



The independent review of
**Learning Disability
and Autism**
in the Mental Health Act

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Other evidence

Paper for Law and Policy Advisory Group, October 2018

Themes:

- Freedom and safety, including autism and learning disability as 'mental disorders' in the Mental Health Act
- Protection from abuse. This theme includes absolute rights, which are the most important rights.

Theme 3: Freedom and safety

What we need to understand is

how the Mental Health Act promotes and protects people's rights to freedom and safety.

These rights are at the end of this section.

The rights include rights about liberty and security, and many other rights

The rights to liberty and security are relevant to the question of whether autism and learning disability should be 'mental disorders' in the Mental Health Act

You can see the right about liberty and security at 3.10 and at 3.12 in the human rights framework, below

What else do we need to know about **freedom and safety**?

Where we can find this information?

The other evidence that we have found for this theme is on the next pages.
After that, you can see all of the human rights that are in this theme.

Other evidence about: Freedom and safety

What we need to know	Where this comes from
<p>About the Mental Health Act:</p> <p>The purpose of the Act</p> <p>Principles of the Act</p> <p>Five criteria for detention</p> <p>How the Act should operate</p> <p>Meaning of 'mental disorder'</p>	<p>Law:</p> <p>The Code of Practice for the Mental Health Act.</p> <p>Green's annotated Mental Health Act</p>
<p>What the United Nations, European Court of Human Rights and UK Supreme Court think of the Mental Health Act</p>	<p>Monitoring: UN concluding observations on the UK.</p> <p>Law: UK Supreme Court on the Act's principles</p>

Other evidence about: Freedom and safety

What this tells us	Where this comes from
Definitions of autism and learning disability.	Medicine: International Classification of Diseases (ICD-11) from the World Health Organisation
All the laws for Scotland that have 'mental disorder' in them.	The review team will write this. It will come from law, including the OPSI website
The main laws for Scotland that promote and protect the human rights in the review's human rights framework	The review team will write this. It will come from law, including the OPSI website.
People's experiences of decision making, Tribunal, and Court	Lived experience: Learning Disability Alliance Scotland report. Edinburgh Napier University – to be written.

Other evidence about: Freedom and safety

What this tells us	Where this comes from
What forms of decision making the Mental Health Act allows in Scotland	Law: The Code of Practice for the Mental Health Act. Green's annotated Mental Health Act
What forms of decision making the Mental Health Act should allow in Scotland	Law: United Nations treaties, European Convention on Human Rights
What challenges to decision making should be made possible by the Mental Health Act	Law: United Nations treaties, European Convention on Human Rights
Human rights standards for decision making, with informed consent	Law: United Nations treaties and the European Convention on human rights
Human rights standards for decision making, without informed consent	Law: United Nations treaties and the European Convention on human rights

Rights in Theme 3: Freedom and safety

There should be –

- Systems that support you to make decisions for your self
- Support to make decisions
- Support for your decisions to be carried out
- Respect for your rights, will and preferences
- Not many decisions for you should be made by other people

If your rights are not promoted and protected, there should be effective ways for you to challenge this

You should not be detained just because you have a disability

Being in hospital should always be based on you understanding and agreeing to being there, whenever this is possible

The justice system should be fully accessible for you to participate in

People who work in the justice system should have the skills that they need to make the justice system accessible for you

Hearings and processes should be fair for you, and you should have enough information and time to prepare for them

You should have the chance to challenge (appeal) the decision that is made about you

Theme 4: Protection from abuse

What we need to understand is

how the Mental Health Act promotes and protect people's rights to protection from abuse.

The rights include the 2 most important rights in this review:

1.The right to life

2.The right to freedom from torture or cruel, inhuman or degrading punishment

These are absolute rights. This means that no-one should ever interfere with these rights for anyone.

Theme: Protection from abuse

What else do we need to know about **protection from abuse**?

Where we can find this information?

The other evidence that we have found for this theme is on the next pages.
After that, you can see all of the human rights that are in this theme.

