

Learning Disabilities, Autism and Neurodivergence (LDAN) BILL: Consultation



Scottish Government
Riaghaltas na h-Alba

Respondent Information and Answer Return Form

Some sections of this consultation may be more relevant to particular individuals than others. Therefore, you may wish to only answer the questions or sections you find most relevant.

Please note the 'About You' section **must** be completed and returned with your responses. Questions marked with * must be answered and we cannot accept your response if these are not correctly completed.

Please send this completed form to us by email or by post using the following details:

Our email address is: **LDAN.Bill@gov.scot**

Our postal address is: **FREEPOST – LDAN BILL**

(simply put form in an envelope and add address above – 3 words, all in capital letters - is all that is required to post your response free of any postage charge)

You can submit any written form of response this way too, so long as you have provided answers to the 'About You' section of this form, and in particular whether you would like your response to be published, and follow the flow of the questions, answering the questions as they are asked.

You are welcome to submit a response in an audio clip, video, or BSL video file – please email these to LDAN.Bill@gov.scot. You must again include answers to the 'About You' questions on pages 1-4, which can be accepted verbally. You are asked for a phone number and email so we may contact you if anything is missing and so that your responses can be accepted.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

About You

- Are you responding as an individual or an organisation?* (required)

Individual
 Organisation

- What is your name? **Fiona McIntyre**

- What is your organisation?

If responding on behalf of an organisation, please enter the organisation's name here.

Royal Pharmaceutical Society

If you are responding as an individual you can leave this blank.

- Phone number

Please provide a number we can contact you on in case any of your responses are unclear.

+44 (0) 207 572 2226

- Address

44 Melville Street, Edinburgh, EH3 7HF

- Postcode* (required)

EH3 7HF

Please provide so we can ensure we have a good representation across Scotland. Organisations should add an office postcode where possible.

- Email Address* (required)

Fiona.mcintyre@rpharms.com

If you would like to be contacted again in future about this consultation please enter your email address here. You will also need to give permission to be contacted in the separate question asking this. Your email address will never be published.

- If you are responding as an organisation, please tell us which of the following categories best describes you (select all that apply)* (required):
 - Private sector organisation
 - Public sector organisation
 - Third sector organisation
 - Disabled persons organisation(DPO)/Autistic persons organisation(APO)
 - Other (please say) **Professional Leadership Body**
 - Not applicable - responding as an individual (see next question)
- If you are responding as an individual please tell us which of the following categories best describes you (select all that apply)* (required):
 - Neurodivergent person (i.e. autistic person, person with ADHD, person with a learning difficulty (i.e. dyslexia, dyscalculia))
 - Person with a learning disability
 - Family member or friend of a neurodivergent person or person with a learning disability
 - Carer of a neurodivergent person or person with a learning disability
 - Answering on behalf of a neurodivergent person or person with a learning disability (i.e. parent/guardian, support worker)?
 - Neurotypical person
 - Prefer not to say
- **Not applicable - responding as an organisation** (see previous question)
- Which ethnic group best describes you?

- White Scottish
- Other British
- Irish
- Gypsy / Traveller
- Polish
- Other white ethnic group
- Mixed or multiple ethnic group
- Pakistani, Pakistani Scottish or Pakistani British
- Indian, Indian Scottish or Indian British
- Bangladeshi, Bangladeshi Scottish or Bangladeshi British
- Chinese, Chinese Scottish or Chinese British
- Other Asian, Asian Scottish or Asian British
- African, African Scottish or African British
- Caribbean, Caribbean Scottish or Caribbean British
- Black, Black Scottish or Black British
- Other Caribbean or Black
- Arab, Arab Scottish or Arab British
- Other ethnic group
- Prefer not to say

Not Applicable – responding as an organisation

- What was your age last birthday?

<input type="checkbox"/> 0 - 15	<input type="checkbox"/> 45 - 54	<input type="checkbox"/> 85 +
<input type="checkbox"/> 16 - 24	<input type="checkbox"/> 55 - 64	
<input type="checkbox"/> 25 - 34	<input type="checkbox"/> 65 - 74	
<input type="checkbox"/> 35 – 44	<input type="checkbox"/> 75 - 84	

Not Applicable – responding as an organisation

- Which local authority area you live in (or operate in if an organisation)?

<input type="checkbox"/> Aberdeen City	<input type="checkbox"/> Inverclyde
<input type="checkbox"/> Aberdeenshire	<input type="checkbox"/> Midlothian
<input type="checkbox"/> Angus	<input type="checkbox"/> Moray
<input type="checkbox"/> Argyll & Bute	<input type="checkbox"/> North Ayrshire
<input type="checkbox"/> City of Edinburgh	<input type="checkbox"/> North Lanarkshire
<input type="checkbox"/> Clackmannanshire	<input type="checkbox"/> Orkney
<input type="checkbox"/> Dumfries & Galloway	<input type="checkbox"/> Perth & Kinross
<input type="checkbox"/> Dundee City	<input type="checkbox"/> Renfrewshire
<input type="checkbox"/> East Ayrshire	<input type="checkbox"/> Scottish Borders
<input type="checkbox"/> East Dunbartonshire	<input type="checkbox"/> Shetland Islands
<input type="checkbox"/> East Lothian	<input type="checkbox"/> South Ayrshire
<input type="checkbox"/> East Renfrewshire	<input type="checkbox"/> South Lanarkshire
<input type="checkbox"/> Falkirk	<input type="checkbox"/> Stirling

<input type="checkbox"/> Fife	<input type="checkbox"/> West Dunbartonshire
<input type="checkbox"/> Glasgow City	<input type="checkbox"/> West Lothian
<input type="checkbox"/> Highland	<input type="checkbox"/> Western Isles (Eilean Siar)

- Which of these Options best describes how you think of yourself?

<input type="checkbox"/> Heterosexual/Straight	<input type="checkbox"/> Gay/Lesbian
<input type="checkbox"/> Bisexual	<input type="checkbox"/> Other
<input type="checkbox"/> Prefer not to say	

Not Applicable – responding as an organisation

- Which gender identity best describes you? Please only answer this question if you are aged 16 years or older.

<input type="checkbox"/> Male	<input type="checkbox"/> Female
<input type="checkbox"/> Non-binary	<input type="checkbox"/> Other
<input type="checkbox"/> Prefer not to say	

Not Applicable – responding as an organisation

The following 2 questions MUST be answered so we can accept your responses.

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:^{*} *(required)*

Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?^{*} *(required)*

Yes
 No

Consultation Questions

The questions in this document refer to information contained in our main consultation document [here](#). There are also alternative formats you can access.

You need only answer the sections most relevant to you and all answers in the Bill proposal sections should be provided voluntarily. The questions are mostly consistent throughout the sections and space is provided for your response – if you need more space, additional pages can be added.

Part 1: Reach and definitions: who should the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill include?

Who Should the Bill include?

A Bill has to set out who it will apply to and in what circumstances. This means our Bill has to say which groups of people it will apply to.

This is important because it sets out who can benefit from the Bill's provisions, and who can rely upon it to uphold their rights or seek redress for their rights being breached.

If the people included are not properly defined, the legislation won't be able to fully benefit the people it is intended for.

What can the LDAN Bill do?

There are 3 different potential approaches for this Bill.

Proposal 1: 'People who are Neurodiverse'/'Neurodiverse People'

There are differing schools of thought in academic literature about what 'neurodiversity', and 'neurodiverse' means.

We understand that it is, however, commonly accepted that 'neurodiversity' encompasses all of humanity, and does not mean 'neurological disability' or 'otherness'. 'Neurodiversity' describes a population, not individuals. A person cannot, therefore, be individually 'neurodiverse'.

If we use the term neurodiverse in the Bill then it may be too broad. It will cover the whole population including people who are not neurodivergent - 'neurotypical' people - so we don't think it is a good description to use in the Bill.

Proposal 2: ‘People who are Neurodivergent’/‘Neurodivergent People’

We understand that it is commonly accepted that ‘neurodivergent’ means having a mind that functions in different ways to the minds of the majority of people in society.

‘Neurodivergent’ and ‘neurodivergence’ are very broad terms that would allow us to capture a wide range of people within the Bill, including people with learning disabilities, people with learning difficulties such as people with dyslexia, dyspraxia and dyscalculia, autistic people and people with Down’s Syndrome, Attention Deficit Hyperactive Disorder (ADHD), and Fetal Alcohol Spectrum Disorder (FASD). However, the term can also apply to people with acquired brain injuries.

We could also consider how to put some further definitions in the Bill around how we define “neurodivergent” to ensure that it does not become too wide.

