

Response ID ANON-V6YT-9YNQ-A

Submitted to Scottish Mental Health Law Review consultation
Submitted on 2022-05-26 16:27:51

Chapter 2: What is the purpose of the law?

1 What are your views on our purpose and principles?

Please share your views on our purpose and principles:

SASW agrees with the principles and purposes set out in this consultation. Respect for dignity and autonomy and supporting the right for inclusion and equality are all fundamental values in social work practice.

The challenge comes around ensuring that there is appropriate resource, funding and capacity to meet these principles. This does not even mean one-off funding but ongoing investment and focus on workforce training and development to ensure that the purposes and principles can be met.

Social workers are currently under serious pressure due to significant demands on services. This is damaging to the mental health and wellbeing of social workers themselves and also increasing the risk of people not getting support they need. There is also a shortage of Mental Health Officers in the workforce as a result of social work services being stretched, with most social workers unable to commit the time required to this role.

It's therefore critical that attention is given to how social work services can be better resourced and funded to enable a marked improvement in capacity levels which will help to bring these principles into reality.

2 What do you think about the approach that we are proposing for Scottish Government to meet core minimum obligations for economic, social and cultural rights in this area?

Please share your thoughts on the approach that we are proposing for Scottish Government to meet core minimum obligations for economic, social and cultural rights in this area:

Access to safe, secure and appropriate housing, a reasonable income, health and social services and to be treated equally with others are basic human rights and, therefore, we agree with the proposed legal requirement for the Scottish Government to establish core minimum obligations to people with mental disorder to secure these rights.

SASW believes that the principle of reciprocity, and a definitive duty to provide the full range of evidenced-based treatment evidence as best to help someone to manage their mental health. This duty should be enhanced to become a requirement within the law. This should be an absolute condition to the loss of liberty, and enforced pharmacology, which is one of the most severe peacetime breaches of human rights and individual dignity. The state must continue to act to help the person recover. Otherwise, we are simply medicalising and locking up those who are often the most traumatised in society, and who often come from generations of structural poverty.

3 What are your views on our suggestions for reforming sections 25 to 27 of the Mental Health Act?

Please share your views on our suggestions for reforming sections 25 to 27 of the Mental Health Act :

We support the proposal for clear and attributable duties to be placed on NHS boards and local authorities to provide mental health support to individuals with significant levels of need.

We also suggest that this widening of duties should extend to the Scottish Prison Service. Whilst both social workers and NHS workers have some contact with prisoners, it is Prison Officers who have the most direct and regular contact and are therefore best placed to identify changes in a prisoner's mental health and to support good mental wellbeing. Improving access to adult social support and care in prisons must be a key factor in better mental health for people in prison.

4 Do you have suggestions on how law could be reformed to address stigma, and issues with attitudes towards mental disability?

Please share your suggestions on how law could be reformed to address stigma, and issues with attitudes towards mental disability:

Changing public perceptions of mental health goes much deeper than creating and enforcing legislation. Reforming the law doesn't necessarily mean that people's attitudes will change. Instead, there needs to be a greater willingness at all levels of society to have open conversations about what mental health is and how it affects all of us.

Creating environments and opportunities where people feel safe and comfortable having those conversations is fundamental if we are to address the stigma attached to mental disorder. As well as deepening our understanding of mental health through education and public awareness, it is essential that everyone frames mental health more positively and sensitively in our language and messaging.

5 Do you have suggestions on how the law could lead to prevention, and how the law could address the social determinants of mental health?

Please share your suggestions on how law could be reformed to address prevent and the social determinants of mental health:

We feel that this question is much wider than mental health law. Preventing instances of poor mental health has to be considered through the lens of how we improve people's quality of life so that we reduce the likelihood of people reaching the point of needing treatment and support.

More generally, mental health support services have been reduced as local authority budgets are cut, which makes it harder for people to access services. This is again responsible for the acceleration of problems. Better resources given to community mental health teams and attention given to how we make community mental health support more responsive and accessible.

From a legal perspective, making it a legal duty for local authorities to be accountable for early intervention services could focus attention on prevention.

6 What are your views on our proposals on adequate income, housing and independent living, inclusion in society, and accessible information?

Please share your views on our proposals:

We agree with the proposals set out in each of these areas.

It's important that information is available to people at the earliest possible opportunity and not just at the point of crisis. This is an important step to addressing a lack of awareness of rights and options that people have available to them when experiencing mental health problems. We therefore support the broadening of the existing duty on access to information. Consideration also needs to be given to ensuring information is available in a variety of formats and is universally accessible.

Moreover, no person should have their income or access to benefits disrupted as a result of mental ill-health. Financial insecurity and anxiety around money is a cause of poor mental health and can compound existing problems. The new Scottish benefit system offers an opportunity to create a fairer system that doesn't penalise or allow people to fall through gaps in welfare support because of their mental health.

Please let us know if you have suggestions of other economic, social or cultural rights which you feel are particularly relevant to mental health?:

7 What are your views on the system-wide changes which we think are needed?

Please share your views on the system-wide changes:

More support to professionals to ensure they have the knowledge, resources and skills to give full effect to the human rights of individuals is vitally important. Social workers are often on the frontline when supporting people who are experiencing poor mental health across all the specialisms of adults', children's and justice services but unless they are an MHO, they may not have received much training in the area of mental health. Greater resource and attention to supporting the workforce is needed, particularly around developing a consistent understanding of a human rights-based approach. Social work education does not always cover a human rights approach in enough depth or detail, yet it is crucial to social work practice. We would also like to see training being led and shaped by people with lived experience.

We support all other proposed system-wide changes around redefining culture, properly resourcing community and in-patient services and giving more attention to the design of spaces to ensure comfortable environments. We also strongly agree with the proposal that people with lived experience should drive system-wide changes.

However, in order for these system-wide changes to happen and be effective, there must be commitment to the necessary levels of funding and resources. As mentioned in response to question one, this cannot be "one-off" grants but rather a commitment to fund these changes over a long period of time. Many of these changes will require time, particularly around redefining culture and embedding a human rights-based focus in training and continuous professional development

8 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name].:

Chapter 3: Supported Decision Making

1 What are your thoughts on our proposals for a wide ranging supported decision making scheme ?

Please share your thoughts on our proposals for a wide ranging supported decision making scheme:

Social workers and MHOs already support people to make decisions and uphold their rights, and in many ways supported decision making is embedded in practice, however this can be curtailed by the structures that we work within and there may be potential to do more to maximise a person's capacity to participate in decisions.

