



## Briefing for the Public Petitions Committee

**Petition Number:** [PE01550](#)

**Main Petitioner:** Andrew Muir on behalf of Psychiatric Rights Scotland

**Subject:** Mental Health Act Inquiry

Calls on the Parliament to urge the Scottish Government to set up a public inquiry into historical cases of abuse of people detained under the Mental Health (Scotland) Act 1984 and the Mental Health (Care and Treatment) (Scotland) Act 2003

### Background

The petition proposes that the Scottish Government set up a public inquiry to investigate abuse of people detained on mental health grounds. It argues that,

“there has been no proper investigation into people who have been abused whilst being detained under mental health legislation”.

It refers to evidence submitted to the Scottish Parliament in the context of public petition [PE01494](#) and the Mental Health (Scotland) Bill.<sup>1</sup> It notes that the Minister for Health has refused Psychiatric Rights Scotland’s request for an inquiry and that the Mental Welfare Commission has refused to investigate.

### *Public Inquiries*

UK statutory public inquiries are governed by the Inquiries Act 2005 (the 2005 Act). It gives Ministers (including Scottish Ministers) the power to set up an inquiry where events have caused or are capable of causing public concern, or there is public concern that particular events may have occurred (section 1). Scottish Ministers can only set up an inquiry when it relates to a Scottish matter (see 2005 Act, section 28).<sup>2</sup> The Inquiries (Scotland) Rules 2007 provide more detailed rules for Scottish inquiries.

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<sup>1</sup> This petition called on the Scottish Parliament to urge the Scottish Government to amend the Mental Health (Care and Treatment) (Scotland) Act 2003 to make it compatible with the European Convention on Human Rights. The Committee agreed to close the petition as there was broad agreement that the Act complied with human rights legislation

<sup>2</sup> For further details of the 2005 Act see the [House of Commons Library Standard Note](#).

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

The petition states that no-one has ever been convicted under sections 315 and 318 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act). These make it an offence to ill-treat or wilfully neglect a mentally disordered person or to make false statements in relation to applications made under the 2003 Act.

The Crown Office and Procurator Fiscal Service (COPFS) recently responded to a freedom of information request asking for information on the number of successful/unsuccessful prosecutions under section 315 of the 2003 Act. Its [response](#) indicates that, between 2006 and 2014, court proceedings under section 315 of the 2003 Act were taken in respect of 46 cases reported to COPFS and that 16 resulted in a conviction (a number of cases are also still ongoing).<sup>3</sup> Therefore, based on COPFS' information, it would appear that there have been certain convictions under section 315 of the 2003 Act.

For further details of the workings of the 2003 Act and an overview of mental health more generally, see this [SPICe Briefing on Mental Health in Scotland](#).

### **Scottish Government Action**

On 19 June 2014, the Scottish Government introduced a Mental Health (Scotland) Bill (the Mental Health Bill). It seeks to amend certain aspects of the 2003 Act (see also below).<sup>4</sup>

On December 17 2014, the Cabinet Secretary for Education and Lifelong Learning announced that the Scottish Government will set up a statutory public inquiry to examine the historical abuse of children in care in Scotland.<sup>5</sup>

The Scottish Government is currently seeking views from survivors of abuse and other relevant organisations, on the Inquiry's terms of reference and the attributes for a Chair to the Inquiry. The Scottish Government aims to announce the Inquiry's terms of reference by April 2015.

The [National Confidential Forum](#), which was set up as part of the Victims and Witnesses (Scotland) Act 2014, can receive testimony on abuse from children who were in institutional care (including mental health institutions).<sup>6</sup>

### **Scottish Parliament Action**

The Scottish Parliament's Public Petitions Committee considered some of the issues raised by the petitioner in the context of public petition [PE01494](#).

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<sup>3</sup> See Annex A. COPFS has confirmed to SPICe that the information in Annex A relates to convictions under section 315 of the 2003 Act

<sup>4</sup> For further details on the Mental Health Bill see the [SPICe Briefing](#) on the Bill.

<sup>5</sup> See <http://www.scotland.gov.uk/Topics/People/Young-People/protecting/child-protection/historical-child-abuse>

<sup>6</sup> See <http://www.nationalconfidentialforum.org.uk/who-is-it-for/health-services/>

The Scottish Parliament's Health and Sport Committee is currently considering the Mental Health Bill. In its [Stage 1 Report](#) published on 30 January 2015, the Committee asks the Scottish Government to respond to comments made by witnesses that there should be a greater reference to the use of force, restraint or covert medication in legislation, and in the 2003 Act's Code of Practice.<sup>7</sup> At the time of this briefing, the Scottish Government had yet to respond to this request.

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19 February 2015

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<sup>7</sup> See paragraphs 226–229 of the Stage 1 Report.