Such an approach could allow us to define neurodivergence by reference to common barriers or behaviours faced or expressed by various groups. This would be similar to the approach taken by the Education (Additional Support for Learning) (Scotland) Act 2004, where a child or young person does not require a diagnosis to be able to receive support.

Proposal 3: including specific conditions only in the Bill

We could take an approach that specifically names and defines populations of people in the Bill. This would increase the visibility of these groups and more clearly state who the Bill applies to for the benefit of those people, as well as for practitioners.

For example, we could choose to apply the Bill only to people with a learning disability and autism; add ADHD and FASD; or any combination of neurodivergent conditions. However, if a condition was not specifically listed and defined, then that population would be excluded.

The Bill could include a power that allows future changes to the Bill’s definitions to be made by Regulations, as our understanding of neurodivergence and different conditions evolve. This means that, if certain conditions were left out of the initial Bill, they could potentially be added later, after the Bill has become law.

There is also a question about whether Down’s Syndrome should be specified separately from broader learning disabilities – we understand that some people will support this and some will not.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Intentionally blank

Which of these proposals do you **not agree** with (if any), please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to this topic?

Intentionally blank

Part 2: Overarching Themes

Section 1: Statutory Strategies for Neurodivergence and Learning Disabilities

The Scottish Government has previously produced national strategies on learning disability and separately on autism. Following the COVID pandemic, a joint plan produced in partnership with Convention of Scottish Local Authorities (COSLA) was published covering both learning disabilities and autism – the *Towards Transformation* Plan. The Scottish Government continues to work to this plan pending decisions on the shape and content of the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill.

Scottish Government strategies are scrutinised by the Scottish Parliament and stakeholders. There is currently no formal or legislative requirement for either national or local strategies specifically for neurodivergent conditions or learning disabilities.

What can the LDAN Bill do?

The Scottish Government is proposing to take a broad approach covering neurodivergence and learning disabilities.

We recognise that approaches to previous strategies and polices have been single condition focussed even although many people have more than one condition. Although there will always be a need for some distinct policies according to certain conditions, we think a wider neurodivergent approach is more appropriate in terms of recognising the whole person rather than single conditions and recognising the crossover in the way services and supports are delivered. This includes the workforce delivering them.

There should also be a clear recognition that neurodivergent people and people with learning disabilities should be treated equally whatever condition or combination of conditions they have.

Proposal 1: Introduce a requirement for a national strategy on neurodivergence and learning disabilities to be produced by the Scottish Government.

Proposal 2: Introduce a requirement for local strategies to be produced by some public bodies, for example health and social care partnerships, local authorities, and other public bodies.

Proposal 3: Introduce guidance that could cover a range of topics to be included in national and local strategies.

Proposal 4: Ensure that there is a requirement to review strategies, for example every 5 years for example.

Proposal 5: Ensure that people with lived experience have to be involved in the development of the strategies.

Proposal 6: Consider whether any new accountability mechanism introduced by the Bill should have a duty to review national and/or local strategies and their effectiveness.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Intentionally blank

Which of these proposals do you **not agree** with (if any), please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to strategies?

Intentionally blank

Section 2: Mandatory Training in the Public Sector

One of the key themes we have heard through our scoping exercise, and from stakeholders and the Lived Experience Advisory Panel (LEAP), is that there needs to be greater awareness, training on, and understanding of neurodivergent people and people with learning disabilities. In particular, there is a need for this when people are trying to access help, support and services and to exercise their rights.

Whilst there can be training options available to public sector professionals to help them to better understand and communicate with neurodivergent people and people with learning disabilities, undertaking this training is voluntary and is not necessarily developed or delivered by people with lived experience. This means that people who work in public services, such as in the National Health Service (NHS) or social care, the police and prisons, can choose to do training or not, if it is available to them. It is not consistent across different public services or delivered to a standard. It can vary in quality and effectiveness.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

Having access to staff in public services who are informed and able to understand and communicate with people effectively can make a significant difference:

- People are more likely to engage with services
- People are more likely to seek help and support at an early stage meaning crisis can potentially be avoided
- Staff will feel more confident in meeting needs successfully
- Early engagement with health and social care supports will allow a greater focus on prevention and reduce health inequalities

Proposal 1: Mandatory Training for Public Services

We want to consider how we make training mandatory for public facing staff in some public services.

In the first instance, we would like to consider implementing the same approach as in England, by placing a mandatory training requirement on health and social care staff.

However, we could also consider extending this to other public sector areas. For example, the justice system, which could include the police and prison staff, and in the education system for teachers and other educators.

Although the approach in England relates specifically to training on autism and learning disabilities, we could consider a broader approach for training to be inclusive of neurodivergence more generally, as well as learning disabilities.

As part of our approach to mandatory training we want to think about how people with lived experience should be involved.

What Do You Think?

Do you **agree** with this proposal, please tell us why?

The Royal Pharmaceutical Society (RPS) agrees with this proposal, to make training mandatory for public facing staff in health and social care and would be in support of extending the mandatory nature of training to the education and justice systems. The RPS responded in 2023 to the Department of Health and Social Care consultation on Oliver McGowan draft code of practice for statutory learning disability and autism training.

In our response, we described the urgent need for culture change amongst health and social care staff and a shift in attitude to support people with learning disability and autism safely, respectfully and confidently. The training must be mandatory to act as the lever for change.

Do you **not agree** with this proposal, please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to mandatory training?

It is important to have training materials co-produced and co-designed with individuals who have learning disabilities, autism and neurodivergent people but it is also important to highlight that these individuals' experiences are not representative of everyone. People within the scope of this Bill will have different abilities and experiences depending on the severity of their conditions which is important to capture.

Section 3: Inclusive Communications

Inclusive communication means sharing and receiving information in a way that everybody can understand. For public authorities and people who provide support and services, it means making sure that they recognise that people understand and express themselves in different ways. For people who access support systems and services, it means getting information and expressing themselves in ways that meet their needs. Inclusive communication relates to

all modes of communication: written information, online information, telephone, face to face.

Neurodivergent people and people with learning disabilities with communication support needs can face widespread exclusion and disadvantage. The use of inclusive communication is vital in order to allow people to know and exercise their rights, to live independently and to participate fully in life.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

The Bill could assist by providing a stronger focus on how public authorities' duties around inclusive communication can best be met for neurodivergent people and people with learning disabilities – potentially providing more specificity than the Human Rights Bill (recently consulted upon) and existing public sector duties. The provision of more accessible information links also to our proposals on training. Inclusive communication would inherently be a significant component of that training.

Although we focus on public bodies for the Bill, it will also be important to think about how we extend and promote inclusive communications to other organisations in the future. Some or all of the following could be explored further for possible inclusion in the Bill.

Proposal 1: Alternative means of communication

Provide for neurodivergent people and people with learning disabilities to request access to alternative means of communication where the offered means of communication will not work for them. This could mean being able to request an online or telephone meeting rather than face to face, or a telephone call instead of a letter, or other forms of communication.

It might also be appropriate for neurodivergent people, and people with learning disabilities, to be able to request access to a practitioner with specialist training in certain circumstances. For example, when accessing health care or when navigating the criminal justice system.

Proposal 2: Easy-read

Better access to easy-read versions of all public facing communications and documents made by public authorities. This could include a broad duty to make them available on request and an automatic duty to provide them in certain circumstances, such as:

- a duty on National Health Service (NHS) Boards and Health & Social Care Partnerships (HSCPs) to require appointment letters to automatically be produced in easy read; and
- a duty on the Scottish Police Service, the Scottish Courts and Tribunal Service and the Scottish Prison Service to automatically provide information to people in certain circumstances including when accused or convicted of a crime in an accessible way, including standard bail conditions.

There will be other circumstances too where an automatic duty would be important.

Proposal 3: Neurodivergent and learning disabilities strategies

Local and national strategies are discussed more fully in a previous section. If the Bill were to require local strategies to be produced, this could apply to local authorities, NHS Boards and integration authorities, and potentially other public bodies if appropriate. The Bill could provide the Scottish Government with power to direct what these strategies should cover and this could include how communication needs are met.

Proposal 4: An enforceable Accessible Information Standard for Scotland

Whilst the Accessible Information Standard made under section 250 of the 2012 Act is not enforceable in Scotland, guidance sets out that it should be considered best practice in NHS Scotland organisations. The Bill could provide for an Accessible Information Standard to be enforceable in Scotland with requirements for its implementation and impact to be reviewed.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

The RPS sees the benefits to Proposals 2 and 4 for neurodivergent people and people with learning disabilities and also to address health literacy within the general population.

