

Paper 1 for the Law and Policy Advisory Group meeting on 18st June 2018

The title of Paper 1 is **The work of this group**

This paper will be discussed in the **first session**, before the break.

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A: Some things that you need to know before you read this paper

The Mental Health Act

In this document, we talk about the '**2003 Act**'.

This means the law called the 'Mental Health (Care & Treatment) (Scotland) Act 2003'.

This law applies to autistic people and to people with learning disability, especially for people who may receive compulsory care and treatment.

There is an easy read guide to the Mental Health Act. You can get it at: <http://www.gov.scot/Resource/Doc/196881/0052725.pdf>

The right to mental health

In this document we talk about the **right to mental health**.

The right to mental health is part of the right to health.

The right to health is not to a right to be *healthy*.

That is because people's health can be affected by lots of things. It is not possible to guarantee that people are healthy.

The right to health means that everyone has the right to the "**highest attainable standard of health**".

This means the **best possible** standard of health for them.

People have a right to the best possible health, taking into account their resources and the resources that the Government has to spend.

The right to health includes:

- the right to control your own health and body
- the right to be free from interference from other people
- the right to have the facilities, services and conditions that will give you the highest attainable standard of mental health.

Do you have any questions or comments about the Mental Health Act or the right to mental health?

B: The Review's approach

The Review is taking a human rights based approach. This approach is defined by the Scottish Human Rights Commission.

You can see how we plan to use this approach in the paper called 'The Review's Human Rights Based Approach'.

What are human rights?

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death.

They apply regardless of where you are from, what you believe or how you choose to live your life.

They can never be taken away, although they can sometimes be restricted – for example if a person breaks the law.

You can read more about human rights here:

1. What are human rights? EHRC.

<https://www.equalityhumanrights.com/en/human-rights/what-are-human-rights>

2. How are your rights protected? EHRC.

<https://www.equalityhumanrights.com/en/what-are-human-rights/how-are-your-rights-protected>

Different types of human rights

It is not always possible for the Government to fully respect a person's human rights at all times.

1. Absolute human rights

The right to life and the right not to be tortured are called “**absolute rights**”. They can never be interfered with in any circumstances.

Most human rights are not absolute.

2. Limited human rights

Some rights are described as ‘**limited**’. This means they can be restricted in certain circumstances.

For example, the right to liberty can be limited if a person is convicted and sentenced to prison.

3. Qualified human rights

Other rights are described as ‘**qualified**’. This means they can only be restricted to **protect the rights of other people** or if it is in the **public interest** for specific reasons such as the prevention of crime.

For example, the Government may restrict the right to freedom of expression if a person is encouraging racial hatred.

Human rights and the Review of the 2003 Act

This review will consider how well the 2003 Act promotes and protects the right to mental health for autistic people and people with learning disability.

We will be measuring how well the 2003 Act does this against international human rights standards.

We will have a human rights framework. This will contain a list of all the human rights that are important to the Review. This will help us to understand how well the 2003 Act promotes and protects the right to mental health.

The nature of the Review

We need to consider evidence about how the Act works as a law. Some of this will be about access to appropriate support, care and treatment.

We will need to use this evidence to decide whether the Act itself can promote and protect the right to mental health effectively for autistic people and people with learning disability.

However we will use this evidence to find out whether the law itself is a good law. We need to decide this regardless of how well the Act is used in practice at present.

For example we might find out that sometimes people's right to mental health might not be being promoted because there is a lack of services.

We need to think about whether this is because of the law or because of something else.

We need to think about whether a change in the law would better promote people's right to mental health, or whether there is a better way to improve things.

Mental health and disability

Mental health law can be understood as a part of 'disability law'.

The United Nations Convention on the Rights of Persons with Disability (CRPD) is a human rights treaty, and is relevant to this Review.

The CRPD says that autism and learning disability are disabilities. Some autistic people and people with learning disability may be unhappy with or offended by that description.

However, the benefit of being defined as having a disability for autistic people and people with learning disability is that the CRPD places lots of requirements on the Scottish Government to promote and protect people's rights in relation to care and treatment for mental health.

A model of disability

A 'model' is a way of describing something that helps you to make sense of it.

In this Review, we need to seek evidence about different parts of life that may affect autistic people and people with learning disability.

We think that disability is affected and influenced by:

- medical issues – like the health condition people may have
- individual issues – like a person's outlook on life
- social issues – like other people's attitudes to disability
- environmental issues – like good quality housing

So that we can look at all these factors we will use a model called the **"biopsychosocial" model** of disability.

This model is from the World Health Organisation.

We want to use it because it "broadens the perspective of disability". It allows us to think about how different issues can influence disability.

Do you have any questions or comments about the Review's Human Rights Based Approach?

Please look at this section and also the document called "The Review's Human Rights Based Approach"

Do you have any questions or comments about the Review's model of disability?

C: What the Review has to do

The Scottish Government remit

The 2003 Act sets out the law on how compulsory care and treatment is delivered, monitored and reviewed in Scotland.

Scottish Government has stated that:

- The review needs to gather evidence from a **wide range of sources**
- The review needs to engage with people who have a **personal or professional interest**
- The review needs to **reflect this evidence** in its final analysis and recommendations

The Scottish Government also stated that the evidence-gathering and analysis will focus on:

- The operation of the 2003 Act – are people with autism and learning disability well served?
- Increasing the role of psychologists in relation to the 2003 Act
- The definition of mental disorder under the 2003 Act in relation to learning disabilities and autism
- The criminal justice system and the interaction with the 2003 Act
- The use of psychotropic medication (current prescribing practices)”

How we understand the Scottish Government remit

Here is how we plan to follow this remit and take a human rights based approach:

1. The Review will seek evidence on whether the 2003 Act is effective in promoting and protecting the right to mental health for autistic people and people with learning disability. All of the evidence described above will contribute to this.

2. The 2003 Act has a focus on compulsory care and treatment.

Because of this it is possible that the 2003 Act does not promote or protect the whole of the right to mental health for everyone.

For example the 2003 Act may not promote or protect the right the mental health for people who don't receive compulsory care and treatment.

We may find areas where there is no law or policy to promote or protect the right to mental health. We will report on this if we find it.

3. The Review may find that 2003 Act relates to other laws or policies that promote or protect the right to mental health.

For example the 2003 Act places duties on Local Authorities about care and support services. Scotland has other laws and policies that deal with these services.

The Review will not assess whether those laws and policies promote and protect the right to mental health.

The Review will assess how effectively the 2003 Act **interacts** with those laws and policies.

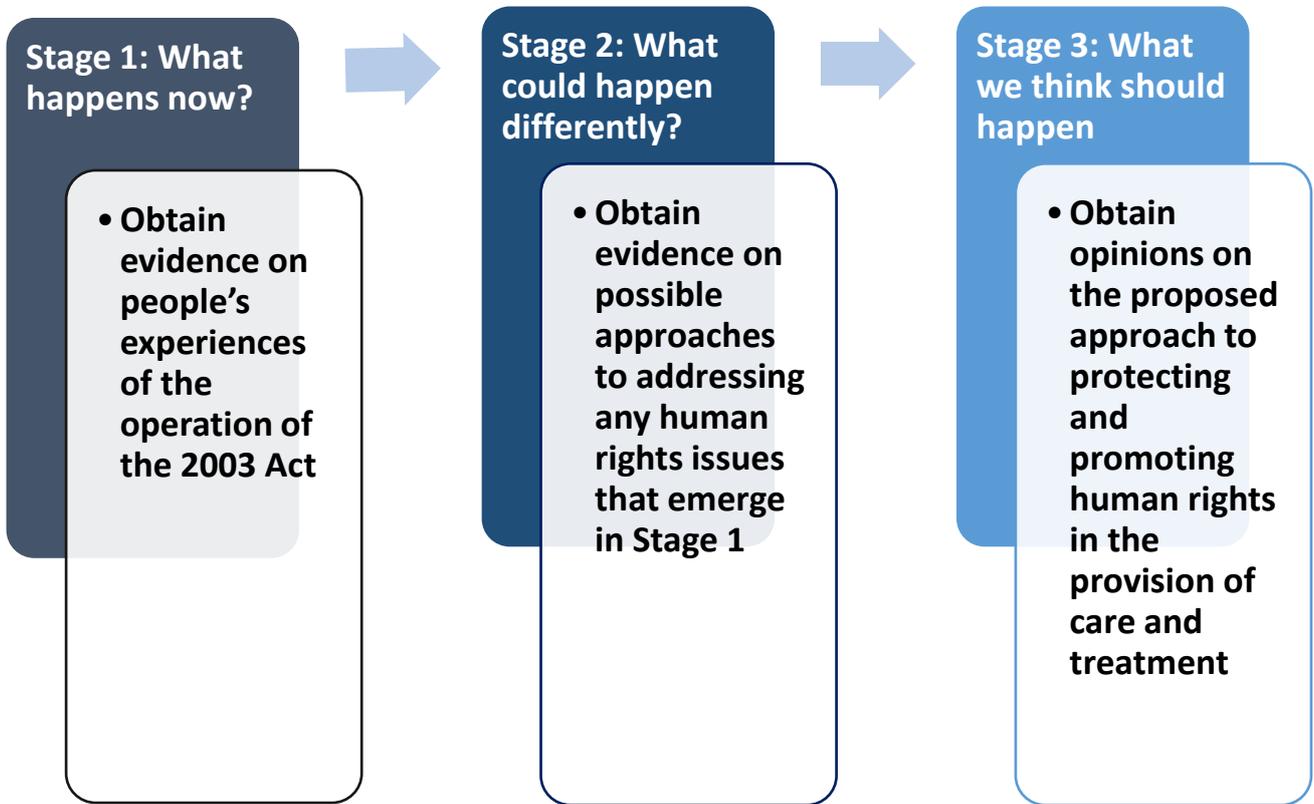
4. For the Review, 'the operation of the 2003 Act' means how the Act promotes and protects the right to mental health for autistic people and people with learning disability.

