

Scottish Mental Health Law Review: Our Response Simplified Summary

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Simplified Summary

What is the Mental Health and Capacity Law Reform Programme?

In 2019, the Scottish Government asked Lord Scott KC to manage a review to look at how well mental health, incapacity and adult support and protection laws are working in Scotland.

The review looked at three pieces of law. These were:

- Mental Health (Care and Treatment) (Scotland) Act 2003
- Adults with Incapacity (Scotland) Act 2000
- Adult Support and Protection (Scotland) Act 2007

The Review was asked to look at ways in which people's human rights could be improved through the law, and what could be done to make it easier to get care and support.

It followed on from other reviews into how the law is working for people with a learning disability and autistic people (the Rome Review) and how the system could be improved for patients in the forensic system (the Barron Review into forensic mental health).

The final report was published in September 2022. It made over 200 recommendations for changes to these laws and changes to how the laws worked in practice. It recommended that some of these changes need to happen quickly, but some changes will take longer because we need more time to get things right.

What will the Scottish Government do next?

The Scottish Government needs to decide what it wants to do with these recommendations, and how to make them work. The Scottish Government has looked at the report and listened to people who will be impacted by the recommendations. This paper sets out how the Scottish Government is starting to do this work.

What did the Review recommend?

The Review made over 200 recommendations. These are the main themes.

A new purpose for the law

The law should be changed so that people affected by mental health and capacity law should have their rights better respected, protected and fulfilled.

There should be a new definition of 'mental disorder' in the new law. Those words should not be used anymore.

In the next five to ten years, there should be only one law for mental health and capacity. Before that happens, human rights principles should be made the same across the current mental health, incapacity and adult support and protection laws.

Moving towards better human rights protection

The Scottish Mental Health Law Review (SMHLR) said that everyone should receive the right support at the right time, based on their needs and rights. The Review said that there should be a duty on some services and local authorities to provide this and they should be able to explain why people are not getting the right support at the right time if this doesn't happen.

People also need to be able to know where they can go, and who to speak to, quickly and easily, when something goes wrong or they don't get the support that they need at the time they need it.

Decisions about a person's care, treatment and support should be based on fulfilling their human rights. The individual needs of the person should be considered and the person should be given as much support as possible to help them make decisions about their life. The Review called this a Human Rights Enablement approach.

New laws are needed to manage situations where people need care and support somewhere other than their own home, and might need to be deprived of their liberty to keep them safe for a time. If they can't make a decision for themselves about where that might be, new law is needed to make sure this happens in a way that meets human rights standards.

Training is also needed for people who work with the law on these new laws and practices.

Improved accountability and scrutiny

The SMHLR said that mental health services need to be checked more often. People should have somewhere to go to report issues when services are not providing the support that they said they would provide.

Steps need to be taken to reduce the number of people who are being treated without their consent.

There needs to be more support provided in the community, and people should be able to use their own experience to help each other in the community.

What does the Scottish Government think about these recommendations?

We agree with the main aims of the Review. Our mental health and incapacity laws need to be updated to make sure they fit with the current thinking about human rights.

The Review said that people need more support to be able to make decisions for themselves. And that much more attention needs to be paid to people's feelings and wishes about their life care and treatment .

But it also said that there will still be times when it will be necessary to act without a person's consent. This could be to stop that person hurting themselves, or someone else. This should only happen if nothing else has worked.

We agree with this.

The Review also said that lots of different things, like where a person lives, their age, sex or gender identity, race or ethnicity can also have an effect on a person's mental health and wellbeing and what support they can get. More needs to be done to make sure people can access the support they need no matter what their circumstances are. We agree with this.

The Review said that because there were so many recommendations in the final report, and many of them need more development to work in practice, the changes should take place in stages. This means that some of the changes will happen soon but others will take much longer. This could be 10 years. We agree with this.

How do the Review's recommendations fit with other work in the Scottish Government?

The Review made lots of recommendations about making it easier for people to access their human rights. The Scottish Government is already doing a lot of work on this. This includes:

Consultation on a Human Rights Bill : The Scottish Government is currently asking the public what they think about [proposals for a new Human Rights Bill](#). This proposed Bill will bring economic, social, cultural and environmental rights into the law in Scotland, within the limits of the Scottish Parliament's devolved powers. The Scottish Government also wants to include specific rights for women, disabled people and people who experience racism. This Bill will aim to give more importance to these human rights in all aspects of people's lives in Scotland.

