

Barry Gale submission of 12 March 2024

PE1999/G: Fully implement the UN Convention on the Rights of Persons with Disabilities

I am responding to the submission by the Minister for Social Care, Mental Wellbeing and Sport dated 29 January 2024.

The Minister outlines the Government's broad vision for change. However, whether anything does change depends on the details of how this vision will be implemented. To date, these details are absent from the Government's proposals.

For example, the promised "action to support decision-making" is vague and ambiguous. It is not an inability to make decisions which prevents the vast majority of involuntary patients from exercising choice and control. It is the professionals' statutory right to over-rule those decisions if they deem the person to "need" treatment.

The Government's response suggests that shifting the balance of power, to give people "choice and control" over their lives, can be effected through existing "commitments and cross-cutting policy developments," without law reform. This is misguided. Rights are enforced by tribunals and courts, which apply law not policy. Unless the law is changed to put people unequivocally in control of decision-making about their own lives then practice will continue largely as it is at present.

In particular the Government does not state whether and how it will change the criteria for compulsory treatment under the Mental Health Act and for the making of Guardianship and Intervention Orders under the Adults with Incapacity Act.

The Scott Review proposed that an Autonomous Decision Making Test (ADMT) should apply uniformly across mental health and incapacity legislation, in place of Capacity and Significantly Impaired Decision Making Ability (SIDMA) Tests. No details have been provided of how this test will work in practice. The SIDMA test was criticised by the Scott Review for being undefined in legislation. In practice it is implemented as a test of 'insight,' commonly interpreted as acceptance of diagnosis and adherence with medication. This is contrary to the letter of the law and also to the Government's own statutory guidance. If the ADMT is likewise undefined, will practice be any different? I suggest not.

Forensic patients are excluded by law from making their own decisions about treatment. The Scott Review cautiously recommended that this anomaly be reviewed by the Scottish Government. As forensic patients are detained on average many years beyond civil patients, the case for reform is urgent. Yet there is no mention of it in the Government's proposals.

Incorporation of the UNCRPD into Scots Law through the Human Rights Bill is a necessary step forward. But it will not automatically over-rule existing law and practice. The burden will be on the vulnerable people who are subject to the provisions of existing laws to prove that they are incompatible with the CRPD.

Like myself, the Petitioner is impatient to see change. Progress is glacial. It is 17 months since the recommendations of the Scott Review were published (September 2022). Before that we had the Deaths in Mental Health Detention Review (March 2022), the Barron Review (February 2021) and the Rome Review (December 2019). Earlier still we had the Consultation on Reform of the Adults with Incapacity Act (April 2018). We are still waiting for the Government's detailed responses to all of these reviews. The Government is now advising that the programme of reform will stretch over the next 10 years, and that further consultations will follow. It appears that the Government is dragging its heels. What we need is less engagement and more urgency, more action, more detail.