

Briefing for the Public Petitions Committee on petition PE2242: Repeal the Mental Health (Care and Treatment) (Scotland) Act 2003, lodged by Andrew Joseph Muir

Brief overview of issues raised by the petition

[PE2242](#) calls on the Scottish Parliament to urge the Scottish Government to repeal the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”).

The petition makes reference to the [UN Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#), 2013. This outlined:

“The mandate has previously declared that there can be no therapeutic justification for the use of solitary confinement and prolonged restraint of persons with disabilities in psychiatric institutions; both prolonged seclusion and restraint may constitute torture and ill-treatment”

It went on to say:

“Moreover, any restraint on people with mental disabilities for even a short period of time may constitute torture and ill-treatment. It is essential that an absolute ban on all coercive and non-consensual measures, including restraint and solitary confinement of people with psychological or intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric and social care institutions. The environment of patient powerlessness and abusive treatment of persons with disabilities in which restraint and seclusion is used can lead to other non-consensual treatment, such as forced medication and electroshock procedures”

The petition raises concerns that “It is easy to label someone mentally ill [...]and very hard to refute this allegation”.

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

The [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) (as amended by the [Mental Health \(Scotland\) Act 2015](#)) is the main mental health legislation in Scotland. The 2003 Act followed the [2001 report of the Millan Committee](#) which reviewed earlier legislation. It recommended that law and practice relating to mental health should be driven by ten principles, focused on minimising interference in people’s liberty and maximising the involvement of service users in treatment.

The [2003 Act](#) applies to people who have a “mental disorder”. This is defined under section 328 of the 2003 Act and includes any mental illness, personality disorder or learning disability, however caused or manifested. It sets

out when and how people can be treated if they have a mental disorder, when people can be treated or taken into hospital against their will and what a person's rights are and the safeguards to ensure that these are protected.

The Act aims to be rights-based legislation which allows people to express their views about their care and treatment. It provides the right to:

- [independent advocacy](#)
- submit an [advanced statement](#) (stating an individual's wishes)
- choose a [named person](#) who can make decisions on an individual's behalf.

The [Scottish Government has said in response to an earlier petition: Obtain a second medical opinion before detention under the Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(PE2108\)](#):

“Mental health legislation in Scotland is based on rights and principles and provides for rigorous safeguards in respect of individuals' human rights where compulsory treatment is necessary. Safeguards include a right to independent advocacy and an efficient and independent Mental Health Tribunal which grants and reviews orders for compulsory treatment.”

Detention and compulsory treatment

Under the 2003 Act there are three types of orders: emergency detention certificates, short term detention certificates and compulsory treatment orders.

An [emergency detention](#) certificate allows for a person to be held in hospital, or transferred to a different hospital, and allows for their detention for up to 72 hours while their condition is assessed. Any registered medical practitioner can grant an emergency detention certificate. The doctor does not need to be an [Approved Medical Practitioner](#), often an consultant psychiatrist with additional training, (AMP).

A [short-term detention](#) certificate allows for a person to be held in hospital, or transferred to a different hospital, and their detention for up to 28 days for assessment and/or treatment. A short-term detention certificate can only be granted by an AMP and a Mental Health Officer (HMO) must be consulted.

A [compulsory treatment order](#) (CTO) allows for a person to be treated for their mental illness. A CTO is granted by a Tribunal and authorises detention and treatment in hospital or the community for an initial period of six months, extended for six months and then reviewed annually. A CTO requires two medical reports, a report by the MHO making the application, and a proposed care plan. The CTO will set out a number of conditions that an individual will need to comply with. These conditions will depend on whether the individual has to stay in hospital or is in the community. The individual and their named person should be informed if an application for a CTO is to be made. The Tribunal decides whether a CTO is to be granted. The individual has the right to make their views known to the Tribunal. If a compulsory treatment order is made the individual or named person, can apply to the Tribunal for it to be removed once the order has been in force for three months.

