RESPONSE FROM RCGP SCOTLAND

The Royal College of General Practitioners (RCGP) is the professional membership body for family doctors in the UK and overseas. We are committed to improving patient care, clinical standards and GP training. Its objectives, in concern for care for patients, are to shape the future of general practice, ensure GP education meets the changing needs of primary care throughout the UK, grow and support a strong, engaged membership and to be the voice of the GP.

The College in Scotland came into existence in 1953 (one year after the UK College), when a Scottish Council was created to take forward the College’s interests within the Scottish Health Service. We currently represent around 5,000 GP members and Associates in Training throughout Scotland. In addition to a base in Edinburgh, the College in Scotland is represented through five regional faculty offices in Edinburgh, Aberdeen, Inverness, Dundee and Glasgow.

RCGP Scotland welcomes the opportunity to respond to the proposals for reform to the Adults with Incapacity (Scotland) Act 2000 (AWI). The outcome of this review will have a direct impact on our members, many of whom are involved with enacting this piece of legislation on a regular basis. We have restricted our comments on this legislation to those areas which we feel will have the most direct impact on general practice.

RCGP Scotland comment on the proposals

RCGP Scotland supports the general principles which underpin the Act, which are sound and appropriately patient-centred with due respect given to the rights of people with incapacity. However, some of the current processes required to support these people under the terms of the AWI Act are administratively burdensome and place additional, and at times unnecessary, strain on the general practice workforce. In a climate of increased workload pressures on GPs, where time and resource is stretched, we would expect any proposed changes to the AWI Act to reflect the current climate, providing relevant support to those implementing the Act and reducing unnecessary bureaucracy, while of course fundamentally prioritising the safety and wellbeing of patients. We also recognise that owing to changing demographics and an ageing population, incapacity assessments are likely to become an increasing part of the GP workload. We would like consideration to be given to easier access to specialist advice in cases of less straightforward capacity assessments, and more educational resources, for those carrying out assessments.

We do have concerns that certain, key elements relating to this Bill are not included within this reform paper. For instance, we have been unable to find reference to end of life care.
within the consultation paper. We recognise that end of life care presents unique conditions under which this Bill is enacted and we do not feel that in its present state, this reform paper reflects this vital area of care.

GPs will always strive to act in the best interests of their patients and engage with and explain to family members and carers about clinical decisions. Anticipatory Care Planning (ACP) and end of life care planning is an important feature of this decision-making process.

RCGP Scotland recognises that the implementation of the AWI Act is variable across the country and across the health and social care workforce. We would hope that any changes to this piece of legislation would be for the purpose of delivering pragmatic solutions to the problems being experienced in relation to this Act.

Chapter Six – Capacity Assessments

- Should we give consideration to extending the range of professionals who can carry out capacity assessments for the purposes of guardianship orders?

This proposal appears to be sensible and responsive to the growing number of people living with diminished capacity, coupled with the diversity of home placements. These trends place increased demand on assessments to take place within general practice and psychiatry, however there is limited capacity in both of these services to undertake these assessments. A practical and pragmatic approach must be taken to approaching any changes in this regard, whereby those healthcare professionals who are best placed to judge the capacity of a particular individual can do so.

- If you answered yes, can you please suggest which professionals should be considered for this purpose?

It seems sensible to extend these enhanced powers to those professionals listed under Section 47 of the Adults with Incapacity Act. If a more complex graded approach is being considered, perhaps two professionals could help with this process.

Chapter Seven – Guardianship changes and proposed gradation of guardianship

- Do you agree with the proposal for a 3 grade guardianship system? Please give reasons for your answers.

From a general practitioner perspective, the current arrangements are extremely time consuming and we recognise the distress that many patients suffer as a result of lengthy delays which hinder the ability to act in the best interests of those with incapacity. An appropriately graded system may go some way to addressing the lengthy process that is in place to achieve guardianship, particularly in Grade One cases. We are pleased that there appear to be stringent safeguards proposed, given the amount of power that this level of guardianship provides. It is anticipated that proposals for Grade Two could help, however any future changes should aim to simplify and speed up the process for the majority of cases, while still safeguarding the rights of the person which are underpinned in the principles of the Act. We anticipate that appropriate legal advice and safeguarding will be sought to ensure clarity around the grading system.
The principles of Grade One of the Act appear to provide adequate flexibility, however the wording may need to be more explicit around this flexibility to avoid the examples being interpreted too prescriptively.

In terms of the guardianship proposals as a whole, we have some concerns over the practical implementation of these proposals should they become too complex.

Chapter 11: Advanced Directives

RCGP Scotland believes that there is benefit in providing more legal clarity in Scotland around Advanced Directives. This will bolster clinicians’ confidence in enacting their patients’ wishes. We believe that this legislative provision should sit separately from the AWI Act as Advanced Directives should be considered well before the AWI Act is implemented. Advanced directive authority also needs to be clarified as it may create conflict with the family if a person develops incapacity.

Chapter 12: Authorisation of Medical treatment and proposed changes and enhancement of Section 47

- Do you agree that the existing s.47 should be enhanced and integrated into a single form?

Yes, we feel that an enhanced S.47 which is integrated into a single form would be beneficial.

- Do you think there should be provision to authorise the removal of a person to hospital for the treatment of a physical illness or diagnostic tests?

Yes, this seems appropriate in cases where there is absolute incapacity to make judgement and no existing guardianship order exists to contribute to this decision. Additionally, this would only be appropriate in instances that would have a clear and undisputed benefit on the individual’s quality of life.

- Do you agree that a second opinion (medical practitioner) should be involved in the authorisations process? If yes, should they only become involved where the family dispute the need for detention?

Yes, we believe that a second opinion should be sought in the authorisation process and also agree that they should only become involved where the family dispute the need for detention.

- Do you agree that there should be a review process every 28 days to ensure that the patient still needs to be detained under the new provisions? How many reviews do you think would be reasonable?

A robust review process needs to be implemented. However, the timeframes involved in this process will vary and should be established on a case by case basis.
• 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?

We are unclear of whether this is necessary to protect patients and are concerned that this process may result in unnecessary recertification for readmissions if the patient’s condition deteriorates after discharge. It would appear sensible to have a review period built into this process to provide assurances in cases of relapse, for instance the certificate could require renewal after a six-month period.

• Do you think we should give consideration to extending further the range of professionals who can carry out capacity assessments for the purposes of authorising medical treatment? Please give reasons for your answers.

Members of the wider multi-disciplinary team (MDT) play a vital role in the delivery of patient care. For instance, practice based pharmacists and members of the Allied Health Professionals, including physiotherapists, may well have sufficient knowledge of the patient to judge capacity and carry out the relevant assessments. Additionally, mental health professionals providing care and support in the community may also be well placed to carry out such capacity assessments.

Chapter 13: Research

• When drafting their power of attorney should individuals be encouraged to articulate whether they would wish to be involved in health research?

Encouraging individuals to articulate whether they would wish to be involved in health research would help to avoid any potential professional conflicts of interest which may arise if medical professionals are able to authorise participation.

Dr Alasdair Forbes
Deputy Chair (Policy) RCGP Scotland

April 2018