relating to interim applications and the ease of requesting/completing/sharing the reports.
Q59) Do you agree that further medical reports are not required when varying a guardianship to add either welfare or financial powers?
An individual's capacity is situation specific in that an adult may be deemed incapable of managing welfare while being capable of managing finances. Therefore, the College accepts that further medical reports are not required when varying a guardianship to add either welfare or financial powers as a MHO report will have already been completed.
Q60) Does the current approach to length of guardianship orders provide sufficient safeguards for the adult?

RCGP Scotland believes that the current approach to length of guardianship orders provides sufficient safeguards for the adult provided the principles of the AWI Act are followed at the time of the application and sufficient consideration is given to the cause of incapacity and whether it is likely to resolve with time.
Q61) Do changes require to be made to ensure an appropriate level of scrutiny for each guardianship order?
The College's view is that no changes are required to be made in respect to the level of scrutiny for each guardianship order.
Q62) Is there a need to remove discretion from the sheriff to grant indefinite guardianships?
RCGP Scotland does not believe that the sheriff's ability to grant indefinite guardianship should be removed provided the principles of the AWI Act are adhered to. It may be beneficial for a random case review with peers to be conducted as part of an ongoing quality assurance process.
Q63) If you consider changes are necessary, what do you suggest they would be?
Please refer to the answer given to question 62.
Q64) Which of the following powers should guardians, attorneys and interveners be expressly excluded from using on behalf of the adult? **consenting to marriage or a civil partnership, consenting to have sexual relations, consenting to a decree of divorce, consenting to a dissolution order being made in relation to a civil partnership, consenting to a child being placed for adoption by an adoption agency, consenting to the making of an adoption order, voting at an election for any public office, or at a referendum, making a will, if the adult is a trustee, executor or company director, carrying discretionary functions on behalf of them, giving evidence in the form of a sworn affidavit**
The College agrees with the addition of the powers to the exclusion list to help clarify the roles and responsibilities of guardians, attorneys and interveners.
Q65) Are there any other powers you think should be added to a list of exclusion?
The College believes the issue of privacy laws should be considered so that an attorney or guardian cannot consent or give authorisation to the adult being filmed for public viewing.

Part seven: deprivation of liberty proposals, stand-alone right of appeal, appointment of safeguarders

Q66) Do you agree with the overall approach we are proposing to address Deprivation of Liberty?
RCGP Scotland agrees with the proposed overall approach to address Deprivation of Liberty (DOL), while noting that any proposal that incapacity would require to be determined by independent medical assessment does have workload implications. This impact should be acknowledged and factored into all workforce planning, especially as the Scottish population continues to age and more people are likely to be affected by the AWI Act.
Q67) Is there a need to consider additional safeguards for restrictions of liberty that fall short of Deprivation of Liberty?
The College agrees with the principles described in the Scottish Mental Health Law Review (SMHLR) for both restrictions in liberty and DOL, namely that "deprivation is proportionate and will demonstrably lead to more respect, protection and fulfilment of the person's rights overall." Provided this principle is upheld we do not consider there to be a need for additional safeguards.
Q68) Do you agree with the proposal to have prescribed wording to enable a power of attorney to grant advance consent to a Deprivation of Liberty?
The College agrees with proposals to have prescribed wording to enable a power of attorney to grant advance consent to a DOL. The prescribed wording should be clear, and support given to the granter and power of attorney to understand any legal or medical jargon to ensure equity of access.
Q69) What are your views on the issues we consider need to be included in the advance consent?
RCGP Scotland believes that in instances where advance consent is required then incapacity must be determined by an independent medical assessment. Power of attorney is granted by an adult with capacity, and the power of attorney only comes into effect in practical terms once capacity is lost by the granter. It may be difficult for the person with power of attorney to know when capacity is lost, therefore having an independent medical assessment will provide clarity and this process may offer an opportunity to remind the person with power of attorney of their legal responsibilities, and to offer support if necessary.
Q70) What else could be done to improve the accessibility of appeals?
It is the College's view that the following factors must be taken into account in order to approve the accessibility of appeals; the literacy levels of the person

