

FREQUENTLY ASKED QUESTIONS

Updated 15 January 2020

What will the review do?

The Review is looking at the Mental Health Act to see if it needs to change.

The purpose of the Review is

- To improve the rights and protections of persons, who may be affected by the Mental Health Act, the Adults with Incapacity (Scotland) Act 2000 (AWI) or the Adult Support and Protection (Scotland) Act 2007 (ASPA), because they have a mental disorder.
- To remove any barriers that carers who look after and support persons with a mental disorder might have in their caring role.

The Review will carry this out by:

- Looking at the changes that have happened in mental health law and practice since the Mental Health Act came into force in 2005
- Recommending changes that mean peoples' rights, will and preferences are fully respected in the Mental Health Act, the AWI Act and ASPA, as required by the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).
- Thinking about whether the Mental Health Act, the AWI Act and ASPA should be replaced by 1 law instead of 3

The review will look at what is required to achieve the highest achievable standard of mental health.

What are human rights?

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. They apply no matter where you are from, what you believe or how you choose to live your life. They can never be taken away. They can sometimes be restricted –for example if a person breaks the law. However, if they are restricted the same rules must apply to everyone.

What is the UN Convention on the Rights of Persons with Disabilities?

This is a human rights treaty that promotes and protects the rights of people with a disability. It is known as the UNCRPD. People who have a mental disorder are considered to have a disability. There is a benefit of being defined as having a disability. This benefit is that the UNCRPD places lots of requirements on the Scottish Government to promote and protect people's rights.

How will the review work?

The Review will seek evidence that helps us to find out how well the Mental Health Act is working just now, what changes have happened since the Act first came into force, and how well the Mental Health Act and the AWI Act and ASPA work together to protect and respect the human rights of people with a mental disorder who may be subject to these laws.

It will seek evidence that helps us to find out how well the Mental Health Act, AWI and ASPA are respecting people's rights, will and preferences as required by the UNCRPD and the ECHR.

How with the Review operate?

We plan to run three stages to the Review

Stage 1: What happens now?

In this stage we will obtain evidence on people's experiences of the 2003 Act. In May 2020, which will be towards the end of stage 1, we will publish an interim report which will tell the public what has been done so far in the Review.

Stage 2: What could happen differently?

In this stage we will obtain evidence on possible approaches to addressing any issues that have arisen from evidence gathered at stage 1

Stage 3: What we think should happen

In this stage we will obtain opinions on our recommendations for change to mental health law and practice before publishing a report. It might be that further investigation and reports follow this.