If an SDM framework becomes embedded in law and practice, resources would be required to make it work and ensure it is embedded across all systems, for example, additional MHOs and advocacy services.

For the named persons scheme, more guidance around the role and responsibilities of a named person would be an important change. Currently, there is little information available to a named person to give them a sound understanding of what is expected of them in the role. Making guidance available to a named person and giving them a formal opportunity to ask questions and become more informed would be beneficial.

We agree that independent advocacy should be available to people throughout the decision making process. Often access to advocacy only becomes available at the point of intervention. This makes it harder for someone to develop a relationship and trust with the advocacy partner. Access to independent advocacy needs to be extended to make it available at an earlier stage.

We would like to see supported risk taking part of a supported decision making scheme. The current system is perhaps too risk averse, resulting in unnecessary powers in guardianship applications. Practitioners often feel discomfort when someone makes a decision which is not the one they want them to make, and which they feel contains unmanageable risks. There should be scope for taking an acceptable level of risk as an adult citizen.

What do you consider would be the barriers to this? :

There is a risk that SDM would become process driven with administrative burden placed upon practitioners. There is also a question around resource and the ability of the workforce to deliver these duties without a commitment to more adequate resourcing in the current system.

How do you think the Supported Decision Making scheme should be taken forward?:

Social workers are well placed to begin the process and support an individual to develop their own framework for supported decision-making. Social workers work in partnership with colleagues from the legal profession, health and support providers to deliver a human rights based approach and this must be promoted. Independent advocacy plays an important role in ensuring processes are transparent and person-centred.

2 How do we mitigate against undue influence or pressure in Supported Decision Making generally?

Please let us know your suggestions for mitigating undue influence:

One of the challenges faced is competing demands and priorities between services. For example, hospitals are under pressure to have beds available and this can unduly impact on decisions around discharge. There needs to be a more holistic approach taken to allocation of resources to alleviate much of the wider system pressure that can influence decisions. Partnership approaches encourage healthier communication around organisational priority and individual need and can help mitigate people working in silos managing competing demands.

3 Should there be legal duties on public bodies to secure Supported Decision Making for people who need it?

Agree

If so, given that advocacy is a form of SDM, what should be the relationship between that and the existing duties in respect of advocacy?:

We believe that it would be beneficial for there to be legal duties on public bodies to secure supported decision making for those who need it. The use of supported decision-making is necessary to formally reduce any undue authority of strangers or professionals making decisions which may not be keeping with an individual's will, preferences and desired outcomes

4 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name].:

Chapter 4: The Role and Rights of Carers

1 What are your views on our proposals for mandatory Carer Awareness training for all mental health staff?

Please share your views on our proposals for mandatory Carer Awareness training for all mental health staff:

SASW supports the proposal for mandatory carer awareness training to help mental health staff with their role and the needs and rights of carers. Training appropriate to the role should be available widely across the health and social care systems. The training should also be developed and delivered with the involvement of unpaid carers. For example, the current Carer Awareness Training is not mandatory and does not hear from unpaid carers.

The biggest challenges will be ensuring that funding is available to support the training including having enough resources to allow staff to attend and to make it mandatory. Making it part of the registration process or accreditation for professional body could be considered.

2 What are your views on information sharing with unpaid carers of all ages?

Please share your views on information sharing:

Unpaid carers should be more involved in the decision-making relating to the care and treatment of those they are caring for. At present, patient confidentiality can be a barrier to providing carers with information and some unpaid carers struggle to be appropriately identified and acknowledged as having that vital role, particularly young carers.

A framework for identifying and working with unpaid carers would be a positive initiative. There are various models, such as the "triangle of care" model, that could be adopted to ensure that carers are involved as an equal partner and can actively participate in decisions about care. The Somerset model, which is a service-wide approach, developed to improve the inclusion of family and carers in . And the psychoeducation model, where specialist teams provide a package of support, including at least an education component about the patient's diagnosis and the recommended treatment to families are other options.

Finally, transcultural awareness of mental health also needs to be included within information sharing models and processes. Different ethnic groups construct mental disorder differently. It is vital to work closely with family and loved ones so the mental health practitioner can best understand and work alongside their construct of mental disorder.

If you are an unpaid carer, what are your views on sharing information with mental health practitioners?:

3 What is needed to ensure mental health services identify and engage with young carers?

Please share your thoughts on what is needed to ensure mental health services identify and engage with young carers:

Many young carers are excluded from attending and taking part in multi-disciplinary team meetings since they usually happen when the carer is at school, college or university. More flexibility around when these meetings are organised would enable young carers to be included and allow them to engage in ways better for the care of the person and the young person themselves.

4 What are your views on including unpaid carers in discharge planning and processes, as stated in Carers (Scotland) Act 2016?

Please share your views on including unpaid carers in discharge planning and processes, as stated in Carers (Scotland) Act 2016:

Involving unpaid carers in decisions around discharge planning is important. Services need to be aware of the rights of unpaid carers to state their views about the discharge of someone they care for and their judgement as to whether they are ready to and able to support the person at home. The Carers (Scotland) Act 2016 places a duty on health boards to involve unpaid carers in discharge planning, where practicable, and steps must be taken to ensure this is achieved within mental health services as well as in physical health settings.

5 What needs to happen to ensure unpaid carers of all ages are respected and valued?

Please share your views on what needs to happen to ensure unpaid carers of all ages are respected and valued:

Reinstating a specific principle around respect for the views of carers, which is currently found in the 2003 Mental Health Act, is vital. Removing it risks devaluing the role of carers and fails to acknowledge and recognise the pivotal role that unpaid carers have in caring for those experiencing mental disorder or disability. Involving all carers in decisions around treatment and care plans and respecting their views would be a positive approach.

The proposals on adequate income, housing and independent living, inclusion in society and accessible information as part of a system wide change to how carers are valued and respected is very welcome. Having human rights-based services that enable rather than disable people will help to better support and empower unpaid carers. In this way they become a central part of a team around the person they care for rather than someone who exists in the background, often taking significant responsibility when a person is discharged from a service.

A focus on the mental health and wellbeing of unpaid carers is needed. The State of Caring Survey 2021 revealed that 30% of unpaid carers felt their mental health is bad or very bad. This was even higher for those who are caring for more than 35 hours a week. The stress and anxieties felt by unpaid carers can often be very damaging to their own mental wellbeing, particularly since the nature of the role means they are more likely to put their own needs last. Poor job security or having to give up paid employment further adds to stress and anxiety. A recent Carers UK study found that the use of foodbanks during the pandemic had increased in families where there was an unpaid carer. Additionally, most unpaid carers are female and can find themselves caring for more than one person, usually an older relative and either a child or partner.

