

Briefing for the Citizen Participation and Public Petitions Committee on petition PE1999: [Fully implement the UN Convention on the Rights of Persons with Disabilities](#) lodged by William Hunter Watson

Brief overview of issues raised by the petition

The petitioner wishes to ensure that people in Scotland are not treated for a mental disorder without their consent. He believes that while restraint and medication of someone with a mental disorder in certain circumstances is permissible under current legislation, restraint and 'covert medication' are incompatible with the UN Convention on the Rights of Persons with Disabilities.

The term 'mental disorder' is the terminology used in the Mental Health (Care and Treatment) (Scotland) Act 2003 and is defined under the Act as covering any mental illness, personality disorder or learning disability (as per [s328 of the Act](#)).

What is the UN Convention on the Rights of Persons with Disabilities? (UNCRPD)

The [UNCRPD](#) was adopted by the UN in 2006 and was ratified by the UK in 2009 (agreed to follow it). The purpose of the UNCRPD is to protect and promote the human rights of disabled people, [including](#):

- eliminating disability discrimination
- enabling disabled people to live independently in the community
- ensuring disabled people are protected from all forms of exploitation, violence and abuse

However, like other UN treaties, the UNCRPD does not give individuals legal rights in the UK courts. While the UK Government has pledged to make sure domestic policies comply with UN treaties, people normally cannot take public bodies to court if their treaty rights have been breached in some way.

The Petitioner highlights specific articles in the UNCRPD as being incompatible with the recommendations in the [Final Report of the Scottish Mental Health Law Review](#):

- Article 4 – general obligations on State Parties - they must undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all disabled people without discrimination on the basis of disability. This includes, for example, in designing policy and adopting legislation, and training of professionals who work with disabled people.
- Article 12 – equal recognition before the law – requires state parties to recognise that disabled people enjoy legal capacity on an equal basis with others and take measures to support disabled people in exercising their legal capacity.
- Article 14 – liberty and security of the person – requires State Parties to ensure that disabled people have an equal right to liberty and security, on an equal basis with others.
- Article 17 – protecting the integrity of the person – every disabled person has a right to respect for his or her physical and mental integrity on an equal basis with others.
- Article 25 – health – State Parties recognise that disabled people have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.

Further background is available in the Equality and Human Rights Commission's [The United Nations Convention on the Rights of Persons with Disabilities: What does it mean for you?](#)

New human rights framework

The Scottish Government has [proposals](#) to incorporate four United Nations Human Rights treaties into Scots law, including the UNCRPD.

The Bill will take forward the [30 recommendations from the National Taskforce for Human Rights Leadership](#). The new Bill was first outlined in the [Programme for Government 2021-22](#). The Bill will take forward the [30 recommendations from the National Taskforce for Human Rights Leadership](#). The [Programme for Government 2022-23](#) said that the Scottish Government would continue work on this and consult on proposals for a Bill.

The intention is to introduce a Scottish Human Rights Bill in this parliamentary session to give effect to a range of internationally recognised human rights, making them enforceable in Scots law. In a [letter to the Equalities, Human Rights and Civil Justice Committee on Pre-Budget Scrutiny 2023-24](#) (22 December 2022), the Minister for Equalities and Older People, Christina

McKelvie MSP, confirmed that the Scottish Government would be consulting on proposals in the first half of 2023.

Adults with Incapacity legislation

This legislation introduced a system for safeguarding the welfare, and managing the finances and property of adults who lack capacity to make some or all decisions for themselves.

It is underpinned by principles which anyone taking action under the Act must apply when deciding which measure will be the most suitable for meeting the needs of the individual. The principles must also be used whenever decisions need to be made on behalf of the adult.

There are [five key principles](#):

Principle 1: benefit

Any action or decisions taken must benefit the adult and only be taken when that benefit cannot reasonably be achieved without it.

Principle 2: least restrictive option

Any action or decision taken should be the minimum necessary to achieve the purpose. It should be the option that restricts the person's freedom as little as possible.

Principle 3: take account of the wishes of the adult

In deciding if an action or decision is to be made, and what that should be, account shall be taken of the present and past wishes and feelings of the adult as far as they can be ascertained. The adult should be offered appropriate assistance to communicate his or her views.

Principle 4: consultation with relevant others

Account shall be taken of the views of the nearest relative and the primary carer of the adult, the adult's named person, any guardian or attorney with powers relating to the proposed intervention, and any person whom the Sheriff has directed should be consulted.

Principle 5 – encouraging the adult

encourage the adult to exercise whatever skills he or she has concerning property, financial affairs or personal welfare as the case may be and to develop new such skills.

Codes of Practice for Medical Practitioners

[Guidance](#) is available for a range of circumstances and people when they are acting in relation to the [Adults with Incapacity \(Scotland\) Act 2000](#) .There is [specific guidance for health practitioners](#) authorised to carry out medical treatment or research under the Adults with Incapacity Act. There is also [specific guidance](#) relating to medical treatment under Part 5 of the Act.

The [Mental Welfare Commission published good practice guidance on covert medication in May 2022](#).

Mental Health legislation and the Mental Health Law Review

The petitioner does not make specific reference to other relevant mental health law, such as [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#), which applies to people who have a "mental disorder" . Mental disorder is defined under the Act and the definition includes any mental illness, personality disorder or learning disability. The [Mental Welfare Commission-\(MWC\) for Scotland provides comprehensive information on Mental Health law](#). This Act allows for emergency and short-term detention, as well as Compulsory Treatment Orders when someone is diagnosed with a mental disorder.

The Final Report of the Mental Health Law Review is a long document, with many recommendations. Throughout, the approach taken makes reference to human rights being acknowledged and respected:

“Recommendation 1.5: The Scottish Government should ensure that all recommendations in this report be implemented in such a way as to protect, respect and fulfil the rights of those with protected characteristics equitably.”

Further, the UNCRPD underpinned the terms of reference, as explained in the Report’s introduction.

There is also a [shorter summary report and recommendations](#) from the Review:There is also a [shorter summary report and recommendations](#) from the Review:

- Chapter 8 covers Human rights enablement, deprivation of liberty and autonomous decision making.
- Chapter 9 covers reduction of coercion.
- Chapter 13 – Adults with incapacity legislation and
- Chapter 14 – Adult Support and Protection legislation.

The Review recommends further safeguards for the use of covert medication, as well as legal process. The [MWC guidance](#), while widely used, has no statutory force.

Other relevant petitions and reports

As highlighted by the petitioner:

[PE867](#)

PE01459 (wrong number and couldn't find the correct one in the archive/google search)

[PE01667](#)

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28 January 2023

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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Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP