

Independent Review of Mental Health Law in Scotland

Views and experiences of Mental Health Law in Scotland

We want to hear from you

- BACKGROUND -

A review is being carried out into the way mental health law is working in Scotland. This review was set up by the Scottish Government but it is independent from the Scottish Government.

John Scott QC is leading the Review and wants to hear about your experience of mental health law in Scotland. Your views will help John and his team learn more about the way the law is working just now and what can be done to improve the way it works.

Any views given to the Review by an individual, will be dealt with confidentially. The names of individuals responding to the Review, and their responses will not be made public and will not be shared with anyone else. But if you wish your name and your response to be made public then you can say so on a form at the end of this paper.

Any responses given to the Review by an organisation will be made public, along with the names of the organisation.

If you have responded recently to a review on the same or similar subject matter, please feel free to send in the same response if you wish.

What is the Review?

The aim of the Review is to improve the rights and protections of people affected by the mental health, incapacity or adult support and protection laws because they have, or used to have, a mental disorder. This includes carers or supporters of people affected by these laws.

We are using plain English throughout this document, and definitions that are used in the law just now. We acknowledge that some of this language might not be acceptable to everyone, for example “mental disorder” but hope that this will not stop people from contributing. We can look at language as part of the Review.

When the law talks about someone with “a mental disorder” it means someone who has a mental illness, a personality disorder or a learning disability. This can include people experiencing dementia, depression or autistic people. This is the definition that is used in the law at present which is why we are using it.

When we talk about mental health, incapacity or adult support and protection laws we mean the laws called:

The Mental Health (Care and Treatment) (Scotland) Act 2003

This law provides ways in which people can be treated for mental health disorders, on a compulsory or a voluntary basis, and sets out rules that must be applied when people are being treated for mental disorder. This treatment can have happened with or without the person’s consent.

The Adults with Incapacity (Scotland) Act 2000

This law provides ways in which decisions can be made for people when they may not have the capacity to make decisions for themselves, or their capacity is limited in some way. It is the law used to make guardianship orders and powers of attorney.

The Adult Support and Protection (Scotland) Act 2007

This law provides ways in which support can be provided for people who may be at risk of harm or neglect because they are affected by disability, mental disorder, illness or physical or mental infirmity.

If you want to read the full terms of reference of the Review you can find this at the end of this paper. You do not need to read this, or any of the other linked information to give us your views. The links are just for extra information.

DIFFERENT WAYS OF GIVING VIEWS

If you would rather speak to someone about your experiences of mental health law in Scotland instead of giving your views here, information about how you can do that can be found on the Mental Health Law Review website. www.mentalhealthlawreview.scot

HUMAN RIGHTS APPROACH

We are also taking what is known as a Human Rights based approach to the Review.

This means that at all times we are asking how mental health law promotes and protects human rights, and if it could do this in better ways. It also means that the way we are carrying out the Review, follows human rights principles such as participation, accountability, non-discrimination and empowerment. If you want to find out more about human rights based approaches, and human rights more generally, links are provided at the end of this paper.

When we talk about human rights we mean the basic rights and freedoms that belong to every person in the world, from birth until death. They apply no matter where you are from, what you believe or how you choose to live your life.

They can never be taken away. They can sometimes be restricted –for example if a person breaks the law. However, if they are restricted the same rules must apply to everyone.

The human rights we think most apply when we are thinking about mental health law are:

- The right to life;
- The right to health;
- The right not to be subjected to torture or cruel, inhuman or degrading treatment including the right to respect for physical and mental integrity
- The right to liberty and security;
- The right to a fair hearing or trial in decisions about civil rights or criminal charges;
- The right to private and family life;
- Not being discriminated against in claiming or getting your rights
- The right to an effective remedy
- The right to equality before the law
- The right to participate in society.
- The right to an adequate standard of living, food and housing
- The right to live independently in the community
- The right to social security

If you are telling the Review about your views and experiences, you might want to think about how your human rights were affected.

Views and experiences of Mental Health Law in Scotland

Who do we want to hear from?