Finally, many unpaid carers have little trust in the complaints system, which is viewed as overly bureaucratic, complex and time-consuming. There is a risk that unpaid carers don't feel safe or confident in raising legitimate concerns. A simpler and more transparent system that deals with complaints more effectively is needed. The complaints system should be designed around the needs of the complainant. This would help to build more trust in the system.

Having a dedicated advocacy service for unpaid carers would also be a step forward, not just when raising complaints, but for helping unpaid carers to better understand and engage with mental health services more widely. Again, this would go some way to valuing the role of unpaid carers and recognising them as an important person within mental health.

6 Please tell us anything else you think may be relevant to the role of unpaid carers when supporting someone experiencing mental disorder and working with services.

Please share your thoughts:

7 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name].:

Chapter 5: Human rights enablement

1 What are your thoughts on the proposed Human Rights Enablement (HRE) framework?

Please share your thoughts on the proposed HRE framework:

The proposed universal approach to HRE will need to be accompanied by a shared understanding of human rights across professional groups. There will also need to be clear lines of responsibility around who is carrying forward HREs given that a wide variety of professionals would be involved.

Social work services will need to be given adequate investment and resources to enable social workers to deliver on this duty. Contrary to the suggestion in the consultation that HREs will not constitute an additional assessment, social workers will be required to evidence the assessment and review of the HRE which will create additional work.

2 How do you see the framework as proposed working in practice?

Please share your thoughts on how you see the framework as proposed working in practice:

The proposed universal requirement for putting HREs in place will put more demand on social workers given that they will need to evidence that the HRE has been completed. Consideration also needs to be given to the fact that systems, assessment forms and recording varies across all local authority areas.

Consideration will need to be given to how making all efforts to best understand the person's will and preferences is carried out in practice. For example, people change their minds, so how one determines when a person's will or preference is settled is difficult. It will also require a consistently applied approach that responds well to change.

What barriers do you see to its operation in practice?:

3 What are your thoughts on who should initiate an HRE ?

Please share your thoughts on who should initiate an HRE ?:

Social workers are well placed to initiate an HRE given that the social work education has a strong focus on practice through a human rights lens. Social workers are trained to consider the wider social structures and systems that are barriers to meaningful engagement for people, such as poverty, disadvantage and discrimination. Widening the lens to consider these factors and their impact allows for better direction of community based and preventative solutions when initiating an HRE, and so social workers are a natural fit for carrying out this role.

4 What are your views on the triggers for an HRE?

Please share your views on the triggers for an HRE:

Clear and consistent thresholds should be in place to help support practitioners when making decisions around when an HRE should be initiated. The assessment of autonomous decision making transitions for children moving into adult services are examples of appropriate trigger points for initiating an HRE.

The risk about making HRE a universal assessment is that it becomes some sort of tick box exercise. This risks diluted and less pertinent support at those times when it is most critical to support the expression of human rights.

Is there anything not included which should form a trigger?:

5 What are your views on the right to request a review and the right of remedy and appeal as proposed?

Please share your views on the right to request a review and the right of remedy and appeal:

We do not want to see a separate process under which reviews and appeals are carried forward relating to HREs. It seems disproportionate for a tribunal or judicial review to have the ability to uphold an HRE outcome.

6 Would the body for remedy and appeal differ if the request for a review was in respect of a group of persons rather than an individual?

Not Answered

Please tell us why you feel this way:

Please see response above.

7 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name].:

The ability to progress the recommendations made around HRE are dependent on the level of funding and resources available to effectively deliver them. Real and effective change cannot happen with the resources to facilitate it, which means ensuring that social workers have the capacity and training to deliver on the proposed duties.

Social workers want to work in early intervention and prevention and to build trust and relationships with those they support. They are trained to respect and uphold human rights and work alongside individuals and communities. It is the unique role of social work to assess an individual's needs, understand their wishes, and to promote their interests and wellbeing within the framework of their human rights and the current service / resource context.

However, social workers often find themselves working in systems which can force them to be 'assessors' of risk and gatekeepers to over-rated services.

Having a legislative framework which enables respect for human rights and ensures appropriate support and protection is in place is correct. However, it needs to be backed up with sufficient investment and resources so that social workers are supported to carry it out effectively.

Chapter 6: Autonomous decision making test

1 Capacity and SIDMA

Not Answered

Agree

If you would prefer a reframed definition, please feel free to comment on what you would wish to see adjusted.:

There is no single test for assessing someone's capacity. From a social work perspective, assessing capacity is a multifaceted and multidisciplinary task which depends on the knowledge and experience gained from MHO training, analysis of key factors that may contribute to risk and an informed approach from the MHO and others about whether past actions and behaviours indicate an inability to make and understand the consequences of decisions. It should be noted that not all social workers, regardless of practice area, have the relevant knowledge, experience, training or understanding of legislation to consider the many factors influencing someone's capacity which is why the MHO role and training is delivered as an advanced practitioner offer. However, there could be great benefit if specific training on capacity assessment were given to social workers to enable them to carry out this ring-fenced role. This could bring additional resource into this area of work through a professional already comfortable in working with complex and/or competing rights issues.

The Significantly Impaired Decision Making Ability assessment also depends on the professional judgement, experience and knowledge of the Mental Health Officer and responsible Medical Officer. The human-rights based social work education, experience of working across the welfare and protective legislation spectrum, and the knowledge and skill set of MHOs allow for appropriate assessment to determine whether an individual's decision making is significantly impaired. SIDMA benefits from wide-ranging knowledge and experience of intersectionality of factors brought by MHOs. Professional experience and application of a cross-section of skills are better placed to make informed decisions than a rigid framework.

On that basis, option 2 is the closest option to allowing MHOs to use their professional knowledge, experience and skill-set as previously mentioned. Capacity and decision-making tests should remain separate to enable them to continue assessing different factors.

Not Answered

If so, please comment to let us know if would this include additional matters, or be a reworking to conjoin the current tests?:

Not Answered

Please let us know your thoughts on any options not mentioned:

2 We seek your views on the concept of the test of autonomous decision-making, distinct from a capacity or SIDMA test.

Please share your views on the concept of autonomous decision making:

A clear test identifying thresholds and including safeguards where there is requirement to intervene in people's lives due to potentially diminished capacity is important. A framework should include clarity on thresholds and definitions and clear lines on responsibility and governance for decisions.

3 What are your views on the skills and experience required for someone to competently undertake a test of a person's ability to make an autonomous decision?