National Care Service – the aim of the National Care Service is to make sure everyone has high quality social care support when they need it. People who use social care are helping to design the service in a way that best meets their human rights.

Mental Health and Wellbeing Strategy – this will set out the Scottish Government’s approach to improving the mental health and wellbeing of everyone in Scotland.

Dementia Strategy – This strategy wants to make sure that people living with dementia can be supported to live an independent life. This means that the things that they are able to do should be recognised and their rights should be upheld the same as everyone else’s.

Learning disability, autism and neurodiversity – ideas are being worked on for what might be in a new law to better protect the rights of people with a learning disability, autistic people and people with other neurodivergent conditions.

What have people told us about the Review?

We have been speaking to people about what they think of the Review. We spoke to people who work with the current laws and people who have lived experience of the laws and practices. We wanted to hear what people thought about the recommendations and which of the recommendations we should focus on changing first.

Most people liked the Review’s recommendations for change to the law and the importance placed on human rights.

People who had experience of caring for, or supporting someone with dementia wanted to see early changes made to Adults with Incapacity law to make it work better for people.

The Review said there should be a new definition of 'mental disorder', and a change in the law so that it was about providing support and ensuring people's rights were respected . Because of this change they felt that the support given through a new law should be available to as many people as possible.

But people with a learning disability, autistic people and people with other neurodivergent conditions believe that they should not be treated as having a 'mental disorder' and mental health law should not apply to them.

They are disappointed that the Review recommendations meant they could still be treated without their consent and made to stay somewhere where they didn't want to stay under mental health law. They do not think this should happen.

Some people thought that the Review should have said that people should never be treated without their consent. But other people thought that sometimes people needed to be treated without their consent. They thought that this would make the system safer and would mean treatment without the consent of the person really would be a last resort.

Because of the different opinions we heard, we can't say right now what the Scottish Government plans to do about all of the recommendations. Some need a lot more work, and we need to speak to people to understand what they think should happen if we don't follow what the Review has said.

We think it is important to work with the people who are disappointed about these recommendations and work together to find a way forward.

People were also worried about how much all the changes might cost, how many more people might be needed to make the changes work and whether Scottish Government have the money to do this.

People also told us that there is a lot of change going on just now in health and social care, and more changes might be too difficult to cope with.

What did people agree needs to change?

We spoke with lots of different people about the recommendations from the SMHLR. For some of the recommendations lots of people agreed that these changes needed to happen. These are:

- Making sure human rights are better protected
- Making sure the support that people get is based on their human rights.
- The Adults with Incapacity Act needs changing first.
- More money is needed to improve the support in the community so that people can live independently and make decisions for themselves.
- Independent Advocacy needs to be more available.
- The mental health system needs to be better at recognising and understanding how families and unpaid carers can support people.
- The system needs to be better for people when they don't get the support that they need at the time they need it.

Which areas need more work?

Some of the people we spoke to said that some of the recommendations needed more work before we could decide what to do with them. These are:

- Changing the definition of ‘mental disorder’
- Replacing Significantly Impaired Decision Making Ability (SIDMA) and capacity tests
- How we can make sure that the law works for everyone so that people with a learning disability, autistic people and people with other neurodivergent conditions have their rights upheld in the same way as other people who are treated under the Act.
- If there should be just one law for mental health and capacity in the future
- How to improve the law when treating or caring for people who haven’t given their consent to receive the treatment, care or support

What happens now?

There will be a new Mental Health and Capacity Reform programme . This will take forward some of the proposals from the final report of the Review and will find a way forward on other areas where there is still work to be done.

This aim of the programme is to make our laws, policies and practices work better to improve people’s rights. We decided on these aims after speaking to people to find out what was really important to them.

We are going to work with people who have experience of working with the current law, people who have lived experience, and carers to:

- Look at how we might change the Adults with Incapacity Act and the Mental Health Act.
- Look at how we might make changes to the Adult Support and Protection Act but in a smaller way.
- We will look at what the SMHLR said when we think about those changes.
- Make sure mental health and capacity law, policies and wider support and services give better effect to international human rights and standards.
- When people need to be treated without their consent for their safety or for other people's safety, there should be stronger safeguards. Safeguarding means to protect people from harm.
- Strengthen the accountability framework. This means people need to be clear about what organisations like the NHS are expected to deliver, how this will be checked and what will happen if they fail to deliver services in the way that is expected of them.