The Review would like to hear from you if:

1. You have had a mental disorder and because of that mental disorder, have had experience of the mental health, incapacity or adult support and protection law.

This could mean you have been in hospital because of your mental health. Some people are in hospital voluntarily. Some people are in hospital under an order. You might have heard this described as 'being sectioned' or 'detained'. In either case, if you think this means you, we want to hear from you.

Or, if you have had care and support provided at home, or in a care home setting or somewhere else in the community, because of your mental health, we want to hear from you.

Or, if you are or have been a carer, supporter or acted as a named person for anyone with a mental disorder and because of that have had experience of the mental health, incapacity or adult support and protection law, the Review wants to hear from you.

If this applies to you please go to **PART A**.

The Review would also like to hear from you if:

2. You are working in an area that uses any of these laws in your job. If this applies to you please go to **PART B**.
3. You are an organisation that represents and/or supports people who may have had experience of the mental health, incapacity or adult support and protection law because they have, or used to have a mental disorder. If this applies to you please go to **PART B**.

We have split the questions into two parts, **Part A** which is for people with lived experience, either directly or because they are a carer, supporter or named person and **Part B** for organisations and professionals.

If you want to answer both parts please feel free to do so.

PART A

Individuals who have had personal experience of the law because of a mental disorder, or have supported, cared for or acted as a named person for someone in that position (including groups who represent or advocate for these people)

The Review wants to hear your views about how the law is working at present and especially how you feel people's rights are protected under the law and what, if anything needs to be done to improve that.

The Review wants to give you a chance to tell your story about your experience of the law so we are not asking specific questions which everyone needs to answer.

There are some things you might want to think about when you reply so we have made some suggestions.

You do not need to tell us about all of these things, but they might be helpful to you in thinking about what you want the Review to look at. Please add your own thoughts and tell us your experiences as you wish:

- **Who or what brought you into contact with mental health services? For example social work, police, GP or something/someone else?**
- **Do you know what law, if any, was applied to you?**
- **Did you get the help and care you needed, and did you get it at the right time?**
- **Did you feel your rights and wishes were respected?**
- **How did you make your rights and wishes known?**
- **Did you feel what was happening to you was properly explained?**
- **Were you given options for treatment or support?**
- **Did you get the opportunity to discuss any previous plans or wishes you may have?**
- **Did you feel safe at all times?**
- **How did your experience make you feel?**
- **Did you feel you were treated with dignity and respect and that your voice was heard?**
- **Did you feel there was something about you which meant you were treated differently? For example, gender, age, race, religion.**

- **Are there ways in which you think your experience could have been improved?** For example, you might think that more needs to be done to support people to make decisions and have their wishes respected when they are very ill. Or you might think that we need to do more to avoid people being subject to compulsory treatment.
- **Did you receive any support to help you adjust to your life after having treatment?** For example did anyone speak to you about housing, money, education or employment, and how support with those sort of things might help you?
- **Do you think the law could do more to help people with other issues that might affect their mental health, like housing, money, education and employment?**
- **Do you think the law could do more to raise awareness of, and encourage respect for, the rights and dignity of people with mental health needs?**
- **Is there anything else you wish to tell the Review?**

If you are a carer, supporter or a named person you might wish to think about the following things:

- **How did you find out the person you support had come into contact with mental health services?**
- **Did you feel your rights and wishes as a carer, supporter or named person were respected?**
- **Did you feel what was happening to the person you support and / or care for, was properly explained? Were you given time to ask questions?**
- **Were you kept informed about any changes in treatment including transfers and discharge discussions?**
- **As a carer, supporter or named person, did you feel the person you support was safe at all times?**
- **How did you experience as a carer, supporter or named person make you feel? Did you feel you were treated with dignity and respect and that your voice was heard?**

- **Did you feel there was something about you which meant you were treated differently, for example gender, age, race or religion?**
- **Are there ways in which you think your experience could have been improved?** For example, you may think that as a supporter or carer you should have had access to advocacy yourself, or been given more help to support the person to make their own decisions.
- **Did you receive any support to help you adjust to your role as supporter or carer after the person you support had treatment?** For example, did anyone speak to you about the effects medication may have on a person, or about carer support, employment, housing, education or money and how support with these sort of things might help you?
- **Is there anything else you would like to tell the Review?**

These are just some suggestions you might like to think about when answering but the Review is keen to hear about any experiences you may have of the Mental Health law and any suggestions you have for changes.