making the appeal, language barriers and the support that may be required to overcome this, digital exclusion, practical supports such as easy-read formats, and the cost of making an appeal and how this can be considered equitably and sensitively to their circumstances.
Q71) What support should be given to the adult to raise an appeal?
Please refer to the answer given to question 70.
Q72) What other views do you have on rights of appeal?
The College notes that 'any person demonstrating an interest in the welfare of the adult' can appeal and is concerned about the workability of such a proposal. We believe this term is too vague, and a better definition of who can appeal would be beneficial and prevent unnecessary administrative burden from dubious appeals.
Q73) How can Deprivation of Liberties authorised by a power of attorney be appropriately reviewed?
RCGP Scotland believes that DOLs authorised by a power of attorney could be appropriately reviewed every 12 months as is the case for guardianships. This would allow simplicity of a single process that occurs on a regular basis thus minimising administrative burden. Alternatively, it could be argued that since a person with power of attorney is carrying out actions in accordance with the adult's specific instructions (assuming that the process was carried out properly at the time of granting) that an annual review is not necessary, and a 3-yearly review would be adequate. Any decision on the timescale for review of DOL should ultimately consider administrative burden and workforce capacity.
Q74) Do you agree with the proposal to set out the position on Deprivation of Liberty and guardianships in the Adults with Incapacity Act?
The College agrees with the proposal to set out the position on DOL and guardianships in the AWI Act.
Q75) What are your views on the proposed timescales?
RCGP Scotland believes the proposed timescales of 12 months, then 2 years on renewal, to be reasonable. However, the College would like clarification as to whether there would be GP input as part of the review as this is not mentioned in the consultation. Any GP involvement in reviewing DOLs authorised by a power of attorney would have workload implications.
Q76) What are your views on the proposed right of appeal?

The College agrees with the proposed right of appeal in relation to guardianships as set out in the consultation.
Q77) What else could be done to improve the accessibility of appeals?
Please refer to the answer given to question 70.
Q78) Do you agree with the proposal to have 6 monthly reviews of the placement carried out by local authorities?
The College is unsure of the proposal to have 6 monthly reviews of the placement carried out by local authorities as this would represent a doubling of the workload. Any such move would need to be justified by evidence and the ultimate goal must be to uphold standards.
Q79) Is there anything else that we should consider by way of review?
Please refer to the answer given to question 78.
Q80) Do you agree with our proposal for a stand alone right of appeal against a deprivation of liberty?
RCGP Scotland agrees with the proposed stand-alone right of appeal against DOL provided the factors listed in answer to question 70 are recognised and addressed in order to improve the accessibility of appeals.
Q81) Do you agree with our proposal to give the Mental Welfare Commission a right to investigate Deprivation of Liberty placements when concern is raised with them?
RCGP Scotland agrees with giving the Mental Welfare Commission (MWC) a right to investigate DOL placement when concerns are raised with them by any person having an interest in the adult's welfare.
Q82) Do you agree with the proposals to regulate the appointment, training and remuneration of safeguarders in Adults with Incapacity cases?
The College agrees with the proposals to regulate the appointment, training and renumeration of safeguarders in AWI cases.
Q83) Do you agree with the proposals for training and reporting duties for curators?
RCGP Scotland agrees with the proposals for training and reporting duties for curators.