What do we want to happen?

The plan we have is called our vision. Our vision is that our mental health system and wider supports will better uphold human rights and enable people to live well. People should have choice and control over their own lives, as well as any care, treatment or wider assistance.

When we talk about our system we mean all the laws, policies and practices that support people's mental health and wellbeing in Scotland.

This includes family and community networks as well as clinical services that help people to live well , and get the treatment or care they need in a way that is best for them.

What does the vision mean for me ?

The changes we are planning should mean:

- Laws and the way they are acted on will help people with mental illness and those who lack capacity by supporting their human rights
- If you are being treated, you must be treated fairly, with dignity and in a way that meets your needs and your human rights.
- You should receive the support you need to tell people what you want and get the care and treatment that best meets your wishes
- Services will work with you to provide the support you need in the right way and at the right time, in a way that restricts you as little as possible
- Organisations should know how they are expected to care and treat people. They should know what will happen if they don't meet these expectations. There should be safeguards in place to protect people's rights.

How are we going to do this?

Some changes will be made within the next 3 years, some will be made within the next 3 to 5 years and some will take up to ten years to be made. These are short, medium and long term changes.

We are going to have 3 workstreams. These will look at how we might improve the law, help us to improve services and make sure organisations deliver their services appropriately. This will include looking at how the law and services meet human rights standards.

We will do this work together with people with lived experience of the systems and those who work in mental health services at all levels.

What will we do first ?

1. Changes to Adults with Incapacity Law

We plan to look at changing adults with incapacity law to make sure people's wishes and feelings are given proper consideration. People should be given all the support they need to make decisions for themselves. Only if all other options for support have been ruled out should things like guardianship orders be considered. We will also look at changes to the law to make sure that if someone is living in a situation where they are not free to come and go as they wish, and are not able to make decisions for themselves, proper processes are in place to ensure their rights are protected. People should have rights of appeal and regular reviews of their situation.

2. Supported Decision-Making

The SMHLR said that people must be allowed to make their own choices in life. People should be given help and support to make these choices.

We are going to look at all the good work that already takes place in Scotland on supported decision making. We will then be able to see what else needs to be done to make sure that the support is really there for people that need it. This will include looking at how we can ensure that everybody can get Independent Advocacy. Independent Advocacy can help people to make choices about their life.

3. Changes to Mental Health Law

We plan to look at how we might change the Mental Health Act to make it fit better with international human rights standards. Some smaller changes might be able to be made more quickly. These changes might include what the Review said about named persons and advance statements.

We will also speak to people to see how we can change the definition of 'mental disorder' and who should be included in this definition.

4. Human Rights Enablement

We want to make sure that people working with the law understand how to fulfil people's human rights. The National Care Service and the proposed Human Rights Bill are other pieces of work happening in Scottish Government that are also looking at this. We will consider how these pieces of work can support us in doing this.

We will be looking at ways to improve how people's human rights can be provided for in practice. This will mean looking at how the proposed

Human Rights Bill and the National Care service will provide for people's human rights and thinking what training might be needed to help people who work with the law work in a way that promotes human rights.

5. Improving the Role and Rights of Unpaid Carers

We recognise that carers can be a big support for helping people make decisions about their own lives. We will improve the support for unpaid carers and make sure that carers are also having their rights fulfilled and will develop carer awareness training for people working with others who have mental illness, dementia or a learning disability.

6. Reducing coercion across the system

The SMHLR said that sometimes coercion needs to happen to keep people safe. Coercion means when somebody is treated without their consent. We want to reduce the amount of times that people are treated without their consent. We want to make sure this only happens when it really needs to happen and happens in a way which respects the individual. We will start this piece of work as soon as possible by speaking to people to see how we can do this.

7. Strengthening accountability and scrutiny in the mental health system

We recognise that sometimes people don't get the support they need at the time they need it.

We will make a plan that will strengthen the way mental health services are checked and set out more clearly what happens when services are not doing what they should be. This plan will also look at how we make it easier for people to know who to speak to, and what can be done to resolve matters when services have not been provided properly.

What about the rest of the Review's recommendations?

As well as working on these 7 priority issues, we will be speaking to people to help us work out what we should do with the rest of the recommendations from the Review. We will publish updates on our progress and will involve people with lived and learned experience at every stage of the work.



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