



Briefing for the Public Petitions Committee

Petition Number: [PE1741](#)

Main Petitioner: Keith Lynch on behalf of People First (Scotland)

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

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

Background

The subject of this petition relates to a range of existing legislation and covers a number of policy areas.

Legislative background

There is currently no single piece of legislation specifically covering learning disabilities, although a number of Acts are particularly relevant:

- [Adults with Incapacity \(Scotland\) Act 2000](#) provides a legal framework to safeguard the welfare and manage the finances of adults, aged 16 and over, who lack capacity due to mental illness, learning disability or a related condition, or due to an inability to communicate.
- [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) can apply to people who have a mental illness, learning disability or related condition. The Act defines these conditions as a “mental disorder”. It is a rights-based piece of legislation that gives individuals the right to express their views about their care and treatment. This was amended by the [Mental Health \(Scotland\) Act 2015](#).
- [Adult Support and Protection \(Scotland\) Act 2007](#) enables the protection of adults who may be at risk of harm or neglect. The Act requires local authorities and a range of public bodies to work together to support and protect adults who are unable to safeguard themselves, their property and their rights.
- [The Social Care \(Self-Directed Support\) Scotland \(Act 2013\)](#) places a duty on local authority social work departments to offer people who are

eligible for social care a range of choices over how they receive their support.

- [The Criminal Procedure \(Scotland\) Act 1995](#) makes provision for disposal¹ by the criminal courts for people with mental disorders. This was amended by the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) and the [Mental Health \(Scotland\) Act 2015](#).
- [The Standards in Scotland's Schools etc. Act 2000](#) sets out the rights of children to education and the related duties of education authorities. This includes a duty to make sure that a child's education is directed to the development of their personality, talents and mental and physical abilities to their fullest potential. The Act sets out that local authorities and schools must have due regard to children's views in decisions that significantly affect them and introduced the policy of '[presumption of mainstreaming](#)'.

Other relevant legislation includes [The Equality Act 2010](#) which provides the legal framework to protect the rights of individuals and advance equality of opportunity for all, including those with disabilities. Under this legislation, people are protected from discrimination based on their protected characteristics in employment, education, access to goods and services and membership of clubs and associations.

The Millan Committee

The Mental Health (Care and Treatment) (Scotland) Act 2003 followed the [report of the Millan Committee](#) which reviewed the previous mental health legislation for Scotland. The Millan Committee made recommendations based around the central feature that both the law and practice relating to mental health should be driven by a set of ten principles. These principles relate to minimising interference in peoples' liberty and maximising the involvement of service users in any treatment. The report discussed the inclusion of learning disability in the Mental Health Act and the arguments for and against inclusion. It recommended that an expert review be undertaken at an early date of the position of learning disability within mental health law.

Scottish Government Action

A [Fairer Scotland for Disabled People](#) is the Scottish Government's delivery plan to 2021 for the [UN Convention on the Rights of Persons with Disabilities \(UNCRPD\)](#), an international legal agreement that exists to protect and promote the human rights of disabled people.

¹ Disposal refers to how a case or proceeding is completed. In mental health cases court disposals include compulsion orders, hospital directions, restriction orders, assessment orders and treatment orders

In [Disability rights in Scotland: Supplementary submission to inform the CRPD List of Issues on the UK](#) (2017) a number of draft recommendations were made of the measures the Scottish Government should take to promote and protect disabled people's rights and a number of these related specifically to learning disability and autism.

In 2017, NHS Health Scotland published [People with Learning Disabilities in Scotland: 2017 Health Needs Assessment Report](#) which aims to provide policy makers, service planners, service commissioners and funders and practitioners with a broad overview of the evidence of the health needs of adults with learning disabilities

The [Keys to Life](#) is the Scottish Government's learning disability strategy. It was launched in 2013 and was refreshed in March 2019 with an [implementation framework and priorities 2019-2021](#). The Scottish Government has also published a Scottish Strategy for Autism and more recently a document [outlining outcomes and priorities for action 2021](#).

Adults with Incapacity Reform

The Scottish Government carried out a [consultation on the Adults with Incapacity \(Scotland\) Act 2000](#) between January and April 2018. The purpose of the consultation was to seek views on changes to the legislation and practice around Adults with Incapacity. These changes aimed to address both the need to reflect the requirements of the UN Convention on the Rights of Persons with Disabilities, and concerns that many of the processes within the legislation had become overly cumbersome and were no longer fit for purpose.

The reforms proposed by the Scottish Government were seen by many consultation respondents not to maximise the autonomy and exercise of legal capacity of individuals with cognitive impairment so that genuine non-discriminatory respect is afforded to a person's rights, will and preference, in keeping with the provisions of the UN Convention on the Rights of Persons with Disabilities.

The Scottish Government's [Summary and analysis of consultation responses](#), published in August 2018, notes that it will be "working closely with a wide range of stakeholders over the autumn to adjust the proposals where required so that they more accurately reflect the original aims for the reform of this legislation".

Independent Review of Learning Disability and Autism in the Mental Health Act

In the consideration on the Mental Health Bill (2015), the Minister for Sport, Health Improvement and Mental Health, committed the Scottish Government to undertake a review of the inclusion of learning disability and autism within the 2003 Act.

In 2017, the Scottish Government published [Learning disability and autism provision in the Mental Health \(Scotland\) Act 2003: findings from a scoping exercise](#) a report on a study carried out by the Mental Welfare Commission for Scotland and the Scottish Commission for Learning Disability. This was to help inform the development of the review.

An [independent review of Learning Disability and Autism in the Mental Health Act](#) was set up and the first advisory group meetings took place in June 2018. In May 2019, [the stage 1 report](#) was published and, in August 2019, [stage 3 of the review final consultation was published](#). This notes that:

“One part of this review’s remit is to consider ‘the definition of mental disorder under the 2003 Act in relation to learning disabilities and autism’. Based on what we found in stage 1, we concluded that autistic people and people with learning disability are not well served overall by the Mental Health (Care and Treatment) (Scotland) Act 2003.

We discuss definitions of autism and learning disability in 2.1 on ‘disability’ and in 6.2 on ‘limits on human rights’. The Convention on the Rights of Persons with Disabilities does not allow rights to be limited on the basis of disability. We think that the model of disability from the United Nations Convention on the Rights of Persons with Disabilities should be the basis for our definitions of autism and learning disability.

We think that this would help Scotland to reach a long-term goal of no longer limiting the rights of these groups of people on the basis of disability. We think that a person with a diagnosis of autism could be said to have ‘autistic impairment’ – and strengths – and could be said to have ‘autistic disability’ on a temporary basis when the person is experiencing extreme stress or distress. We think that a person with a diagnosis of learning disability could be said to have ‘intellectual impairment’ – and strengths – and could be said to have ‘intellectual disability’ on a temporary basis when the person is experiencing extreme stress or distress.

We suggest that all autistic people and people with learning disability who need mental health services would be supported under a new law”.

The review’s final report and recommendations will be submitted to the Scottish Government’s Minister for Mental Health in December 2019.

The Scottish Government has also [announced a review of mental health legislation in Scotland](#).

Scottish Parliament Action

A number of relevant Parliamentary Questions have been asked, including Question [S5W-23845](#) on the needs of people with autism and learning difficulties who are detained in hospitals. Also, relevant is Question [S5W-](#)

[23162](#) on consultation with people with learning disabilities and their representative organisations on measures to assist vulnerable witnesses in the criminal justice system.

Lizzy Burgess

SPICe

5 September 2019

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