

Scottish Mental Health Law Review

Consultation

Scottish Commission for People with Learning Disabilities (SCLD) Submission

Summary of Key Points and

Recommendations

Easy Read Summary

 **June 2022**



What is the Scottish Mental Health Law Review Consultation ?



A team of experts has been looking at what changes should be made to the laws on mental health and capacity.



This is called the Scottish Mental Health Law Review.



The Review team will send a report to the Scottish Government at the end of September 2022.



In March 2022 a document was put out telling people about the changes that the team wanted to recommend in the review.



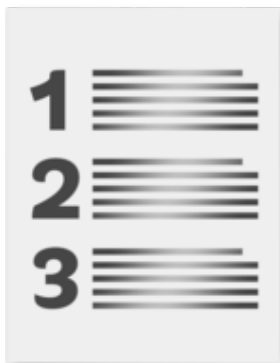
They asked people and organisations what they thought of these changes.



They also asked people and organisations what changes they thought should be made to the laws on mental health and capacity.



This document is known as the Scottish Mental Health Law Review Consultation.



The main points from SCLD's response to this consultation are listed below.

SCLD's Response



SCLD thinks that the laws on mental health and capacity should be changed.



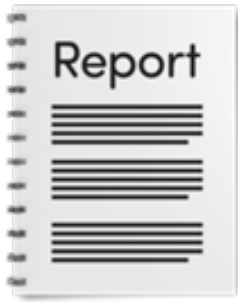
Capacity law affects people who may need help or support to make decisions.



SCLD thinks the law needs to be changed to protect the human rights of people with learning disabilities and improve their well-being.




SCLD thinks the Review should pay more attention to what was said in another review.



This is the Independent Review of Learning Disability and the Autism in the Mental Health Act review or Rome Review for short.



SCLD  thinks it is important that the Review should pay attention to other changes to the law that are happening right now.

The Rome Review



The Rome review said a learning disability should no longer be called a 'mental disorder'.



Sometimes people with learning disabilities and autistic people experience mental health issues.



The Rome review said it is important they get the help they need when this happens.



It said people should not have their rights taken away because they have a learning disability or autism.



It said a new law is needed to protect people's rights and make sure that they can get the services that they need.



It said that a new commission should be made to make sure that the rights of people with learning disabilities are protected.

Changes to the law in the future



SCLD thinks laws should not use the words mental disorder when they are talking about people with learning disabilities.



People with learning disabilities and autistic people who also have mental ill-health issues should always be able to get the care, treatment and support that they need.



Mental health and capacity law should always protect and respect the rights of people with learning disabilities.



They are not the only laws that can do this.



There are some other big changes to laws happening that affect people with learning disabilities.



These laws are listed below.



The development of the National Care Service.



A Human Rights Bill for Scotland.



A law for the UNCRC (United Nations Convention on the Rights of the Child).



A Learning Disability, Autism and Neurodiversity Bill and Commissioner.



SCLD think all these new laws are important to protect the human rights of people with learning disabilities.

Supported Decision Making



SCLD thinks supported decision making is very important to help people with learning disabilities enjoy their human rights.



Sometimes people with learning disabilities might find it difficult to make their own decisions.



These people can be given support to help them make their own decisions.



This is known as supported decision making.



Supported decision making can include things like being given accessible documents or being able to talk to support workers who can help people understand the different options they have.



People with learning disabilities should be able to get different types of supported decision making.



There should be a plan on how to make sure people across Scotland can get support to make decisions.



There should be a place to train people on how to support people with their decision making.

The Role and Rights of Unpaid Carers



All staff should be given training on the needs and rights of carers and understand the problems that unpaid carers might face.

Human Rights enablement



The Review thinks something called Human Rights Enablement can help people who get care, treatment and support to have their human rights protected.



Human Rights Enablement is an assessment that can help professionals to make decisions about people's care treatment or support.



Sometimes a doctor decides that someone must have care and treatment which will affect their human rights.



SCLD thinks that Human Rights Enablement can help to make sure that a person's rights are protected as much as they can be.