Making easy-read formats available on request will be a good step forward and further consultation, on which circumstances require an automatic duty for easy-read formats to be available, will be necessary.

Health inequalities can arise when patients have a lack of information about how to manage their condition or how to take medication safely and where patients are not enabled to make decisions about their care. Low health literacy is a significant barrier to shared decision making and enforcing an Accessible Information Standard would support the wider population as well as the people within the scope of this Bill.

Which of these proposals do you **not agree** with (if any), please tell us why?

Proposal 1 relies on the person asking for the information in another format which may not be easy for them to do. The onus should be on the service to offer the alternatives, rather than on the person to identify that the offered information or service will not meet their needs and know to ask for an alternative and what alternative to ask for.

Is there anything else that we should consider in relation to accessible information?

Intentionally blank

Section 4: Data

Better data collection and reporting will enable better understanding of the requirements of people with learning disabilities and neurodivergent people throughout their life and build evidence on whether they are able to realise their rights.

It is important that the population of neurodivergent people and people with learning disabilities are visible in topic specific data collections where these are of particular interest, for example, employment data.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

In order to achieve the desired outcomes, organisations often need to link different pieces of data to paint a full picture. However, a barrier to being able to do this is that there needs to be a legal basis for some types of data to be collected, including personal data. The Bill could provide an opportunity for data to be collected in particular circumstances if that would be beneficial to neurodivergent people and people with learning disabilities.

Proposal 1: Developing a commission(er) with responsibility for data collation

Within the section entitled “Accountability”, there is discussion on the possible creation of a new Commission or Commissioner, or adding to the remit and powers of an existing body. If a Commission or Commissioner (or other relevant accountability model) is created, their functions could include responsibilities for collecting and analysing data on neurodivergent people, and people with learning disabilities.

Additionally a body could have powers to make recommendations to other organisations collecting data to disaggregate their data to the level of neurodivergent people, and people with learning disabilities.

There are some other options that would need to be developed further, however, to help us with this, we would like to know your views on the following:

Proposal 2: Placing duties on some relevant public bodies to collect data on neurodivergent people and people with learning disabilities where this would be helpful for better understanding of the needs of these groups, their experiences, informing service design and improvement, and to allow for evaluation of measures to improve outcomes for these groups.

Proposal 3: Placing duties on some relevant public bodies to provide returns to the Scottish Government regarding local data on people with learning disabilities and neurodivergent people, where this would be helpful for better understanding of the needs of these groups, their experiences, informing service design and improvement, and to allow for evaluation of measures to improve outcomes for these groups.

Proposal 4: Consideration of the development of a Scottish version of the Learning Disability Mortality Review (LeDeR) programme. This helps reduce inequalities in care for people with a learning disability. It could reduce the number of people dying sooner than they should.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Intentionally blank

Which of these proposals do you **not agree** with (if any), please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to data?

A round table involving representatives from across pharmacy in Scotland was held at the Scottish Parliament on 3 October 2022. The aim was to discuss how to better enable people with disabilities to work in pharmacy. The meeting was hosted by Jeremy Balfour MSP, Convener of the Cross-Party Group on Disability.

A recent Royal Pharmaceutical Society (RPS) survey identified disability as the biggest barrier to working in pharmacy. In response, RPS has launched a disability awareness campaign which comprises: challenging barriers to entry to pharmacy, calling for more accessible working environments and encouraging employers to collect data on disability in the workplace. More information is available at: www.rpharms.com/recognition/inclusion-diversity/disability

One of the actions agreed at the round table is; to have a better understanding of the workforce and their needs, organisations should commit to collecting disability data on their workforce. We are supportive of mechanisms to improve our understanding of the number of people affected by disability and what support is required by having better data insights.

Section 5: Independent Advocacy

Independent advocacy can play a key role in helping people to secure their rights. An independent advocate will help someone's voice be heard. This can help people to make choices about their services and supports. There are different kinds of independent advocacy and this includes collective advocacy when people are supported to come together to talk about their experiences and challenge discrimination.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

We are looking at how we can improve rights through the availability of independent advocacy through our policies on:

- The creation of a National Care Service (NCS) through the National Care Service (Scotland) Bill (the "NCS Bill"); and,
- Our response to the Scottish Mental Health Law Review.

Proposal 1: Strengthen and improve access to existing advocacy provisions

We want to take time to make sure that there is more consistency around our approach to advocacy and we want to involve people with lived experience in helping us to design this. To do this, we will:

- work with the Scottish Independent Advocacy Alliance, other organisations and people with lived experience to help identify how best to strengthen rights and access to provision; and,
- develop a consistent definition of 'Independent Advocacy'.

This work will take place across the Scottish Government and we will ensure that it includes specific consideration of the rights of neurodivergent people and people with learning disabilities. How we legislate for advocacy for these groups will depend on the proposed changes in the NCS Bill and to mental health legislation, including whether people with a learning disability or autistic people remain covered by provisions within the 2003 Act.

This means that **we are not currently proposing a broad right in this Bill to independent advocacy for neurodivergent people and people with learning disabilities**. However, we think there are some other things we could explore in the LDAN Bill especially since the right to advocacy under the Mental Health Act only applies the duty to the State Hospital, Health Boards and local authorities (although Health and Social Care Partnerships

may in some cases be carrying out this duty) and only applies to a subset of neurodivergent people (as people with a "mental disorder" under the legislation includes people with learning disabilities and autistic people).

Therefore, we could:

- Provide a power in the Bill that allows us to make regulations around the provision of independent advocacy for neurodivergent people and people with learning disabilities whilst further discussions take place about how to improve this.
- Include a provision in the Bill that places a duty on all public bodies to ensure that all neurodivergent people and people with learning disabilities are given information about advocacy and how to appoint their own independent advocate to support them.

Proposal 2: Improve our Understanding of Independent Advocacy

We will also in the meantime identify and gather evidence on specific circumstances where a right to independent advocacy could make a difference.

For example, we know that there are some circumstances where additional support could help, as follows:

- Evidence research published by the Scottish Commission for Learning Disabilities suggests that where women with a learning disability have been subject to gender-based violence they struggle to access support due to discrimination and stereotyping. There can be significant barriers to accessing support and to effective support when people are able to come forward. Professionals may not recognise that someone has learning disabilities and if they do they may not have any relevant training in how to support them.
- The Equalities and Human Rights Commission, in its Inquiry report into housing for disabled people in 2018, recommended that local authorities should ensure that people with learning disabilities have access to good-quality, accessible advice and advocacy when discussing housing options and to help them navigate complex systems.

We could consider whether the Bill could provide some specific legal rights to free independent advocacy in these circumstances, as well as others.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Intentionally blank

Which of these proposals do you **not agree** with (if any), please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to independent advocacy?

Any patient-facing pharmacist could be required to advocate for patients including those within the scope of this Bill. This may be in the form of recognition of their needs, providing support including safeguarding vulnerable people.

Part 3: Specific Themes

This part of the consultation sets out specific themes that arose during our scoping work, and through our work with the LEAP.

Section 1: Health and Wellbeing

Neurodivergent people and people with learning disabilities experience poorer health outcomes than the general population, which can be preventable, resulting in below average life expectancies and death caused by preventable conditions.

It is important that people with learning disabilities and neurodivergent people have good health outcomes in order to access their rights and be able to participate fully in life. Poor health creates an additional barrier for neurodivergent people and people with learning disabilities, potentially limiting or impacting their ability to be active in their communities, access employment or maintain relationships.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

The Bill can help to create the right conditions for people with learning disabilities and neurodivergent people to access supports and services successfully when they need them, helping to prevent illness and improving overall health and wellbeing.

Proposal 1: Neurodivergent and Learning Disabilities Strategies

We are proposing legislative requirements for national and local strategies in future and we could set out what the strategies must include. For example, in relation to health care, we could ask Health Boards, Integration Authorities and Local Authorities to set out in their local strategies how their workforce planning and service planning has taken into account the needs of the neurodivergent and learning disability populations.

Proposal 2: Mandatory training for the health and social care workforce

We have set out proposals around mandatory training. In England, the UK Government has introduced a new legal requirement for all health and social care services registered with the Care Quality Commission (CQC) to provide employees with training appropriate to their role on learning disabilities and autism. In England, this is called the Oliver McGowan Training.

We propose to legislate for a similar training requirement for health and social care in Scotland in the LDAN Bill. However, we could take a wider approach so that the mandatory training focusses on learning disabilities and neurodivergence - not just learning disabilities and autism.

