# Citizen Participation and Public Petitions Committee

# 19th Meeting, 2023 (Session 6), Wednesday 20 December 2023

# PE1999: Fully implement the UN Convention on the Rights of Persons with Disabilities

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| **Lodged on** | 5 January 2023 |
| **Petitioner** | William Hunter Watson |
| **Petition summary** | Calling on the Scottish Parliament to urge the Scottish Government to ensure the UN Convention on the Rights of Persons with Disabilities (UNCRPD) is fully implemented in Scotland. |
| **Webpage** | https://petitions.parliament.scot/petitions/PE1999 |

## Introduction

1. The Committee last considered this petition at its meeting on 22 March 2023. 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 asked the Scottish Government when its response to the Scottish Mental Health Law Review would be published. An extract of the Scottish Government's response is included at **Annexe C** and the full response can be found online.

4. Every petition collects signatures while it remains under consideration. At the time of writing, 48 signatures have been received.

## Action

The Committee is invited to consider what action it wishes to take on this petition.

**Clerk to the Committee**

# Annexe A

# PE1999: Fully implement the UN Convention on the Rights of Persons with Disabilities

## Petitioner
William Hunter Watson

## Date lodged
05/01/22

## Petition summary
Calling on the Scottish Parliament to urge the Scottish Government to ensure the UN Convention on the Rights of Persons with Disabilities (UNCRPD) is fully implemented in Scotland.

## Previous action
I have been campaigning for over twenty years in an attempt to ensure that people in Scotland could not be treated for a mental disorder without their consent. In that time, I have submitted three petitions to the Public Petitions Committee: PE867 in 2005, PE01459 in 2013 and PE01667 in 2017. I also have had two meetings with my MSP, Audrey Nicoll and produced papers which have been sent to various people including a Policy Manager of the Scottish Government's Mental Health Unit.

## Background information
Treatment for mental disorders without consent should not be permitted. The Code of Practice for the Adults With Incapacity (Scotland) Act 2000 states that "The use of covert medication is permissible..." Further, the "Health and Social Care Standards" refer to "chemical restraint", something that commonly involves the giving of antipsychotics to elderly people with dementia even though this involves a clear increased risk of stroke and a small increased risk of death.

Covert medication and chemical restraint are incompatible with the UNCRPD, something that the Scottish Ministers must observe and implement. Parliament should pay particular attention to Articles 4, 12, 14, 17 and 25 while debating proposals for change to mental health and incapacity law. It should not accept those recommendations in the Final Report of the Scottish Mental Health Law Review which are incompatible

with the UNCRPD. It should not accept that it is acceptable to use force, detention or covert medication in the treatment of patients with disabilities.

# Annexe B
# Extract from Official Report of last consideration of PE1999 on 22 March 2023

**The Convener:** Our final new petition this morning is PE1999, which has been lodged by William Hunter Watson. It calls on the Scottish Parliament to urge the Scottish Government to ensure that the UN Convention on the Rights of Persons with Disabilities, which is referred to as the UNCRPD, is fully implemented in Scotland. The petitioner believes that treatment for mental disorders without consent should not be permitted. He states his view that covert medication and chemical restraint are incompatible with the UNCRPD, as he interprets article 25 as meaning that persons with disabilities have the right to refuse treatment. The petitioner highlights the importance of the right to refuse treatment in care homes and mental hospitals.

We have received two submissions from individuals who have shared their experiences in relation to treatment without consent. In particular, Barry Gale expresses his view that there is a gap between policy and practice. He states that patients and carers should be empowered “to make their own discretionary decisions about their own lives, and to put the onus on the professionals to appeal against them—instead of the other way around.”

The committee has received a response to the petition from the Minister for Mental Wellbeing and Social Care. He states that, for some individuals, “compulsory treatment is used to provide the person with medical treatment to alleviate suffering and for the protection of both the person and others”.

He adds: “Compulsory treatment is only allowed under mental health legislation in Scotland in very strict circumstances.”

