

Consultation

Questions



1. What do you think about it?

Good

Bad

Not sure



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What is this consultation about?



The Scottish Mental Health Law Review is looking at the mental health law in Scotland.



The Review is a group of people who are making suggestions to change the mental health law. These people are called The Executive Team.

The Scottish Government asked for three pieces of mental health law to be reviews. These are:



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



You should respond by 22 July 2022.



If you would like a copy of this to be posted to you, or sent to you by another format, please email secretariat@smhlr.scot

What is this consultation about?



You can email your replies to secretariat@smhlr.scot or email secretariat@smhlr.scot with your phone number. Someone will give you a call and speak to you.



We recently asked you what you thought of some of the ideas we have so far.



We want to find out what you think about some more of our ideas.



We might want to share some of your comments. We will only do that with your permission and nobody will know who the comment was made by.



A final report will be passed to Scottish Ministers by the end of September 2022.



They will decide what happens next.

Making plans for your future



Making plans for your future is what is called an advance statement.



It is a record of how you would want to be medically treated for a mental health condition.



We think it is too difficult to do this so we want to make it easier.



Not many people know how to make plans for their future.



Sometimes practitioners don't know that someone has made plans for their future.



An advance statement can only be used for medical treatment.

Making plans for your future



A Doctor or Mental Health Tribunal can overrule something noted in an advance statement.



If they do this, their reason for doing it needs to be kept on record.



Independent advocacy can help you make an advance statement.



It can be difficult getting access to independent advocacy.



Everyone's wishes are important and should be respected.



You should still have a voice if you are unwell and not able to speak for yourself.

Making plans for your future



We think advance statements should be replaced by something called a **Statement of Will and Preference**.



A **statement of will and preference** is when you record everything you want to happen to you in life. This includes:

- Treatment for mental health conditions.
- Any other medical treatment.
- Any other welfare issue such as how often you want to get your hair cut.



This would help make sure your human rights are met.



If you are able to make decisions for yourself, your **statement of will and preference** would not need to be used.



Your **statement of will and preference** should always be respected.

Making plans for your future



We think your **statement of will and preference** should be witnessed when you sign it.



As we change our minds about what we want, your **statement of will and preference** should be updated regularly.



The Mental Welfare Commission should deal with any issues about carrying out your wishes.



The Mental Welfare Commission could give advice on what to do

Or



Arrange for an independent clinician to tell them what they think.

A final decision will then be made.



Sometimes it might not be possible for you to get what you want.

Making plans for your future



We think the **statement of will and preference** will help you make your own decisions through life.



We think the Mental Welfare Commission for Scotland should keep a register of who has a **statement of will and preference**.



Anyone who needs it should be given help to make a **statement of will and preference**.



The **statement of will and preference** should be made with time and care.



Your unpaid carer, family member, trusted person and clinician can have an say in your **statement of will and preference** if you want them to.



A **statement of will and preference** doesn't need to be in writing. You can do this by video, audio or visual guides.

Making plans for your future



You should keep a copy of your **statement of will and preference** in case you need it urgently.



Your voice is still important even if you don't have a **statement of will and preference**.



If you don't have a **statement of will and preference** someone might have to guess what it is you want.



We think a **statement of will and preference** is important so that **your** views are the ones being heard.

Questions



What do you think about the idea of a **statement of will and preference**?



Is there anything you would change about it?



If there anything else you would like to tell us?

Getting support to help you make your own decisions



There is help available called independent individual advocacy.



There are 2 types of independent individual advocacy. These are:



Individual independent advocacy

And

Non-Instructed advocacy



Independent individual advocacy helps and supports people to have a say in what they want.



Non-instructed advocacy helps and supports people who have difficulty being able to say what they want.



Not many people know about non-instructed advocacy.

Getting support to help you make your own decisions



Non-instructed advocacy should be more available for children and young people.



Family members and unpaid carers can help non-instructed advocacy know what it is you would want.



We think that more people need to know about non-instructed advocacy.



There is also collective advocacy.



This is when a group of people with shared experiences come together to try to improve issues that may affect their lives.



We think that the law needs to change to make sure everyone can access independent individual advocacy.



You should automatically be given access to an independent individual advocate unless you say you don't want one.



Information should be gathered on how independent advocacy is working.



Independent advocacy organisations should be supervised.



All advocacy workers should have a Scottish Qualification to carry out the role.



Their details should be kept on a register.

Getting support to help you make your own decisions



All independent advocacy workers should be trained on equality, diversity and inclusion.