Proposal 3: Inclusive communications and Accessibility

We have set out proposals on inclusive communications and this will impact on healthcare. We propose to legislate for neurodivergent people and people with learning disabilities to be able to request access to alternative means of communication where the offered means of communication is not suitable work for them. We also propose better access to easy-read versions of public facing communications and documents. This could include a broad duty to make them available on request as well as an automatic duty to provide them in certain circumstances, such as a duty on National Health Service (NHS) Boards and Health and Social Care Partnerships (HSCPs) to require appointment letters to automatically be produced in easy read.

In addition, we also propose legislating for an Accessible Information Standard for Scotland which would be applicable to NHS Scotland organisations.

We also plan to do more work to look at how far existing complaints systems meet the needs of neurodivergent people and people with learning disabilities.

Proposal 4: Patient Passports

We could place a duty on Health Boards, HSCPs and Local Authorities to ensure that a person's "passport" is able to follow them through whichever care pathways they are accessing, such as a hospital or care home admission, and that these passports include important information about their needs and preferences, including how to communicate with them in an accessible way. This could be similar to Advance Statements that can be used by people with mental health conditions, or it could be based on Promoting a More Inclusive Society (PAMIS)'s Digital Passports.

Passports like these help medical professionals to know how best to support people, their preferred treatments or communication styles, and can reduce barriers and frustration when people have to repeatedly restate their needs. There is currently no statutory duty placed on patient passports and, although they are encouraged as best practice, implementation is inconsistent.

Proposal 5: Annual Health Checks

We are currently rolling out annual health checks for people with learning disabilities across Scotland. A health check will be offered to everyone who is eligible by end March 2024, backed by £2m of funding per year. Given the really good evidence of significantly poorer health outcomes of people with learning disabilities, annual health checks will make a big difference. We propose to include the delivery of annual health checks as a specific legal duty in the Bill.

Autistic people, people with Fetal Alcohol Syndrome Disorder (FASD) and Attention Deficit Hyperactive Disorder (ADHD) also have poorer physical health outcomes and/ or a lower life expectancy than the general population. There are many possible reasons for this gap, including poor professional understanding among health and care staff, which can result in these groups people having signs of illness or their needs overlooked. Without the right understanding, these groups can miss out on adjustments needed for them to engage in medical appointments which can lead to distressing experiences and avoiding seeking advice. We could include a duty in the Bill which, in effect, extends the current annual health checks for people with learning disabilities to autistic people. We could also consider extending this to people with FASD and ADHD. We would want to first gather more evidence of the need for this.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

We agree with all of the proposals, recognising that an overarching local strategy will allow assessment and therefore relevant services to address local need. We agree with the proposal to make training mandatory for public facing staff in health and social care and would be in support of extending the mandatory nature of training to the education and justice systems.

There is an urgent need for culture change amongst health and social care staff and a shift in attitude to support people with learning disability and autism safely, respectfully and confidently. The training must be mandatory to act as the lever for change.

Making easy-read formats available on request will be a good step forward and further consultation, on which circumstances require an automatic duty for easy-read formats to be available, will be necessary.

Health inequalities can arise when patients have a lack of information about how to manage their condition or how to take medication safely and where patients are not enabled to make decisions about their care. Low health literacy is a significant barrier to shared decision making and enforcing an Accessible Information Standard

would support the wider population as well as the people within the scope of this Bill.

There will be benefits in a patient-held “passport” of relevant information that would assist all healthcare professionals to support people within the scope of the Bill. This patient-held information should include information on the current medicines that a patient is taking, any specific administration information including topical medicines and those administered via enteral tubes. Information about tools used to support concordance with medicines, who supports the patient to take their medicines and when they take them should also be included.

Any annual health check should include a medicines review particularly if the patient is experiencing problematic polypharmacy.

Which of these proposals do you **not agree** with (if any), please tell us why?

Intentionally blank.

Is there anything else that we should consider in relation to health and wellbeing?

It will be useful to consider the principles of Realistic Medicine when caring for people within the scope of this Bill, to ensure that a person-centred approach is taken and their preferences and goals are reflected in care plans. A patient-held passport could be implemented alongside a single integrated patient-held digital health record where all healthcare professionals, regardless of setting could read and have write access to.

Section 2: Mental Health and Capacity Law

Current mental health, capacity and adult support and protection legislation in Scotland can, in certain circumstances, apply to autistic people and people with learning disabilities.

The law uses the term ‘mental disorder’, as defined within the Mental Health (Care and Treatment) (Scotland) Act 2003 (the “Mental Health Act”). We accept that this term is seen by many as stigmatising and offensive towards people with lived experience. However, it is used in this document to reflect the language of the legislation, where needed.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

The proposed purpose of the LDAN Bill is to better protect, respect and champion the rights of neurodivergent people and people with learning disabilities. The LDAN Bill could, therefore, propose to make changes to mental health and capacity legislation in Scotland as it relates to autistic people and people with learning disabilities. Those changes could be to:

- (1) specifically remove learning disability and autism from the scope of mental health and incapacity legislation; or,
- (2) change “mental disorder” to a term that is not stigmatising or offensive.

However, we are not at this time consulting on any proposals for legislative change in this area. This is not because we do not think it is important but because more work needs to be carried out to consider how we balance the different recommendations of the Rome report and the Scottish Mental Health Law Review (SMHLR).

We know that people with learning disabilities and autistic people have been asking for change in this area for a long time. We therefore need to consider what we can do to address these concerns and what this would mean in practice, including any consequences to the rights and protections the Mental Health Act provides to people with learning disabilities and autistic people who are currently treated under this legislation.

We know that people took time to make their views clear to both the Rome review and the SMHLR. We are not asking for those to be reiterated. We now want to develop options and consider whether there is an evidence-base for potentially making changes, ahead of wider reform. We need to more fully understand the consequences and implications of any changes, including any unintended consequences, to ensure that people with learning disabilities and

autistic people still have appropriate rights, protections and support where needed.

For example, if we were to remove learning disability and autism from the current definition of mental disorder, we need to understand what this means for some of the people who are currently receiving care and treatment under the Mental Health Act.

A short-term piece of work is being prioritised as one of the first actions under the Mental Health and Capacity Reform Programme. That work will consider the current definition of mental disorder within the Mental Health Act and the approach to compulsory care and treatment and safeguards. This will include, amongst other aspects, consideration of whether learning disabilities and autism should continue to fall within the definition, along with updating the language of the definition.

The outcome of this work may lead to a change in the law. The LDAN Bill may be an appropriate place to make those changes, however, that will be determined once the work has concluded.

Initial work on this has begun with a scoping workshop held in November this year to help inform the design of the workstream.

What Do You Think?

Do you agree with this approach? Please tell us why?

Intentionally blank

Section 3: Social Care

For those people who need it, social care, social work and community health are vital supports that enable people to live fuller lives connected to their local communities.

People with learning disabilities and neurodivergent people are more likely to present with care and support needs compared to some other groups and those needs may be perceived as more complex by the people providing the services. Without the right support from care practitioners, people are much more likely to need hospital care. This applies in particular to those with complex care needs.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

Proposal 1: Neurodivergent and learning disabilities strategies

We are proposing legislative requirements for these strategies in future. For local strategies, we could ask Integration Authorities and local authorities to set out how they and organisations they commission will take into account the needs of neurodivergent people and people with learning disabilities in their workforce planning and workforce training, including how they are meeting requirements around inclusive communications and accessibility.

Proposal 2: Mandatory training for the health and social care workforce

In England, the Health and Care Act 2022 introduced a new legal requirement for all health and social care service providers registered with the Care Quality Commission (CQC) to provide employees with training appropriate to their role on autism and learning disabilities – the Oliver McGowan Training.

We propose to legislate for a similar training requirement for health and social care staff in the LDAN Bill. However, we could take a wider neurodivergent approach to the training so that it focusses on neurodivergence and learning disabilities, and not just autism and learning disabilities.

Proposal 3: Inclusive communication and Accessibility

We propose to legislate for neurodivergent people and people with learning disabilities to be able to request access to alternative means of communication where the offered means of communication will not work for them. We also propose better access to easy-read versions of public facing communications and documents made by public authorities. This could

include a broad duty to make them available on request and an automatic duty to provide them in certain circumstances, such as: a duty on National Health Service (NHS) Boards and Health and Social Care Partnerships (HSCPs) to require appointment letters to automatically be produced in easy read.

We also plan to do more work to look at how far existing complaints systems meet the needs of neurodivergent people and people with learning disabilities.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

See answer to Part 3 Section 1 on strategies, mandatory training and inclusive communication.

Which of these proposals do you **not agree** with (if any), please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to social care?