Please share your views on the skills and experience required:

Social workers, trained as Mental Health Officers, have the necessary skills and experience to carry out assessments in relation to decision making and capacity. Social workers can apply an extensive knowledge base of legislative duties and powers, use analysis of key factors and supporting considerations of intersectionality, alongside human-rights and person-centred approaches, to competently assess a person's ability to make an autonomous decision. Furthermore, their education, skill sets and experience is founded on a human-rights based approach and so social workers with advanced practice experience and post-qualifying training as an MHO should carry out these assessments and ensure that least restrictive options are considered and wider duties are met. Having appropriately trained medical officers as part of the process would provide complimentary experience and skills.

There is also a need for shared understanding across professional groups responsible for taking forward these duties to ensure all legislative responsibilities are known and connected as appropriate.

4 What are your views on the ADM appeal process?

Please share your views on the appeal process:

We support an appeals process that aligns with the existing processes in place. Where judicial consideration already applies, the appeal route for autonomous decision making should follow these processes.

We would also like to see the use of section 47 certificates reviewed in light of their impact on human rights. For example, issuing section 47 certificates to someone without their knowledge, not having a centralising recording and storage system and the expectation that those living in care homes or in hospital should have a section 47 certificate in place risks discriminating against people with vulnerabilities.

5 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name].:

Chapter 7: Reduction of Coercion

1 Please share your views on how the Review understands coercion

Please share your views on how the Review understands coercion:

SASW agrees with the Review's understanding of coercion as generally involving force or possibility of force, but also including other restrictive practices without informed consent. We welcome the recognition that coercion can be harmful whilst appreciating the Review's aim to balance the use of coercion where it might be necessary as a proportionate part of protecting and promoting a person's human rights.

2 What you think about the Review's proposed approach to reducing coercion, including reducing the use of involuntary treatment?

Please let us know what you think of the proposed approach to reducing coercion:

We agree that there should be a focus on making coercion less necessary. However, this can't be achieved by solely changing the law. We agree that it will require a 'full spectrum' approach across law, policy and practice. Education, training and more resources are essential if we are to bring about changes that help people in a calm and paced way so as to reduce the need for coercion.

3 Do you think that "coercion" or some other word(s) should be used to describe the use of force, the possible use of force, and the experience of coercion

Not Answered

Please give reasons for your answer and any suggestions of other word(s) that should be used:

We suggest that, rather than considering what term is used, more focus should be given to ensuring that its definition is clearly and consistently understood across all professional areas. This could be achieved through multidisciplinary training and good quality national guidance.

4 Please share your views on whether law reform could drive changes which could reduce the use of coercion.

Please share your views on whether law reform could drive changes which could reduce the use of coercion.:

As mentioned in response to question two of this section, there needs to be a fundamental change to environments and cultures to reduce the use of coercion. This cannot be achieved by only changing the law. Better education to improve people's understanding of their rights and the resource to allow environments to support people more effectively in times of crisis will reduce the likelihood of coercion needing to be used.

5 Do you think that safeguards for medical treatment in Part 16 of the Mental Health Act should be strengthened?

Not Answered

Please give reasons for your answer:

Many coercive practices tend to take place outside of mental health settings. There is a need for greater consistency across different settings towards coercion which would mean strengthening the Adults with Incapacity Act to have parity with the Mental Health Act.

6 We seek your views on whether the Mental Welfare Commission should have stronger powers to oversee the use of coercive interventions and to identify areas for action.

Please share your views on whether the Mental Welfare Commission should have stronger powers to oversee the use of coercive interventions and to identify areas for action.:

SASW members do not believe this to be necessary. Social workers and existing health and social work regulators are already well placed to review coercive approaches. The MWC plays a critical role in investigating, reporting on significant cases and areas of thematic concern. Positive regulation and quality improvement can only be truly effective where a whole system approach can be applied together with the input from those responsible for delivery across the wider system. The scope of social work and health and the delivery of holistic services extends beyond mental health. It is important that integration arrangements and the role of Chief Social Work Officers continues to be recognised. In future, the National Social Work Agency may hold the responsibility for quality and improvement across all social work functions and specialisms.

7 Please share any suggestions that you have for the Review's ongoing work on understanding rising rates of detention and community-based Compulsory Treatment Orders

Please let us know if you have any further suggestions for understanding rising rates of detention and people on community based CTOs:

There must be a re-emphasis towards recovery orientated, community-based services. Awareness of the views of people with lived experience regarding community-based Compulsory Treatment Orders is also paramount and we hope that a trauma informed lens will be used in this process. Of equal importance is that the Review Team must be explicitly anti-racist in its approach to understanding rising rates of detention and on community-based Compulsory Treatment Orders.

8 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name].:

Chapter 8: Accountability

1 What do you think about our proposals to give the Mental Health Tribunal increased powers to order that specific care and/or support be provided for a person?

Please share your thoughts on our proposals to give the Mental Health Tribunal increased powers to order that specific care and/or support be provided for a person:

There is a risk that increasing powers of the Mental Health Tribunal to order that specific care and/or support be provided for an individual could contravene the duty set out in The Social Care (Self Directed Support)(Scotland) Act 2013 that an individual has the right to direct their care and support. It also risks creating competition for resources between groups, possibly resulting in one vulnerable group being prioritised for support over another.

Better funded services would improve community based support and reduce the need for a public body to have increased powers in this way.

2 What do you think about the ways we want to extend current excessive security appeals to anyone who feels they are being subjected to unjustified levels of restriction?

Please share your thoughts about the ways we want to extend current excessive security appeals to anyone subject to unjustified restrictions:

We agree with the proposal to extend the current excessive security appeals so that all patients subject to compulsion have the right to appeal against unjustified levels of restriction. This is a basic human right.

All patients subject to compulsion should have the right to challenge the level of restrictions while staying in the same place, rather than automatically being moved to less restrictive care or treatment setting as a solution. To deny someone the right to challenge breaches their freedoms. We therefore support the inclusion of a right to appeal against being subjected to unjustified restrictions.

3 What you think about our ideas for reforming the ways a person can raise a concern or complain about their care and treatment?

Please share your thoughts about our ideas for reforming the ways a person can raise a concern or complain about their care and treatment:

We strongly agree that the complaints systems should be firmly based within a human rights approach which places complainants as active, trusted and valued participants in a dialogue about the decisions that affect them. We therefore agree with all the suggestions in the review around how to reform the complaints process along these lines. Fundamentally, the complaints process needs to be open, accessible, trusted and robust in its handling of complaints and well resourced.