The minister’s submission highlights safeguards that are in place, such as the right to independent advocacy and the Mental Health Tribunal for Scotland. The minister states that other interventions should be considered before restrictive practice is proceeded with, as such action should be a last resort. He notes that the Scottish Mental Health Law Review’s report proposes reforms to help to drive reductions in the use of coercion, including restrictive practices, while recognising the potential need for it in certain circumstances.

I should have recorded David Torrance’s apology for the meeting earlier. I do so now. I feel that, if he was here, he would recollect some of these themes being raised in petitions on such issues before, as I do. Do colleagues have thoughts as to how we might proceed?

**Fergus Ewing:** I note the reference in our papers to the independent Scottish Mental Health Law Review, which was chaired by John Scott KC and which published its final report on 30 September. The Scottish Government states in its response to the petition that it is taking time carefully to consider the

recommendations. That is fair enough, because the issues are by no means straightforward.

It would make sense for the committee to inquire as to when the Scottish Government expects to respond to the mental health law review. As I understand it, the review recommended that a human rights approach be taken to these matters but it acknowledged that there may still be instances where treatment may require to be administered without consent—for example, for health reasons, as has been alluded to. It would be useful to ascertain—I am sure that the petitioner would like to know this—when the Government is going to respond. I think that its response will very much dictate how the petitioner will wish us to proceed in relation to any possible recommendations that may arise from the Government's response to the review.

**The Convener:** I agree. Do we have any other suggestions? As there are none, are we content to keep the petition open and proceed on the basis that Mr Ewing has advocated?

**Members** *indicated agreement.*

**The Convener:** That concludes the public section of our meeting. We will next meet on Wednesday 19 April. I thank all those who have joined our proceedings this morning.

# Annexe C

# Extract from the Scottish Government response to the Scottish Mental Health Law Review

The final report set out over 200 recommendations for the law, policy, and practice. This includes:

**A new purpose for the law:**

- A new purpose for mental health and capacity law to ensure that the human rights of those covered by the legislation are respected, protected, and fulfilled.
- Replacing the definition of mental disorder within mental health and capacity law
- A long-term aim is to fuse mental health and incapacity legislation, with a short-term focus on aligning human rights principles.

**Progressive realisation of human rights:**

- New legal duties and minimum core obligations on public bodies providing mental health and associated services.
- Accessible, affordable, timely and effective remedies and routes to redress where rights are not upheld.
- A new framework for human rights (Human Rights Enablement); supported decision-making (SDM) and tests of autonomous decision-making (ADM)
- A new legislative framework for when people are deprived of their liberty.
- Specific rights protections and improvements for children and young people; people within the forensic mental health system and adults with incapacity.
- Training for our workforce(s) and development and promotion of best practice engagement frameworks
- Provision of trauma-informed and recovery-focused community based and peer support, and wider reform to reduce non-consensual treatment and practices.

**Improved Accountability and Scrutiny:**

- A systematic improvement programme to reduce coercive treatment.
- Strengthened regulation and scrutiny of mental health services.
- Improved data collection

[…]

**Our high-level priorities for inclusion in a Reform Programme are as follows:**

1. Adults with Incapacity Law Reform

We will work towards addressing long-standing gaps in the law to ensure stronger rights protections and safeguards. We will look at updating powers of attorney and the section 47 Certificate for medical treatment scheme. We will also aim to introduce wider technical changes to the legislation and consider opportunities to revise the principles, particularly so that they more clearly reflect the requirements of the UNCRPD.

Additionally, we will consider making smaller but significant amendments to the process of Guardianship to improve its efficiency. This will be a precursor to more wide-ranging changes that may be developed in the future. Within the AWI reforms we will develop a suite of options to address the Deprivation of Liberty in circumstances where people require non-consensual care and support but are unable to make decisions for themselves. Further consultation will be taken forward in the short term.

2. Supporting Decision-Making

Supported Decision-Making is an important part of shifting the way in which the system fulfils people's rights. Early work will review and build on existing practices, working with partners to support the development and roll-out of effective supported decision-making approaches. Based on learning and evaluation from this work we will consider whether a national framework or approach is needed.

