

## Briefing for the Public Petitions Committee

**Petition Number:** [PE01849](#)

**Main Petitioner:** Barry Gale, Ruth Hughes and Tracey Gibbon on behalf of Mental Health Rights Scotland

**Subject:** Independent review of non-forensic detentions within high and medium secure psychiatric hospitals.

Calls on the on the Scottish Parliament to urge the Scottish Government to launch an independent review of the detention of all non-forensic patients within high and medium secure psychiatric hospitals, with a focus on:

1. the necessity and appropriateness of the care and treatment provided;
2. exploring all reasonable options for early rehabilitation, with the full participation of the patient and family carers;
3. the practice of admitting patients unnecessarily to high and medium secure hospitals and then requiring them to appeal in order to get out; and
4. the conditions under which courts may impose restriction orders.

### Background

*Mental Health (Care and Treatment) Scotland Act 2003*

[The Mental Health \(Care and Treatment\) Scotland Act 2003](#) came into force in October 2005. It followed the [2001 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 2003 Act applies 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. It was amended by the [Mental Health \(Scotland\) Act 2015](#).

Under the 2003 Act people can be detained or “sectioned”. There are three types of orders: emergency detention certificates; short term detention certificates; and compulsory treatment orders.

*Criminal Procedure (Scotland) Act 1995*

[The Criminal Procedure \(Scotland\) Act 1995](#) makes provision for disposal of people by the criminal courts for people with mental disorders. It makes provision for a number of orders including assessment orders; treatment orders; temporary compulsion orders; interim compulsion orders; compulsion orders; restriction orders; hospital directions; and transfer for treatment directions.

Restriction orders are made by a court at the time of disposal and are added to a compulsion order. They are the same as a compulsion order, in terms of authorising detention and treatment in a hospital or community setting, but do not have a time limit.

*Forensic mental health services*

Forensic mental health services specialise in the assessment, treatment and risk management of people with a mental disorder who are currently undergoing, or have previously undergone, legal or court proceedings. Some other people are managed by forensic mental health services because [they are deemed to be at a high risk of harming themselves or others under civil legislation \(the Mental Health \(Scotland\) Act 2003\)](#).

*Secure services*

The forensic network supports national, regional and local services across Scotland to provide forensic mental health and learning disabilities services across the spectrum of levels of security. In Scotland there are three levels of enhanced security for inpatients

High Secure Services	National	The State Hospital, Carstairs
Medium Secure Services	Regional	North – Rohallion Clinic, Perth South East – Orchard Clinic, Edinburgh West – Rowanbank Clinic, Glasgow West - National Learning Disability Unit (Rowanbank Clinic)
Low Secure Services and Community	Local	Most Health Boards have low secure services, community forensic mental health teams and forensic learning disabilities teams

People should not be kept in conditions of security that are higher than clinical requirements or unnecessary for the protection of the public. People in high and medium secure units have the right to appeal if they feel they are being

held in conditions of excessive security. However, there have been issues with the availability of beds in medium and secure settings.

## **Scottish Government Action**

### *Review of forensic mental health services*

In March 2019 the Scottish Government announced an independent review looking into how forensic mental health services are being delivered in hospitals, prisons and the community across Scotland.

The review defines forensic mental health services as services that provide assessment, care, treatment and all forms of support (including reintegration into the community) to:

- people in high, medium and low secure hospitals or hospital units
- people accused of offending or who have offended and are in intensive psychiatric care hospital units or open rehabilitation inpatient facilities
- people not in hospital who are at risk of offending, accused of offending or who have offended and have a mental illness, personality disorder or learning disability (this includes people who develop a mental illness while in prison).

The [terms of reference](#) have been published and, amongst other things, include the consideration of:

- the ease of movement of patients both down and up through levels of security
- the impact of appeals against conditions of excessive security across the mental health system, including demand for low secure services and the extent to which this can be met by the current forensic estate
- the delivery of services for intellectual impairment / learning disability and neurodevelopmental disorder / autistic spectrum disorder
- the movement of people from low or medium secure services to the community; any delays and the causes of them
- the support and services that are needed to successfully treat people in the community and any difficulties providing or accessing such services.

An [interim report](#) has been published and the final report is expected in January 2021.

### *Review of learning disability and autism in the Mental Health Act*

An independent review of learning disability and autism in the Mental Health Act took place in 2018 and the [final report](#) was published in December 2019.

The review recommended:

“major change to comply with human rights law. The recommendations aim to put the human rights of disabled citizens at the heart of our mental health law. They focus squarely on positive change which is needed to promote the rights of people with intellectual disability and autistic people and prevent discrimination”.

