

**PE1667/O**

Minister for Mental Health submission of 19 March 2019

I am writing to you to provide you with further detail on the review of mental health legislation that I announced today.

As you know, very few people are ever treated for a mental disorder against their will; however, if they are, it is because it is necessary to protect them or to protect other people. In addition to the Mental Health (Care and Treatment) (Scotland) Act 2003, people with a mental disorder may also be affected by the Adults with Incapacity (Scotland) Act 2000, if they lack capacity with regard to their welfare or finances, or the Adult Support and Protection (Scotland) Act 2007, if they are at risk of harm or neglect. Depending on their needs, a person may be subject to one, two or all three of these Acts. This may be confusing for the individual and their carers and also create barriers to those caring for their health and welfare.

While huge advances have taken place in relation to mental health, in terms of treatment and changing social attitudes, the Scottish Government has always been clear that it will continue to keep the changing context under review to ensure our legislation is fit for purpose.

In recent years, there has also been an increasing focus in all areas of public life on the importance of protecting and promoting human rights, and on recognising the rights of people with disabilities. The European Convention on Human Rights and the United Nations Convention on the Rights of Persons with Disabilities have provided the impetus for this increased focus. This has provided us with an opportunity to look again at our legislation to ensure that the rights and protections of those with a mental disorder are fully respected.

It is important to make clear that the review announced today will be building on, and is complementary to, work that is already underway in this area. We have already begun work to review incapacity law and practice, as well as a review of learning disability and autism under the Mental Health Act and will shortly be undertaking work on the Adult Support and Protection Act. Taking all of these developments, together with the addition of a broader review of the Mental Health Act announced today, will mean there is a programme of activity that amounts to an overarching review of the legislative framework affecting people with mental disorder.

The principal aim of the review of the Mental Health Act is to improve the rights and protections of people with a mental disorder and remove barriers to those caring for their health and welfare. It will do so by:

- reviewing the developments in mental health law and practice on compulsory detention and care and treatment since the Mental Health (Care and Treatment) (Scotland) Act 2003 came into force;
- making recommendations that gives effect to the rights, will and preferences of the individual by ensuring that mental health, incapacity and adult support and protection legislation reflects people's social, economic and cultural rights including UNCRPD and ECHR requirements; and

- considering the need for the convergence of incapacity, mental health and adult support and protection legislation.

This review will be stakeholder driven and evidence led. We want to gather views from as wide a range of people as possible. Throughout the process, I am determined to ensure that the views of service users, those with lived experience and those that care for them are front and centre of the work to be taken forward so that they can help shape the future direction of our legislation.

We are currently exploring who would be the most suitable candidate to take on the important work of chairing this review. The work will also be supported by a short-life working group which will include representation from a range of key stakeholders.

I very much hope that you welcome the announcement of this review, which complements the work that is already under way, and which will ensure that Scotland's mental health legislation continues to lead the way in ensuring the rights and protections for our citizens.