Intentionally blank

Section 4: Housing and Independent Living

Appropriate housing for neurodivergent people and people with learning disabilities is crucial in helping them to live safe and independent lives. Whilst most people live in mainstream housing, for some people accessible or supported housing will be the most appropriate option.

Unsuitable housing can have a negative impact on neurodivergent people, people with learning disabilities, their families and their carers, including impacting on mobility, poorer mental health social isolation and a lack of employment opportunities. Appropriate housing is therefore an essential requirement of independent living.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

The Bill could provide a stronger focus on how public authorities' duties around housing and independent living can best be met for people with learning disabilities and neurodivergent people. Some or all of the following could be explored further for possible inclusion in the Bill, or other work.

Proposal 1: Advice, advocacy and guidance

Adequate housing advice, support and advocacy were thought to be necessary to enable neurodivergent people and people with learning disabilities to access their rights to housing and independent living. There is already an advice service available, Housing Options Scotland, however this is not an independent advocacy service.

Whilst another section of this consultation deals with independent advocacy, this could include consideration of the introduction of specialist advocacy services for housing support.

Proposal 2: Neurodivergence and learning disabilities strategies

Strategies are discussed in the overarching themes section of this consultation where we propose legislative requirements for national and local strategies in future. We could require strategies produced by local authorities to set out how independent living principles are embedded into assessment and allocations policies, to ensure real choice and control.

Local Authorities must currently produce Local Housing Strategies. We could consider whether these must also set out how the needs of neurodivergent people and people with learning disabilities are met, and to evaluate their progress.

With regard to Integration Authorities, we could consider requiring that their neurodivergent and learning disabilities strategies must: set out how housing, care and health services are integrated; describe the supports available to people to help them live independently; and, evaluate progress against this.

Proposal 3: Mandatory training for housing professionals

As set out in the overarching themes section, we have proposed introducing a statutory requirement for learning disabilities and neurodivergence training for professionals who work in health and social care settings. We could consider extending this requirement to housing service professionals.

Proposal 4: Data

We could consider the following in relation to data collection on housing and independent living:

- Relevant public bodies, such as local authorities, to improve the way data is collected and shared, on the requirements of neurodivergent people, and people with learning disabilities, and their housing needs.

- Collection of data on how many people with learning disabilities are considered not to have access to appropriate housing.

Proposal 5: Inclusive communications

We are making proposals to improve communications. We think there is likely to be a need for some documents in relation to housing to be available in easy read formats.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Intentionally blank

Which of these proposals do you **not agree** with (if any), please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to housing and independent living?

Intentionally blank

Section 5: Complex Care – Coming Home

We know that some people with learning disabilities who have more complex care needs spend a longer time in hospital than is medically necessary often due to a lack of appropriate community support. This is called delayed discharge. We also know that some people are living away from their home communities and families even though they did not choose to. This is often called living in an inappropriate out-of-area placement.

The Scottish Government knows that this is completely unacceptable and we want to change it. We have been working to improve this for people with learning disabilities and complex care needs and this is often called the *Coming Home* programme.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

Proposal 1

Dynamic Support Registers are our new way of ensuring we know how many people are in a delayed discharge or inappropriate out of area placement and involve collecting and publishing this data. We want to strengthen the Dynamic Support Registers and the processes around them through the LDAN Bill so that it becomes law for the relevant local public body (Integration Authority, Local Authority, Health Board) to hold these. This would help to ensure that there is visibility for people with learning disabilities and complex care needs on a national level, and that a consistent approach is taken.

Each area would be required to have a Dynamic Support Register, and to report data from it to Public Health Scotland (PHS) for it to be published. It is important to note that personal information about people on Dynamic Support Registers is not published, and none of the data that is published nationally identifies the individuals that it is about.

If we do not make this a law, then Integration Authorities could decide to monitor people in a different way. It could also be more difficult to ensure that sufficient planning and early intervention is being put in place.

Proposal 2

The National Support Panel (“the Panel”) should work with and support the new Dynamic Support Registers and Peer Support Network and we think there are different ways to do this. We want to consider different options, including whether we should make the Panel statutory in the LDAN Bill.

The Coming Home Implementation Report recommended a National Support Panel that could understand and hear from families and individuals about their individual circumstances. One way to do that is to establish a panel that would look at every individual case.

Although we have thought about this, we do not think it would work in practice due to the length of time it would take a panel to consider every case. We would need several panels to make this work and we would need to use our small pool of experts in Scotland to do this. We think this would make the situation worse for people who need quick solutions.

We have set out below the options we think could work under proposal 2.

Option A: Legislative Panel Conducting Individual Reviews within Defined Parameters

This type of Panel would be made up of sector experts and people with legal and clinical knowledge.

This type of Panel would have a function allowing it to conduct investigations into individual cases on a discretionary basis. The Panel could have a list of potential circumstances that may give rise to a review or investigation and where the Panel members might decide that an investigation would provide a good example of what could be done to address complex barriers or issues.

This would mean that not everyone would get an individual review. However, Integration Authorities, Local Authorities and Health Boards would be able to use the findings and learnings from the Panel's example individual case reviews to improve their practices.

The Panel would be reviewing fewer cases and therefore the demand on the Panel and its members would be reduced to a manageable level.

Option B: Legislative Panel Conducting Peer Reviews of Local Processes

Another option for a legislative Panel would be one that conducts Peer Reviews of Local Processes.

This Panel would consist of a group of experts who could provide checks and balances through a model of peer reviews. It would be made up of a 'bank' of expert members, including people with lived experience, who could be brought in to conduct peer reviews of the work and processes of Health

Boards, Local Authorities and Integration Authorities in relation to this population.

This process would involve the Panel going to a local area and reviewing the relevant public bodies' systems and processes in relation to complex care needs, to identify key challenges and issues. The Panel would then provide recommendations or decisions based on the peer review that the Health Board, Local Authority and Integration Authority would have to implement. The Panel would provide follow up support and would monitor progress.

The Panel might review systems and processes that could be of benefit to everyone – things like:

- Commissioning appropriate accommodation and services
- Securing and financing support packages
- Identifying suitable support providers.

This panel would be legislative, so the relevant public bodies (Health Board, Local Authority, Integration Authority) could be required by law to participate and could also be required by law to implement the recommendations made by the Panel.

Although this type of Panel would not be able to review individual cases as part of their role, their reviews would have a significant impact on those individual people and their outcomes.

Option C: Non-legislative Panel Conducting Peer Reviews of Local Processes

A non-legislative National Support Panel Conducting Peer Reviews of Local Processes would work in the same way as the Panel described in Option 2, however it would not be legislative.

Because this Panel would be non-legislative, it could be set up more quickly than a legislative one. However, it would not be the law for Health Boards, Local Authorities or Integration Authorities to participate in peer reviews. The peer reviews would be voluntary, with the option of local areas being able to request a review.

What Do You Think?

- Should there be a statutory duty upon the relevant public body or bodies (Integration Authority, Health Board, Local Authority) to hold a Dynamic Support Register? (Proposal 1)

Yes No

Please tell us more?

Intentionally blank

- Which of the options for the National Support Panel (Proposal 2) do you think has the most benefits?

- Option A
- Option B
- Option C

Please tell us more?

Intentionally blank

Are there any other options that you think we should consider?

Intentionally blank

Section 6: Relationships

Children, young people and adults that have a learning disability or are neurodivergent have the right to the same opportunities as anyone else to live satisfying and valued lives and, to be treated with the same dignity and respect. They should be able to develop and maintain relationships and get the support they need. However there are a range of barriers that prevent some neurodivergent people, and people with learning disabilities, from having healthy and fulfilling relationships. This often causes loneliness, social isolation, poor mental health, and trauma.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

Proposal 1: Access to Independent Advocacy

Another section of this consultation discusses independent advocacy. We would like views on any specific circumstances where a right to independent advocacy could make a difference. With regards to this section on relationships, this could include:

- (a) where a parent with learning disabilities is at risk of their child being taken into care; and,
- (b) where a neurodivergent person or person with learning disabilities have disclosed gender-based violence or abuse. This would aim to enable them access to justice and support (as recommended in *Unequal Unheard*).

Proposal 2: Data

The overarching section of this consultation sets out some broad proposals on data. With regards to relationships, we could consider data collection on the following:

- (a) Data collection and reporting on gender-based violence affecting women with learning disabilities (as recommended in *Unequal Unheard*).
- (b) Data collection and reporting on the number of parents with learning disabilities in Scotland, including where their children have been removed from their care. This acknowledges that there is currently a lack of knowledge of this population which may impact on the availability and range of services provided.