They should also be trained on Human Rights and how to support someone to make their own decisions.



This will make sure everyone gets the same fair treatment.



There are communities such as the travelling community or ethnic minority groups that face barriers in Scotland.



There should be dedicated advocacy workers to work with these groups.



There should be a national fund to pay for independent advocacy.

Getting support to help you make your own decisions



Independent advocacy should be available to support unpaid carers.



The Scottish Government should recruit staff and volunteers for these posts.

Questions



What do you think of these ideas?



What do you think about independent advocacy being available to everyone?



Is there anything else you would like to tell us?

If you get into trouble with the Law



We have looked at our criminal law and mental health law to see if any changes are needed.



If you have a mental health disorder when you do a crime, your sentence might be different to someone who doesn't have a mental health disorder.

We don't think this should change.



We think it is important that your human rights are still met and you are treated equally.



It is important that people get the right help and support they need.



A person with a mental disorder can have an appropriate adult with them when they are being interviewed by the Police.

If you get into trouble with the Law



But some people told us that they need more support to be able to go to court.

We think there should be someone available to support people with a mental disorder if they go to court.



This would help people who find it difficult to communicate.



It is important that someone with a mental disorder gets properly assessed if they have been accused of a crime.



But sometimes the authorities don't know if a person has a mental health disorder.



This might be because they are too unwell to say, their Lawyer doesn't know or they don't want to tell anyone.

If you get into trouble with the Law



It is important that they are assessed quickly so they can get the right help and support.



The court can ask for this to be done.



Sometimes people are kept in prison while they wait for a mental health assessment to be done because there are no beds in hospital.



This can be really frightening.



We need to make sure people are placed somewhere safe which is right for their needs.

We are considering whether Scottish Ministers should do that.

If you get into trouble with the Law



We looked at the forensic orders.



Forensic orders allow courts to send someone who has done a crime to a hospital rather than prison.



There are other reasons someone can be held under the mental health act, not just for doing a crime.

We think the reasons for holding someone in hospital should be the same whether they have done a crime or not.



We are not sure a forensic order should be allowed if it is only to protect someone from harming themselves.



We think you should only get a forensic order if your mental health disorder means you might struggle to make decisions about your treatment.

If you get into trouble with the Law



There are concerns you can be held in a hospital on a forensic order for too long.



It is important that people with a mental health condition who have done a crime are not held in hospital longer than is needed.



We think it is important that information is collected on this.

Questions



What do you think about these ideas for forensic orders?



Do you think there should be time limits on forensic orders to stop someone being held in hospital too long?

If you get into trouble with the Law



The Mental Health (Care and Treatment) (Scotland) Act 2003 talks about a 'serious harm' test.



A serious harm test is when is someone with a mental disorder can continue to be held in hospital if they are a serious risk to someone else, even if there isn't any treatment for their mental disorder.



We think that the test is being used too often.

Question



What do you think should happen with the serious harm test?

Some ideas we were given were:

- ❖ Get rid of it.
- ❖ Only use it for patients in the State Hospital.
- ❖ Pass the case back to the court.

If you get into trouble with the Law



Scottish Ministers who work in the Scottish Government have a say in when restricted patients can progress, such as approving suspension and detention.



Restricted patients are people with a mental health disorder who have done a serious crime and been sent to hospital rather than prison.

Question



We would like to know whether you think Scottish Ministers should keep these roles or whether a tribunal should do this instead?

If you get into trouble with the Law



There is a Mental Health Tribunal in Scotland.

It is an independent judicial body who makes decisions about compulsory care and treatment for mental health patients.



We think the Mental Health Tribunal should be able to order bodies to provide care and support needed for someone on a forensic order.



We also think the Mental Health Tribunal should be able to have a role in recalling restricted patients and be able to vary any conditions that are in place to allow that person to be discharged.

Question



What do you think about our ideas for the Mental Health Tribunal?

If you get into trouble with the Law



People in high and medium secure hospitals can appeal against the level of their restriction.



We would like everyone held in hospital to have this right to appeal against the level of their restriction.



At the moment you need to get your own medical report to support your appeal. We are not sure you should need to do this.

Question



Do you think people who are convicted of criminal offences who are in the mental health system should be allowed to vote?

Why do you feel this way?

General Question



Is there anything else you want to tell us?

What happens next?



Thank you for answering our questions.



Please email your answers and comments to secretariat@smhlr.scot



Your responses will form part of our final report which will be passed to Scottish Ministers by 30 September 2022.