



## **Paper 1: Draft outcomes**

**This paper is for the first session of the advisory group meeting.**

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### **A: What this paper is about**

Paper 1 tells you about the ‘main papers’ we chose to use for stage 1 of the review, and what we mean by ‘main papers’.

Paper 1 tells you how we chose those papers.

Paper 1 tells you about some of the outcomes that we think the law needs to achieve.

Paper 1 explains how we decided on these outcomes, and gives you some examples of these outcomes.

## **B: What we are asking advisors**

We will talk to you about paper 1. Then we will have a discussion about it and you can ask us any questions that you want to ask.

The questions we are asking you are:

1. What are the strengths of this outcomes approach?
2. What are the weaknesses of this approach?

## **C: Why we are talking about ‘outcomes for mental health law’**

An outcome is something that happens that makes a difference to people.

Any change to the law should aim for more good outcomes and fewer bad outcomes for people.

We will focus on outcomes for our discussions in stage 2.

We think that focussing on outcomes will help us to talk about the topics more easily.

We think it will help people to talk about solutions. Outcomes help us to look at where we should be, so that we can work out how to get there.

We will tell people about what human rights are promoted by each outcome.

## D: How we developed the draft outcomes

The outcomes we are developing come from stage 1 evidence. Stage 1 evidence is made up of evidence from main papers, and new evidence.

### Evidence from main papers

We have chosen some 'main papers' for the review. None of these papers were written by the review team. The papers were all written by people with lived experience or by professionals.

These papers helped us to understand what outcomes autistic people and people with learning disability may need from mental health law in Scotland.

More information about how we chose papers is in section G.

### New evidence

We will also look at the new evidence that people and organisations gave us in stage 1 of the review.

We are looking at this evidence at the moment. When we meet we will update you about this.

Together, all of this information will help us to understand what autistic people and people with learning disability need from mental health law in Scotland.

The outcomes on the next pages are the ones we have thought of so far. **These may change** when we have looked at the new evidence we have.

Later in the review, we will think about how the law would need to change to make these outcomes happen.

**E: The review's draft main outcomes for mental health law, for autistic people and people with learning disability**

This table shows how the draft outcomes link to the review's remit.

	<b>Main outcomes</b>	<b>The review's remit</b>
<b>X</b>	The law promotes and protects all of the person's human rights	The operation of the 2003 Act – are people with autism and learning disability well served?  The definition of mental disorder under the 2003 Act in relation to learning disabilities and autism
<b>A</b>	People are safe in a crisis	The operation of the 2003 Act – are people with autism and learning disability well served?
<b>B</b>	All decisions promote and protect the person's human rights	The operation of the 2003 Act – are people with autism and learning disability well served?
<b>C</b>	Medicine has a positive effect for the person	The use of psychotropic medication (current prescribing practices)
<b>D</b>	Care and treatment have positive effects for the person	The role of psychology in relation to the 2003 Act
<b>E</b>	Criminal justice is fair and helpful for the person	The criminal justice system and the interaction with the 2003 Act

The next pages tell you more about the main outcomes and how they relate to the human rights themes in the review's human rights framework.

## F: More detail about each draft main outcome

# X The law promotes and protects all of the person's human rights

## 1. Human rights themes

This outcome affects all human rights themes. It especially affects:

Protection from abuse

Equality and non-discrimination

Health

Implementation and monitoring

## 2. Draft outcomes that will make sure this happens

The law in Scotland protects persons with disabilities against **discrimination**.

The law in Scotland makes sure that **Disabled Persons' Organisations** exist.

Disabled Person's Organisations are involved in **making sure** that mental health law promotes and protects human rights in practice.

Scotland's mental health law requires decisions that respect the **rights, will and preferences of persons** with disabilities instead of decisions about people's best interests.

Scotland's **criminal justice system** is fair for autistic people and people with learning disability.

Scotland's mental health law leads to the end of people being treated without their agreement **because they have a disability**.

Scotland's mental health law prevents all care, treatment and support that may be **cruel, inhuman or degrading**.

The law ensures that all services for persons with disabilities are **monitored independently** and **effectively**

The law ensures that professionals **meet their duties** and act **within their authority**.

The law in Scotland ensures the right to **living independently** and being included in the community.

The law in Scotland ensures that **absolute rights** are always protected.

Scotland's mental health law **works well with other laws** to promote and protect human rights.

Scotland's mental health law has a definition of 'disability' that works with our **international human rights obligations**.