If you would prefer to speak to someone face to face or over the phone, then please contact the Mental Health Law Review team on the details below:

Secretariat

Independent Review of Mental Health Law in Scotland

Room GE.19

St Andrews House

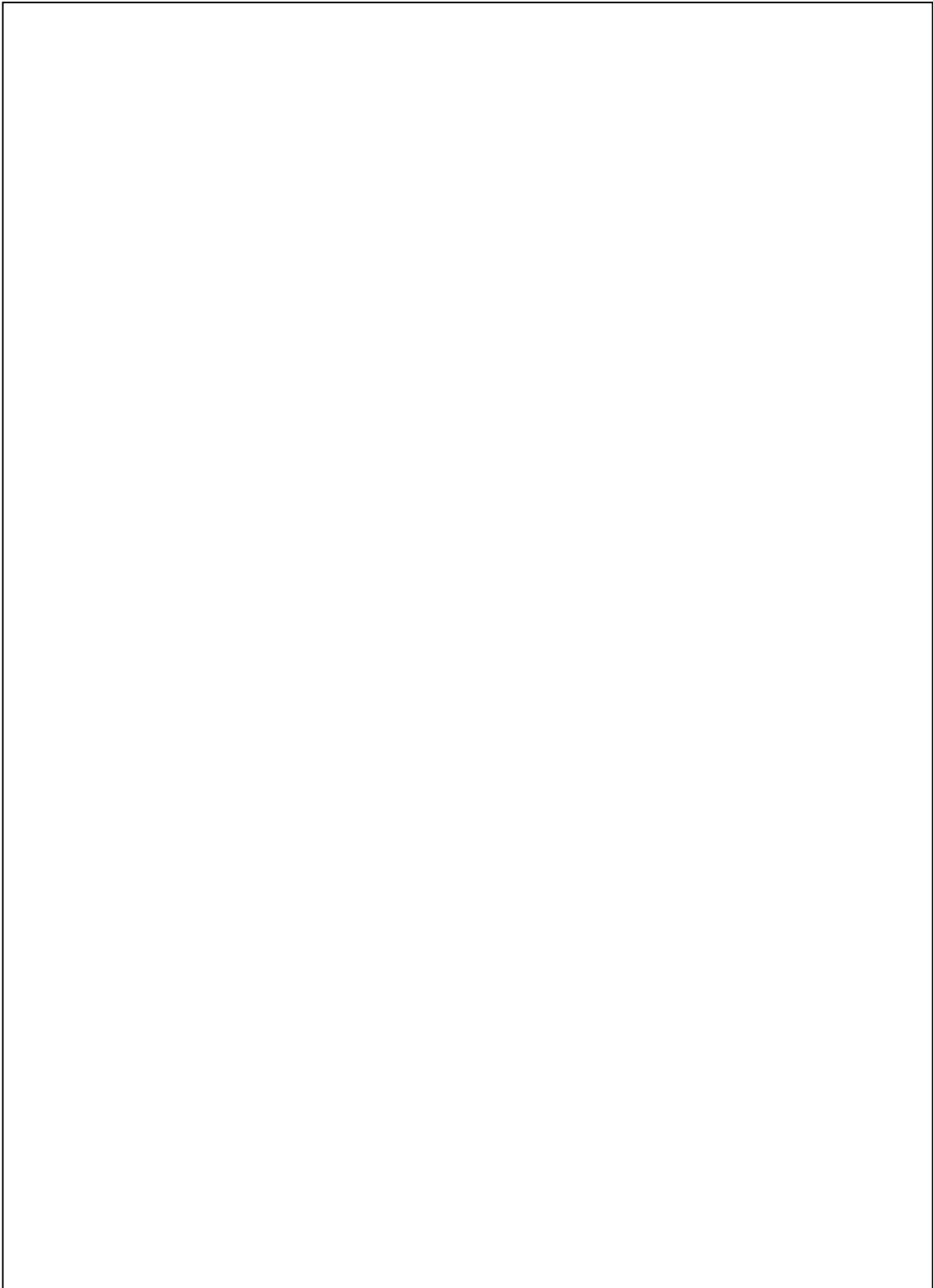
Regent Road

Edinburgh

EH1 3DG

secretariat@SMHLR.scot

Please fill in the box below with your contribution. There is no restriction to the length of your statement. You may submit additional pages by post or use the text box below, or submit written submissions by email.