Do you have any other ideas to make this process more effective and equitable? :

4 What are your thoughts on collective advocacy groups raising court actions?

Please share your thoughts on collective advocacy groups raising court actions:

We support the recommendation from the National Taskforce on Human Rights that people should be able to bring systemic cases of public interest to courts. We would agree that this right should extend to collective advocacy to enable groups of people to access justice.

What are your thoughts about creating a way for collective advocacy groups to alternatively escalate unresolved human rights issues to an identified scrutiny body?:

Please let us know of any existing organisation that you feel should take on that role?:

The court system is best placed to take on this role and ensure that human rights-based approaches are embedded in the justice system.

Agree

Please tell us why you feel this way.:

5 What are your views on why and how we think collective advocacy should be strengthened?

Please share your views on our ideas about why and how we think collective advocacy should be strengthened.:

We agree that collective advocacy groups need to be better resourced and supported to be fully involved at all levels of decision-making. The intention to strengthen collective advocacy is welcome. In particular, a national strategy to raise awareness of collective advocacy would be a positive move. We support the proposed duties on the Scottish Government to secure and support collective advocacy organisations at both national and local level, as well as a duty on NHS boards and local authorities to resource this provision. However, these strengthened commitments will require sufficient resource.

6 Do you have any suggestions to make the scrutiny landscape for mental health services more effective?

Please share any suggestions you have for making the scrutiny landscape for mental health services more effective?:

Joint working across health, social work and social care regulatory bodies should be encouraged to prevent working in silos. Strong engagement with local authorities and HSPCs in the delivery of their statutory duties and support services could strengthen a human-rights based approach to advocacy .

7 What do you think about the ways in which we think the role of the Mental Welfare Commission should be extended?

Please share your thoughts about the ways in which we think the role of the Mental Welfare Commission should be extended?:

We agree with some of the proposals to extend the role of the Mental Welfare Commission. We support the core remit to safeguard and promote the human rights of people covered by mental health and incapacity law and to strengthen the requirement to include people with lived experience in their work. Increasing their work in the community should go hand in hand with supporting more people in community settings but should be in conjunction with existing regulators. More accountability to the Scottish Parliament is another additional safeguard but deserves further scrutiny.

However, the remaining proposals are already responsibilities of existing regulators and therefore it is questionable whether they are needed. For example, powers to oversee the operation of advanced statements and other forms of supported decision making is an area where the commission should work with other regulators.

With regards to stronger powers to oversee the use of coercive actions, we have already explained in chapter seven why we do not believe this is necessary.

Do you have any other ideas? :

8 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name].:

Chapter 9: Children and Young People

1 Do you think the current 2003 Act principle for children is still needed?

The principle should be replaced by a wider principle of respecting all the rights of the child under the UNCRC in any intervention

Please explain your answer:

Children's rights under the UNCRC must be central to all decisions and service provision for children. Alongside this we have GIRFEC guidance, which is in the process of being refreshed to better reflect UNCRC. While the current principle is broadly consistent with Article 3 of UNCRC, it should be broadened to take explicit account of children's rights under UNCRC and refer to children's wellbeing.

2 What do you think about having a statutory duty on Scottish Ministers and health and care agencies to provide for children the minimum standards needed to secure the human rights set out in international treaties such as the UNCRC?

Please share your thoughts on a having a statutory duty:

Provision of services to support children's wellbeing, including specific mental health provision, was scarce already, but the covid pandemic has exacerbated this. The pandemic, and the accompanying social isolation and home schooling, have led to increased concerns about the mental health and wellbeing of children and young people. Additional pressures on families due to the increased cost of living will also undoubtedly have a detrimental impact on children's health and development, including mental health. We know that children living in deprivation and disadvantage have a higher likelihood of poor mental health. We also know that children and young people from minoritised backgrounds, including those with insecure immigration status, refugees and Roma and traveller communities, face increased likelihood of mental health issues, and greater barriers to accessing support. Children and young people have the right to a range of services which can be tailored to their individual needs, including but not restricted to specific mental health provision. Often services which are not specifically categorised as 'mental health' services can have a positive impact and help mitigate against deteriorating mental health. These include services which promote physical health and positive social interaction. Interventions aimed at improving children's mental health must consider the wider family and societal contexts they live in.

An enforceable statutory duty on Scottish Ministers should serve to strengthen mental health support, but only if accompanied by the necessary resources. Such a duty, to be fully effective, would need to ensure adequate, consistent provision of a range of supportive services, from preventative through to acute, with smooth transitions all the way from infancy to adulthood, across all of Scotland. We hear from our members that provision is currently patchy and not always straightforward for children and their families to navigate. Clear pathways for assessment and provision of services should be in place for all children.

3 What are your views on reforming crisis services for children and young people experiencing acute mental distress?

Please share your views on reforming crisis services for children and young people?:

It is deeply concerning to read in the consultation paper that professionals at times feel they must stretch legal tests simply to keep people safe, and this flies against a child rights approach. No child in need of any kind of support should experience anything other than tailored, appropriate care. It is also alarming to hear that young people are being detained without MHO consent or involvement of a social work professional.

An acute mental health crisis can often occur outside of normal working hours, so provision must allow for that and cannot operate only on a 9-5 basis. As outlined above, we know that children and young people are increasingly in need of mental health support. This must be available as and when required, with consistency of provision across the country. Guidance should cover the inclusion of family in decisions and the sharing of information and the right to family contact. Children must not be cut off from family supports in a time of crisis. Support for family members is also an essential component if we are to consider recovery and longer-term support. If we can get it right at the point of initial contact, with responsive, need-led, rights-based crisis provision the benefits will not just be to children and their families at the point of crisis, but will serve to reduce repeated escalations and long-term intervention.

What are your views on the safeguards for emergency detention?:

Please see response above.

4 What you think about law reform to ensure access to CAMH services up to at least the person's 18th birthday and to ensure age appropriate services more generally?

Please share your thoughts on law reform to ensure access to CAMH services up to at least the person's 18th birthday:

CAMHS national service specification currently states that CAMHS will be available for all children aged 0-18, who meet the agreed referral criteria, but there are indications that this is not adhered to consistently. Lack of resources means that services generally don't have the required capacity to support young people beyond 18.

In keeping with the outcomes of The Promise, and UNCRC, CAMHS should be available consistently to children and young people up to the age of 18, and in some circumstances 26 years. Many young people at 18 transition to adult services but would have benefited more from continuing to access multi-disciplinary support from CAMHS. There are examples where young people have had intensive involvement from CAMHS spanning many years but experience an abrupt end with CAMHS at 18. The continuity of relationships for young people is important, particularly for those who are care experienced, and this needs to be considered.

