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Committee

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2 May 2025

Dear Karen,

Adults with Incapacity (Scotland) Act 2000

I am writing to you to provide an update on the planned amendment of the Adults with Incapacity (Scotland) Act 2000 ("the Act"), as set out in the 2024-25 Programme for Government.

As you may be aware, the Scottish Government consulted between July and October 2024 on proposed changes to the Act, with a particular focus on:

- Improving access to justice for adults affected by the AWI Act
- Shifting the focus of the AWI Act to one that truly centres on the adult
- Enabling adults to access rights more easily
- Ensuring adults are supported to make and act upon their own decisions for as long as possible
- Ensuring that when an adult cannot make their own decisions despite support, that their will and preferences are followed unless doing so would be to the overall detriment of the adult
- Setting out proposals for reform concerning authority for research

More than 160 responses were received, and whilst it was clear from the engagement that there is strong support to modernise the AWI legislation, risks relating to European Convention on Human Rights (ECHR) non-compliance in relation to deprivation of liberty cases emerged. As a result, there is the need for a more detailed approach to be developed to ensure we can bring forward a solution consistent with ECHR legislation.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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I am very grateful to those who took the time to respond to the consultation, and having carefully considered the viewpoints shared I have concluded that further work must be prioritised ahead of bringing forward a Bill in this area.

I appreciate that this decision may be disappointing. I remain committed to modernising the legislation, to reflect international standards on human rights in particular, but I believe that further time is required to get this right for both the vulnerable individuals at the heart of AWI as well as those working to protect and support them. Shifting the focus of the Act to truly centre on the adult will require significant change across the health, social care and justice systems and it is crucial therefore that we work closely with partners to fully understand policy, practical and resourcing implications more fully.

I have asked my officials to prioritise a number of actions, with an expectation of bringing forward an amendment Bill early in the next parliamentary term.

1. To establish an AWI Expert Working Group to advise and collaborate with government on the policy and operational detail required to bring forward, and successfully implement, future legislative change. Given the importance of this work, I will also establish and chair a Minister-led Oversight Group to monitor and drive progress. I expect invites for both groups to be issued ahead of Summer recess, with initial meetings to take place in September 2025.
2. To identify key areas for further development, drawing on the valuable feedback already gathered through consultation. I expect this will include workstreams on Supported Decision Making, Deprivation of Liberty and Forced Detention and Covert Medication, as well as assessing each section of the current Act through a continuous improvement lens.
3. To seek to learn from relevant practice across other jurisdictions and nations.
4. To consider how best to drive transparency as we take this work forward, and to commit to provide regular updates to those with an interest as efforts progress.

I hope this is helpful and I will continue to keep the Committee updated.

Yours sincerely,

MAREE TODD MSP

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