

Citizen Participation and Public Petitions Committee
Wednesday 28 January 2026
3rd Meeting, 2026 (Session 6)

PE2061: Require solicitors to ensure capacity of vulnerable individuals by having a medical professional co-sign legal documents

Introduction

Petitioner Laura Johnston-Brand

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to help prevent coercion of vulnerable, frail, and debilitated individuals by requiring solicitors to have a medical professional co-sign legal documents confirming the capacity of the individual.

Webpage <https://petitions.parliament.scot/petitions/PE2061>

1. [The Committee last considered this petition at its meeting on 18 June 2025.](#) At that meeting, the Committee agreed to write to the Scottish Government.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received a new written submission from the Scottish Government, which is set out in **Annexe C**.
4. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage.](#)
5. [Further background information about this petition can be found in the SPICe briefing for this petition.](#)
6. [The Scottish Government gave its initial response to the petition on 30 November 2023.](#)
7. Every petition collects signatures while it remains under consideration. At the time of writing, 423 signatures have been received on this petition.

Action

8. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee
January 2026

Annexe A: Summary of petition

PE2061: Require solicitors to ensure capacity of vulnerable individuals by having a medical professional co-sign legal documents

Petitioner

Laura Johnston-Brand

Date Lodged

2 November 2023

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to help prevent coercion of vulnerable, frail, and debilitated individuals by requiring solicitors to have a medical professional co-sign legal documents confirming the capacity of the individual.

Previous action

I have contacted MSPs Keith Brown and Jim Fairlie. Keith Brown responded to say he has written to the Cabinet Secretary for Justice and Home Affairs to highlight our campaign and seek the Scottish Government's view on this proposed change.

Background information

Our dad was terminally ill in the high dependency unit of Perth Royal Infirmary, when during his final days his solicitor along with his business partner presented him with legal documents to sign. These documents affected the value of our dad's estate, consuming his final moments and the little time we had with him.

We took the matter to the Law Society of Scotland, and the solicitor was found guilty of 5 counts of misconduct and received a £5000 fine. During the tribunal, part of the defence was that the solicitor didn't have to ensure dad's capacity in the same way as he would have to in England, where they have a "golden rule" to ensure any frail or extremely sick person has to get a medical professional to co-sign legal documents to guarantee capacity and confirm there has been no coercion.

Annexe B: Extract from Official Report of last consideration of PE2061 on 18 June 2025

The Convener: Our next petition is PE2061, which was lodged by Laura Johnston-Brand and calls on the Scottish Parliament to urge the Scottish Government to help prevent coercion of vulnerable, frail, and debilitated individuals by requiring solicitors to have a medical professional co-sign legal documents confirming the capacity of the individual.

We last considered this petition on 30 October 2024, when we agreed to write to the Office of the Public Guardian, the Academy of Medical Royal Colleges and Faculties in Scotland, the Law Society of Scotland, and the Scottish Legal Complaints Commission. We have received responses from all of them.

The Office of the Public Guardian makes it clear that it will not comment on matters of policy but notes that the proposals in the petition could impact the provisions for powers of attorney, guardianships and intervention orders and access to funds authorisations under the Adults with Incapacity (Scotland) Act 2000. Those provisions include the submission of medical reports for consideration by the judiciary or the OPG.

The Scottish Legal Complaints Commission has indicated that it receives a small but steady number of complaints each year that involve concerns about the steps that have been taken by a solicitor to assess capacity, although it was not able to identify cases alleging coercive behaviour. None of the service complaints that have been investigated by the SLCC have been upheld. Conduct complaints about solicitors are not handled by the SLCC but are passed to the Law Society of Scotland.

The data from the Law Society of Scotland shows that the overall number of applications that were made to the client protection fund increased between 2020 and 2024, although the number of paid claims remained roughly the same. The LSS did not attempt to identify capacity-related claims, but it might be able to provide further data on whether claimants were individuals, solicitor firms or others.

The Academy of Medical Royal Colleges and Faculties in Scotland noted concerns that had been raised by doctors in both primary and secondary care regarding inconsistencies in relation to how lawyers involve medical teams to support capacity assessment when working with clients who are also in-hospital patients. It also noted that, as long as assessment of capacity is undertaken by qualified individuals, they do not need to be medically qualified, highlighting concerns from primary care doctors that a requirement for a medical assessment in all situations might prove burdensome, time consuming and potentially more expensive. However, on balance, the academy indicated that it was broadly supportive of the petition at this time.

Finally, we have also received a submission from the petitioner, who points out that the Adults with Incapacity (Scotland) Act 2000, which provides the current framework, was subject to a review in 2024, with the consultation analysis being published earlier this year. She highlights that the majority of responses agree that there need to be relevant changes to how power of attorney documents are obtained and by whom, and also that further mandatory attorney training was needed.