Proposal 3: Inclusive communications

We have made some proposals on inclusive communications, and we have asked for views on particular situations where a strengthened right to and focus on inclusive communications would have an impact. With regards to relationships, we could explore the following:

- (a) Where a person with learning disabilities is at risk of having their child removed from their care. This could include information automatically being provided in easy-read, and support provided by professionals who have specialist training in learning disabilities.
- (b) Where a neurodivergent person, or person with learning disabilities, has disclosed gender-based violence or abuse and is interacting with the justice system. This could include information automatically being provided in easy-read, and support provided by professionals who have specialist training in learning disabilities.

Proposal 4: National and Local Strategies

We have set out a proposal for national and local strategies. As part of this, we could explore whether those strategies should include the following with regard to relationships:

- (a) Local authorities to set out how a multi-disciplinary team and Whole Family Approach is being implemented to proactively support neurodivergent parents and parents with learning disabilities, including reporting on and evaluating this approach.
- (b) Police Scotland to set out how people with learning disabilities are provided specialist support to report crimes, including gender-based violence and abuse.
- (c) Local authorities or Education authorities to set out how Relationships, Sexual Health and Parenthood (RSHP) education is provided to all Additional Support Needs learners.
- (d) Local authorities to set out how they provide services to neurodivergent people and people with learning disabilities to enable them to be active and involved in their communities and meeting other people, rather than being isolated at home as is often the case. This could include evaluating the impact of these services.

Proposal 5: Accountability

Another section of the consultation sets out options for increased accountability. This includes proposals for a new Commission/er specifically

for neurodivergent people and people with learning disabilities, as well as considering changes to the power and remit of existing Commissions or Commissioners.

If a new or existing body had powers of investigation they may be able to investigate ongoing and historic cases of child removal from parents with learning disabilities, based on their disability.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Intentionally blank

Which of these proposals do you **not agree** with (if any), please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to relationships?

Intentionally blank

Section 7: Access to Technology

Over recent years digital access has become increasingly important to the way we live our lives. It is important to stay connected with family, friends and our communities, as well as being able to access learning and employment opportunities online. Digital inclusion therefore plays a key role in a person's independence. The pandemic made the importance of digital access even more critical, due to many services moving online.

There are many people with learning disabilities who have difficulties accessing digital devices or using digital services and are at risk of being digitally excluded.

There is a need for security, awareness and training in terms of how to use technology and how to use technology safely.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

We have made proposals for inclusive communications and we would expect this to have a positive impact on increased digital access.

Proposal 1 - We could also consider how to ensure that training is available to people with learning disabilities in digital skills and online safety.

Proposal 2 - We could gather clear data on the number of people with learning disabilities and neurodivergent people accessing and using technology.

Proposal 3 - We could make more support available to directly help people with learning disabilities and neurodivergent people access and use technology.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Intentionally blank

Which of these proposals do you **not agree** with (if any), please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to access to technology?

Intentionally blank

Section 8: Employment

Employment can help people to feel valued and contribute to more independent living. While employment should not be seen as the only option

to be a valued member of society, opportunities and choices to work are important for everyone.

The Scottish Government is focused on supporting those furthest from the labour market to progress towards, enter, and sustain employment. We are committed to high quality, fair and inclusive work and employability support. However, we know that many neurodivergent people and people with learning disabilities continue to face barriers to employment.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

Disabled people face some of the most persistent labour market barriers, which is why we have committed to at least halve the disability employment gap by 2038. We agree that more needs to be done to support people with learning disabilities and neurodivergent people to access fair and sustainable employment, particularly in light of the available data which suggests these groups achieve some of the poorest labour market outcomes, even compared to wider disability groups.

However, given the work that is currently ongoing, and our limitations on changing the law in this area, we are not currently proposing any legislative changes. Instead, we intend to explore the following in order to promote and encourage more inclusive approaches:

- Under our Fair Work First approach, the recipients of public sector grants and contracts can be challenged in new ways to work towards meeting the Fair Work First principles. This includes taking action to create a more diverse and inclusive workplace. We can highlight to employers that it is best practice to ensure they undertake disability equality training, including more specialist training for line managers on individual impairments, such as neurodivergence and learning disabilities, where this would enable appropriate support and reasonable adjustments to be provided to staff.
- Training for job coaches on neurodivergence and learning disabilities in the workplace: we are taking forward the Review of Supported Employment within Scotland (2021), which recommended that work continues to support the professionalisation of the supported employment workforce, including ensuring it is well equipped to provide appropriate support to people with learning disabilities and neurodivergent people.

- We will review the language within impairment level (employability) data that the Scottish Government collects on employability to ensure it is consistent with the language individuals and professionals use.

What Do You Think?

Do you agree with this approach? Please tell us why?

Intentionally blank

Section 9: Social Security

Social security is a human right and is essential to the realisation of other human rights. None of us know when we might need it. It is a shared investment to help build a fairer society, together. Social security is key for disabled people, including neurodivergent people and people with learning disabilities, to gain independence from families, boost their social participation and support their ability to live with dignity. It can enhance the productivity, employability and economic development of disabled people. And, ultimately, help to tackle inequalities and allow every person in Scotland to live with dignity, fairness and respect.

We know that neurodivergent people and people with learning disabilities are less likely to be in employment and are therefore more likely to need social security support. For those who are in employment, we know that they may also need social security support if they are unable to work full time, or to help with the additional costs of being disabled.

Neurodivergent children and young people, and children and young people with learning disabilities, and their families, may also need support with the additional costs of being disabled.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

Proposal 1 National and Local Strategies

Requiring Social Security Scotland to report on, and evaluate, how its inclusive communication strategies have taken into consideration the needs of people with learning disabilities and neurodivergent people.

Proposal 2: Mandatory training for social security staff

We have set out proposals for mandatory training for health and social care staff and we invite views on whether there are other public sector areas this should extend to.

With regard to Social Security Scotland, we are aware that there is likely to be a significant proportion of people with learning disabilities and neurodivergent people who are eligible for social security, given the employment rates. We could therefore explore whether there is a need for training on learning disabilities and neurodivergence to be a statutory requirement for some Social Security Scotland staff.

Proposal 3: Data collection

We have set out broad proposals on data in the overarching themes section. To better understand neurodivergent and learning disabilities groups and their needs, including how many people are accessing social security benefits, current data reporting could be disaggregated further. For example, current data reporting on Adult Disability Payment (ADP) in Scotland has a category for “autism and other developmental disorders” but does not report on learning disabilities, Attention Deficit Hyperactive Disorder (ADHD), and Fetal Alcohol Spectrum Disorder (FASD) or other conditions separately.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Intentionally blank

Which of these proposals do you **not agree** with (if any), please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to social security?

Intentionally blank

Section 10: Justice

Although there is a lack of robust data, there are indications that people with learning disabilities and neurodivergent people may be over-represented in the criminal justice system and that their needs can be unidentified and unmet. This can be because of inaccessible information, lack of knowledge and lack of a reliable method of identifying people with vulnerabilities.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

There are many developments happening across the civil and criminal justice system that have the potential to be very positive for neurodivergent people and people with learning disabilities. Some of those changes are broad and not specifically adapted for neurodivergence and learning disabilities but trauma focused work is a key theme that can be built upon for these groups.

We think that there is merit in exploring the extent to which the Bill could seek to improve the position for a neurodivergent person or person with learning disabilities interacting with the justice system in the following ways.

Proposal 1: Strategies and a co-ordinated approach

We could consider bringing together a single national strategy that deals with neurodivergence and learning disabilities in the civil and criminal justice systems. There are many complex interactions between different parts of the justice system that would benefit from this approach and allow a clear set of priorities to be developed reflecting the other proposals below.

Proposal 2: Data and the identification of neurodivergent people and people with learning disabilities in the justice system

It is a critical requirement to ensure that neurodivergent individuals and people with learning disabilities and their needs can be appropriately identified at key points of contact with the justice system. This is to ensure that:

- The right kind of communication is used and it is adapted for neurodivergent people and people with learning disabilities;
- Any additional impact of a situation, for example admittance to custody is understood and appropriate adjustments made such as to the physical custody environment;
- Additional supports are provided, such as an Appropriate Adult in criminal justice and access to independent advocacy;
- Appropriate information is fed into key decision points in the justice system to help provide more accurate future data.

At present the onus in the criminal justice system is often on individual police officers to recognise and flag up any additional needs. We want to consider how best to ensure that neurodivergence and learning disabilities are better identified at relevant points and by relevant staff.

