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Submitted to Scottish Mental Health Law Review consultation
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Chapter 1: Introduction and Background

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:

SAMH believes everyone living in the Scotland - including people experiencing a mental health problem - should be able to benefit from the basic freedoms and protections set out in the Human Rights Act 1998. We all have human rights; however, people experiencing mental ill-health are at greater risk of having their rights, including the right to liberty, infringed.⁽¹⁾ It is for this reason that we welcome the purpose and principles of the Mental Health Law Review. We would suggest that the review may also want to read the Cross Party Group on Mental Health's report Priorities for Rights, Information Use and Planning, which includes the lived experience of group members.

https://www.samh.org.uk/documents/CPG_on_Mental_Health_Report_-_RIGHTS_INFORMATION_USE_AND_PLANNING_-_FINAL.pdf

Scottish Human Rights Commission, Mental Health, 2022 Accessed at:

<https://www.scottishhumanrights.com/our-law-and-policy-work/mental-health/#mental-health-1400>

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:

SAMH supports the approach that is being proposed for the Scottish Government to meet its core obligations for economic, social and cultural rights. We especially support the recommendation that this work should not solely be confined to healthcare but also be addressed by other Government policies such as housing, poverty, employment and community support.

However, when creating law it is prudent to look to future proof it, we have already seen that mental health will be impacted by things like the cost-of-living crisis, and the climate crisis (1). It is not possible to predict how the landscape of mental health may change in the future, so one way to future proof would be to embed mental health across Scottish Government policy areas. We would hope to see this approach also echoed in the Mental Health Strategy Refresh. Some consideration would need to be given to how this intersects with other rights legislation such as the International Covenant on Economic, Social and Cultural Rights, which was ratified by the UK in 1976.

We welcome the suggestion that development and timetabling should be done with full participation of people with lived experience of mental health problems.

(1) <https://www.frontiersin.org/articles/10.3389/fpsy.2020.00074/full>

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 :

SAMH agrees with the extension and reframing of s25-27 of the Mental Health Act, as it appears at the moment that the duties are not informing practice - therefore more robust duties appear sensible. Part of making those duties robust would be to include mechanisms to make sure the realisation of the duties in practice can be assessed, and barriers to their realisation easily identified, with interagency working to overcome them. The current shortage of Mental Health Officers is detrimental to Local Authorities being able to adequately discharge their duties, and we would welcome support and focus being given to this issue.

SAMH is delighted that a greater emphasis will be given to physical health in a mental health context, and would recommend that social health is also considered too. The Cross-Party Group on Mental Health 2021 report on the Priorities for the Physical Wellbeing of People with Mental Health Problems, which contains findings and recommendations around these issues as well as highlighting the need for work to be carried out across Scotland, by both Government and Local Authorities⁽¹⁾.

(1)

https://www.samh.org.uk/documents/CPG_on_Mental_Health_Report_-_THE_PHYSICAL_WELLBEING_OF_PEOPLE_WITH_MENTAL_HEALTH_PROBLEMS.pdf

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:

SAMH supports the submission of See Me in answer to this consultation, and specifically when they call for an explicit focus on eradicating mental health stigma and discrimination, so that this aim is actively worked towards. See Me is Scotland's anti-stigma programme and is at the forefront of work to

eradicate mental health stigma. Any reform to the law to address stigma should be accompanied by the continuation of funding for this important programme.

However, we also believe that fighting stigma on its own is not enough, and that law should also reflect the discrimination that many people with mental health problems face, and enable them to challenge that discrimination.

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:

SAMH declines to answer this question, at this time.

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:

SAMH supports the proposals around adequate income, housing and independent living, inclusion in society and accessible information. SAMH believes that those with mental health problems deserve to not just survive, but also to thrive and independent living, skills for life and building resilience are all part of this mix.

A key part to delivering economic equality for those with mental health problems will be to make sure that social security policy is aligned with this ambition, and is given some focus as well as the abolition of social care charging.

Proposals on these areas will likely be affected by the development of a National Care Service which the Scottish Government is currently undertaking. We would suggest the Scottish Mental Health Law Review take account of this work when making its recommendations to the Scottish Government.

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

SAMH would like to emphasise that cultural rights can cover a broad range of activities which can include physical activity and sport, which we know can be an incredibly useful tool for those who are experiencing mental health problems. Grassroots sports activity can also be an important part of building strong communities, which in turn impacts positively on resilience and 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:

SAMH welcomes the system wide changes that are proposed, having previously called for many of them, so are supportive of the overall direction.

