

## **PE1667/N**

Petitioner submission of 21 November 2018

In order to stimulate a discussion about mental health and incapacity legislation, the Public Petitions Committee should consider the possibility of inviting the Minister for Mental Health to answer questions such as the following when she appears before it to give oral evidence:

1. Is the Scottish Government willing to set up at the earliest possible opportunity a broadly based and independent committee of experts to conduct a wide review of Scottish mental health and incapacity legislation and to make recommendations?
2. Given the judgments of the European Court of Human Rights to which attention has been drawn in submission PE1667/H and given that section 2 of the Human Rights Act requires a court to take into account any relevant judgment of the European Court of Human Rights when determining a question which has arisen in connection with a Convention right, is the Scottish Government confident that no individual who has been detained in hospital on the basis of a short-term detention certificate will be successful if he or she raises an action under the provisions of section 7(1) of the Human Rights Act?
3. Given that the Scottish Government is under an obligation to ensure that the Convention rights of everyone within its jurisdiction are safeguarded, given that section 57(2) of the Scotland Act states that a member of the Scottish Government has no power to do any act that is incompatible with a Convention right and given that the lives of some elderly people with dementia will be shortened in breach of Article 2 ECHR if they are subjected to chemical restraint, will the Scottish Government amend Scotland's Health and Social Care Standards in such a way that they no longer condone the use of such restraint?
4. Given that Article 12.4 of the Convention on the Rights of Persons with Disabilities requires that "States Parties shall ensure that all measures that relate to legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law" and given that it has been found that such effective safeguards are, in reality, lacking in Scottish mental health and incapacity legislation, will the Scottish Government act to ensure that this legislation is suitably revised?
5. Given that in October 2018 a manufacturer of ECT equipment acknowledged that patients who have been given ECT treatment "may experience permanent memory loss", will the Scottish Government consider carefully whether Scottish mental health legislation should continue to permit patients to be given ECT in cases where they resist or object to the treatment?

[Weblinks provided by the petitioner]

<https://breggin.com/huge-breakthrough-in-lawsuits-against-electroconvulsive-therapy-ect-manufacturers/>

<https://breggin.com/>

6. Given that the Committee on the Rights of Persons with Disabilities observed in its General Comment No 1 (2014) that "State parties have an obligation to require all medical and health professionals (including psychiatric professionals) to obtain the free and informed consent of persons with disabilities prior to any treatment", will the Scottish Government consider what advice regarding informed consent should be given to psychiatrists and other medical practitioners?

7. Given that on 18 December 2018 the Mental Welfare Commission reported that there were 5,647 new episodes of compulsory treatment for mental health in 2017/18 in Scotland, the highest number since the 2003 Mental Health Act was implemented, does the Scottish Government agree that a review of that Act is necessary?