

PE1667/K

Minister for Mental Health submission of 13 July 2018

Thank you for your recent letter. I would like to take each of the pieces of work referred to in my letter of 5 December 2017 in turn.

Mental Health (Scotland) Act 2015

The bulk of the provisions of the 2015 Act have been implemented and we are working towards introducing the residual elements of that Act. We are also looking at ways to further promote rights-based practice under existing legislation, including updating the statutory guidance contained within the Code of Practice – the present intention is that the draft will be laid in the Scottish Parliament and made available for public consultation in Spring 2019.

Review to consider whether the provisions of the 2003 Act fulfil the needs of people with learning disability and autism

This review has commenced. A strong emphasis has been placed on reaching a broad range of stakeholders and seldom heard groups so that the real issues can be fleshed out and considered. This will mean several stages of engagement as well as providing the right supports for people so that it will be able to record a range of views and experiences, making the review truly accessible. The first public engagement phase is expected to take place this autumn.

The original scoping exercise, which laid the foundations for this review did not recommend a duration period as there was no consensus between stakeholders (views ranged from 18 and 24 months to “as long as is needed”). Scottish Ministers have no wish to impose an unrealistic timeline in which the review should operate and it was therefore appropriate for the Chairperson to determine the length of time they need to complete a comprehensive review. Taking into account the level of engagement required, the expectation from the Chairperson is that this work will take around 24 months, meaning that the final report will not be available before December 2019.

Adults with Incapacity (Scotland) Act 2000

The work to reform Adults with Incapacity Act legislation is well underway. We are aiming to build in flexibility within the current system to ensure that resources are directed appropriately, guardianship orders are granted at the lowest level necessary to meet the needs of the adult, and the adult’s autonomy and legal capacity are maximised to meet the requirements of the UN Convention on the Rights of persons with disabilities.

A full public consultation was launched early this year which set out a number of detailed recommendations for reform of the legislation and sought views on these and further areas for change. The consultation closed on 30 April 2018 and officials are currently analysing responses, thereafter working groups will take place over the autumn to develop concrete proposals for legislative reform which will also then be tested out with stakeholders. The medium to long term aim is to have

recommendations for change available by Spring 2019 with the present intention being that the Scottish Parliament is asked to consider the proposals for legislative reform before the end of the current parliamentary term.

Additional pieces of work

Aside from the 2 reviews and the remaining work related to the 2015 Act, we are also looking at the arrangements for investigating deaths of people who are subject to the Mental Health (Care and Treatment) (Scotland) Act 2003, or the Criminal Procedure (Scotland) Act 1995, or are in hospital voluntarily for treatment of mental disorder. This review is underway and is due to report at the end of this year.

Summary

The work set out in this letter and in a previous letter (5 December 2017) are key pieces of work which are evidence led and have a heavy focus on stakeholder engagement which will therefore play a major role in helping shape the future of mental health and incapacity legislation. We plan to consider the views, findings and recommendations as they arise from the current work streams. Given the breadth of that work and their interplay we will, however, continue to evaluate the need for further legislative reform and consider how best to use this work to lay those foundations.

The Committee may also wish to note I met with the petitioner, Mr Watson, on 11 July 2018 following a request from him to have an opportunity to discuss his concerns and views on mental health and incapacity legislation.