### 3. The papers that helped us to identify these outcomes

<b>Name of paper</b>	<b>Who wrote it</b>	<b>When</b>
Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland	United Nations Committee on the Rights of Persons with Disabilities	2017
Consideration of Petition PE1667	Scottish Human Rights Commission	2017
Monitoring the Implementation of the UNCRPD	UK Independent Mechanism for the CRPD	2014

## A: People are safe in a crisis

### 1. Human rights themes

This outcome will affect these human rights themes:

- Health
- Protection from abuse
- Implementation and monitoring

### 2. Draft outcomes that will make sure this happens

**Suicide risk** is recognised in individuals and is acted upon

**Assessments** are done well

All individuals have their support **co-ordinated effectively**

Care is **well planned**, to prevent crisis

**Specialist care** is provided, to prevent crisis

People have effective support to **get through a crisis** when living in the community

**Serious incidents** are investigated well

People have the support that they need **when they are very distressed**

### 3. The papers that helped us to identify these outcomes

Name of paper	Who wrote it	When
Investigation into the death of Ms MN	Mental Welfare Commission for Scotland	2016
Place of safety monitoring report	Mental Welfare Commission for Scotland	2018
Coming Home: A report on out-of-area placements and delayed discharge for people with learning disabilities and complex needs.	Dr Anne MacDonald, Scottish Government	2018

## **B: All decisions promote and protect the person's human rights**

### **1. Human rights themes**

This outcome will affect these human rights themes:

- Health
- Freedom and safety
- Protection from abuse
- Independent living

### **2. Draft outcomes that will make sure this happens**

All decisions are based on people's **rights, will and preferences**

People have all the support they need and want for **making their own decisions**

People have fair **opportunities to challenge** professionals

Decisions on **physical restraint** prevent assault or death, and prevent unnecessary restraint or seclusion.

Opportunities are provided so that **the least restrictive option** is available for each person.

People **get out of hospital** when they are well

People are under compulsion in the community **for the shortest possible time**

People can **return to their home area** from other areas if they want to

People can choose to use **seclusion**, but are only put into seclusion if there is a clearly identified and significant risk of serious harm to others that cannot be managed with greater safety by any other means.

**Carers** are involved in everything that they should be

### 3. The papers that helped us to identify these outcomes

<b>Name of paper</b>	<b>Who wrote it</b>	<b>When</b>
Are Mental Health Tribunals a good use of money?	Learning Disability Alliance Scotland	2016
Autism and the madness of the Mental Health Act	Autism Rights	2015
Citizens' Grand Jury Report	People First Scotland	2011
Coming Home: A report on out-of-area placements and delayed discharge for people with learning disabilities and complex needs.	Dr Anne MacDonald, Scottish Government	2018
Learning disability and the Scottish Mental Health Act	Heather Welsh and Gary Morrison	2017
No through road	Mental Welfare Commission for Scotland	2016
Partners in care?: views and experiences of carers from a cohort study of the early implementation of the Mental Health (Care & Treatment) (Scotland) Act 2003	Dr Julie Ridley and Susan Hunter	2010
Subjective experiences of compulsory treatment from a qualitative study of early implementation of the Mental Health (Care & Treatment) (Scotland) Act 2003	Dr Julie Ridley and Susan Hunter	2013
The exercise of legal capacity, supported decision-making and Scotland's mental health and incapacity legislation: working with CRPD challenges	Professor Jill Stavert	2015

## C: Medicine has a positive effect for the person

### 1. Human rights themes

This outcome will affect these human rights themes:

Health

Protection from abuse

### 2. Draft outcomes that will make sure this happens

Psychotropic medicine is not prescribed '**off label**' unless absolutely necessary

Psychotropic medicine is not given to people **under compulsion** unless absolutely necessary

Other care and treatment is always given to people before psychotropic medication is given under compulsion

People are not prescribed psychotropic medicines when they have **concerns about adverse effects**.

Use of psychotropic medicine always respects people's **absolute rights**

### 3. The papers that helped us to identify these outcomes

Name of paper	Who wrote it	When
10 years of anti-psychotic prescribing in Scotland for people with learning disability.	Scottish Learning Disability Observatory	2017
Assessment, diagnosis and interventions for autism spectrum disorders (SIGN 145)	Healthcare Improvement Scotland	2016

Name of paper	Who wrote it	When
Autism and the madness of the Mental Health Act	Autism Rights	2015
Autistic son and mother flee UK	Herald Scotland	2012
People with Learning Disabilities in Scotland: 2017 Health Needs Assessment Update Report	Dr Maria Truesdale and Professor Michael Brown	2017

## D: Care and treatment have positive effects for the person

### 1. Human rights themes

This outcome will affect these human rights themes:

Health	Independent living
Protection from abuse	Dignity
Equality and non-discrimination	

### 2. Draft outcomes that will make sure this happens

Autistic people and people with learning disability are **understood and feel accepted** by services.

All professionals have the **skills** that they need to support people well.

The right **care and treatment** is available for all autistic people and people with learning disability.

The right support is available for **behaviour challenges**.