Please share your thoughts on law reform to ensure age appropriate services more generally:

Law reform alone will not ensure access for all under-18s. It must be accompanied by guidance and resource allocation, including clear information for children and their families about what they are entitled to and how to ensure those entitlements are fulfilled.

5 What are your views on our ideas about relatives and families?

Please share your views on our ideas about relatives and families:

The consultation paper rightly recognises that a legal responsibility to recognise the needs of parents is an important starting point but that it must be accompanied by culture change and awareness raising. Children's needs cannot be fully considered and met if they are not considered within the context of their family and wider social circumstances. A crucial foundation for recovery and long-term health is the inclusion of those people who are important to the child.

Formal recognition of Article 5 of the UNCRC would be a step towards ensuring families are given due regard but must be accompanied by training and guidance to help those involved to navigate individual situations, particularly where the family situation is not straightforward. Choice and flexibility must be core components when considering family involvement, within a framework of children's rights.

Children should be able to choose their named person and be enabled to talk about the reasons behind their choice. The consultation document is not clear on what is meant by a child not being sufficiently mature to choose their named person and we are concerned about how sufficient maturity would be determined. This inherently risks the review's intention around children's rights.

We would welcome more clarity on this aspect to provide an informed view, particularly around whether it refers to a child under 16 or aged 16/17.

6 What are your thoughts on how supported decision making, human rights enablement and the autonomous decision making test in chapters 3, 5 and 6 might apply to children and young people?

Please share your thoughts on how supported decision making, human rights enablement and the autonomous decision making test might apply to children and young people?:

Universal access to supported decision making for children and young people is crucial to ensure that they are involved, respected and heard at all times. In order to comply with UNCRC, children and young people must have access to supported decision making.

Consideration should be given to how young people communicate and express themselves and how this is likely to differ from adults. Parents and carers play an important role in helping young people to communicate and be part of the decision making process which should be encouraged and supported.

Early interventions and support from members of multi-disciplinary teams, such as speech/language therapists and clinical psychologists, is essential to determining capacity around autonomous decision making. A range of opinions need to be sought- including from parents, carers, social workers- to ensure that all information is known, especially relating to a young person's early development.

7 What do you think about our proposals on advocacy and on accountability?

Please let us know what you think of our proposals on advocacy:

It is crucial that children and young people have access to advocacy. However, it should be noted that independent advocacy is not regulated. Consideration should always be given to what sort of advocacy is best for the young person based on their individual circumstances and needs. For example, a parent or trusted adult might be better placed to provide advocacy. The fundamental consideration is that the young person has someone who they trust to support and advocate for them.

Training and education around advocacy should be widely available so that Children's Rights Officers and other groups have all information to support the young person.

Please let us know what you think about our proposals on accountability:

The development of a coherent and robust framework that ensures proper scrutiny and accountability of the right of all children to the highest attainable standard of mental health is needed and greater collaboration between the relevant bodies to achieve this would be a positive move.

8 What are your views on autism, learning disability and neurodiversity and the possible law reforms for children and young people?

Please share your views on autism, learning disability and neurodiversity and the possible law reforms for children and young people:

Young people with autism, intellectual impairments and neurological conditions often have different communication styles and may face additional life challenges. However, they should have the same rights of access to support and treatment for mental ill health as anyone else. Legislation needs to be careful not to create a separate service that unintentionally leads to barriers to support. Such an approach risks excluding young people who are really struggling but who appear to be managing due to some of the strengths and other abilities that they have.

Rather, what is required is a human rights approach based on individual needs and the recognition that those needs may fluctuate over time whatever underlying characteristic a person has. There are dangers in a system that segregates those with some of the greatest need for support and the greatest disadvantage.

There also needs to be sensitivity and awareness of the different needs of young people to support their transition from children's services. This could be brought about through guidance and practice change, such as training, to better understand the needs of young people in this category and ensure they have the support they require.

9 What do you think about our proposals on safeguards for treatment and services, and safeguards to protect the relationships between children and parents?

Please share your thoughts on our proposals on safeguards for treatment and services:

Safeguards need to be in place for children and young people who receive treatment and services, particularly in relation to physical interventions. Restraining a young person can cause immediate distress and risks considerably damaging their health, wellbeing and development longer term. It is imperative that consistent standards and safeguards are in place to protect against this from happening.

Extending the role of the Psychiatric Mental Health Nurse Practitioner to review care plans could also provide a necessary additional safeguard.

The lack of ICU wards in Scotland is another area in which safeguards could be strengthened to better protect young people who require a secure environment and treatment. Again, this is a resourcing issue.

Please let us know what you think about our proposals to protect the relationships between children and parents:

10 At this time, Scotland's mental health law applies to compulsory mental health treatment at all ages. Do you have views on the idea of moving mental health law for children to connect it with other law for children, to apply across health, education and social care?

Please share your views on the idea of connecting mental health law for children with other law for children:

We would want to see mental health law aligned to legislation and frameworks for children, particularly GIRFEC and UNCRC, so that no child or young person is disadvantaged. We would support greater input from MHOs in children's services to better inform practice with children and young people.

11 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name].:

Where possible, priority should be given to supporting young people in the community. However, without resources and capacity, it becomes too difficult to make this a reality. As a result, young people are more likely to be subjected to unnecessary levels of restriction in hospital settings because the resources are not available to support them in the community. This increases the risk of young people becoming institutionalised, and their mental health getting worse because of prolonged hospital admissions.

Reforming crisis services for young people also has to consider the responsibilities that local authorities have to care experienced young people. There are times when continuing care and aftercare have little opportunity to discuss with a psychiatrist or MHO support for young people aged 18+ who are care experienced before detention is revoked & discharge is agreed. Therefore the local authority (corporate parent for that young person) haven't had a chance to consider the safe care plan for returning home/to placement which consequently increases risk of harm & hospital readmission.

Chapter 10: Adults with Incapacity proposals: Part 1 Guardianship

1 Part 1: Guardianship

Please share your views on the new model:

2 Specifically, what are your views on the role of co-decision maker – and its omission from this model?

Please share your views on the role of co-decision maker:

We agree with the omission of co-decision maker from the model. Its inclusion would dilute the voice of the person on whom the decision impacts which is inconsistent with the need to pursue a human-rights based approach.

3 Will the proposed change address the issues currently experienced with guardianship?

Not Answered

Please explain why you feel this way:

We would welcome more detailed proposals around how to approach circumstances where emergency measures are required. Any measures that will promote a personal individualised approach to each guardianship should be pursued.

