

Scottish Mental Health Law Review - Consultation

The Scottish Social Services Council is the regulator for the social work, social care and early years workforce in Scotland. Our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce.

We protect the public by registering social service workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct we can investigate and take action.

We:

- publish the national codes of practice for people working in social services and their employers
- register people working in social services and make sure they adhere to the SSSC Codes of Practice
- promote and regulate the learning and development of the social service workforce
- are the national lead for workforce development and planning for social services in Scotland
- are an ONS statistics provider.

Consultation questions

2. What is the purpose of the law?

We welcome any comments, suggestion or thoughts you have on what we have said in this chapter. We would be particularly interested to know:

- **What are your views on the purpose and principles that we are proposing?**

The SSSC agrees with the proposed purpose as stated within the consultation document. Expanding the remit of mental health law to ensure that the wider needs of people with mental disorder are met is important for making sure people are given the right support to allow them to live with dignity and autonomy. However, given the potential for impact mental health care and treatment has on individuals' liberty and autonomy, we believe it is essential that regulation, founded on the human rights approach outlined in the consultation, remains an area of focus of future legislation.

- **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?**

The SSSC agrees with the proposed approach to meeting the core standards. We welcome the proposal that public bodies should have a statutory duty to secure the aspects of the core principles relevant to their powers, however, we would require clear guidance on how to meet this duty. The SSSC looks forward to being able to collaborate closely with the government in relation to gathering relevant data to analyse how obligations are being met.

- **What are your views on our suggestions for reforming sections 25 to 27 of the 2003 Act?**

The SSSC agrees with these suggestions.

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

We believe that the Scottish Government's proposals to include people with lived experience in the development of law, policy and practice is the key step to addressing stigma, discrimination and attitudes toward mental disability. In particular we welcome the proposal to include lived-experience led training in staff training packages and we would welcome the opportunity to collaborate with the government on this.

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

We have no suggestions to make in relation to this.

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

The SSSC supports the Scottish Government's proposals.

- **Are there other economic, social or cultural rights which you feel are particularly relevant to mental health?**

We have no suggestions to make in relation to this.

- **Do you have views on the system-wide changes which we think are needed?**

The SSSC agrees with the changes proposed by Scottish Government, however.

- **What do you think law reform can do to achieve culture change in mental disability services?**

3. Supported decision making

We welcome any comments, suggestion or thoughts you have on what we have said in this chapter. We would also particularly be interested to know:

- **What are your thoughts on our recommendations for a wide ranging supported decision making scheme?**
- **What do you consider would be the barriers to this?**
- **How do you think the SDM scheme should be taken forward?**
- **How do we mitigate against undue influence or pressure in SDM generally?**
- **Should there be legal duties on public bodies to secure SDM for people who need it? 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?**
- **What are your thoughts on the creation of a Centre of Excellence for Supported decision making?**

The SSSC does not have a view on this matter.

4. The role and rights of carers

We welcome any comments, suggestions or thoughts you have on what we have said in this chapter. We would also be interested to know:

- **What are your views on mandatory Carer Awareness training for all mental health staff?**

The SSSC supports this proposal and welcomes the opportunity to work closely with the Scottish Government to support the implementation of carer awareness training.

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

The SSSC supports information sharing with unpaid carers of all age. However, it is essential that carers are given the opportunity to be involved in relevant decision making and are supported as necessary to be able to provide any required information. Similarly, the proposed carer awareness training should ensure that services are aware of and acknowledge the role of carers of all ages and that they seek the input of carers in decision making.

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

N/A

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

The SSSC believes that proper carer awareness training should ensure that mental health services have the tools necessary to carry out proper assessments of the carer arrangements for individuals to young carers being overlooked. Furthermore, services should engage with young carers in an open and flexible manner, recognising that young carers are often balancing their caring duties with education or work.

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

The SSSC welcomes this proposal.

