



## Briefing for the Public Petitions Committee

**Petition Number:** [PE1786](#)

**Main Petitioner:** Andrew Muir

**Subject:** Prosecutions under the Mental Health (Care and Treatment) (Scotland) Act 2003

Calls on the Parliament to urge the Scottish Government to investigate why there have been no prosecutions under either section 315 or section 318 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

### Background

The current petition states that there have been no prosecutions under sections 315 or 318 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act).

The above sections set out offences in relation to: (a) the ill-treatment or wilfully neglect of a mentally disordered person; and (b) making false statements in relation to applications under the 2003 Act.

A previous petition submitted by Andrew Muir (on behalf of Psychiatric Rights Scotland) sought a public inquiry into historical cases of abuse of people detained under mental health legislation – [PE1550](#) lodged January 2015. That petition also referred to sections 315 and 318 of the 2003 Act, stating that no-one had been convicted under either section. Information provided at the time, by the Crown Office & Procurator Fiscal Service, indicated that there had in fact been successful prosecutions under section 315 of the 2003 Act. Further information is set out in a [SPICe briefing on the previous petition](#). It was closed following consideration by both the Public Petitions Committee and the Health & Sport Committee.

More recent information provided by Scottish Government officials indicates that, during the ten-year period 2008-09 to 2017-18, there were 40 prosecutions under section 315 of the 2003 Act, with 25 resulting in conviction.<sup>1</sup> There were, however, no cases under section 318.

The current petition refers to the work of the [Mental Welfare Commission for Scotland](#), including a section of its [Annual Report 2018-19](#) (November 2019) on the use of the 2003 Act:

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<sup>1</sup> Communication with author January 2020, providing information from the Scottish Government's criminal proceedings database.

“The Commission is concerned at the way emergency detention takes place in some parts of the country. Detentions are supposed to take place with the consent of a specialist social worker, called a mental health officer. The rates where this happens vary greatly, with 83% compliance in Dumfries and Galloway and only 33% compliance in Greater Glasgow and Clyde.” (p 20)

The Petitioner argues that:

“One would have expected that in some of these cases, due to procedures not being followed, false statements would have been made on documents leading to a section 318 offence.”

An earlier report of the Mental Welfare Commission for Scotland considered the issue of mental health officer consent – [Emergency Detention Certificates without Mental Health Officer Consent](#) (June 2016). Whilst noting that such consent is not a legal requirement, it emphasised its desirability. The report included recommendations aimed at achieving higher rates of consent.

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12 February 2020

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