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| **Survey for Professional Organisations****RCPsych in Scotland Response** **(Intellectual Disability Faculty)****Due: 30th November 2018** |

1. **Welcome to this survey**

Thank you for your interest in the review.  This is a survey for organisations of professionals.

The review needs to understand what the Mental Health Act does for the human rights of autistic people and people with learning disability in Scotland.

This survey is for organisations whose members have experience of working with the Mental Health Act in Scotland at any time since 2005.

We are interested in the experiences of all professionals who have worked with people with learning disability or autism who were subject to the Mental Health Act. This includes professionals who have specific duties under this Act and other professionals.

If you need help with this survey you can contact the review team by email on irmha.scot@nhs.net or by phone on 0131 313 8744.

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**2. What you will find in the survey**

The survey is in this order:
1. Information about your organisation

1. Your members’ experiences of working with the Mental Health Act
2. Human rights and the Mental Health Act
3. Mental Health Law in Scotland

**3. How the review will look after your information**

### Information about how the review will look after your information is included in a separate document that is available on our website.

Please don’t give us information that could be used to identify living people, unless you have to do this for the information to make sense.

**4. What we will ask about your members’ experiences**

We will ask you to tell us about:

* your members' experiences of working with the Mental Health Act
* any experience that your members have of the Mental Health Act in relation to:
	+ psychotropic medication
	+ psychological support
	+ the criminal justice system

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...as these areas are of specific interest to the review.

* your members' experiences in relation to people's human rights.

**5. Deadline for responses**

The deadline for submitting evidence is 30 November 2018.

**Survey for professional organisations**

**Section 1 Information about your organisation**

1. **What is the name of your organisation?**

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| The Royal College of Psychiatrists  |

We may want to publish the name of your organisation. Is it OK to publish the name of your organisation?

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| --- | --- |
| ☒ | Yes |
| ☐ | No |

1. **How many members are there in your whole organisation?**

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| --- |
| **Around 1100** |

1. **On how many members experience is this response based?**

|  |
| --- |
| **We consulted our Intellectual Disability Faculty** |

### **At which levels do your members work?**

|  |  |
| --- | --- |
| ☒ | Executive |
| ☒ | Manager |
| ☒ | Staff |
| ☒ | Trainee |

1. **Your members' professions:**

Please tell us about your members’ professions. Please tick all that apply.

|  |  |
| --- | --- |
| **Allied Health Professional**  | **Legal** |
| ☐ | Art / Drama / Music Therapist | ☐ | Criminal Defence Solicitor |
| ☐ | Dietician | ☐ | Mental Health Solicitor |
| ☐ | Occupational Therapist | ☐ | Procurator Fiscal |
| ☐ | Physiotherapist | ☐ | Sheriff |
| ☐ | Speech and Language Therapist | ☐ | Sheriff Principal |
|  |  | ☐ | Other – please specify: |
| **Carer (Professional)**  | **Manager** |
| ☐ | Support for independent living | ☐ | Health & Social Care Partnership |
| ☐ | Support for health | ☐ | Independent sector |
| **Clinical Psychologist**  | ☐ | Local Authority |
| ☐ | Child and Adolescent | ☐ | NHS |
| ☐ | General Adult | ☐ | Prison |
| ☐ | Learning Disability | ☐ | Third sector |
| ☐ | Forensic | ☐ | Other – please specify: |
| ☐ | Other Applied Psychologist |  |
| **General Practitioner** |  |  |
| ☐ | General Practitioner |  |  |
| **Independent Advocate**  |  |  |
| ☐ | Independent Advocate |  | *Continued…* |
| **Nurse** | **Social Worker**  |
| ☐ | Child and Adolescent | ☐ | Adult Social Worker |
| ☐ | Learning Disability – Community | ☐ | Children & Families Social Worker |
| ☐ | Learning Disability – Hospital | ☐ | Criminal Justice Social Worker |
| ☐ | Mental Health – Community | ☐ | Mental Health Officer |
| ☐ | Mental Health - Hospital | ☐ | Specialist disability / learning disability role |
| ☐ | Other – please specify: | ☐ | Other (please specify): |
| **Psychiatrist**  | **Other (please specify):** |
| ☒ | Child and Adolescent |  |
| ☒ | Forensic |
| ☒ | General Adult |
| ☒ | Learning Disability |  |  |
| ☒ | Old age |  |  |
| ☒ | Psychotherapy |  |  |
| ☒ | Other (please specify): Addictions, Intellectual Disability, Medical, Liaison, Rehabilitation, Eating Disorders, Perinatal, Neuropsychiatry |  |  |

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1. **The areas where your members work**

Please tell us in which areas your members work:

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| --- | --- | --- | --- |
| ☐ Aberdeen |   | ☐ | Inverclyde |
| ☐ Aberdeenshire |  | ☐ | Midlothian |
| ☐ Angus |  | ☐ | North Ayrshire |
| ☐ Argyll and Bute |  | ☐ | North Lanarkshire |
| ☐ Edinburgh |  | ☐ | Orkney Islands |
| ☐ Clackmannanshire |  | ☐ | Perth and Kinross |
| ☐ Comhairle nan Eilean Siar (The Western Isles) |  | ☐ | Renfrewshire |
| ☐ Dumfries and Galloway |  | ☐ | Scottish Borders |
| ☐ Dundee |  | ☐ | Shetland Islands |
| ☐ East Ayrshire |  | ☐ | South Ayrshire |
| ☐ East Dunbartonshire |  | ☐ | South Lanarkshire |
| ☐ East Lothian |  | ☐ | Stirling |
| ☐ East Renfrewshire |  | ☐ | Highland |
| ☐ Falkirk |  | ☐ | Moray |
| ☐ Fife |  | ☐ | West Dunbartonshire |
| ☐ Glasgow |  | ☐ | West Lothian |
|  |  |  |  |
| ☒ All of Scotland |  |  |  |
| ☒ Out with Scotland |  |  |  |
| ☐ Don't know |  |  |  |
| ☐ Other (please specify): |  |
|  |

**Section 2 Your members experience of working with the Mental Health Act**

### **Who have your members worked with, whilst they were subject to the Mental Health Act?**

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| --- | --- |
| ☒ | Autistic people |
| ☒ | People with learning disability |
| ☒ | Autistic people with learning disability |
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1. **Experience of the Mental Health Act with autistic people**

From your members’ experience, please give us some examples of how and why the Mental Health Act has been used for people who have **autism without learning disability.**

You might give examples of typical use of the Act, and strengths and weaknesses of the Act.

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| The College recognises that use of the Mental Health Act (MHA) for people who have autism without learning disability in Scotland is rare. We are also aware of changing demographics, particularly in the diagnosis of Autistic Spectrum Disorders.  We are aware that some people in this group would object to the idea that their condition is described as a mental disorder, where others do not. This may reflect a need for appropriately sensitive terminology rather than a fundamental issue with the Act.The College is concerned that taking autism out of the MHA may result in the loss of the safeguards that are currently in place for these cases. The College members believe that one potential issue with the removal of ASD from the MHA is that there are already procedures and processes set-up around this, and presumably removal may then create a need for another way to meet the vulnerabilities and needs of people in this group, even though they are relatively small in number as there are only a few cases.  |

1. **Experience of the Mental Health Act with people with learning disability**

From your members’ experience, please give us some examples of how and why the Mental Health Act has been used for people who have **learning disability only.**

You might give examples of typical use of the Act, and strengths and weaknesses of the Act.

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| There are case examples of the MHA being used for people who only have learning disabilities. Most people with a learning disability who are detained in hospital do have another listed diagnosis, though there are some with only a learning disability. A strength of the MHA in this example is that it provides the ability to detain people using the learning disability option, so allowing further inpatient assessment to determine the presence or absence of mental illness. The group reflected also that people with a learning disability may show a different presentation of mental illness compared to the general population. Our members look to the example of New Zealand where learning disabilities were taken out of their respective MHA. The consequences of this was that services disappeared, and more people with learning difficulties ended up in prison. This resulted in a need to create a new act to cover what had been removed. This process took 11 years and New Zealand had to import many doctors from the UK to bring the lost skills back. The experience there also meant that other diagnoses were applied in order to facilitate the treatment that patients needed, though learning disability may have actually been the most significant part of that person’s presentation, it then being undocumented in terms of the act. We have concerns that if a similar change happened here then there could be a loss of transparency and appropriate scrutiny.If learning disabilities is removed from the MHA, the College believes a mechanism is needed to assist Psychiatrists with prescribing treatments, similar to what is covered by the MHA now. |

1. **Experience of the Mental Health Act with people who have autism and learning disability**

From your members’ experience, please give us some examples of how and why the Mental Health Act has been used for people with **autism and learning disability.**

You might give examples of typical use of the Act, and strengths and weaknesses of the Act.

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| Members stated that more resources are needed for training staff on treating people with autism and learning disability using the MHA. They questioned whether this could be achieved through new legislation or amendments.The question of accessibility of current tribunal and MHA paperwork to patients with LD was also discussed. |

1. **Psychotropic medication**

From your members’ experience, please tell us whether the Mental Health Act ensures good practice in prescribing psychotropic medication for autistic people and people with learning disability.

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| We were uncertain if this question is directed only at patients who did not have mental illness, or whether it was designed also to include patients who did.The MHA and T2/T3 system does provide clear safeguards for patients receiving psychotropic medication. |

1. **Psychological support**

From your members’ experiences, please tell us whether the Mental Health Act ensures good access to psychological support for autistic people and people with learning disability.

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| Our members have found that good access to psychological support is dependent on the availability of resources, rather than the MHA. The tribunal system and use of recorded matters does provide an avenue if patients detained under the act are having difficulty in obtaining necessary supports. We note that psychological support can be provided by other professionals, including learning disability and mental health nurses and other specialist nurses, in addition to that directly provided by psychology.We also note the benefits for patients from occupational therapy, SALT, physiotherapy and other allied health professionals though they are not specifically addressed in this survey. |

**g) Criminal justice system**

From your members’ experiences, please tell us how effectively the Mental Health Act interacts with the criminal justice system for autistic people and people with learning disability.

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| The College notes that if LD was withdrawn from the scope of the MHA, then for patients with learning disability and forensic presentations, this may lead to an increase in people with mild learning disabilities being put in prison without assessment. It is not necessarily inappropriate for a person with a mild learning disability who is found after trial to have committed an imprisonable offence to be in prison, but we would have significant concerns if this became a default without assessment and consideration of other options.While the MHA does give people access to support, it is important that any changes must ensure that assessments take place, in a transparent way to avoid any negative impacts. |

**Section 3 Human rights and the Mental Health Act**

Human rights cover all areas of life. We will be asking your members to think about rights about care and treatment, but also about other areas of life that are relevant to mental health and law.

There are 9 areas of human rights in this review. In the next pages, you can choose to respond to any or all of these areas.

The 9 areas are: standards of living; health; freedom and safety; protection from abuse; independent living; dignity; equality and non-discrimination; accessibility; and implementation and monitoring.

If you want to see full detail of all areas of human rights in this review, our human rights framework is available on our website.

All information is derived from international human rights standards that apply to Scotland.

**Based on your members' experiences - with examples - please tell us whether the Mental Health Act promotes and protects the following human rights of autistic people and / or people with learning disability:**

1. **Standard of living**

**How does the Mental Health Act promote and protect people’s right to a standard of living:**

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| The MHA promotes and protect people’s rights, and we would see this as being one of its primary purposes. The principle based nature of the legislation clearly provides an expectation and ways in which a patient can frame an argument if they feel this is not being respected in their case,However, admitting a person to hospital might be detrimental to their standard of living in comparison to living in their community. Delayed discharge is a significant problem for our patient groups, especially those with learning disability. If it becomes the case that people with LD and ASD are excluded from the act then there needs to be consideration of how those needs are addressed in future, both legislatively and practically. |

**B. Health**

**How does the Mental Health Act promote and protect people’s right to health:**

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| Our members views on how the MHA protects people’s rights to health are similar to their views for part A on the standard of living. In addition, they recognise the MHA also allows for physical health of people to be assessed.  |

**C. Freedom and safety**

**How does the Mental Health Act promote and protect people’s right to freedom and safety:**

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| The criteria for protecting people’s rights to freedom and safety must be applied and scrutinised because of the MHA. The act allows people to examine the statistics and scrutinise the system in place, which would be harder to do without the MHA. This also increases transparency of the system in place too. Our members recognise that scrutiny is very important in this area and, while the MHA does allow this, there should be increase scrutiny and explanation of the reasons for detention.There are major concerns that taking learning disabilities out of the MHA might have unintended consequences for health services. Practically, this is a likely outcome, as happened in New Zealand in the example mentioned in Question C in Section 2.  |

**D. Protection from abuse**

**How does the Mental Health Act promote and protect people’s right to a protection from abuse:**

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| Without the MHA people may not be as clear on what they are entitled to when it comes to protection from abuse and inadequate care, as the MHA does provide a clear framework, principles and expectations. |

**E. Independent living**

**How does the Mental Health Act promote and protect people’s right to independent living:**

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| Our answers to the previous questions in this section cover the College’s views on independent living. However, our members also believe that the MHA could do more towards letting patients know their right which impact their independent living status. An example of this is the right of the patient to live in the community.  |

**F. Dignity**

**How does the Mental Health Act promote and protect people’s right to dignity:**

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| Our members recognise that the MHA gives the legislative groundwork to move people out of difficult or dangerous situations, which stops the damaging of the person’s relationships with friends and family and causing negative views of the person in the community. Stopping these negative consequences allows the patient to retain their dignity. |

**G. Equality and non-discrimination**

**How does the Mental Health Act promote and protect equality and non-discrimination for all:**

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| Our members recognise that the Mental Welfare Commission collect data on this subject for review and scrutiny purposes.The College is encouraged that the MHA promotes **equality and non-discrimination for all as the act begins** with a promotion of these values. Our members note that the MHA was written in 2003 and, therefore, would have had modern promotion of equality and non-discrimination considered at the time.  |

**How does the Mental Health Act promote and protect equality and non-discrimination for women:**

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| --- |
| Our members concluded that the MHA promotes equality and non-discrimination of women in its current format.  |

**How does the Mental Health Act promote and protect equality and non-discrimination for children. In the Mental Health Act a child is a person under 18 years of age:**

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| --- |
| The College members note that specific parts of the MHA are aimed at the well-being of children. Our members are of the belief that at present children with learning disabilities do not have equality of treatment due to an absence of specialist inpatient beds in Scotland, which can lead to transfer away from families and community ties to facilities in England, or admission to adult or general paediatric wards.  |

**H. Accessibility**

**How does the Mental Health Act promote and protect people’s right to accessibility:**

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| Our members note that there can be a lack of accessible information, for example easy-read format, for people to understand their rights, and that it is not routine to make such information accessible e.g. in a tribunal decision.  |

**I. Implementation and monitoring**

**How does the Mental Health Act promote and protect people’s right to effective implementation and monitoring:**

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| Our members believe that the MHA allows for the promotion and protection of people’s right to effective implementation and monitoring in a positive manner as there is a system in place. However, they are concerned that the implementation and monitoring could break down if the system is removed.  |

**Section 5 Mental Health Law in Scotland**

### In the experience of your members, what are the **benefits** of **autism** being included in Scotland's Mental Health Act?

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| The College members view a major benefit of autism’s inclusion within the MHA is that it is a legal framework to get people with autism the help they need. Our members question the practicality of having separate legislation when this section is used so rarely and the system is in place already. They believe there will be no achievements from separate legislation, but instead might cause increase discrimination. |

1. In the experience of your members, what are the **disadvantages** of **autism** being included in Scotland's Mental Health Act?

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| --- |
| Our members believe one disadvantage is that by being included in the MHA, this may prevent a drive in social care improvement for autistic people.  |

### In the experience of your members, what are the **benefits** of **learning disability** being included in Scotland's Mental Health Act?

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| The members believe the benefits of learning disabilities being included in the MHA are the same and/or like the benefits of including autism within. With learning disabilities being included, this provides people with learning disabilities equity with other conditions. |

### In the experience of your members, what are the **disadvantages** of **learning disability** being included in Scotland's Mental Health Act?

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| --- |
| Our members believe one disadvantage is that by being included in the MHA, this may prevent a drive in social care improvement for people with learning disability, especially for people in a delayed discharge situation. If learning disability was removed from the MHA, we believe there would need to be a clear understanding of the need to develop appropriate community based plans for any people who would no longer be able to be cared for in hospital. |

**What does Scotland need in law?**

### What do your members think should change or continue in Scotland's mental health law, to promote and protect the human rights of **autistic people**?

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| --- |
| The College members believe that mental health legislation should be altered to include mechanisms to improve mental health services, while providing a timeframe for the development of these services.The College believes information about mental health law and its protection of human rights should be fully accessible to autistic people.  |

### What do your members think should change or continue in Scotland's mental health law, to better promote and protect the human rights of people with **learning disability**?

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| Our members believe that legislation could have a role in encouraging inpatient services to be developed for children with learning disabilities. Some members were concerned that the current set-up has left such services undeveloped and unbeneficial to patients. The College also believes information about mental health law and its protection of human rights should be more accessible to people with learning disabilities. |

**Thank you**

This is the last section. Thank you for your responses.

### If you give us your email address, we will contact you to update you on the review and to let you know about any more opportunities to take part.

### You can give your email address here **if you wish**:

Andrew.fraser@rcpsych.ac.uk

### If there is anything else you want to tell us about the Mental Health Act that has not been covered by this survey, you can say it here:

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|  |