

PE2194/A: Amend the Adults with Incapacity (Scotland) Act to prevent abuse of power of attorney

Scottish Government written submission, 12 November 2025

Does the Scottish Government consider the specific ask of the petition to be practical or achievable?

The Scottish Government is currently undertaking the work required to support future reform of the Adults with Incapacity (Scotland) Act 2000 (AWI Act), with an amendment Bill expected to be taken forward in the next parliamentary term. Future legislative change in this area will provide the opportunity to take forward relevant recommendations of the Scottish Mental Health Law Review (Scott Review), including, amongst a range of proposals, improvements to the power of attorney process.

We have established an Expert Working Group and Ministerial Oversight Group to progress and oversee AWI reform activity.

What, if any, action the Scottish Government is currently taking to address the issues raised by this petition, and is any further action being considered that will achieve the ask of this petition?

In September 2022 the Scott Review published its final report, setting out over 200 recommendations for mental health law reform to better protect and fulfil international human rights obligations. The Scott Review recommended that as a high priority, the Scottish Government bring forward legislation to reform the AWI Act, prior to any wider reforms of the Mental Health (Care and Treatment) (Scotland) Act 2003. This recommendation has been overwhelmingly supported by a wide range of stakeholders.

The Scottish Government consulted between July and October 2024 on proposed changes to the AWI Act with more than 160 responses received. While it was clear from responses that there is strong support to modernise the AWI Act, we also heard concerns on system resourcing and the need for a further level of detail to be developed to support consideration by partners. As already noted, this work is now underway and is supported by an Expert Working Group and Ministerial Oversight Group.

Is there any further information the Scottish Government wish to bring to the Committee's attention, which would assist it in considering this petition?

The Scottish Government is fully committed to ensuring full and equal participation of people with lived experience and key practitioners including with unpaid carers in developing the legislation in line with the Scott Review recommendation.

Tribunals Policy, Civil Law and Legal System Division