5. For the Review, 'well served' means that a person is offered or given support, care and/or treatment that they may need to promote and/or protect their right to mental health.

What we plan to do

We plan to run three stages to the Review.

These are the outcomes that we plan for each stage of the Review:



Do you have any questions or comments about section 1.3?

D: The Review's governance

'Governance' is about how decisions are made in the Review.

The Chair



The Chair of the Review is Andrew Rome. Andrew is independent. He is responsible to report to the Minister for Mental Health with recommendations at the end of the Review.

The Executive

The Review has a group called the Executive that makes all decisions about how the Review will run.

The Executive will write the report for the Minister and decide on the recommendations to the Minister.

The Executive is the Chair, Secretary and Project Manager.



The Secretary is Simon Webster.



The Project Manager is Catherine Evans.

The Secretary and Project Manager are employed by the Mental Welfare Commission for Scotland.

The Executive meets whenever it needs to, usually once every two weeks.

The Executive makes a note of any significant decisions that it makes.

The advisors

Advisors have been selected because of their experience and their approach to working with others.

There are advisors with lived experience and professional advisors. Some advisors may have both lived experience and professional experience.

All advisors are expected to adhere to standards of conduct.

We expect that all Advisors will:

- want the review to work well
- work together with others and listen to others
- work to find solutions
- put forward their own advice
- respect people even if they disagree with them

Advisors with lived experience are volunteers with the Mental Welfare Commission for Scotland. However, the Project Manager and the Secretary for the Review will be the people working with volunteer advisors.

All advisors are expected to contribute to the advisory group meetings.

If an advisor cannot come to a meeting, we ask that the advisor gives their comments on the papers before the meeting.

In between meetings, advisors may be invited to help with other work and can help if they choose to do so.

Ad hoc advisors

Some other people have been asked to be *ad hoc* advisors to the Review. This means that they are not members of an advisory group, but may be asked for advice when the Executive needs this from them.

The Advisory Groups



The role of each Advisory Group is to advise the Executive on their proposed processes for the Review.

Three of the Advisory Groups – including the Law and Policy group - will advise the Executive on:

- What evidence the Review should seek
- Where we should seek this evidence

The Communication and Engagement Group advises the Executive on

- How we should seek this evidence

Each Advisory Group has *terms of reference*. The terms of reference for this group is in the next section.

Advisory group meetings

The work of the Advisory Groups will fit together and will fit with the stages of the Review.