However, we would also suggest that there should be a prohibition of retrogression, to make sure that once a right has been realised, or significant strides have been made towards them, policy change or events will not be able to weaken rights that have been hard fought for.

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].:

SAMH declines to answer this question, at this time.

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:

SAMH believes that the best results can be obtained for service users when there is a suite of options available to support decision making, as each service user presents with a unique set of preferences and circumstances. There needs to be improvement in the availability of independent advocacy and we address this further in other answers.

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

In speaking to people who use our services we know one of the biggest barriers to supported decision making can be a lack of knowledge about what is available to them. SAMH has also found that service users are not currently using Advance Notices due to a lack of confidence that they will be followed. It will be important that an enhanced supported decision-making scheme will be well communicated to both professionals, public bodies, third sector and service users. We also believe that it is time to increase people's knowledge, understanding and confidence in the Advance Notice system, and as an organisation SAMH would welcome the opportunity to be part of that effort.

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

SAMH declines to answer this question at this time.

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:

A strengthening of independent advocacy (which we go into some more depth on in further answers) for both individuals and collectively would be necessary to guard against undue influence. As of 2021, only five out of 14 NHS Boards have a Strategic Advocacy Plan in place, and independent advocacy services have had their funding cut despite an increase in demand.

Other mechanisms which should also guard against undue influence are care management and commissioner meetings, and good communication between all involved in a service users' care and support.

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?:

A legal duty on public bodies to secure supported decision making for people who need it is only one way to improve access to supported decision making. However, legal duties can only be effective if organisations are adequately resourced and supported to do the work that is required. For instance, the short fall in Mental Health Officers would need to be resolved for any duty to be adequately adhered to.

It would be worth the review considering whether a tandem duty should be placed on the Scottish Government to adequately resource public bodies to achieve this work.

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].:

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question.

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

Please share your views on information sharing:

SAMH declines to answer this question.

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

SAMH declines to answer this question.

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:

SAMH declines to answer this question.

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:

SAMH declines to answer this question.

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:

SAMH declines to answer this question.

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:

SAMH declines to answer this question.

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].:

SAMH declines to answer this question.

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:

SAMH believes that person-centred support planning is the key to human rights enablement in mental health services. Enabling human rights would be easier to strengthen if it was tied to outcomes, contracts and contract monitoring. However, we would also suggest that the review consider if human rights enablement could be added to the assessments that are already in place rather than creating a new and separate assessment.

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:

SAMH declines to answer this question, at this time.

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

SAMH declines to answer this question, at this time.

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

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

SAMH declines to answer this question, at this time.

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

Please share your views on the triggers for an HRE:

SAMH declines to answer this question, at this time.

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

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

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].:

SAMH declines to answer this question, at this time.

Chapter 6: Autonomous decision making test

1 Capacity and SIDMA

Not Answered

Not Answered

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

Whatever test is used one key to it working will be that people who are undergoing decisions on capacity are supported to fully understand the process and have access to the full range of supported decision making.

Capacity is something that can fluctuate over the lifetime of an illness, and the scope of capacity will need to be defined. A loose interpretation can mean medical practitioners will differ in their evaluation. An undefined scope leaves room for uncertainty for people with mental health problems, particularly if they have been subject to coercion in the past.

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?:

SAMH declines to answer this question, at this time.

Not Answered

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

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this questions, at this time.

4 What are your views on the ADM appeal process?

Please share your views on the appeal process:

SAMH declines to answer this question, at this time.

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].:

SAMH declines to answer this question, at this time.

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:

We would suggest the review should consider the inclusion of coercive shadow. Coercive shadow is the fear that coercion may be used, even if it is not present, and can be a factor in decision making. In 2015 Szmuckler suggested that even "perceived" coercion is lessened when people believe that their voice has been heard, making the whole suite of supported decision making is a valuable tool in the reduction of coercion.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4592637/>

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:

SAMH agrees.

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:

SAMH is aware this is a highly emotive topic and would suggest exploring the use of this word with those with lived experience.

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 we have stated before law reform is only one element of a suite of changes that are needed when seeking to change culture. Any reform of the law will also need to be accompanied with resourcing and workforce planning to make sure that there are enough appropriately trained people to staff in mental health services. As well as having easily accessible community-based treatment, and sustainable funding for services to enable more long-term planning.

SAMH would be open to any law reform including a presumption towards sustainable funding models, from the Scottish Government and Local Authorities.

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:

SAMH declines to answer this question, at this time.

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.:

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

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].:

SAMH declines to answer this question, at this time.