- **What needs to happen to ensure unpaid carers of all ages are respected and valued? Please answer the questions you feel are more relevant to you, or feel free to answer all of them. Please tell us anything else you think may be relevant to the role of unpaid carers when supporting someone with mental disorder and working with services.**

5. Human rights enablement – a new approach to assessment

- **What are your thoughts on the proposed HRE framework?**
- **How do you see the framework as proposed working in practice?**
- **What barriers do you see to its operation in practice?**
- **What are your thoughts on who should initiate an HRE?**
- **What are your views on the triggers for an HRE? Is there anything not included which should form a trigger?**
- **What are your views on the right to request a review and the right of remedy and appeal as proposed?**
- **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? Please offer any relevant views. You do not need to limit yourself to addressing these questions.**

The SSSC agrees with the proposals for an HRE framework. The Scottish Government rightly recognises the fact that there is already a complex framework of assessment processes. We agree that this is a good

opportunity to incorporate HRE to those regimes is better for both providers and the individuals involved.

We agree with the proposals for requesting a review and ultimate escalation to the court or tribunal service as a final decision maker.

6. Autonomous decision making test

- **We seek your views on the current capacity and SIDMA tests. You may wish to use the numbered options in that section above to indicate your preferred position but feel free to offer other suggestions and to expand on your preference.**
- **We seek your views on the concept of the test of autonomous decision making, distinct from a capacity or SIDMA test. We have deliberately not asked specific questions; we wish to leave this open for you to offer any comments on its workability for different categories of persons and to make any suggestions for improvement.**
- **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?**
- **What are your views on the ADM appeal process? Please read the chapters on enablement of human rights, supported decision making and this chapter on the autonomous decision making test as part of a suite of key information.**

The SSSC has no view on this.

7. Reduction of coercion

We welcome any comments, suggestion or thoughts you have on what we have said in this chapter. We would be particularly interested to know:

- **Your views on how the Review understands coercion**
- **What you think about the Review's proposed approach to reducing coercion, including reducing the use of involuntary treatment**
- **Whether 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**
- **Your views on whether law reform could drive changes which could reduce the use of coercion. Changes might include: changes to physical environments; changes to resourcing and better valuing of staff; addressing attitudes**

and culture; and acceptance, participation and activities on wards, for example.

- **Whether you think that safeguards for medical treatment in Part 16 of the Mental Health Act should be strengthened, including the current responsibilities of the Mental Welfare Commission and 'Designated Medical Practitioner', and ways in which the patient or their supporters might challenge particular interventions.**
- **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.**
- **Any suggestions that you have for the Review's ongoing work on understanding rising rates of detention and on community-based Compulsory Treatment Orders**

The SSSC broadly agrees with the Scottish Government's understanding of coercion and would welcome the introduction of stronger powers for the Mental Welfare Commission to oversee the use of coercive interventions.

8. Accountability

We welcome any comments, suggestion or thoughts you have on what we have said in this chapter and on any other aspect of accountability you wish to let us know about. We would also particularly be interested in the following:

- **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?**
- **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?**
- **What do you think about our ideas for reforming the ways a person can raise a concern or complain about their care and treatment? Do you have any other ideas to make this process more effective and equitable?**
- **What are your thoughts on collective advocacy groups raising court actions? What about our idea of creating a way for them to escalate unresolved human rights issues to an identified scrutiny body? Is there an existing organisation you feel should take on that role? Should these proposals also cover individual advocacy organisations?**
- **What are your views on why and how we think collective advocacy should be strengthened?**

- **Do you have any suggestions to make the scrutiny landscape for mental health services more effective?**
- **What do you think about the ways in which we think the role of the Mental Welfare Commission should be extended? Do you have other ideas?**

The SSSC supports the education and training of social workers to become mental health officers through our role in setting professional standards and competencies. We also monitor and quality assure the Mental Health Officer Award programmes approved by us and provided by universities. We would welcome the opportunity to work further with the Scottish Government to ensure that the regulatory and scrutiny landscapes for mental health officers is as effective as possible. As the consultation recognises, the regulatory landscape is wide ranging, complex and has areas of overlap. We need to take care to make sure that new scrutiny and regulatory bodies don't increase on this overlap and result in a bigger, more complex and harder environment for the individual to navigate. Legislative change around sharing of information across regulatory bodies and other agencies might remove any confusion over what is and isn't lawful for bodies to share under data protection law.

9. Children and young people

We welcome any comments, suggestion or thoughts you have on what we have said in this chapter. We would also be interested to know:

- **Do you think the current 2003 Act principle for children is still needed? Should it be replaced by a wider principle of respecting all the rights of the child under the UNCRC in any intervention – or something else?**
- **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?**
- **What are your views on reforming crisis services for children and young people experiencing acute mental distress, and about safeguards for emergency detention?**
- **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?**
- **What are your views on our ideas about relatives and families?**
- **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?