SCLD thinks that the review needs to be clearer about when Human Rights Enablement should be used.

Autonomous decision making test



The Review talks about a test called the Autonomous decision making test.



It says that this test could be used to decide if a person with mental health issues should be able to make their own decisions.



These decisions could be about things like care, treatment and support.



SCLD is worried that Autonomous decision making tests are too much like capacity tests which are already in use.



A capacity test is a test which is used to find out if people are able to make their own decision and choices about the care, support and treatment they get.



These tests can often lead to people's human rights being taken away.



SCLD feels that rights should only be taken away from people to protect their rights overall.



SCLD thinks that test for this should be through the Human Rights Enablement process.



The Human Rights Enablement process is a test used to make sure that people's human rights are always protected when it comes to the decisions they are allowed to make.



SCLD believes that people should always have the right to challenge any decision that goes against what they want.

Reduction of coercion



Coercion is when people **are** forced to do things they do not want to do by other people.



Coercion can also be physical which means that people can be made to do things through force or the threat of force.



Coercion can be mental which means that people are controlled by other people and are left unable to make their own choices.



Coercion can often be experienced by people with mental health issues during their treatment.



People in hospitals and care homes can experience coercion.



This can cause trauma.



Trauma is when a person experiences very bad feelings during and after something that happens to them.



It can be physical and result in injuries.



It can also be mental and result in mental health problems.



SCLD agrees that more needs to be done to make sure people are safe from coercion and trauma.



SCLD also agrees with the plans in the review to lower the amount of coercion against people with learning disabilities who are getting mental health treatment.



SCLD believes that members of an organisation called Restraint Reduction Scotland can help with the changes.

Accountability



There is a need to look at how different organisations can work together to make sure people's rights are protected.

Children and Young People



Services should always respect the rights of children.



The United Nations Convention on The Rights of the Child should be used by organisations to help them make sure that children's rights are being protected.



SCLD thinks that services who provide mental health support and treatment should think about using supported decision making when they are supporting children and young people.



SCLD thinks that the Scottish Government should introduce laws to make sure that children and young people with learning disabilities are given support plans.



SCLD believe that these laws should also make sure that the plans will always be carried out.



The law should help to make the goals in Article 23 of The United Nations Convention on The Rights of the Child a reality.



Article 23 of the convention is the part which says what the rights of children and young people with disabilities should be.



The Scottish government should talk to the services which support children with learning disabilities so they can find out the best way of linking child law and mental health law together.

Adults with Incapacity proposals



This law deals with those who might have difficulties when it comes to making decisions.



The Review says that people should be supported more to make their own decisions.



SCLD thinks it is very important this should be done instead of allowing other people to make decisions for people with learning disabilities.



The Review says changes to the law and new rules on decision making will have to be made.



This includes people being able to have an official supporter to help them make decisions.



They will also be able to get support from an independent advocate.



New staff will be needed to make this happen.



More money will be needed to pay for this.



Any changes to this law must keep people safe.



There should be new rules on how medication can be given to people.



SCLD believes that the new laws should be careful when it comes to giving more staff the ability to issue section 47 certificates.



Section 47 certificates are papers which make it legal for doctors and other medical staff to make important decisions about a person's medical treatment.



This is done when it is felt that the person is unable to make their own decisions about treatment.



It is done when the person has no family members or carers to make the decision for them.



It is important that Section 47 certificates are only used when they need to be because they can cause people's rights to be taken away.

Deprivation of Liberty



People must always be involved in decisions about their treatment when there is a risk of their freedom being taken away.



SCLD believes that the Scottish government must get better at making sure this always happens.

Mental Disorder



SCLD believes that it is wrong to describe all people with learning disabilities as having a mental disorder.



This is because using the term mental disorder does not put the human rights of the people with learning disabilities first.



There should be separate laws to protect the rights of people with learning disabilities.



SCLD believes that Mental Health laws should not use disability as a reason for people to be given care, treatment and support they do not want.



SCLD thinks the Review needs to make sure the law is the same for everyone.