In the analysis of the consultation, the Scottish Government stated that the responses would inform the development of a bill amending the adults with incapacity legislation. Although the proposed bill was part of the programme for government that was announced last September, it was not included in the updated legislative programme that was published last month.

Do members have any comments or suggestions for action?

David Torrance: In the light of the evidence, the committee could consider closing the petition under rule 15.7 of standing orders, on the basis that it is already best practice for solicitors to obtain a medical opinion if there are doubts about a person's capacity. In addition, the Scottish Government does not believe that the proposed legislative changes are necessary or appropriate, and evidence that has been received by the committee suggests that the action that is called for could become time consuming, costly and burdensome.?

The Convener: Thank you for that suggestion. I am slightly concerned that the bill was in the Government's programme for government in September but then disappeared in the updated legislative programme.

Fergus Ewing (Inverness and Nairn) (SNP): Having read the submissions from the SLCC, the OPG and others, it is clear that this is an area that is not without complexity. The fact that the bill has apparently been removed from the legislative programme begs the question why. I think that, before moving to close the petition, which otherwise I would do, it would be useful to find out why that was done. I think that it is a legitimate question that should be answered. If we ask it and get an answer now, that might save time in the next session of Parliament, were the petitioners to bring the issue back to us. I do not think that we would be unduly extending the work in this session of Parliament, which is limited, given the fact that we have less than a year to go. I am curious about the reasons for the Scottish Government not proceeding with the bill.

Having said that, and having been a practising solicitor for some 20 years—although I am no longer—I note that it is up to each solicitor to assess the capacity of a client, and if one has concerns then one has to raise them, as there is a clear professional ethical duty to do so. Looking at the evidence that we have seen, there seem to be vanishingly few cases where the solicitors have been accused of coercion in any way—I think that that is specifically stated. Of course, it could be said of me that, as a solicitor, I would say that, wouldn't I?

I sympathise with Mr Torrance's approach and would agree with it were it not for the fact that the Scottish Government appears to have supported the proposals but no longer does so. If we find out why the position has changed, we may well feel that we can close the petition, having received a satisfactory answer. Mr Torrance may be happy with that.

David Torrance: I am happy with that.

The Convener: I think that Mr Torrance was quite right in his recommendation, but that the issue that Mr Ewing raises stands out slightly, and that we would be advised to find out more. We more or less accept that the petition has run its course insofar

as we can act, but it is important to understand why the bill has just disappeared from the Government's programme, so we would like to ask about that.

Fergus Ewing: Yes. It should also be said on the record that, were there to be a new system involving a requirement for a medical opinion, in practical terms, that would involve probably tens of thousands of certificates in situations where, quite frankly, they would not be necessary. Solicitors would be under an obligation to take a precautionary approach, and it would clog up the process of, for example, drawing up a will or arranging a power of attorney, meaning that someone could cease to have capacity in the period in which the process of obtaining medical opinion is going through, or they could die without leaving a will, meaning that an unnecessary intestacy would arise. The system is not without its flaws, but I suspect that the costs of the new process of obtaining the certificates would be very substantial indeed for the client, because I cannot see the state paying for it any time soon.

The Convener: Thank you, Mr Ewing. We will hold the petition open until we gain the information that we seek.

Annexe C: Written submission

Scottish Government written submission, 3 July 2025

PE2061/O: Require solicitors to ensure capacity of vulnerable individuals by having a medical professional co-sign legal documents

The committee are asking:

1. why the proposed Adults with Incapacity Bill, initially included in the Scottish Government's legislative programme in September 2024, was not included in the most recent legislative programme, announced in May 2025
2. what legislative steps it will take to address the responses to the Adults With Incapacity Amendment Act consultation, in light of the above.

The Scottish Government's response:

1. The Scottish Government consulted on proposed changes to the Adults with Incapacity (AWI) (Scotland) Act 2000 between July and October 2024. More than 160 responses were received. Whilst it was clear from these that there is strong support for modernising the AWI legislation, respondents raised concerns regarding resourcing implications for the system and the need for a more detailed policy development to support detailed consideration by partners in relation to implementation. The Scottish Government remains fully committed to modernising the AWI legislation, to reflect international standards on human rights in particular. However, in light of the consultation feedback, additional time is required to ensure that any legislative proposals are robust, workable and deliver the best outcomes for the vulnerable individuals at the heart of the AWI system, as well as those working to protect and support them. For this reason, the proposed Bill was not included in the May 2025 legislative programme.
2. To progress this work, Scottish Government officials have been asked to establish an AWI Expert Working Group. This Group will provide advice and collaborate on the detailed policy and operational considerations necessary to inform and support future legislative change in this area. In parallel, a Minister-led Oversight Group will be established to monitor and drive progress. Invitations for both groups have been issued ahead of summer recess, with initial meetings to take place in September 2025. These steps are intended to ensure that the next phase of legislative development is informed by expert input and grounded in practical delivery considerations, while maintaining momentum toward reform.

Mental Health Law and Incapacity Unit, The Scottish Government