The Bill could potentially place a duty on public bodies such as the Police, Crown Office and Procurator Fiscal Service (COPFS), and the Scottish Prison Service to seek to identify neurodivergence and learning disabilities when people are coming into contact with the criminal justice system. This could apply at key points such as:

- When a victim or witness comes forward
- When someone is arrested and brought into custody
- When someone is sentenced
- When someone is admitted to prison to begin a sentence

This is not about diagnosis - it is about identifying the need for support.

It may also be possible to investigate whether a common screening tool across criminal justice agencies could help.

Proposal 3: inclusive communication

Inclusive communication is critical for neurodivergent people and people with learning disabilities and we have set out broad proposals around this in the overarching themes. Those in contact with the criminal and civil justice systems need to be able to fully understand the information they are being given whether they are a victim, witness, party or potential offender. If information is not accessible this can result in people being either unaware of their rights or unaware that they are at risk of breaching standard or special bail conditions. The approach we have set out earlier in this consultation on inclusive communications proposes:

- Better access to easy-read versions of public facing communications and documents made by public authorities. This could include a broad duty to make them available on request and an automatic duty to provide them in certain circumstances. For example, a duty on the Police, the Scottish Courts and Tribunal Service and the Scottish Prison Service to provide information to people accused or convicted of a crime in an accessible way, including standard bail conditions.
- Provide for neurodivergent people and people with learning disabilities to request access to alternative means of communication where the offered means of communication will not work for them. This could mean being able to ask for an online meeting rather than face to face or a telephone call instead of a letter.

Proposal 4: Mandatory Training

Proposals in relation to mandatory training are set out in the overarching themes section. We propose that the Bill provides for training on neurodivergence and learning disabilities to become mandatory for health and social care staff, and we are seeking views on whether this should be extended to other public bodies.

We could therefore consider extending the requirement for mandatory training to police, prison, COPFS and relevant courts and tribunals staff. We think that mandatory training for staff in the civil and criminal justice systems is a key element to support better identification of needs, better support and improved communications. We know that not all staff will need this but public facing staff would, and we could consider how to define this in the Bill for new and existing staff.

Proposal 5: Advocacy

We have set out our proposals on advocacy in the overarching themes section. There is currently work going on across the Scottish Government to consider a consistent approach to advocacy and this includes neurodivergent people and people with learning disabilities. We do not want to take anything forward separately on advocacy that is not informed by this work. If necessary, and if this work is not concluded, we could consider the Bill conferring a power that would enable the Scottish Ministers to make any necessary regulations on independent advocacy for neurodivergent people and people with learning disabilities, should this be required.

In addition, mandatory training could include information about the role and availability of advocacy in the civil and criminal justice systems as well as information about the Appropriate Adults scheme.

Proposal 6: Diversion from Prosecution (DfP)

As with others, neurodivergent people and people with learning disabilities may benefit from the use of DfP where they are alleged to have committed offences. Better identification within the justice system and training for staff to understand how to do this could help. A requirement to identify needs should allow better information to be provided by the Police to COPFS in the Standard Prosecution Report (SPR). The SPR is the basis on which COPFS can make a decision about DfP. This will also help local authorities when they complete their DfP assessment as they would need to take this into account.

Training and awareness raising provided to professionals working in COPFS on neurodivergence and learning disabilities, how it impacts on people's lives, and how it can have an influence on offending behaviour could help with increasing consistency of decisions around DfP for these groups. This training could include the role of support in reducing the likelihood of re-offending.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Intentionally blank

Which of these proposals do you **not agree** with (if any), please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to justice?

Intentionally blank

Section 11: Restraint and Seclusion

We know that neurodivergent children and young people and those with learning disabilities can have negative experiences at school where restraint or seclusion is used in response to distressed behaviour.

We know that adults in certain settings, including hospital or care settings, may also have negative experiences as a result of restraint or seclusion being used inappropriately.

It is not acceptable for neurodivergent people and people with learning disabilities, or anyone else, to be subject to the misuse of restraint, seclusion or other restrictive practices. This can lead to increased and unnecessary distress and trauma.

What can we do about it?

We have committed to exploring options for legislation in this area that would apply equally to all schools (education authority, independent and grant-aided). This includes the option of statutory guidance.

However, we do not think that the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill would be the right place to do this because it would need to apply to all children and young people, and not just neurodivergent children and young people and children and young people with learning disabilities.

What Do You Think?

Do you agree with this approach? Please tell us why?

Intentionally blank

Section 12: Transport

We know that accessible travel can enable people to enjoy a better quality of life, feel more connected to their community and reduce social isolation. However, we understand that there can still be barriers to transport and travel for neurodivergent people and people with learning disabilities.

Not being able to travel easily, comfortably and safely will impact many areas of life such as employment, education and access to health, social care and day services, and basic needs like getting shopping and socialising.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

An ambitious and wide ranging programme of work is already underway to make improvements for disabled people when travelling, and this work is being informed and influenced by people with lived experience.

Whilst some aspects of transport are reserved to the UK Parliament and UK Government, there are some areas that we could explore in relation to the LDAN Bill:

Proposal 1: National and Local Strategies

Regional transport Partnership's (RTPs) were established to strengthen the planning and delivery of regional transport so that it better served the needs of people and businesses. They publish regional transport strategies specific to each region, supported by a delivery plan. RTPs bring together local authorities and others to take a strategic approach to transport in each region of Scotland. We could consider requiring RTPs to set out in their transport strategies how the specific needs of neurodivergent people and people with learning disabilities are being considered and met through travel information systems and accessibility initiatives.

We could also consider a requirement to set out in RTP travel strategies how staff across different modes of transport are being trained in disability awareness, how that training incorporates specific training on neurodivergence and learning disabilities, and the uptake of this.

Proposal 2: Mandatory training

Various actions and commitments around disability awareness training for transport staff are in place or are currently being progressed but is not a statutory requirement and is not necessarily consistent.

We have also set out in a previous section proposals for mandatory training for public sector staff on neurodivergence and learning disabilities, primarily in relation to health and social care staff, and have invited views on whether this requirement should be extended to other public sector areas. We could consider extending this requirement to transport staff in Scotland.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Intentionally blank

Which of these proposals do you **not agree** with (if any), please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to transport?

Intentionally blank

Section 13: Education

This section relates to children and young people in early years, primary and secondary school education settings. Higher and Further Education and University education is considered within the scope of another section of the consultation, called Children and Young People -Transitions to Adulthood.

Neurodivergent children and young people, and children and young people with learning disabilities should be able to reach their full potential and live happy and fulfilling lives. Without the right learning experiences and support, these children and young people are likely to be disadvantaged, their quality of life adversely affected and their aspirations unreached. This can be particularly felt by children and young people with profound and multiple learning disabilities for whom specialist education is the most appropriate option.

Neurodivergent children and young people, and children and young people with learning disabilities, their families, and organisations that represent them have consistently raised concerns that these groups are not having their right to education fulfilled and are missing out on reaching their full potential, which may contribute to poorer outcomes in adult life.

In Scotland, the education system aims to be fully inclusive. There is a legal presumption that children will be educated in mainstream schools except for in exceptional circumstances.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

An independent review of additional support for learning legislation found that the legislation is not deficient. However, it found a gap between the policy intention of the legislation and its implementation. Since then, a Additional Support for Learning (ASL) Review Action Plan has, and is currently being, progressed. This work is being done in partnership with Convention of Scottish Local Authorities (COSLA) and the Association of Directors of Education in Scotland (ADES). Whilst there is a comprehensive and robust action plan in place to address the implementation gap, the following proposals could potentially be explored in relation to the Bill:

Proposal 1: Strategies and reporting requirements

The 2000 Act imposes duties on education authorities and schools to plan and report annually on the measures that they are taking to address the key priorities of the National Improvement Framework (NIF). The statutory guidance to support these legislative duties is currently being reviewed. We could consider whether to create a new requirement for education authorities and schools to include in their plans and reports an articulation of how the specific needs of neurodivergent pupils and pupils with learning disabilities have been considered and are being met.

We could consider whether to require that Children's Services Plans Annual Reports should include specific consideration of neurodivergent children and young people and children and young people with learning disabilities.

Proposal 2: Mandatory training for teachers, practitioners and other educators

We have set out proposals for a mandatory training requirement for health and social care staff, and are seeking views on whether this should be extended to other public sector areas. Therefore, we could explore:

- (a) whether there is a need to set out anything in legislation regarding the training requirements for student teachers, given the recently updated Standard for Provisional Registration;
- (b) whether there is a need to set out anything in legislation regarding the training requirements for student Early Learning and Childcare (ELC) practitioners; and,
- (c) whether there is a need for a mandatory training requirement for teachers, practitioners and other educators on learning disabilities and neurodivergence as part of their Continued Professional Development (CPD).