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:

Currently in Scotland, there are two judicial forums that oversee cases of non-consensual care and treatment. The Mental Health Tribunal for Scotland (MHTS) oversees decisions in relation to compulsory care and treatment for a mental disorder, while the Sheriff Court oversees other aspects of non-consensual decision making as related to Adults with Incapacity (AWI) legislation. In its report, The Case for Reform, the Mental Welfare Commission for Scotland recommends that a single judicial forum should be used to oversee all types of non-consensual interventions, and indicates that the MHTS would be the most appropriate forum. This position is also supported by the Law Society for Scotland.

SAMH would like the Scottish Mental Health Law Review to consider the use of a single judicial forum, taking into account the advantages of the MHTS over other judicial forums. The Centre for Mental Health Law at Napier University is undertaking research into the MHTS and, as such, we would advise that the Review takes into account this research once it is published.

People with mental health problems, in particular those with severe and enduring mental health problems or additional support needs, can be subject to the AWI Act as well as the Mental Health Act. This means that people subject to both Acts may have to engage with two separate judicial forums and participate in several different hearing processes. Having a single judicial forum has the potential to make the system less confusing and less onerous for people subject to both Acts and their families and carers. To make this a practical reality it will also be important to make sure that data is also streamlined and can move across systems easily.

Moreover, SAMH agrees with the Mental Welfare Commission that there are key features to an effective judicial forum of this kind, namely: maximum participation of the person about whom the hearing is being held; an awareness and experience of the needs of people with mental health problems and other related support needs; and a consistent approach across Scotland.²⁶ The Sheriff Court does not prioritise these features in the same way that the MHTS does. As such, SAMH would like to see an end to the use of the Sheriff Court for cases of non-consensual interventions.

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:

In 2015 SAMH campaigned for people to be given the right to challenge their security status. As a result, this right was extended to people in medium secure wards, but not those in low secure wards. We would support all people being able to challenge excessive security in low security settings as well.

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:

SAMH agrees with the thinking behind the reform in how complaints are made. It is imperative that the complainant is put at the centre of any complaints process, and that raising a complaint or concern is as easy and painless a process as possible. It would be worth the Scottish Government considering how the concern raising process may intersect with the complaints and putting things right process, as set out in the consultation on the National Care Service.

A growth mindset, from the point of view of services and public bodies, which allows them to see complaints and concerns as an opportunity to learn and grow, rather than a threat to the institution or individuals will also be necessary to get the best out of any system, and developing this across the sector will take training and investment.

Including advocacy in the complaint process, and reframing it as advocacy for support rather than a complaint process, may help people find a smoother pathway.

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

Please see above.

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

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

Empowering collective advocacy groups to raise court action would be an important step in allowing the voices of service users to be heard. However, this would have to go hand-in-hand with long term and sustainable funding for independent advocacy, otherwise a change in law will not lead to better outcomes.

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

SAMH agrees.

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

SAMH declines to answer this question, at this time.

Not Answered

Please tell us why you feel this way.:

SAMH declines to answer this question, at this time.

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.:

Collective advocacy is an important element of a human rights-based approach, and without the input of lived experience a human rights-based approach to mental health will be weakened.

In 2017 only five out of fourteen NHS Boards have a strategic advocacy plan in place, while statutory funding for strategic advocacy had decreased by 4%, demand had increased by 11.5%. (1),(2) Given this situation SAMH suggests that any statutory footing for collective, or individual, advocacy will need to be properly resourced with funding that is sustainable in the long term.

It is also worth noting that while all Local Authorities have a duty to provide advocacy very few local authorities have advocacy in place for children and young people. For advocacy to be as strong and useful as possible it will need to actively cover all age brackets.

(1) The Mental Welfare Commission, Visiting and Monitoring Report: the right to advocacy, March 2018
Accessible at: https://www.mwscot.org.uk/sites/default/files/2019-06/the_right_to_advocacy_march_2018.pdf

(2) The Scottish Independent Advocacy Alliance, A Map of Advocacy across Scotland 2015-2016, 2017
Accessible at: https://www.siaa.org.uk/wp-content/uploads/2021/02/SIAA_Advocacy_Map_2015-16-1.pdf

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?:

SAMH declines to answer this question, at this time.

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?:

SAMH declines to answer this question, at this time.

Do you have any other ideas? :

SAMH declines to answer this question, at this time.

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].:

SAMH declines to answer this question at this time.

Chapter 9: Children and Young People

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

The current 2003 Act principle for children is still needed

Please explain your answer:

Yes, we would agree with the inclusion of this principle.