The review made a number of recommendations:

“Some fundamental recommendations for law include:

- That learning disability and autism are removed from the definition of mental disorder in the Mental Health Act.
- That changes in law and improvements in services are put in place before this happens. A date should be set for this.
- That Scotland works towards law that removes discrimination in detention and compulsory treatment on the basis of disability.
- That a new law is created to support access to positive rights, including the right to independent living.

Other recommendations for law include:

- That the law includes the description of disability from the Convention on the Rights of Persons with Disabilities.
- That the law allows professionals to support people who are experiencing serious adverse effects on their human rights, in a way that does not discriminate.
- Equity and fairness in decisions about support, care, treatment and detention, both for people who need support and for people in the criminal justice system.
- Introducing a human rights-based system for all decision making, including human rights assessment as a key tool for ensuring human rights are promoted and protected.
- A new model for professional roles in making decisions with and for autistic people and people with intellectual disability.
- A “rebuttable presumption” that all professionals will work to enact a person’s will and preferences, in the context of human rights.
- A right to independent advocacy on an opt-out basis. Recommendations aimed at strengthening carers’ rights whilst maintaining focus on the rights of the individual.
- Duties on public authorities to provide a range of services, environments and professionals to meet the needs of autistic people and people with intellectual disability.
- The introduction of a disability model to the criminal justice system to ensure fair access to trials, fairness in responsibility, fair punishment and fair access to support and treatment.”

## **Scottish Parliament Action**

The Health and Sport Committee undertook an evidence session with the [State Hospital NHS Board](#) on 3 December 2019.

There have been a number of relevant parliamentary questions:

Question S5W-23845: Claudia Beamish, South Scotland, Scottish Labour, Date Lodged: 17/06/2019

To ask the Scottish Government what further measures it is considering to fulfil the needs of people with autism and learning difficulties who are detained in hospitals.

Answered by Clare Haughey (11/07/2019):

The Scottish Government is committed to improving the lives of autistic people and/or those with a learning disability to ensure they live healthier lives, enjoy choice and control over the services they use, and are supported to be independent and active citizens.

We are making significant investment in the range of mental health supports available, which will see issues tackled earlier and where possible in the community, whilst ensuring speedier access to specialist care for those who need it. Over the life of this Parliament investment will exceed £5 billion and this underpins the improvement agenda set out in our mental health and suicide prevention strategies. The Mental Health strategy 2017-2027 recognises as a theme the importance of human rights and as part of this we are currently reviewing mental health and incapacity legislation use in Scotland. One such review is the independent review of Learning Disability and Autism within the Mental Health Act which is looking at whether the law needs to change for autistic people or people with learning disability who require compulsory care and treatment

This work is stakeholder driven and evidence led, for example there will be 3 public engagement phases. Stage 1 and 2 have already been completed and they focused on understanding current experience of the legislation before considering what changes may be needed to promote people's human rights. The 3rd stage is due to commence in August with the final report being presented to Ministers in December 2019.

Question S5W-14560: Miles Briggs, Lothian, Scottish Conservative and Unionist Party, Date Lodged: 09/02/2018

To ask the Scottish Government what its response is to whether the judgment of the European Court of Human Rights in the case of X v Finland will impact on mental health law in Scotland, in light of reports that the Scottish legislation allows for the forced treatment of a person detained in hospital to begin before that person has had an opportunity to appeal against the detention.

Answered by Maureen Watt (23/02/2018):

The Scottish Government is committed to creating a modern, inclusive Scotland which protects, respects and realises internationally recognised human rights, and is working with the whole of Scottish society to deliver a shared vision for a Scotland where everyone can live a life of human dignity. The Scotland Act 1998 requires that all Scottish Parliament legislation and all acts of members of the Scottish Government must be compatible with core ECHR rights (“the Convention rights”). In addition, the Human Rights Act 1998 ensures that every public authority in Scotland is obliged to act compatibly with the Convention rights and enables human rights cases to be taken in domestic courts.

We believe that the 2003 Act is fully compliant with the European Convention on Human Rights (ECHR). The 2003 Act has never been found, in part or in whole, by the European Court of Human Rights to be not compliant with ECHR.

The Mental Health strategy 2017-2027 recognises as a theme the importance of human rights and as part of this, has committed to actions around reviewing various aspects of mental health and incapacity legislation use in Scotland. We have recently implemented an amending act in mental health law and there are two reviews underway at the moment which are key, the AWI reform work and the review of how the 2003 Act meets the needs of those with Learning Disability and Autism.

## **Audit Scotland**

Audit Scotland has indicated that it will be undertaking a performance audit on mental health on 2022-23.

**Lizzy Burgess**

**SPICe**

**15 December 2020**

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