4 What are your views about the proposed streamlined application process?

Please share your views about the proposed streamlined application process:

We recognise that there are challenges with the current application process and that it has been criticised as being time-consuming, costly and lacking in flexibility. It therefore makes sense that consideration is given to how the process could be sped up. However, care needs to be taken to ensure that existing safeguards are not compromised or diluted as a result.

5 Does the proposed emergency provision in the model address the concerns about the current system?

Not Answered

Please let us know why you feel this way:

We recognise the concerns about the current system and would welcome these being addressed. However, there is insufficient detail to comment.

6 Should the reframed model allow for the grant of a specific or one-off order (currently called an intervention order)?

Not Answered

If so, will the reframed model allow for this? :

No indication that the new model will not allow for this.

7 Should the current access to funds process be subsumed within the new guardianship model?

Not Answered

If so, will the model allow for this?:

No indication that the new model will not allow for this.

8 Should the current management of residents' finances process be subsumed within the new guardianship model?

Not Answered

If so, will the model allow for this? :

No indication that the new model will not allow for this.

9 What are your views on a system of supervision?

Please share your views on a system of supervision:

We are not convinced of the need for the Mental Welfare Commission to be given additional responsibility for scrutiny in respect of monitoring local authorities where they are appointed as decision making representatives. The role of supervision is an important safeguard though. There might be an opportunity through the proposed NCS and potential National Social Work Agency to consider potential roles and responsibilities within these structures.

10 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name].:

Chapter 10: Adults with Incapacity proposals: Part 2 Power of Attorney

1 Proposed Recommendations

2 What are the key points of guidance that need to be given to attorneys?

Please share your thoughts on the key points of guidance that need to be given to attorneys:

We would suggest wider engagement with the public and attorneys to identify key points of guidance from the perspective of attorneys and those who access attorney support.

3 What support should be given to attorneys – by whom, when?

Please share your thoughts on the support that should be given to attorneys :

This should be the role of the Office of the Public Guardian.

4 What are your thoughts on the reporting structure for someone with concerns?

Please share your thoughts on the reporting structure for someone with concerns:

The current legislative pathways for reporting concerns via the Office of the Public Guardian and Adult Support and Protection are sufficient.

5 What are your thoughts on the investigations structure?

Please share your thoughts on the investigations structure:

Sufficient powers currently exist for the Office of the Public Guardian to advance investigations but they need to be consistently applied.

6 What are your thoughts on authorities being able to supervise an attorney, on cause shown, following a statutory inquiry?

Please share your thoughts on authorities being able to supervise an attorney, on cause shown, following a statutory inquiry?:

This is currently allowed on balance with professional discretion around appropriateness for doing so and we would want to see this remaining as standard, with the social worker and/or MHO involved as appropriate and needed.

7 What are your thoughts on attorneys having power to authorise a deprivation of liberty (assuming this power has been granted in the power of attorney)?

Please share your thoughts on attorneys having power to authorise a deprivation of liberty (assuming this power has been granted in the power of attorney):.

Any such power should be subject to judicial oversight / confirmation of appropriate use by proxy. A social worker and/or mental health officer should be central to supporting such considerations. More guidance for attorneys and clarity around investigatory responsibilities is also needed.

8 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name]:.

9 What measures should be taken to increase the awareness of a PoA?

Please share your thoughts on the measures to be taken to increase the awareness of a PoA:

Work needs to be done to increase overall awareness of power of attorney but it's also important to consider the demographics where awareness and understanding is particularly low.

For example, a recent study by Which? found that a quarter (26%) of people aged 18 to 34 and one in five (20%) who earn under £21,000 a year said they did not know what power of attorney was, compared to just seven per cent of those aged over 55 and one in 10 (10%) of those who earn over £56,000.

Any public awareness campaigns must therefore consider how to increase understanding amongst younger people and those on lower incomes. There are likely to be many different ways to target communications to these demographics, such as digital campaigns and adverts. The types of messaging being used is also important. For example, information on how to access support with the cost for those on low incomes needs to be made clear.

Chapter 10: Adults with Incapacity proposals: Part 3 Medical Treatment and Research

1 We seek your views on the recommendations we are proposing.

Please share your views the proposed recommendations:

2 What are your thoughts on the provisions within s47(7) on the use within the AWIA of force, detention and the relationship with the 2003 Act?

Please share your thoughts on the provisions within s47(7) on the use within the AWIA of force, detention and the relationship with the 2003 Act:

We support a review on the use and practise of issuing section 47 certificates.

Practice evidence suggests that the use of section 47 certificates is not well understood across the professions or with individuals or families who might be subject to them. There have been examples of blanket approaches to using section 47 certificates which do not take into consideration the individual needs and rights of the person.

There should be a streamlined process whereby an individual can challenge a decision to grant a section 47 certificate, or a treatment authorised under that certificate. Greater emphasis must also be given to establishing the will and preference of the adult and working towards their consent.

Consideration also needs to be given to how section 47 certificates are held and recorded. There is currently no central register for this process, which impacts on its transparency. This needs to be reviewed before consideration is given to increasing any powers to them.

The proposal to add the power of detention to this process would pose a serious risk to a human rights-based approach through AWI.

3 Is any change needed to the list of special treatments requiring additional safeguards, (section 48) or the procedures by which they are authorised?

Please share any thoughts you have on change needed to the list of special treatments requiring additional safeguards, (section 48) or the procedures by which they are authorised?:

We do not hold a view on this question.

Please share your views on Transcranial Magnetic Stimulation (TMS) being added to the list of special treatments requiring additional safeguards in section 48. :

We would support the addition of Transcranial Magnetic Stimulation to the list of special treatments requiring additional safeguards in section 48.

4 Is any change needed to the dispute resolution procedure in section 50?

Not Answered

Please give details of the changes you think are needed:

We do not hold a view on this.

5 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name].:

Chapter 11: Deprivation of Liberty

1 Please share your views on our proposals.

Please share your views on our proposals.:

Proposals which are human rights based, flexible across practice areas and simplify the system are most successful when there is a whole systems approach to implementation. The proposals put forward should be amended to reflect this.

SASW is concerned about the lack of safeguards to ensure that individuals are not subjected to restrictions on their liberty. A requirement for a judicial procedure to determine the lawfulness of an individual's detention would provide an adequate safeguard. It should also not be possible for an individual to consent to their own deprivation of liberty where they have not been able to make an autonomous decision without support.