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:

All rights should be respected, and children's rights are no less important. In helping realise the rights of children and young people it is important that their views are considered and that they are able to make an informed choice. To make informed choice a reality there needs to be lots of differing options of information presentation, which is appropriate to both age and stage.

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?:

SAMH would support any moves to reform crisis services for children and young people experiencing acute mental health problems, to make the experience less difficult and stressful for the children and young people involved. However, it would also be prudent to think about preventative measures which stop children becoming distressed. Early intervention and more community-based services are going to be key to intervening before a child gets to crisis point.

If children and young people do require detention, SAMH believes it is imperative for their recovery that their treatment be in age-appropriate settings. We would suggest that the review should interrogate the effect on children of being treated in adult wards, and what the law can do to reform this. SAMH would be interested in having further dialogue with the review on this area.

We understand that with the current financial climate it is not always easy to provide the ideal standard of care, but a focus on early intervention coupled with timely age-appropriate treatment and treatment settings could make a profound difference to the experience of an illness pathway for children and young people.

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

Please see 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:

The CAMHS national service specification published in 2020 outlines that CAMHS is available until at least the child's 18th birthday. SAMH's Going To Be campaign has called for CAMHs services to be available up to the age of 25 if this is what the young person wants and we would want to see that extended as soon as possible. It is for this reason that we welcomed the Scottish Government's NHS Recovery plan commits to increasing the age range of CAMHS from 18 to 25 and would welcome this change being reflected in mental health law.

Transitioning from childhood to adulthood should not be expected to happen due to a change in calendar date, instead, it is a process that takes place over years. At SAMH, we recognise that some children have more challenges when making this transition, a kind society is one in which those challenges are understood and which can stagger the transitional moments in a way that supports the child on their journey to adulthood.

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

Please see above.

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

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

SAMH supports the right for a young person under 16 to have the right to nominate named person, given appropriate safeguards. However, it is also important to make sure that the ability to do this is well communicated to the young person, to make sure they are accessing all the support that they can.

There needs to be a presumption that parent/carers might not be the right person, that young people might need “one good adult”

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?:

SAMH believes that children and young people’s voice is an integral part of their treatment, and that a person centered approach to the treatment of children, rather than a one size fits all approach will be the best way to support children and young people through the decision making and treatment process.

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:

SAMH strongly supports a duty on Scottish Ministers to support collective and individual advocacy for children. While collective advocacy will help bring the voice of children and young people to the table, individuals may still need more one-to-one support.

While all Local Authorities have a duty to provide advocacy, very few local authorities have advocacy in place for children and young people. We would also welcome a duty on Scottish Ministers to work with Local Authorities to remove barriers to individual advocacy for children and young people.

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

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

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

Seeing your child, of any age, go through a mental health crisis is obviously distressing for parents and carers. To help parents and carers achieve the most positive outcomes for the child, it is important to equip those who are open to learning, with the skills they need to navigate the system.

One way this could be done is for advocacy offerings for children and young people supported by the Scottish Government, to include advocacy classes for parents and carers, to upskill them and assist in offering their young person the most person-centred support possible.

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:

Taking children out of mental health law could weaken law that should be applying across a lifetime, and may possibly lead to disadvantage for young people in their mental health treatment. SAMH would be opposed to this move. All children have a right to good mental health and this should be considered in all policy areas.

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].:

SAMH declines to answer this question, at this time.

Chapter 10: Adults with Incapacity proposals: Part 1 Guardianship

1 Part 1: Guardianship

Please share your views on the new model:

A recent UN report seems to imply that it recommends the implementation of the Australian Law Reform Commission's (ALRC) approach to supported decision making. The UN's report states that '[d]espite the recommendations of the Australian Law Reform Commission, the Committee is concerned about the lack of progress to abolish the guardianship system and substituted decision-making regime, particularly in decisions concerning forced psychiatric treatment, and at the lack of a timeframe to completely replace that regime with supported decision making systems.' The ALRC proposes two new roles related to supported decision making: supporter and representative. The supporter is an individual or organisation appointed by a person to support them to make a decision. A representative is someone who is appointed to make decisions for someone as a last resort. The ALRC outlines that a representative must seek to determine and express the person's will, preferences and rights when making decisions. Where this is not possible, a representative must consider the person's human rights when making decisions. It is specific that in cases of representative decision making, when it is not possible to determine will and preferences, decisions should be made in the context of human rights and not assumed 'best interests'.