Other evidence about: Protection from abuse

What we need to know	Where this comes from
How Scotland should implement these rights as a European country	Law: Council of Europe
What it's not OK for mental health services to do when giving care and treatment	Research: Torture in Healthcare Settings - Reflections on the Special Rapporteur on Torture's 2013 Thematic Report
How the Mental Health Act promotes and protects these rights in practice	Monitoring: Mental Welfare Commission. Mental Health Tribunal decisions on certain treatments

Rights in Theme 4: Protection from abuse

Services must act to protect you. This includes protection for your life.

If services fail to act to protect your life, then there should be action

Treatment which causes severe harm, or is grossly humiliating and undignified must never occur

Services must take reasonable steps to protect you from risks of ill-treatment

You should only take part in experiments if you agree to this

Services must act to prevent abuse. This includes giving information and support.

Independent monitoring of services should be effective.

People who have been abused should have help to recover

Other evidence

Paper for Care and Treatment Advisory Group, October 2018

Themes:

- Health, including
current prescribing practice in psychotropic medication (medicine for mental health) and
the role of psychology in relation to the Mental Health Act
- Independent living

Theme 2 : Health

What we need to understand is

how the Mental Health Act promotes and protects people's rights to health.

What else do we need to know about **health**?

Where we can find this information?

The other evidence that we have found for this theme is on the next pages.

After that, you can see all of the human rights that are in this theme.

Theme: Health

What we need to know	Where this comes from
How Scotland sets standards for what care and treatment people in Scotland should be receiving	Medicine: SIGN and NICE standards. Public Health Needs Assessments.
Whether the Mental Health Act is ensuring that people get the care and treatment they need	Research: Anne McDonald's work on people with complex needs Tommy Mackay's work on autism in Scotland Monitoring: Mental Welfare Commission reports

Other evidence about: Health

What this tells us	Where this comes from
How the Mental Health Act give access to psychotropic medicine, and how it enables monitoring of psychotropic medicine	Law: guides to the Mental Health Act Research: Mental Welfare Commission
Information on how psychotropic medicines are prescribed in Scotland	Research: Scottish Learning Disability Observatory
Information on how psychotropic medicines are prescribed elsewhere	Research: NHS England, UK Government, Public Health England
What Scotland's standards are for prescribing medicines	Law: what source?
How the Mental Health Act give access to psychological support, and how it enables monitoring of access to psychological support	Law: guides to the Mental Health Act Research: Mental Welfare Commission
The 'highest attainable standard' of healthcare for psychological support in Scotland	Medicine: standards may include SIGN guidance and the Matrix

Other evidence about: Health

What we need to know	Where this comes from
How the health needs of the autistic people and people with learning disability are met in prison and forensic settings in Scotland and the UK	Research: The Bradley Report. Report from Chief Inspector of Prisons for Scotland.
How the Mental Health Act provides for monitoring of care and treatment of prisoners with autism or learning disability	Monitoring: please advise

Rights in Theme 2: Health

Care and treatment for your mental health and physical health has to be:

- Available. There should be enough people & places to provide healthcare and there should be enough information
- Accessible. Everyone should be able to get healthcare equally. It shouldn't be too expensive or too hard to get to and everyone should be able to understand the information
- Acceptable to everyone, even if they have different cultures
- Quality. Meeting good standards.

You have the right to healthy conditions, including safe drinking water, safe and healthy food, decent housing, information and education about health

People with disabilities have the right to the same standards of healthcare as anyone else.

If people need healthcare because they have a disability, or to prevent it becoming worse, they must be given it.

People with disabilities, like anyone else, have the right to make choices about their healthcare.

Staff must make sure they don't treat people differently because they have a disability.

Theme 5: Independent living

What we need to understand is

how the Mental Health Act promotes and protects people's rights to independent living.

What else do we need to know about **independent living**?

Where we can find this information?

The other evidence that we have found for this theme is on the next pages.

After that, you can see all of the human rights that are in this theme.

Other evidence about: Independent living

What this tells us	Where this comes from
What the Mental Health Act does about independent living	The review team will write this. It will come from law, including the OPSI website
How laws about independent living connect with the Mental Health Act	The review team will write this. It will come from law, including the OPSI website

Rights in Theme 5: Independent living

You should be able to decide where, with whom and how to live

You should have individualised support to allow that to happen

You should not have to live in a particular arrangement – for example, a hospital - in order to receive mental health services

You should be able to take part in all of community life – for example, learning, work, public life, leisure and sport.

