



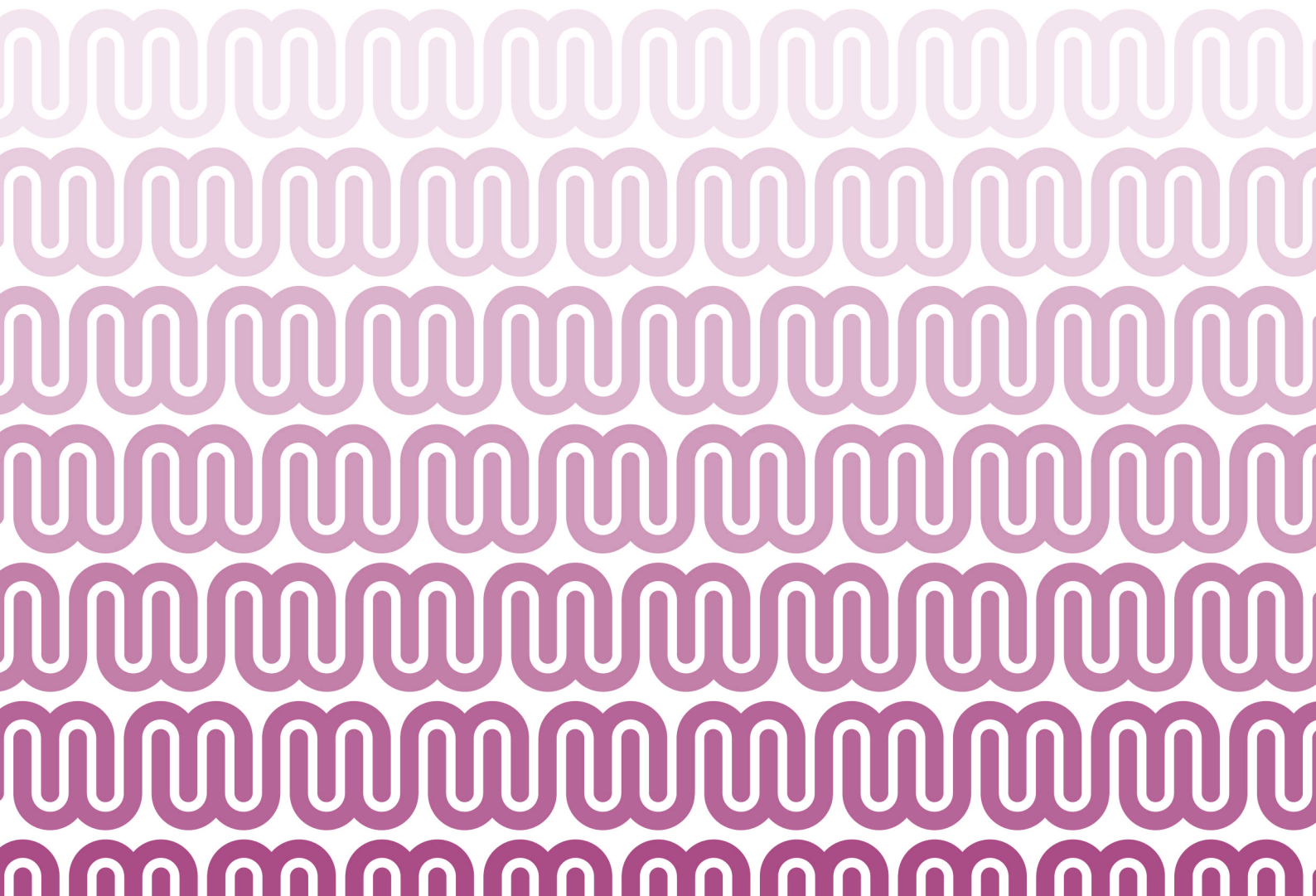
mental welfare
commission for scotland

Cease and vary

The use of Adults with Incapacity (Supervision of Welfare Guardians etc by Local Authorities)(Scotland) Amendment Regulations 2014

Advice notes

September 2024



Our mission and purpose

Our Mission

To be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice.