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PART B

Organisations or individuals who work with the law

The Review would like you to draw on your experience of working with Mental Health law and consider the following questions. You do not need to answer all of the questions, and please feel free to provide as much or as little evidence for your answers as you wish.

- **The Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Act”) came into force in 2005 – how well does it work at the moment?**

In answering this it would be helpful to us if you could consider the following:

- how well the Act helps people to get the right care, treatment and support
 - how well the Act protects people’s human rights (Please see the start of the paper for the human rights we think are most relevant here)
 - how well the Act maximises a person’s ability to make their own decisions and give effect to them
 - how things have changed since the Act came into force in 2005
-
- **Are there certain things that hinder the Act from working effectively? What would improve things?**
 - **Are there groups of people whose particular needs are not well served by the current legislation? What would improve things?**
 - **The Act has a set of legal tests to justify making someone subject to compulsion. Would you suggest any changes to these?**

In answering this, you may wish to think about how practical the tests are to apply and how fair they are to different groups, including people with different diagnoses.

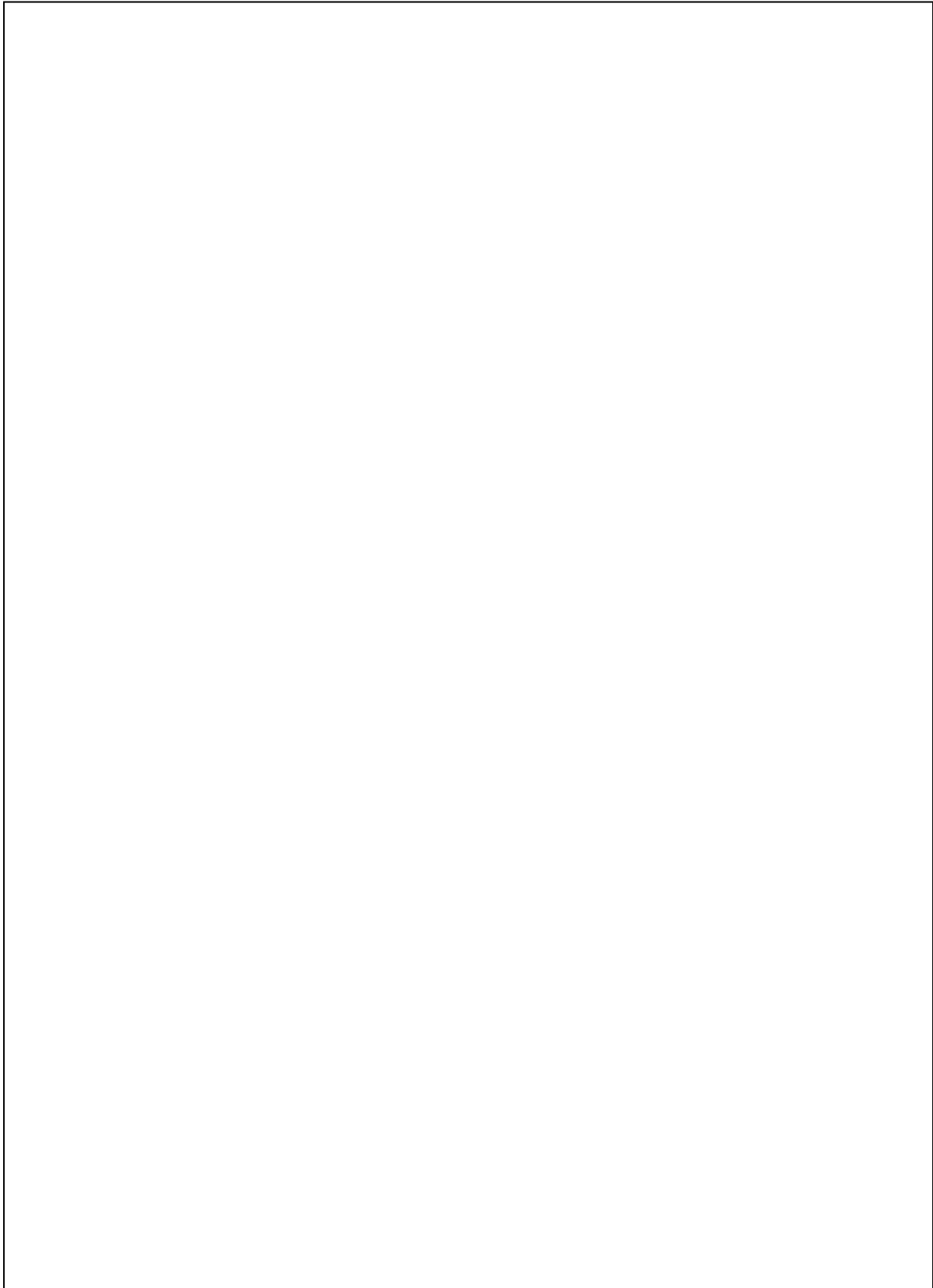
The Act requires a local authority to provide services for people with a mental disorder who are not in hospital, which should be designed to minimise the effect of mental disorder on people and enable them to live as full a life as possible (sections 25 and 26 of the Act).