Independent review of Learning Disability and Autism in the Mental Health Act (the Rome Review)

The [United Nations Convention on the Rights of Persons with Disabilities](#) (UNCPRD) was adopted by the UK in December 2006. In 2017, the UN Committee on the Rights of Persons with Disabilities concluded a [review of the United Kingdom's compliance with the convention](#). The review identified a number of areas of concern, including that legislation, regulations and practices discriminate against people with disabilities.

Following this, the Scottish Government commissioned an [Independent review of Learning Disability and Autism in the Mental Health Act](#). This made a number of recommendations focused on reducing or removing the discrimination of autistic people and people with intellectual disability in existing legislation.

The report made 107 recommendations, including that:

- Learning disability and autism should be removed from the definition of mental disorder in the 2003 Act. But new legislation and service improvements, should be in place before this happens.
- The law should be changed so that people are not detained and/or compulsory treated based on their disability.
- A new law should be created that supports access to positive rights (such as the right to independent living, family and private life, education employment, and freedom of expression).

The Scottish Government said, in December 2020, it was [considering the recommendations](#) of the report.

Scottish Mental Health Law Review (the Scott Review)

The Scottish Government also commissioned the Scottish Mental Health Law Review. This independent review aimed to:

“Improve the rights and protections of persons who may be subject to the existing provisions of mental health, incapacity or adult support and protection legislation as a consequence of having a mental disorder, and remove barriers to those caring for their health and welfare.”

The [Review's final report](#) was published on 30 September 2022. It set out 227 proposals for changes to the mental health system as well as broader areas including health and social care, justice and public sector scrutiny.

Audit Scotland and the Accounts Commission

On 13 September 2023, the Auditor General for Scotland and the Accounts Commission published [Adult mental health](#). Following this, the Session 6 Public Audit Committee undertook an inquiry into [Adult Mental Health](#). Its concluding report

includes a brief reference to an increase in the use of detention, but the Committee did not recommend any changes in this area.

Scottish Government action

The [Scottish Government published its response](#) to the Scottish Mental Health Law Review on 28 June 2023. This committed to establishing a new Mental Health and Capacity Reform Programme to deliver on the ambitions of the Review.

An [initial delivery plan for the Mental Health and Capacity Reform Programme](#) was published on 4 June 2024. This set out a range of actions up to April 2025. The first strategic aim was around law reform, and said:

“We will build on and enhance human rights protections in mental health and capacity law”.

In relation to mental health law reform the following objectives were outlined:

- We will scope possible reforms to the Mental Health Act in line with developing human rights standards
- We will review the safeguards which accompany the named persons provision contained within the Mental Health Act
- We will explore the benefits of moving from the current Advance Statements to a model of Advance Choices
- We will consider making improvements to the ‘recorded matters’ process
- Consider issues around Emergency Detention Certificates (EDCs) under Mental Health Act

In response to a parliamentary question in [2024](#) the Scottish Government said:

“We are taking staged approach to mental health law reform due to the scope, complexity, and inter-related nature of the SMHLR recommendations with other significant ongoing policy developments. This approach recognises the pressure on budgets and services and the challenges of delivering further change and reform at a time when there is significant wider transformation across the health and social care sectors.”

However, a delivery plan from 2025 onwards has not been published.

The Scottish Government is [currently consulting on proposed updates to parts of volume 1 of the Mental Health Code of Practice](#), focusing specifically on the use of restraint and seclusion. It has also been working towards bringing [forensic orders in line with civil orders](#), in relation to recorded matters.

Key organisations and relevant links

- [Centre for Mental Health Practice Policy and Law Research, Edinburgh Napier University](#)
- [Law Society of Scotland](#)
- [Mental Welfare Commission for Scotland](#)
- [Royal College of Psychiatrists in Scotland](#)
- [VOX Scotland](#)
- SPICe briefing on Mental Health (publication forthcoming)

Lizzy Burgess

Senior Researcher

24 September 2026

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

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