Services that are for everyone should be set up so that you can use them and they are appropriate for you.

You should be supported to be independent and to take part in all aspects of life.

Services for this should be made available for this as early as possible

Other evidence

Paper for Criminal Justice and Mental Health Advisory Group, October 2018

Themes:

- Standards of living
- Freedom and safety, including the interaction between the Mental Health Act and the criminal justice system

Theme: Standards of living

What we need to understand is

how the Mental Health Act promotes and protects people's rights to standards of living.

These rights are at the end of this section.

What else do we need to know about **standards of living**? The rights are on the next pages.

Where we can find this information?

The other evidence that we have found for this theme is on the next pages.

After that, you can see all of the human rights that are in this theme.

Other evidence about: Standards of living

What we need to know	Where this comes from
About people who are treated away from their home area	Research: Anne McDonald's work on people with complex needs Monitoring: MWC on delayed discharge
What people's standards of living are in prison	Please advise us on this
Standards of living in hospitals	Monitoring: Mental Welfare Commission
What should standards of living for people in hospital wards	Please advise
What standards standards of living be for forensic inpatient services	Medicine: Royal College of Psychiatrists about forensic wards
What standards for standards of living be in community-based services for mental health	Government: National Care Standards. The Keys to Life. The Scottish Strategy for Autism.

Rights in Theme 1: Standards of Living

You should have:

- No unreasonable interference with your privacy, especially personal and health information
- Adequate living conditions, including in healthcare and residential facilities
- Your standard of living should improve, not get worse
- An adequate standard of food, clothing, clean water
- Devices and other assistance that you need for disability
- Access to a decent social environment with things to do and connections with the outside world

Theme 3: Freedom and safety

What we need to understand is

how the Mental Health Act promotes and protects people's rights to freedom and safety.

These rights are at the end of this section.

What else do we need to know about **freedom and safety**? The rights are on the next pages.

Where we can find this information?

The other evidence that we have found for this theme is on the next pages.

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Other evidence about: Freedom and safety

What this tells us	Where this comes from
International human rights standards for care and treatment to prisoners	Law: European prison rules. European Court of Human Rights on Prisoners' health-related rights.
International human rights standards for monitoring of care and treatment for prisoners	Please advise on this
Scottish standards for the provision of care and treatment to prisoners	Law: guides to the Mental Health Act. Please advise on other laws and on policies Government: Scottish Parliament review of healthcare prisons
Data on what care and treatment people receive in prison	Please advise us on this

Other evidence about: Freedom and safety

What we need to know	Where this comes from
How the criminal justice system works for people who have a 'mental disorder' in Scotland	Law: Green's Annotated Criminal Procedure (Scotland) Act 1995. Mental Welfare Commission guidance. Lived experience: People First Citizens Grand Jury Report 2011
International human rights standards for people with disability the criminal justice system	Law: United Nations treaties and European Convention on Human Rights

Rights for Theme 3: Freedom and safety

There should be –

- Systems that support you to make decisions for your self
- Support to make decisions
- Support for your decisions to be carried out
- Respect for your rights, will and preferences
- Not many decisions for you should be made by other people

If your rights are not promoted and protected, there should be effective ways for you to challenge this

You should not be detained just because you have a disability

Being in hospital should always be based on you understanding and agreeing to being there, whenever this is possible

The justice system should be fully accessible for you to participate in

People who work in the justice system should have the skills that they need to make the justice system accessible for you

Hearings and processes should be fair for you, and you should have enough information and time to prepare for them

You should have the chance to challenge (appeal) the decision that is made about you

Other evidence

Papers for Communication and Engagement Advisory Group, October 2018

Themes:

- Dignity
- Equality and non discrimination
- Accessibility
- Monitoring and implementation

Theme A: Dignity

What we need to understand is

how the Mental Health Act promotes and protects people's rights to dignity.

These rights are at the end of this section.

What else do we need to know about **dignity**? The rights are on the next pages.

Where we can find this information?

The other evidence that we have found for this theme is on the next pages.

After that, you can see all of the human rights that are in this theme.

Other evidence about: Dignity

What we need to know	Where this comes from
International human rights standards for dignity in health care	Law: General principles of the UN Convention on the Rights of Persons with Disabilities
How the Mental Health Act promotes dignity	Law: guides to the Mental Health Act.

Rights in theme A: Dignity

Your choices should be respected.

Services should accept that having a disability doesn't mean there is something "wrong" with you – it just means you are different.

You should be accepted for who you are.

Theme B: Equality and non-discrimination

What we need to understand is

how the Mental Health Act promotes and protects people's rights to equality and non-discrimination.

What else do we need to know about **equality and non-discrimination**?

Where we can find this information?

The other evidence that we have found for this theme is on the next pages.

After that, you can see all of the human rights that are in this theme.

Other evidence about: Equality and non-discrimination

What this tells us	Where this comes from
International human rights standards for equality and non-discrimination	Law: United Nations Convention on the Rights of Persons with Disabilities (CRPD) and European Convention on Human Rights
International human rights standards for equality for women	Law: CRPD
International human rights standards for equality for children	Law: CRPD

Other evidence about: Equality and non-discrimination

What we need to know	Where this comes from
How the Mental Health Act promotes equality and non-discrimination	Law: guides to the Mental Health Act.
How the Mental Health Act promotes equality for women	Law: guides to the Mental Health Act.
How the Mental Health Act promotes equality for children	Law: guides to the Mental Health Act.

Rights in Theme B: Equality and non-discrimination

Services should act to remove barriers and ensure that disabled people have the same opportunities as other people.

All services should be accessible to you.

If you need adjustments so that you can use services, reasonable adjustments should be made for you. This includes individual supports that you need.

You should be able to enjoy all of your rights and freedoms without any discrimination against you.

For women:

Services should make sure that women with disabilities are not disadvantaged because of being both a woman and a person with disability

For children:

Services should give attention to children with disabilities.

The best interests of the child have to come first.

Services should listen to children's views and respect them for who they are as they grow up.

Services should give disabled children support to express their views if they need it.

Theme C: Accessibility

What we need to understand is

how the Mental Health Act promotes and protects people's rights to accessibility.

What else do we need to know about **accessibility**?

Where we can find this information?

The other evidence that we have found for this theme is on the next pages.

After that, you can see all of the human rights that are in this theme.

Other evidence: Accessibility

What we need to know	Where this comes from
International human rights standards for accessibility in health care	Law: The UN Convention on the Rights of Persons with Disabilities
How the Mental Health Act promotes accessibility	Law: guides to the Mental Health Act.

Rights in theme C: Accessibility

Over time, all barriers to access should be removed from all services, facilities, and so on.

There should be 'universal design' – access for all people as part of the original design – for all new services, facilities and so on.

Theme D: Implementation and monitoring

What we need to understand is

how the Mental Health Act promotes and protects people's rights to Implementation and monitoring.

What else do we need to know about **Implementation and monitoring**?

Where we can find this information?

The other evidence that we have found for this theme is on the next pages.

After that, you can see all of the human rights that are in this theme.

Other evidence about Implementation and monitoring

What we need to know	Where this comes from
Human rights requirements on implementation and monitoring of rights for the mental health of autistic people and people with learning disability	Law: UN Convention on the Rights of Persons with Disabilities; Optional Protocol to the Convention against Torture
How Scotland monitors its mental health system for autistic people and people with learning disability, with participation	Law: Mental Health Act

Other evidence about Implementation and monitoring

What we need to know	Where this comes from
How Scotland involves autistic people and people with learning disability in implementing human rights for mental health	Law: Mental Health Act

Rights in Theme D: Implementation and monitoring

Government and services should collect information separately for different groups of people so that they can make sure that they are promoting and protecting people's rights.

Disabled people have 'representative organisations'. These organisations should be involved when there are changes in law or policy, and should be involved in monitoring human rights.