- **Do you think this requirement is currently met? Does more need to be done to help people recover from mental disorder? You may wish to provide an example or examples.**
- **Does the law need to have more of a focus on promoting people's social, economic and cultural rights, such as rights relating to housing, education, work and standards of living and health? If so, how?**
- **Do you think the law could do more to raise awareness of an encourage respect for the rights and dignity of people with mental health needs?**

The Review is also looking at the way people with a mental disorder are affected by the Adults with Incapacity (Scotland) Act 2003, and the Adult Support and Protection (Scotland) Act 2007.

- **Based on your experience, are there any difficulties with the way the 3 pieces of legislation work separately or the way they work together? What improvements might be made to overcome those difficulties?**
- **Is there anything else you wish to tell the Review?**

Please fill in the box below with your contribution. There is no restriction to the length of your statement. You may submit additional pages by post or use the text box below, or submit written submissions by email.

A large, empty rectangular box with a thin black border, intended for the user to provide their contribution. The box is currently blank.

LINKS TO ADDITIONAL INFORMATION

Terms of reference for the Mental Health Law Review and more information about the Review

www.mentalhealthlawreview.scot

Human Rights approach

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

To find out more about human rights based approaches, particularly in the context of health and mental health, please visit:

<http://www.scottishhumanrights.com/health-social-care/mental-health/>

<http://www.scottishhumanrights.com/rights-in-practice/human-rights-laws/>

<https://www.mwcscot.org.uk/law-and-rights/rights-mind>

Easy read version of Mental Health (Care and Treatment) (Scotland) Act 2003

<https://www.gov.scot/publications/new-mental-health-act-easy-read-guide-2/pages/1/>

Further contact with the Review

If you want to have more involvement with the Review in the future, please let us know by adding your name and contact details here:

Name:

Preferred method of contact:

Responding to this Consultation

We are inviting responses to this consultation by 24th April 2020.

Please respond to this consultation using Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/mental-health-law-secretariat/review-of-mental-health-law-in-scotland>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 24th April 2020.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Secretariat Mental Health Law Review

GE.19

St Andrews House

Edinburgh, EH1 3DG

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: www.mentalhealthreview.scot/privacy-policy

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at secretariat@SMHLR.scot

The Review consultation process

Consultation is an essential part of the Reviews process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work. Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

CONSULTATION ON MENTAL HEALTH LAW IN SCOTLAND

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy: :

<https://www.mentalhealthlawreview.scot/privacy-policy>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

Please indicate your publishing

Preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.