The UN's indication that the ALRC's proposals should be adopted by Australia indicates that it sees this approach as a way forward in realising supported decision making. As such, the ALRC's proposals should be closely considered by the Scottish Mental Health Law Review, with a particular focus on the potential benefits of representative decision making in comparison to the current model of substitute decision making in Scotland. Using this model, or something similar to it, would still require an assessment process. The ALRC emphasises that the focus should be on assessing someone's ability to exercise their right to legal capacity and enabling them to realise this right. SIDMA is an assessment of someone's ability to make decisions (albeit based on mental capacity), so it could possibly be used to determine when representative decision making should be used. However, this should be explored further, as should alternative assessment frameworks.

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:

SAMH supports the omission of this role from the decision-making framework due to a lack of differentiation between the co-decision maker role, and other roles in supported decision making, as well as a lack of clarity around any differences of opinion.

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

Agree

Please explain why you feel this way:

There are several issues with the role of guardianship and SAMH supports the proposed changes that the review currently suggests.

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

Please share your views about the proposed streamlined application process:

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

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? :

SAMH declines to answer this question, at this time.

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?:

SAMH declines to answer this question, at this time.

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? :

SAMH believes that whatever model is used, it is imperative that individuals are protected against financial abuse, and it is the role of all involved in a person's care to make sure they are not abused.

SAMH would also suggest that part of the process of any new model should include a regular benefits entitlement review and income maximisation, to make sure that people are receiving all the financial support available to them.

9 What are your views on a system of supervision?

Please share your views on a system of supervision:

It is possible that when Local Authorities act as Public Guardians they can come into a conflict of interest with their roles, certainty could be achieved by having a body tasked with overseeing Public Guardianship. Conflicts of interests could be lodged with the body to trigger supervision. SAMH finds that a lot of people do not know what to do when there is a concern about supervision and a clear pathway for raising concern, and communicating rights to service users are two steps that could make the process easier.

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].:

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

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

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

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

5 What are your thoughts on the investigations structure?

Please share your thoughts on the investigations structure:

SAMH would advise that it is imperative that there is a clear pathway for investigations including possible outcomes, which is well communicated to all who may be taking part at every stage, so as to reduce uncertainty and worry about the process.

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?:

SAMH declines to answer this question, at this time.

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).:

SAMH declines to answer this question, at this time.

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].:

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

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?:

SAMH declines to answer this question, at this time.

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

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question at this time.

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].:

SAMH declines to answer this question, at this time.

Chapter 11: Deprivation of Liberty

1 Please share your views on our proposals.

Please share your views on our proposals.:

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

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:

SAMH declines to answer this question, at this time.

What else may you wish to see included?:

SAMH declines to answer this question, at this time.

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].:

SAMH declines to answer this question, at this time.

Chapter 12: Mental Disorder

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

Not Answered

why do you agree or disagree?:

Whilst we are not in a position to comment on diagnostic criterion we do wish to make a point about the importance of language. Language is a living thing, and words which at some points are purely used for medical categories can become insults, or so loaded with negative connotations that they fall out of use altogether. While in our experience, many people are relieved when they receive a diagnosis, we appreciate that for some people labels carry stigma and can lead to people being discriminated against, particularly as many people will see the label first and the person second. While words and their definition are vitally important to create clear and understandable law, a truly person centered law will reflect diagnostic criterion rather than use words that can remain as a stain on someone's experience.

This is why again, we emphasise the importance of See Me, and their work in reducing the stigma associated with a mental health diagnosis.

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

SAMH declines to answer this question, at this time.

What terminology should we use? :

SAMH declines to answer this question, at this time.

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].:

SAMH declines to answer this question, at this time.

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?

Not Answered

Please provide an explanation for your answer:

Given that people with mental health problems can be subject to both Acts, fused legislation and one assessment approach could make the system easier to navigate for practitioners, families and carers. Having a single piece of legislation that is based on functional decision-making impairment, rather than "mental disorder", would also be a less discriminatory approach – albeit people with "mental disorders" would be disproportionately subject to the legislation.

Not Answered

Please let us know why:

Please see above

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

Please let us know your thoughts on aligned legislation:

Please see above.

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

Please see 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?:

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

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

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:

SAMH prefers the use of one single judicial forum.

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].:

SAMH declines to answer this question, at this time.

About you

1 What is your name?

Name:

Mairi Campbell-Jack

2 What is your email address?

Email:

mairi.campbelljack@samh.org.uk

3 Are you responding as an individual or an organisation?

Organisation

4 What is your organisation?

Organisation:

SAMH

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

Evaluation

1 Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Slightly dissatisfied

Please enter comments here.:

Often the discussion on the longer document from the review team could have been written with a more plain English style.

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:
Slightly satisfied

Please enter comments here.: