



The Scottish Parliament  
Pàrlamaid na h-Alba

**PUBLIC PETITION NO.**

**PE01741**

### **Name of petitioner**

Keith Lynch on behalf of People First (Scotland)

### **Petition title**

Human rights, citizenship and legal protection for people with lifelong learning disabilities

### **Petition summary**

Calling on the Scottish Parliament to urge the Scottish Government to introduce a new law addressing the needs and rights of people with lifelong learning disabilities in Scotland.

### **Action taken to resolve issues of concern before submitting the petition**

We have discussed the need for reform with Michael Mathieson MSP, former Minister for Community Health and Maureen Watt MSP, former Minister for Mental Health. We have also made submissions to the consultation on the Adults with Incapacity Act and the Review of the Mental Health Act.

In addition, we have raised the need for a new law in our 2011 Citizens Grand Jury recommendations and shared these with former Cabinet Secretary for Health, Shona Robison MSP and the Scottish Government.

We have also raised the issue during consultation about the Keys to Life Implementation Framework.

### **Petition background information**

#### **Current legislation for people with learning disabilities**

There are a number of pieces of law which impact on the lives of people with learning disabilities in Scotland including:

- The Adults with Incapacity (Scotland) Act 2000,
- The Mental Health (Care and Treatment) (Scotland) Act 2003,
- The Adult Support and Protection (Scotland) Act 2007 and;
- The Criminal Procedure (Scotland) Act 1995.

None of these Acts however are specifically about people with a lifelong intellectual impairment and can often be a poor “fit” for those people. We believe a new Act

providing an alternative to the existing outdated and piecemeal legislation is required to address this need.

Existing legislation provides for those with temporary loss of capacity or memory later in life but not from birth or early in their lives. It treats learning disability as a medical issue where “treatment” is possible entrusting psychiatrists, GPs, Approved Medical Practitioners or Responsible Medical Officers to make decisions about the lives of people who become subject to the powers of these Acts.

As medical practitioners they inevitably treat learning disability as a medical condition rather than as a lifelong impairment of intellect. As a result, people with learning disabilities may be detained, restricted and removed from their lives and communities in a way that could not happen to citizens who are not intellectually impaired. We believe that a paradigm shift away from that perspective and towards an understanding of intellectual impairment as a lifelong disability is necessary so a social model of disability can be applied to it.

The Scottish and UK Governments have signed up as a State Party to the UN Convention on the Rights of Persons with Disability (UNCRPD). The UNCRPD requires States Parties to abolish substitute decision-making and replace it with support to exercise legal capacity, regardless of the nature or severity of the disability. It specifically includes intellectual and cognitive impairment. The Convention also requires States Parties to move away from Capacity Assessment as a part of its process arguing that capacity assessment is impossible to undertake in any meaningful way.

For a number of years, People First has campaigned to remove learning disability from the definition of ‘mental disorder’ under the Mental Health Act. Opponents have commonly cited the experience of New Zealand who faced a crisis when they chose to remove persons with intellectual impairment from their own mental health legislation without first having alternative provisions in place. As a result, people and communities were at risk and unreasonable expectation placed on the criminal justice system.

This petition differs as it aims to have in place robust legal provision for how people with learning disabilities should be treated while creating a mechanism enabling Scotland to comply with the UNCRPD and avoiding claims of breach of the European Convention on Human Rights (ECHR) or the Human Rights Act 1998 (HRA).

We believe that the current laws allow people with learning disabilities to be detained without limit of time, restricted for long periods, denied a fair trial and other opportunities purely as a result of their intellectual impairment. Our view is that this state of affairs is contrary to their rights under the HRA, the ECHR and the UNCRPD.

### **New legislation required**

We want to see a new piece of legislation which would define learning disability and intellectual impairment properly in law for the first time in Scotland.

The law should guarantee access to education alongside other children and non-disabled students, detail the process of assistance support, allow access to work and earnings and set out the procedures within the criminal justice system should a person with intellectual impairment be accused of an offence.

The Act should guarantee the right to relationships and to family life and outline the support available to make this a realistic proposition. It would also prohibit the removal of legal capacity (ie the right to make one’s own decisions) from intellectually impaired persons and put in place the right to exercise legal capacity with support as necessary. Importantly, the law should make clear that there is a distinction between having a mental illness or experiencing mental distress and having a permanent and life-long impairment of intellect but it would also provide for the possibility of experiencing both of these at the same time.

The law should put in place the right to support to exercise legal capacity, that is, the right to make one’s own decisions about one’s own life with support for decision-making and support to exercise legal capacity and should prohibit the removal of legal capacity from intellectually impaired persons.

Following the introduction of the Act, our expectation is that treatments for mental ill-health would not be applied to people with intellectual impairments who are not

mean that not be applied to people with intellectual impairments who are not mentally unwell. Instead, support would be made available to people with intellectual impairment to learn and develop as citizens. This distinction needs to be made in law so that the decisions are not left to overworked and underfunded service systems and often misguided professionals.

We accept that some people with intellectual impairments have developed anti-social behaviours which sometimes present a risk to themselves or others and may at times be difficult to manage. Fundamentally, we object to the continued use of institutional settings and regimes and to enforced medication to manage these behaviours.

Our view is that these behaviours have developed in social contexts in response to unreasonable treatments and a significant change is required in service systems and community attitudes which will take effort, understanding and resources to create a different system response for people. We accept that once behaviours which challenge people and services have become embedded, it is harder to help people to change but we believe it is not impossible if the right conditions are provided. We assert that keeping people medicated and detained and restricting their movements and expression is much more likely to keep people in a fearful and angry state than to help them relax, enjoy life and become happy.

Despite progressive policies intended to reduce the number of people treated in these inhumane ways, it is obvious that change is not happening. Although we have high expectations of the current reviews of existing legislation in this area, we cannot imagine how systems can change without a new and holistic legal framework in place intended specifically for people with intellectual impairments.

#### Unique web address

<https://www.parliament.scot/GettingInvolved/Petitions/learningdisabilitylaw>

#### Related information for petition

**Do you wish your petition to be hosted on the Parliament's website to collect signatures online?**

YES

**How many signatures have you collected so far?**

0

**Closing date for collecting signatures online**

05 / 09 / 2019

#### Comments to stimulate online discussion

Do you think that people with learning disabilities enjoy the same rights and aspirations that other citizens enjoy in Scotland?

Do you consider that the existing laws are sufficient to ensure human rights and access to full citizenship for people with learning disabilities in Scotland?

Do you agree that a joined up piece of legislation covering all aspects of life for people with learning disabilities would help to change public and professional perceptions and expectations?