Our Purpose

We protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.

Our Priorities

To achieve our mission and purpose over the next three years we have identified four strategic priorities.

- To challenge and to promote change
- Focus on the most vulnerable
- Increase our impact (in the work that we do)
- Improve our efficiency and effectiveness

Our Activity

- Influencing and empowering
- Visiting individuals
- Monitoring the law
- Investigations and casework
- Information and advice

Advice note on the use of Adults with Incapacity (Supervision of Welfare Guardians etc by Local Authorities)(Scotland) Amendment Regulations 2014¹

Introduction

The Mental Welfare Commission for Scotland (the Commission) is an independent organisation. It was set up by statute and works to safeguard the rights and promote the welfare of anyone with a mental illness, learning disability, dementia, and related conditions.

Adults with Incapacity (Scotland) Act 2000

The Adults with Incapacity (Scotland) Act 2000 (the AWI Act) provides a framework for safeguarding the welfare and managing the property/finances of adults (people aged 16 or over) who lack capacity due to mental illness, learning disability, dementia or a related condition, or an inability to communicate.

The AWI Act aims to protect people who lack capacity to make particular decisions. It also aims to support their involvement in making decisions about their own lives as far as they are able to do so.

Any decision or action taken under the AWI Act should take account of the AWI Act principles and must:

- Be of benefit to the adult
- Be the least restrictive option
- Take the person's past and present wishes into account
- Take the views of other relevant people into account
- Encourage the person to exercise their existing skills and develop new skills.

The principles must be considered when powers are being used. They should also be robustly evaluated during statutory review processes.

¹ [The Adults with Incapacity \(Supervision of Welfare Guardians etc. by Local Authorities\) \(Scotland\) Amendment Regulations 2014 \(legislation.gov.uk\)](#)

Private welfare guardianship orders and local authority responsibilities

At the outset of the implementation of the AWI Act, local authorities were required to carry out an initial visit within three months of the welfare guardianship order being granted and thereafter supervise private welfare guardians on an annual basis.

Our annual *AWI monitoring report 2023-24* evidences that there were 19078 people subject to a guardianship order on 31 March 2024. This was a 6.9% increase from the previous year and private guardianship orders accounted to 72.9% of this number.

In recognition of this year on year increase and on the basis of practice experience the requirement of local authority supervision for private welfare guardians was amended by the Adults with Incapacity (Supervision of Welfare Guardians etc by Local Authorities)(Scotland)Amendment Regulations 2014.

The responsibilities for local authorities are set out at Section 10 of the AWI Act and specific responsibilities relating to the supervision of welfare guardians are detailed in the subsequent [Adults with Incapacity \(Supervision of Welfare Guardians etc. by Local Authorities\) \(Scotland\) Amendment Regulations 2014](#) (the Regulations).

Supervision of private welfare guardians

The 2014 Regulations afford the local authority the possibility to vary or cease supervision when they have no concerns with the operation of the welfare guardianship order and:

- the welfare guardian(s) has been appointed for a period of one year or more
and
- the adult and the guardian(s) have been visited within three months of the guardianship order being granted
and
- at least once at an interval of not more than twelve months in accordance with the duties of the local authority (Regulation 2(1)).

In this situation, the local authority can:

- vary the arrangements for visits thereafter to the adult and guardian so that the intervals between visits are more than twelve months
or
- cease visits to the adult or the guardian or both.

However, if the adult or welfare guardian objects to the proposed variation or cessation, the local authority cannot proceed to do so.

This advice note aims to provide information about the ceasing and varying actions available to the local authority relating to their responsibilities to supervise private welfare guardians. It affords an opportunity for local authorities to target their limited resources to the people and situations that need it most, thereby fulfilling their statutory duties under the AWI Act.

The process

Once a welfare guardianship order is granted, local authorities are required to conduct an initial visit within the first three months. This offers an opportunity to establish a working relationship between the welfare guardian and the supervising officer from the local authority, discuss the scope and limitations of the powers granted within the order, consider the potential for the delegation of powers where appropriate and reiterate the need to evidence that the principles of the AWI Act are considered for each intervention under the powers. Arrangements should be made at this point for a follow-up supervisory visit within 12 months.