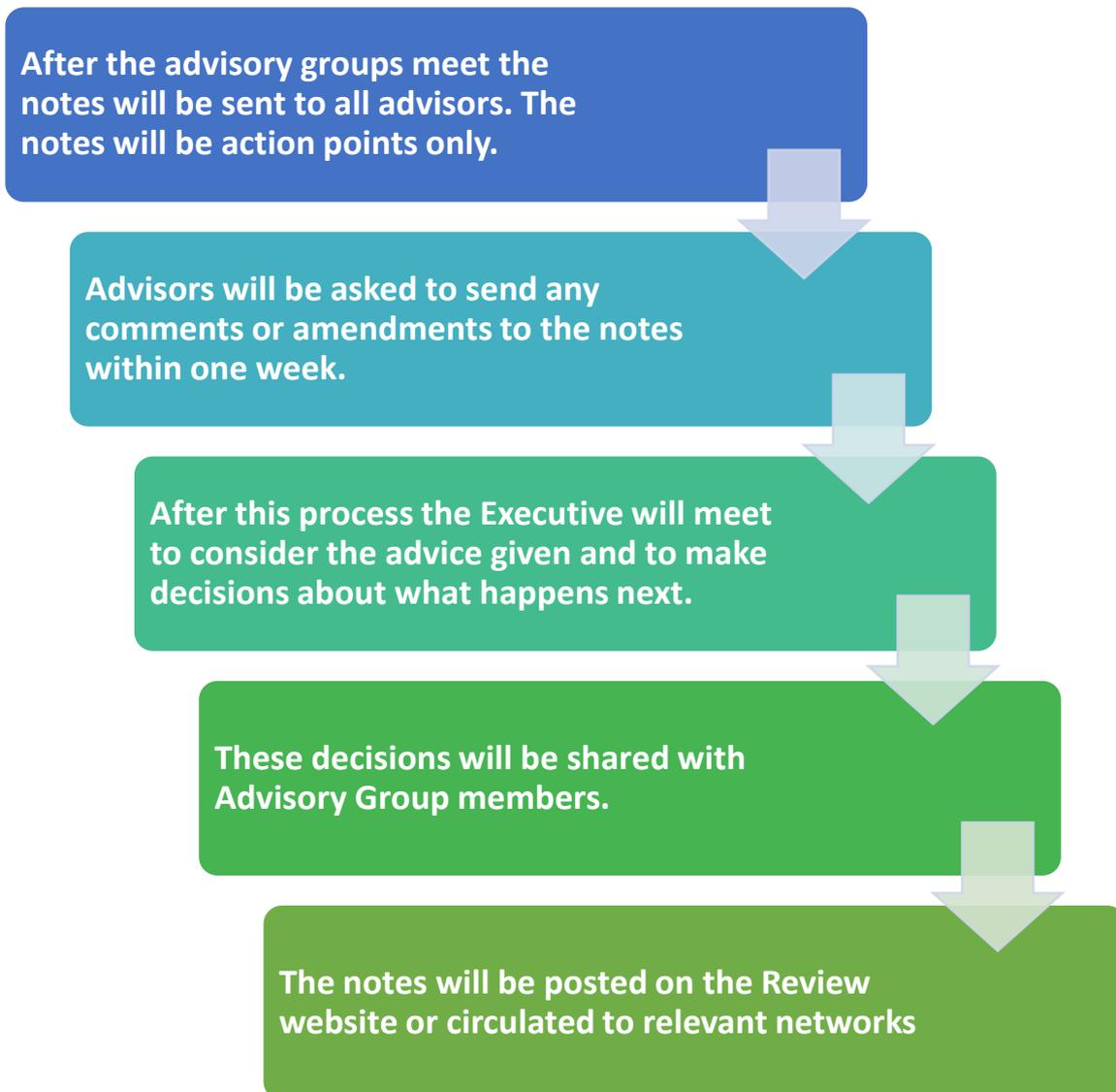
We plan to have 3 stages to the Review.

Before we seek the evidence for each stage, each advisory group will meet. Groups will meet within two weeks of each other.

Near the end of each stage of the Review, all of the advisory groups will meet, on the same day and in the same location.

In total, each advisory group should meet 6 times.

Decision making processes



Decisions will not be made at Advisory Group meetings.

This is because not all of the Executive will be present at Advisory Group meetings. Also the Executive will need to take time to consider the advice given at each meeting.

Do you have any questions or comments about the governance of the review?

E: Terms of reference for the Law and Policy Advisory Group

The purpose of the group

The **purpose** of this advisory group is:

To advise the Executive on how to seek and interpret evidence on care and treatment for mental health, for autistic people and people with learning disability.

This will include advising the Executive on:

- how to seek evidence on whether the 2003 Act promotes and protects the right to mental health
- how to compare this evidence against international human rights standards

Outcome for this group

The main **outcome** for this group is that the Executive is well advised on how to seek evidence on law and policy.

What group members will do

The **process** for this group's work will be:

1. Receive the meetings papers at least 2 weeks in advance of the meeting
2. Read those papers before the meeting, with support if needed
3. Note any questions or comments and bring them to the meeting
4. Attend the meeting
5. After the meeting, talk through any further questions
6. Give any further advice to the Project Manager by the deadline
7. Receive the action points from the meeting

You may also be invited to give advice in between meetings, or to attend some other events. That will be optional.

This group will **meet** 6 times during the Review.

All advisors are expected to contribute to these meetings. If you cannot attend a meeting we will ask you to give us your comments before the meeting takes place by email, phone or in person.

The group members

Person	Expertise
Leo Starrs-Cunningham	Autism
Audrey Edwards	Experiences of people who do not communicate with speech
Kerry McInnes	Learning disability
Cathy Asante	Human rights based approaches
Jane Patrick	Scottish Mental Health Law
To be confirmed	International human rights law

The role of the Executive

The Review's **Executive** will work with this group as follows:

The Chair of this group is Andy Rome, the Chair of the Review.

Simon Webster, the Secretary will attend and note meetings.

Catherine Evans, the Project Manager will work to make sure that people have the information and support that they need before, during and after each meeting.

Do you have any questions or comments about the Terms of Reference for this group?