- What do you think about our proposals on advocacy, and on accountability?
- What are your views on autism, learning disability and neurodiversity, and the possible law reforms for children and young people?
- What do you think about our proposals on safeguards for treatment, and on services and safeguards to protect the relationships between children and parents?
- 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?

The SSSC does not have a view on this matter.

10. Adults with Incapacity proposals

- We seek your views on the new model. For example, what do you see as its advantages? What do you see as its drawbacks? What adjustments, if any, would you suggest?
- Specifically, what are your views on the role of co-decision maker – and its omission from this model?
- Will the proposed change address the issues currently experienced with guardianship? Please explain your answer.
- What are your views about the proposed streamlined application process?
- Does the proposed emergency provision in the model address the concerns about the current system?
- Should the reframed model allow for the grant of a specific or one-off order (currently called an intervention order)? If so, will the reframed model allow for this?
- Should the current access to funds process be subsumed within the new model? If so, will the model allow for this?
- Should the current management of residents' finances process be subsumed within the new model? If so, will the model allow for this?
- What are your views on a system of supervision? Please offer any relevant views, you do not need to limit yourself to addressing these questions.

The SSSC does not have a view on this matter.

Power of Attorney

What are your views generally on PoA and the recommendations we are proposing? Particularly we welcome your thoughts on:

- **What measures should be taken to increase the awareness of a PoA?**
- **Key points of guidance that need to be given to attorneys.**
- **What support should be given to attorneys – by whom, when?**
- **The reporting structure for someone with concerns**
- **The investigations structure**
- **Authorities being able to supervise an attorney, on cause shown, following a statutory inquiry.**
- **Attorneys having power to authorise a deprivation of liberty (assuming this power has been granted in the PoA). We will be taking into account comments submitted to the 2018 AWI consultation so you do not need to repeat earlier opinion, unless you wish to.**

The SSSC does not have a view on this matter.

Part 5: Medical Treatment and Research

We seek your views on what we are proposing.

- **What are your thoughts on the provisions within s47(7) on the use within the AWI Act of force and detention, and the relationship with the 2003 Act?**
- **Is any change needed to the list of special treatments requiring additional safeguards (section 48) or the procedures by which they are authorised?**
- **It has been suggested that Transcranial Magnetic Stimulation (TMS) should be added to the list of special treatments requiring additional safeguards in section 48. What are your views?**
- **Is any change needed to the dispute resolution procedure in section 50?**

The SSSC does not have a view on this matter.

11. Deprivation of Liberty

We welcome your views on any aspect of this chapter but in particular we would like you to consider the following questions :

- **What are your views on the deprivation of liberty proposals?**
- **Who do you think should be able to apply for a deprivation of liberty order?**

- What are your views on the safeguards in the process?
- 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?
- What do you see as potential barriers to its operation?
- What else may you wish to see included?

The SSSC does not have a view on this matter.

12. Mental disorder

We welcome any comments, suggestion or thoughts you have on what we have said in this chapter. We would also particularly be interested to know your views on:

- Should there be a gateway to mental health and capacity law which reflects a diagnostic criterion?
- If so, what should that gateway be and what terminology should we use?

The SSSC does not have a view on this matter.

13. Fusion or aligned legislation

We welcome any comments, suggestions or thoughts you have on what we have said in this chapter. We would be particularly interested to know:

- 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? Please provide explanation for your answer.
- You may consider that two or three pieces of law would be preferred, each dealing with specific issues across mental health, incapacity and adult protection law. If so please tell us, giving an explanation for your answer.
- What do you think about our suggestion of aligned legislation? Which aspects of the law should be aligned and which should be left within standalone law?
- Finally please tell us if you consider a single judicial forum should deal with all mental health, incapacity and adult protection cases, and
 - If that forum should be the Sheriff court or a tribunal
 - If there should be a single forum only in the event of fused legislation, or if a single forum is your preferred way forward regardless of wider changes to the legislation

- **If you consider aligned legislation is preferred, should a single judicial forum be part of that alignment?**

The SSSC does not have a view on this matter.

Scottish Social Services Council

May 2022