Q84) What suggestions do you have for additional support for adults with incapacity in cases to improve accessibility?
The College believes that adults with incapacity in AWI cases would benefit from a clearer understanding of the purpose and safeguarders. The SMHLR reported variances in understanding of these roles among adults affected by the AWI Act. Therefore, adults who may fall under the AWI Act would benefit from learning about these roles when they have capacity.
Q85) Do you think there should be a specific criminal offence relating to financial abuse of an adult lacking capacity?
RCGP Scotland agrees that there should be a specific criminal offence relating to financial abuse of an adult lacking capacity. We note that the lack of a specific criminal offence under the AWI Act can cause uncertainty as to whether a criminal offence has occurred and welcome any move to correct this. Adults with incapacity represent one of the most vulnerable groups in society who are already protected in law against ill-treatment and neglect, and we consider it appropriate that a specific criminal offence relating to financial abuse of an adult lacking capacity be created.
Q86) If so, should the liability be the same as for the welfare offence?
The College agrees that the liability should be the same as for welfare offences.
Q87) Do you have experience of adults lacking in capacity being supported in hospital, despite being deemed to be no longer in need of hospital care and treatment? What issues have arisen with this?
GPs are intimately involved in the care of adults lacking capacity and seek to provide continuity of care. For an adult lacking capacity, being kept in hospital despite not requiring to be in that setting to have their care needs met can have adverse impacts on their well-being due to being disconnected from family and friends, living in an unknown environment which can lead to confusion, anxiety and fear. We note that adults lacking capacity being kept in hospital for longer than necessary also has an impact on the individual's family members who may need to travel to and from the hospital and limit time with their loved ones due to restrictive visiting hours. RCGP Scotland also recognises the impact of adults lacking capacity being kept in for longer than necessary on the wider health service. Delayed discharge of such individuals means that hospital beds that could otherwise be freed up are occupied, impacting on waiting times for planned treatment, increasing waiting times in emergency departments, and worsening the morale of staff.

Q88) Do you foresee any difficulties or challenges with using care settings for those who have been determined to no longer need acute hospital care and treatment?
RCGP Scotland recognises the many challenges currently facing care homes, including staffing shortages and financial pressures. When adults with incapacity move to a new environment for care, such as care homes, it will take time for the new health and care staff to become familiar with them. Registration with a new GP practice does require time for clinical records to be transferred, which unfortunately still includes some manual entry of data. To obtain a suitable level of medical cover for these patients, local general practices might be suitably resourced through an enhanced service, for example.
Q89) What safeguards should we consider to ensure that the interests and rights of the patients are protected?
When moving a patient with incapacity who no longer needs hospital care to a community setting every attempt should be made to ascertain their will and preferences. There are standards for care records that can help convey information that is important to individuals. RCGP Scotland also believes that for such patients, consideration should be given to whether the setting has appropriate levels of clinical staffing to provide adequate medical care.
Q90) What issues should we consider when contemplating moving patients from an NHS acute to a community-based care settings, such as a care home?
RCGP Scotland believes that patients should not be kept in NHS acute settings longer than they need to be. We note that multiple issues might influence decision-making around the movement of people from an NHS acute setting to community-based care. Matching of people to community-based settings near to family or friends would seem desirable, particularly if the patient has expressed wishes around this, although we recognise that it is not practical for every individual to remain in an acute care setting until such a place becomes available. We also believe that the level of clinical cover available should be considered in such cases, this will be of particular importance for patients requiring specialist cover for conditions such as dementia. The College strongly believes that input from GPs should occur as early as possible when moving patients from NHS acute services to the community. This would allow for GPs to quickly familiarise themselves with the patient's circumstances and medical history and anticipate any additional care needs they may have.

If a patient is being moved from acute services to a community-based care setting on a temporary basis then the length of stay must be considered. If the care home is being used as a 'step down arrangement' while a longer-term care arrangement is found, then there should be a clear understanding of how long this temporary period will last.

