

PE1667/G

Minister for Mental Health submission of 5 December 2017

Thank you for your recent letter which seeks the Scottish Government's view on petition PE1667.

The petitioner would like "the Scottish Government to conduct a review of all our mental health and incapacity legislation and when doing so take account of recent developments in international human rights law."

Scottish mental health and incapacity legislation is based on rights and principles. Our legislation is compliant with the Convention and has never been found, in part or in whole, by the European Court of Human Rights to be incompatible with the Convention.

The Mental Health strategy 2017-2027 recognises as a theme the importance of human rights and as part of this, has committed to actions around reviewing various aspects of mental health and incapacity legislation use in Scotland.

It may interest the committee to know about some work to review this legislation which is already underway. The Scottish Government is working with partners including the Mental Welfare Commission, the Office of the Public Guardian and professional and human rights bodies to develop changes to the Adults with Incapacity Act (2000) in relation to deprivation of liberty, and to assess compliance with UN Convention on the Rights of Persons with Disabilities.

A full public consultation on reform of the AWI legislation, including changes around the use of guardianship orders, will be launched next year.

We are also taking forward a review to consider how the provisions of the 2003 Act fulfil the needs of people with learning disability and autism. Mr Andrew Rome has been appointed as Chairperson to take forward this review. There has been considerable debate and no clear consensus about the provisions of the 2003 Act in relation to people with learning disability and autism. The Scottish Government committed to undertake this review and placed an emphasis on engaging widely, so that the real issues can be fleshed out and considered. There has been an extensive scoping exercise for this review and Mr Rome will take this forward, engaging with a broad range of stakeholders and seldom heard groups.

The Scottish Government is committed to creating a modern, inclusive Scotland which protects, respects and realises internationally recognised human rights, and is working with the whole of Scottish society to deliver a shared vision for a Scotland where everyone can live a life of human dignity. The Scotland Act 1998 requires that all Scottish Parliament legislation and all acts of members of the Scottish Government must be compatible with the European Convention on Human Rights and Fundamental Freedoms("the Convention"). In addition, the Human Rights Act 1998 ensures that every public authority in Scotland is obliged to act compatibly with the Convention and enables human rights cases to be taken in domestic courts

Our mental health legislation promotes patients' rights and provides safeguards. The Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act") provides for support to patients in expressing their will and preferences. The principles include that any function should be carried out for the maximum benefit of the patient, with the minimum necessary restriction on the freedom of the patient and having regard to the views of the patient.

The bulk of provisions of the Mental Health (Scotland) Act 2015 ("the 2015 Act") came into force this year. The 2015 Act strengthens measures in the 2003 Act which promote support for decision making. For example, any person with a mental disorder has the right to support from an independent advocate, and the 2015 Act requires reporting from Local Authorities and Health Boards on how they are fulfilling their statutory duty to secure independent advocacy services. The 2015 Act also promotes support for decision making, amending the right to appoint a named person to represent interests and promoting the right to make an advance statement on treatment choices.

These are important and interconnected pieces of work which will address issues that are affecting the lives of those with incapacity and mental disorder. It would be inappropriate to consider wider changes to legislation until these key pieces of work have reached conclusions.

We want to protect and promote the rights of people while they are unwell and ensure they have access to effective and efficient treatment. Therefore only when the views, findings and recommendations arise from this important work will we be able to consider the provisions contained within our mental health and incapacity legislation and determine how best to proceed.