2 Please share your views on the proposed standard and urgent deprivation of liberty orders and the suggested process

Please share your views on the proposed standard and urgent DoL orders and the suggested process:

Social workers are well placed to make decisions that balance the need for a deprivation of liberty order with the promotion of an individual's human rights. Individual personal circumstances also need to be factored in to allow for all alternative options to be considered. This is a key skill set of social workers.

With regards to children and young people, consideration of UNCRC is essential before deciding upon whether to enforce deprivation of liberty. The impact of depriving a young person of their liberty is a potentially serious for their long term health, wellbeing and development. Such a decision should not be taken lightly and all alternatives must be weighed up and considered fully with respect to each individual case. This should be done by the team around the child in line with GIRFEC principles with the understanding that applying a deprivation of liberty order should be an option of last resort.

A multi-agency team with knowledge and experience of children's development, the impact and risks of trauma and relevant legislation should consider all decisions around the need and possible use of deprivation of liberty orders. Consideration of UNCRC and GIRFEC principles should always be used as a frame of reference for decisions and act as a core safeguard.

The current safeguards in relation to working with adults are considered to be sufficient.

3 How can we ensure that there is a real, effective and accessible ability for the adult and/or their representative to challenge the lawfulness of a deprivation of liberty order?

Please share your thoughts on the ability to challenge the lawfulness of a deprivation of liberty order:

Every effort should be made through supported decision making to maximise an individual's autonomy and seek informed consent to ultimately avoid a deprivation of liberty. We support the role of advocacy to challenge decisions where necessary.

4 What do you see as potential barriers to the operation of deprivation of liberty orders?

Please share your thoughts on any potential barriers to its operation:

The biggest barriers are funding and availability of resources. Social workers are facing increasing demands and pressure which is placing a serious strain on their own mental wellbeing and their ability to safeguard vulnerable people. With capacity already stretched, it creates a real problem for the implementation of these recommendations.

A focus on recruitment and retention across the profession to improve workforce capacity is needed along with funding to support preventative and community approaches to addressing mental health problems at an earlier stage and relieve pressure on services. A shared understanding of professional roles and functions would also help in successfully implementing recommendations.

What else may you wish to see included?:

5 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name]:

Chapter 12: Mental Disorder

1 Should there be a gateway to mental health and capacity law which reflects a diagnostic criterion?

Agree

why do you agree or disagree?:

Determining the appropriate gateway to mental health and capacity law is a complex issue. We agree that a threshold should apply to mental health and capacity law and would support the use of a definition of mental disorder as a gateway to application of mental health legislation. However, we would like to see autism and learning disability removed from the current definition.

If you agree, please share your thoughts on what that gateway should be:

Please see response above.

What terminology should we use? :

For people with intellectual impairment, the term "mental disorder" is inaccurate since it encourages a lifelong impairment to be viewed as a subset of mental illness. We support the recommendation from the Rome Review that autism, as well as learning disability, should be removed from the definition of mental disorder.

Labelling all people with learning disabilities as "disordered" is disrespectful to their dignity. We agree with the view of the Scottish Commission for People with Learning Disabilities that the inclusion of learning disability in the term 'mental disorder' obscures societal structures and practices that deny people with learning disabilities access to active participation in society and the full enjoyment of their rights. It therefore risks legitimatising the restriction of rights including detention and non-consensual treatment on the basis of learning disability.

Whichever terminology is eventually decided upon, consideration also needs to be given to how we overcome the stigma attached to mental health. This is part of a much wider discussion around how we improve public understanding of mental health but it stems from the language we use to define and describe mental health. The language we use to frame mental health is important for dispelling commonly held myths and stereotypes and promoting better everyday conversations about our own mental health. There needs to be wider consideration to how this can be encouraged more widely across society.

2 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name]:

Chapter 13: Fusion or alignment?

1 Given the changes being proposed by the Review, do you think a single piece of legislation for mental health, incapacity and adult protection law is the best way forward?

Disagree

Please provide an explanation for your answer:

At this point in time, we do not support a single piece of legislation. Careful consideration would be needed to think about who the pieces of legislation are for and in what ways those constituencies may be the same but also can be very different.

Not Answered

Please let us know why:

This question is not possible to answer as asked.

Fused legislation risks confusing which pieces of legislation are for whom in what circumstances. which could risk broadening scope. Any fusion needs to be very careful in its focus and avoid instances of grouping people together who may very different needs. There are people who need one, two or three elements of the three Acts and not all will have issues of mental ill-health.

Adult support and protection can apply to anyone who may (temporarily or not) meet the three point test.

Adults with incapacity is for everyone who may need help with or who is deemed to lack capacity - so this includes people who do not have mental ill-health.

2 What do you think about our suggestion of aligned legislation?

Please let us know your thoughts on aligned legislation:

Some people could be impacted by more than one pieces of legislation but this is highly variable depending on individual circumstances. Therefore, alignments need to reflect this need for flexibility whilst ensuring the principles underpinning each piece of legislation are consistent and that no piece of legislation undermines another.

Without further thought and detailed exploration and modelling, we do not support alignment being used as a stepping stone toward longer term fusion or a single piece of legislation.

Which aspects of the law should be aligned and which should be left within standalone law? :

Please see response above.

3 Please tell us if you consider a single judicial forum should deal with all mental health, incapacity and adult protection cases

Yes

If yes to single forum matrix of options - Should that forum be the sheriff court?:

If yes to single forum matrix of options - Should that forum be a tribunal?:

Agree

If yes to single forum matrix of options - Should there be a single forum only in the event of fused legislation?:

Disagree

If yes to single forum matrix of options - Is a single forum your preferred way forward regardless of wider changes to the legislation:

Agree

If yes to single forum matrix of options - If you consider aligned legislation is preferred, should a single judicial forum be part of that alignment?:

Please share any reasons for your answers:

A tribunal would be preferable since it is better for engagement by the people who need it. It is person-centred and has less stigma attached to it.

4 Please use the space provided below for any other comments you would like to make, relevant to this chapter.

Please use the space provided below for any other comments you want to make, relevant to [insert topic name].:

About you

1 What is your name?

Name:

Jonny Adamson

2 What is your email address?

Email:

jonny.adamson@basw.co.uk

3 Are you responding as an individual or an organisation?

Organisation

4 What is your organisation?

Organisation:

Scottish Association of Social Work (SASW)

5 The Scottish Mental Health Law Review would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

6 I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

7 Your response will only be viewed by members of the Scottish Mental Health Law Review. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Mental Health Law Review to contact you again in relation to this consultation exercise?

Yes