We will also work with the Scottish Independent Advocacy Alliance, its members and organisations providing advocacy services as well people with lived experience of accessing services to help identify and address gaps and improvements in provision. This will identify how best to

strengthen rights and access to provision. In addition, we will look to develop a consistent definition of ‘Independent Advocacy’. Cross-government work in advocacy will be taken forward driven by the development of the National Care Service and consideration of the proposed Human Rights Bill.

3. Mental Health Law Reform

We will consider how best to reform the Mental Health Act to better align with developments in international human rights standards. Initial cross-government work will seek to ensure that our developing domestic human rights laws in Scotland effectively protect the specific rights of people with disabilities including those with mental illness and people who lack capacity. We will also consider whether specific changes are required to mental health law.

As an early priority we will work with partners to consider the definition of ‘mental disorder’ and reach a position on who should be within the scope of any future reformed Mental Health Act. This work will be undertaken alongside the development of proposed legislation to enhance and protect the specific rights of people with a learning disability, autistic people and people with other neurodivergent conditions, to ensure that our legislative framework provides effective rights protections for these communities. We will also consider whether there are changes that can be made over the shorter term to improve the current operation of the Mental Health Act and to strengthen safeguards when it is considered necessary to provide non-consensual care or treatment. This could, for example, include the consideration of improvements to provisions around named persons and advance statements.

In the medium to longer term, we will consider the implications of the developing Human Rights Bill. As part of this work, we will reach a position on whether or not to expand the purpose of the Mental Health Act to also provide a broader gateway to human rights, including social, economic, and cultural rights, as recommended by the SMHLR. In addition, we will consider the impact and practical implications of moving towards an autonomous decision-making (ADM) test in place of the current SIDMA test whenever a non-consensual measure is being considered.

4. Human Rights Enablement

We will commence early work to support improvements to the implementation of rights, including through supporting our health and social care workforces to understand and apply rights-based approaches in practice.

This will initially explore how the concept of 'Human Rights Enablement' could be practically implemented across the mental health system. This work will consider how this might be included as part of our broader approach to human rights implementation, for example, through the development of the Human Rights Bill and the National Care Service.

We will also explore how a HRE approach might support wider practice reforms within health and social care, such as the development of Getting it Right for Everyone (GIRFE) as well as be better embedded within pre-existing practice models.

5. Enhancing carers' rights and role

We will work with partners to strengthen the role of unpaid carers in supporting people to maintain independence and access their rights. An early priority will be to include a focus on carers in our work on Human Rights Enablement as well as within Supported Decision Making. We will also work to advance the rights of carers in practice.

We are providing funding for NHS Education for Scotland to enhance the existing EPiC learning resource and to explore what further development of this training might be needed to meet the recommendations in the SMHLR to develop Carer Awareness Training in order to raise awareness of carers' rights among all staff working with people with mental or intellectual disability across health and social care settings. This will be considered as an option for early delivery.

6. Reducing Coercion across the system

As an initial step we will scope a programme of work with the aim of reducing the use of coercion and restrictive practices, such as seclusion and restraint, over time. This will be broad and cross-cutting work bringing people together across the system and including consideration of the role of legislative reform, the development of regulation and scrutiny as well as opportunities for improved data collection and monitoring.

The scoping exercise will also look at the role of community-based services and strategies to enhance early intervention, prevention and crisis and distress interventions along with changes in practice to support recovery. We will consider what is required to inform our decision-making in the first instance and to collate insights and analysis that can inform our policy development in the medium term.

7. Strengthening Accountability, and Scrutiny in the mental health system

We will consider the SMHLR recommendations in relation to strengthening accountability alongside the findings and recommendations from the Mental Health Scrutiny and Assurance Review (due to publish in Summer 2023), and the Independent Review of Inspection, Scrutiny and Regulation led by Dame Sue Bruce (due to publish in September 2023).

We will develop a strategic action plan to strengthen the collective scrutiny of mental health services, in response to the findings of these reviews. The development of the proposed Human Rights Bill may further help to ensure that that there are routes to remedy available in situations where human rights have potentially been breached. Work is already under way exploring the potential role of complaints handling bodies and wider scrutiny bodies in this changing landscape.