Mental health services are **accessible** for autistic people and people with learning disability

All adults with autism have access to **good diagnosis and assessment**

All people have access to the **rehabilitation, habilitation and employment support** that they need

**Children** with autism or learning disability have the mental health services that they need

All of **people's health needs** are met, including physical health

Care and treatment always respects people's **absolute rights**

All **environments** for care and treatment promote and protect all human rights

### 3. The papers that helped us to identify these outcomes

Name of paper	Who wrote it	When
5 Year Survey of Need for Mental Health Inpatient Care for Children and Young People in Scotland with Learning Disability and/or Autism	Dr Susie Gibbs	2017
Autism and mental health: The views of people on the autistic spectrum on their mental health needs and mental health services.	Autism Rights Group Highland and Highland Users Group	2011
Assessment, diagnosis and interventions for autism spectrum disorders (SIGN 145)	Healthcare Improvement Scotland	2016
Disabled teenager was left without food and water in care home 'abuse'	The National	2016
Management of serious mental ill-health among people with learning disabilities in primary care: a comparison over time	Scottish Learning Disability Observatory	2017
People with Learning Disabilities in Scotland: 2017 Health Needs Assessment Update Report	Dr Maria Truesdale and Professor Michael Brown	2017
Rights of People with Disabilities in Scotland: Submission to the United Nations Committee on the Rights of Persons with Disabilities 7th Pre-Sessional Working Group	The Mental Health and Disability Sub-Committee of The Law Society of Scotland	2017
The Microsegmentation of the Autistic Spectrum: Economic and research implications for Scotland	T MacKay, M Knapp, J Boyle, V Lemmi, M Connolly & A Rehill	2017
Too complicated to treat? Autistic people seeking mental health support in Scotland	Autistic Mutual Aid Society Edinburgh	2018
What we talk about when we talk about investment in mental health	Graham Morgan	2018

## **E: Criminal justice is fairer and more helpful for the person**

### **1. Human rights themes**

This outcome will affect all human rights themes. It will especially affect:

Standard of living

Health

Freedom and safety

Dignity

Equality and non-discrimination

### **2. Draft outcomes that will make sure this happens**

Autistic offenders and offenders with learning disability are **diagnosed** – if they want to be – and are **supported**

**Rehabilitation in the community** promotes and protects all of the person's human rights

Disabled persons are not restricted more than any other person who presents the same risk

Professionals relate to people **as equals** and use their authority in a fair way

Offenders have full access to **mental health services** which help to rehabilitate and help to prevent harm to the person.

**Women** are placed in appropriate services

**Trials** take place for everyone who wants one. Each person has the **adjustments** that they need for the trial

People have the **representation** that they need

Autistic people and people with learning disability can receive **the same sentences as other people**, with adjustments made to fit their needs

### 3. The papers that helped us to identify these outcomes

Name of paper	Who wrote it	When
Am I there yet? The views of people with learning disability on forensic community rehabilitation	Alana Davis, Michael Doyle, Ethel Quayle and Suzanne O'Rourke	2015
Citizens' Grand Jury Report	People First Scotland	2011
People with Learning Disabilities in Scotland: 2017 Health Needs Assessment Update Report	Dr Maria Truesdale and Professor Michael Brown	2017
Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 28 September 2012	Council of Europe	2014
The Criminal Justice Pathway for People with Learning Disabilities: Challenges and opportunities for change	Supporting Offenders with Learning Disabilities (SOLD) Network	2015

## **G: How we chose the main papers**

This paper is about the draft outcomes that we might need Scotland's mental health law to achieve.

The draft outcomes are based on evidence from papers which were not written for the review.

### **1. How we found the papers**

#### **From December 2017:**

The Secretary collected information that might be relevant to the review, from a wide range of sources.

This included:

- meetings with disabled people, carers and professionals
- news websites
- internet searches for information
- searches for research papers and monitoring data
- reading books and papers on the law

#### **October 2018**

The Secretary gave the Executive a paper that said what information the review had. The paper also had a list of other evidence that the review might need.

The Executive sent this paper to the advisors to the review. The advisors talked about the paper at their meeting on 31<sup>st</sup> October. They also made suggestions before the meeting and after the meeting. Their suggestions were added to the paper.

## **November – December 2018**

The Secretary looked for the information that was suggested and included the papers that were relevant.

Papers had to be:

About Scotland

About mental health **and** learning disability or autism **OR**

About mental health law

Written in English

Some papers are:

About care and treatment

About criminal justice

We included all papers that we found that were written in the last 10 years.

Some papers told us about issues that we already knew about from other papers. We did not include those papers as 'main papers'. We have listed those papers so that we can use them in stage 2 if we need to.

Some relevant papers are still being written. We will include these when they are finished.

## **2. Who wrote the papers**

Some papers were written by people with lived experience.

Some papers were written by professionals.

### **3. Other papers**

There are many other papers that we know about, and we will also talk about some of those papers during stages 2 and 3 of the review.

For example, there are papers about how mental health law needs to change across the world, and papers about how mental health law works in other countries.