Part eight: authority for research

Q91) Should the AWI Act be amended to allow the creation of more than one ethics committee capable of reviewing research proposals involving adults lacking capacity in Scotland?
RCGP Scotland agrees with the AWI Act being amended to allow the creation of more than one ethics committee capable of reviewing research proposals involving adults lacking capacity in Scotland.
Q92) In research studies for which consent is not required for adults with capacity to be included as participants, should adults with incapacity also be permitted to be included as participants without an appropriate person providing consent for them?
The College agrees that adults with incapacity should be permitted to be included as participants in research studies for which consent is not required without an appropriate person providing consent for them.
Q93) Should Scotland A REC (or any other ethics committee constituted under Regulations made by the Scottish Ministers in the future) have the ability to determine that consent would not be required for adults with incapacity to be included as research participants, when reviewing studies for which consent would also not be required to include adults with capacity as research participants? RCGP Scotland agrees that Scotland A REC (or any other ethics committee constituted under Regulations made by the Scottish Ministers in the future) should be able to determine that consent would not be required for adults with incapacity to be included as research participants, when reviewing studies for which consent would also not be required to include adults with capacity.
Q94) Should the Adults with Incapacity Act be amended to allow researchers to consult with a registered medical practitioner not associated with the study and, where both agree, to authorise the participation of adults with incapacity in research studies in emergency situations where an urgent decision is required and researchers cannot reasonably obtain consent from a guardian, welfare attorney or nearest relative in time?
RCGP Scotland agrees that the AWI Act should be amended to permit researchers to consult with a registered medical practitioner not associated with the study and,

where both agree, to authorise the participation of adults with incapacity in research studies in emergency situations where an urgent decision is required and researchers cannot reasonably obtain consent from a guardian, welfare attorney or nearest relative in time.
Q95) Should the Adults with Incapacity Act be amended to allow researchers to enrol adults with incapacity in research studies without the consent of an appropriate representative of the adult, in emergency situations where a decision to participate in research must be made as a matter of urgency, where researchers cannot reasonably obtain consent from an appropriate representative of the adult, and where researchers act in accordance with procedures that have been approved by Scotland A REC (or any other ethics committee constituted by regulations made by the Scottish Ministers)?
The College agrees that the AWI Act be amended to allow researchers to enrol adults with incapacity in research studies without the consent of an appropriate representative of the adult, in emergency situations where a decision to participate in research must be made as a matter of urgency, where researchers cannot reasonably obtain consent from an appropriate representative of the adult, and where researchers act in accordance with procedures that have been approved by Scotland A REC (or any other ethics committee constituted by regulations made by the Scottish Ministers).
Q96) Should the Adults with Incapacity Act be amended to permit researchers to nominate a professional consultee to provide consent for adults with incapacity to participate in research, in instances where researchers cannot reasonably obtain consent from a guardian, welfare attorney or nearest relative?
RCGP Scotland agrees that the AWI Act should be amended to allow researchers to nominate a professional consultee to provide consent for adults with incapacity to participate in research, in instances where researchers cannot reasonably obtain consent from a guardian, welfare attorney or nearest relative. We note that GPs are included in the list of individuals who can provide consent for adults with incapacity to participate in research where researchers cannot reasonably obtain consent from a guardian, welfare attorney or nearest relative. The decision to include GPs on the list of professional consultees who can provide consent in such a scenario is welcome but will require updated professional guidance.
Q97) In addition to being permitted to participate in research that investigates the cause, diagnosis, treatment or care of their incapacity, should the Adults with Incapacity Act be amended to allow adults lacking capacity to participate in research that investigates conditions that may arise as a consequence of their incapacity?

RCGP Scotland agrees with the proposal to allow the AWI Act to be amended to allow adults lacking capacity to participate in research that investigates conditions that may arise as consequence of their incapacity.
Q98) In addition to being permitted to participate in research that investigates the cause, diagnosis, treatment or care of their incapacity, should the Adults with Incapacity Act be amended to allow adults lacking capacity to partake in research that investigates conditions they experience that do not relate to their incapacity?
The College agrees that the AWI Act should be amended to allow adults lacking capacity to partake in research that investigates conditions they experience that do not relate to their incapacity.
Q99) Should the Adults with Incapacity Act be amended to allow adults with incapacity the opportunity to participate in any research regardless of whether the research explores conditions that relate to their incapacity or investigates conditions that they experience themselves?
N/A.