**Scottish Mental Health Law Review: Consultation**

**Social Work Scotland response**

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome this opportunity to comment on the changes to the Adults with Incapacity (Scotland) Act 2000, the Mental Health (Care and Treatment) (Scotland) Act 2003, and the Adult Support and Protection (Scotland) Act 2007 (where it applies to adults with a “mental disorder”) as proposed by the Scottish Mental Health Law Review. The reflections within this consultation response draw from the experience of our membership of Social Workers, the lead professionals taking forward duties under each of these Acts.

Social Workers are uniquely placed as a profession to offer insight and contribution to this consultation and to support the effective interaction and joint working of partner professionals in process of delivering services and interventions to adults and children under the auspices of the above noted legislation. Working within this multi-agency context, social work can offer perspective to ensure that a Human Rights enabling and strengths-based approach is central to the delivery of services.

Our consultation response has been developed with our members. Social Work Scotland has representation from Social Work Leaders, and partners across Adult, Children & Families, and Justice Services as well as Higher Education; it is with this broad lens that we have approached the consultation response. Key themes that have been identified by our members are:

* **Resources, including workforce, appropriate community services, and financial investment in community-based interventions.**
* **The significant implementation gap that is apparent throughout the proposals.**
* **Legislative and policy developments (Neurodiversity Bill, NCS).**
* **Existing legislation (Equality Act 2010, SPSO Act 2002).**
* **A need for a whole system approach to policy development.**
* **Power imbalance both politically and resource-wise between Health, Social Work and Social Care.**
* **Learning & workforce development.**
* **A lack of reference to existing policy (Mental Health Strategy, Children’s Task force on Mental Health).**

Social Work Scotland as an organisation is supportive of the Review’s aim to embed and extend Human Rights in Mental Health law, policy and practice, and welcomes the inclusion of the needs of children and families, and of Carers in the Review. We sincerely appreciate the strong emphasis on Human Rights commitment throughout this document and the wider work of the Review team.

Our members, who are leaders in the social work profession, have consistently expressed some concern, however, at the significant implementation gap that is apparent throughout the proposals and have highlighted issues specifically around resources and workforce that will influence the likelihood of successful implementation of some of the Review’s proposals.

Over the past decade, Social Work Scotland has taken every opportunity available to underline how pressing the need is for investment, paired with reform, across all aspects of social care and social work. The gap between Scotland’s ambitious rhetoric in these areas (often given weight in law) and our collective ability to deliver on it has steadily grown, fuelling disappointment, frustration and cynicism among those seeking publicly funded support and those employed to deliver it. Ten years on from the Christie Commission, the preventative model of public services that it described also remains, for most, some way off. Closing this ‘implementation gap’ is a shared priority for Ministers and Social Work Scotland’s members. Whilst, as an organisation, we remain hopeful that the development and delivery of the National Care Service gives an opportunity for these concerns to be surfaced and addressed, it would be remiss of us as an organisation not to highlight this.

There has also been a consistent challenge from Members as to why an improvement approach has not been used, where the Review Team has identified gaps – for example in the context of Supported Decision Making. The consultation document helpfully sets out the suite of options available currently that facilitate supported decision making, such as Advance Statements and Power of Attorney, and highlights the fact that these are not being used to their full effect. It would be helpful to understand the barriers within the current system and to see some evidence of attempts to overcome these and make improvements before moving to new legislation. This is one example of several where members of Social Work Scotland have noted their concern at moving whole-scale to new legislation without a solid evidence base.

We share this consultation response with you in the hope that – where relevant – it can inform and support your own response, or that you see your perspectives reflected and supported in our submission.

**Read the response**

Please contact us if you’d like a further discussion: [admin@socialworkscotland.org](mailto:admin@socialworkscotland.org)