Proposal 3: Data

The overarching themes section of this consultation sets out broad proposals relating to data and invites views.

Current Additional Support Needs (ASN) data reflects that children and young people have a wide ranging spectrum of learning needs. Within this, there is disaggregated data available on some conditions but not others. For example, there is disaggregated data available on learning disabilities, autism and dyslexia but it isn't available on Attention Deficit Hyperactive Disorder

(ADHD), and Fetal Alcohol Spectrum Disorder (FASD), Dyscalculia and other neurodivergent conditions.

To better understand all neurodivergent children and young people and their experiences and outcomes in relation to education this data could be collected and published. This would allow for reporting on the attainment gap of these groups, school leavers and positive destinations, and to understand the size of these populations and any trends. There may also be a need for data on the use of part-time timetables.

What Do You Think?

Which of these proposals do you **agree** with (if any), please tell us why?

Intentionally blank

Which of these proposals do you **not agree** with (if any), please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to education?

Intentionally blank

Section 14: Children and Young people – Transitions to Adulthood

The term ‘transitions to adulthood’ will mean different things to different young people, and as such will be achieved in many different ways and timescales. In their Principles of Good Transitions, The Association for Real Change (ARC) Scotland refer to this as the period when young people develop from children to young adults. This is not a single event, such as leaving school, but a growing-up process that unfolds over several years and involves significant emotional, physical, intellectual and physiological changes. Transitions also impact on the family of, or those who care for, the child or young person.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

In their Stage 1 Report on the Disabled Children and Young People (Transitions to Adulthood) (Scotland) Member’s Bill, the Education and Skills Committee noted that many people have described the current legislative landscape as being complex, cluttered, and difficult to navigate for young people and their families, and, in some instances, for the professionals working to support them.

The Committee’s report concluded that “... the Committee is not yet convinced that introducing further legislation in an already cluttered and complex legislative and policy landscape will resolve the issues...”. Rather, there was thought to be a “significant implementation gap between the [existing] intended policy and the experiences of children and young people.” In the Stage 1 debate on the general principles of the Bill, on 23 November 2023, the Bill fell and so will not become law.

Transitions is a period of development which can involve changes in every area of life such as housing, employment, social care, education, transport and relationships. We therefore expect some of our overarching and specific consultation proposals, which covers all of these areas and more, to contribute towards improving outcomes for neurodivergent young people and young people with learning disabilities making the transition to adulthood. This also includes our proposals around inclusive communications, mandatory training, independent advocacy, and statutory strategies for learning disabilities and neurodivergence.

Specifically in relation to data, we will consider whether our approach ensures that disaggregated data for neurodivergent young people and young people with learning disabilities is made available to:

- enable us to better understand and measure the extent to which these young people are experiencing a positive and supported transition to young adult life;
- ensure the visibility of these young people;
- help inform the work that will take place under a National Transitions to Adulthood Strategy; and,
- help to inform the development of services to meet the needs of these young people when transitioning to adulthood.

What Do You Think?

Do you **agree** with this proposal, please tell us why?

Intentionally blank

Do you **not agree** with this proposal, please tell us why?

Intentionally blank

Is there anything else that we should consider in relation to Children and young people – Transitions to adulthood?

The Royal Pharmaceutical Society is aware that there are students and registered pharmacists who may be within the scope of this Bill. It is important that to ensure people within the scope of this Bill reach their potential in their chosen profession that they are supported within their academic establishment and also in their experiential learning placements in the workplace. Mandatory training at an appropriate level, should be in place for academic tutors and workplace supervisors. This will enable young people who are undertaking “earn as you learn” higher education and who are within the scope of this Bill are supported to achieve their full potential.

Part 4: Accountability

Throughout our early work we have heard many different views on how people think their rights can best be enforced. One thing most people with learning disabilities and other neurodivergent people agree on is that they often have trouble knowing what their rights are and being able to properly access their rights. Most people would like to see more accountability to make sure rights are not ignored.

When thinking about accountability, people like different models – some people want to see a new body to enforce rights and some people want to see greater accountability within existing public bodies or a specific role within an existing human rights body, such as the Scottish Human Rights Commission.

What can the Learning Disabilities, Autism and Neurodivergence (LDAN) Bill do?

The Bill can be used to ensure that there is improved accountability for the delivery of rights. There are different ways to do this and we have set out some options.

Option 1: A new Commission or Commissioner

A Commission or Commissioner could be set up to help people secure their rights. A Commissioner is one person whereas a Commission might have a board with several people on it.

Either of these would be set up to be independent of Government and its powers and duties and appointments process could be set out in the Bill. These could include the following:

- Consult and involve neurodivergent people and people with a learning disability in the appointments process and work programme,
- Promote human rights,
- Conduct research,
- Hold the Government to account,
- Hold public bodies to account by conducting inquiries and formal investigations,
- Power to bring court proceedings,
- Publish an annual Strategic Plan and financial accounts,
- Collate and publish data and report regularly to the Scottish Parliament on key outcomes for neurodivergent people and people with learning disabilities,

Option 2: Better resourcing and additional duties for an existing Commission or Commissioner

Neurodivergent people and people with learning disabilities already come within the remit of the Scottish Human Rights Commission (SHRC), the European Convention on Human Rights (EHRC), the Children and Young People's Commissioner and other more specialist bodies like the Scottish Public Services Ombudsman (for public service complaints) and the Mental Welfare Commission.

However, these bodies cover the needs of a broader range of people than those with neurodivergence or learning disabilities. This means that they have to take decisions on where to spend their resources and time and prioritise some issues over others. We know that the needs of people with learning disabilities and neurodivergent people are often not being met even though these bodies are doing many good things. But there is not a specific focus on these groups.

Rather than setting up a new body we could look to our existing bodies and provide additional resources and potentially powers and duties that would allow them to play a more comprehensive role in upholding the rights of neurodivergent people and people with learning disabilities.

We would need to decide which body could best do this. The Bill could amend the legislation that established the body chosen.

Option 3: Champions and Advocates within Public Bodies

Scotland has many public bodies whose roles are central to the experiences that neurodivergent people and people with learning disabilities have in their daily lives as they have responsibility for administering many key areas of life such as education, health and social care, and justice.

This option could involve having people with lived experience of neurodivergence or learning disabilities, or people selected by people with lived experience of neurodivergence or learning disabilities, raising awareness of rights within public bodies and promoting a culture where the rights of neurodivergent people and people with a learning disabilities are upheld.

Public bodies include local councils, healthcare providers like the National Health Service (NHS), the Police and many other bodies.

We could explore the potential for the Bill to make provision for this role to be appointed within all Scottish public bodies and could clarify the remit and appointments process.

Option 4: Better resourcing for existing Disabled People's Organisations who support neurodivergent people and people with a learning disability

When we refer to Disabled People's Organisations (DPOs), we mean those organisations that are led by disabled people themselves. They are directly connected to the communities that they support.

In Scotland, many DPOs receive funding from local councils or the Scottish Government. DPOs include Autistic People's Organisations (APOs) in Scotland (there are several) and People First, which is an organisation led by people with learning disabilities.

This option would mean better resourcing of existing DPOs to allow them to support and advocate for the rights of neurodivergent people and people with learning disabilities.

Although the Scottish Government and other organisations already fund DPOs, including some APOs and People First, funding can be limited or directed at particular projects or policies. We know that DPOs work very hard on behalf of the people they represent and have knowledge and understanding of the issues that often come from their own experiences.

Option 5: Supporting good practice through standards, guidance and practical tools and investing in co-production

This could involve us working continuously with people with lived experience (like the Lived Experience Advisory Panel (LEAP)) to produce national standards and guidance to help people understand the needs and wishes of neurodivergent people and people with learning disabilities and uphold their rights.

It could include providing guidance to schools, universities, councils, healthcare providers, the police, and others. However, we already do this kind of work and there are still many serious issues experienced by people with learning disabilities and neurodivergent people. This guidance, and accompanying tools, could help people within these organisations understand how to respect the rights of neurodivergent people and people with learning disabilities.

What Do You Think?

Which of the 5 options set out above do you think would best protect, respect and champion the rights of neurodivergent people and people with learning disabilities? You can select multiple options if you wish.

- Option 1
- Option 2
- Option 3
- Option 4
- Option 5

Please give the reason for your choice(s).

Intentionally blank

Are there any other options we should consider? Please give details.

Intentionally blank