On the basis of findings from this follow up annual visit, and with the agreement of the adult subject to the order and the welfare guardian, the local authority can either decide to vary the timescales for future supervision or cease visits to either the adult or the guardian or both.

Powers for restrictive practices

If the welfare guardianship order includes restrictive powers, the Commission advises against ceasing or varying of supervision of welfare guardians in these situations. This is to ensure restrictive practices are kept under regular review and are only used in accordance with the specific powers of the welfare guardianship order and by application of the principles. Please see [Rights, Risks and Limits to Freedom](#) for further information.

Notifying the Mental Welfare Commission

When proceeding with either the ceasing or varying of supervision arrangements, the local authority must notify the Mental Welfare Commission in the prescribed form (appendix 1).

Recommencing supervision

After supervision arrangements have been varied, a local authority may, at any time, decide to reinstate supervision. This may be on its own accord or at the request of the adult or welfare guardian(s). In instances where supervision has stopped, the local authority can resume supervision. In this instance, it would be good practice to notify the Commission of this revised supervision schedule.

Recommendation

The Commission is aware of the practice demands on local authorities to meet their statutory duties under the AWI Act and we hear on a regular basis that there is limited capacity to fulfil statutory duties in relation to supervision of private guardians. The 2014 regulations offer a real solution to the management of these demands and helps ensure that a finite resource is utilised and targeted in a manageable and bespoke manner.

Please note that there is no equivalent ceasing or varying option for guardianship orders where the chief social work officer (CSWO) has been appointed. When a local authority takes the decision to intervene in a person's life on a statutory basis, there

is a clear expectation that the powers granted will be delegated to an authorised officer on behalf of the CSWO to ensure that powers are used in line with the principles, are reviewed on a regular basis and remain necessary. Whilst the powers can be delegated, the CSWO remains accountable for the guardianship order.

Appendix 1: schedule

FORM OF NOTICE TO THE MENTAL WELFARE COMMISSON

To the Mental Welfare Commission

Supervision of [insert name and address of welfare guardian] (“the guardian”) who has been appointed as welfare guardian for [insert name, address and date of birth of adult to whom the welfare guardian has been appointed] (“the adult”)

[Insert name of the local authority] (“the local authority”) has visited the adult and guardian within three months of the relevant guardianship order being granted, and then has visited the adult and guardian at least once at an interval of not more than 12 months.

The local authority has now decided to:

[delete (a),(b), (c) or (d)]

- a. vary the interval between visits to the adult and guardian to be no more than [insert the number of months, being more than 12 months]
- b. cease visits to the adult
- c. cease visits to the guardian
- d. cease visits to the adult and the guardian

The adult and guardian do not object to the decision. [Give details of what has been done to inform the adult and guardian and what discussions have taken place.]

[Complete where the decision is to vary the interval between visits]

The reasons for local authority’s decision to vary the interval between visits are: [insert a brief description of the current circumstances of the adult and guardian and what, if any, of these circumstances have changed since the application for guardianship was made]

[Complete where the decision is to cease visits]

The reason for the local authority’s decision to cease visits to the adult and/or the guardian are: [insert a brief description of the current circumstances of the adult and guardian and what, if any, of these circumstances have changed since the application for guardianship was made]

The local authority has provided information to the adult and the guardian on how they can contact the local authority if either person wishes visits to the adult and/or the guardian to restart.

[Complete where the decision is to vary the interval between visits or to cease visits to the adult and/or the guardian]

Other relevant details, including any care managements arrangements which will continue are: [insert any relevant details]

The dates of last visit by the local authority to the adult, and visit or contact with the guardian [insert date(s)].

Date:

Signed on behalf of the local authority:

[insert name, job title and contact details]

Send a completed copy of this form by email, from secure networks only to the Mental Welfare Commission secure email address at: mwc.admin@nhs.scot



If you have any comments or feedback on this publication, please contact us:

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