

## **Adults with Incapacity (Scotland) Act 2017 Consultation on Proposed Amendments. Response by SASW on behalf of the members of the Social Work Profession.**

The Scott Review and the central importance of human rights led to this consultation. It proposes several radical changes to ensure that human rights protections are an integral part of all legislation relating to deprivation of liberty within the Law.

SASW members, particularly MHOs, welcomed the consultation and helped us to craft our response. They told us that in many cases what was being proposed is good practice, where circumstances and resources permit it. This is a complex area of practice and requires clarity both of thought and purpose if it is to be a meaningful and beneficial to all concerned. As such there was a clear message from our members that the changes to policy and the law must be effective, and to do so there will need to be: scrutiny over implementation; the changes should be implemented cautiously to manage unintended consequences; any future consultation should allow for a longer response period to address the complications in legislation

Our members told us that they expect a financial and staffing impact on existing services because of what is being proposed. Without additional resources some of these changes risk adding an additional burden to services that are struggling to deliver their statutory responsibilities. The levels of change proposed all have implications both to process and staffing levels. This applies to Power of Attorney; Deprivation of Liberty in all situations; powers of doctors to treat; the existing processes recently underway for Supported Decision Making; the changes to the Office of the Public Guardian and the additional requirements upon Local Authorities. These not insignificant adjustments will have an impact on social work services, particularly mental health and hospital admissions/treatment under section 47 of the Adults With Incapacity Act. There is also a paradoxical risk that a failure to resource the changes could reduce rather than increase the rights of people affected by the legislation.

Our members were also concerned about proposals to speed up the legal processes by changing who can agree that a capacity issue exists. How this impacts on the on the people we support is of real concern. The current legal processes, whilst being limited and hindered by the availability of qualified practitioners, does already provide a considerable degree of safeguarding. Our members felt that the answer is not to reduce the rights of persons by lessening the level of, for example, legal safeguards to Power of Attorney, or Guardianship processes, but to increase the number of specialist professionals involved. Not to reduce the levels of supervision and accountability in, for example, deciding who has capacity to appoint a POA, by making sure that legal aid is available for the process of installing a Power of Attorney. Otherwise, the stated principles that already exist are not protected and the intention of the changes will not be realised.

In short, whilst it is important to take the Scott Review forward for both The Mental Health Act and the Adults with Incapacity Act, it is equally important that any changes

made are properly structured and transparently financed. Both Acts are recognised internationally as being good examples of how good mental health legislation and protection should be done. Both also have very strong principles that, when applied properly are effective in ensuring that time can be taken to get changes and resource allocation/finance set up. Getting this right is crucial for our members, who are the people who will implement these changes and/or supervise/manage others who must do so.

**Response collated and coordinated by Paul Jewitt, consultant MHO and member of the SASW National Standing Committee**