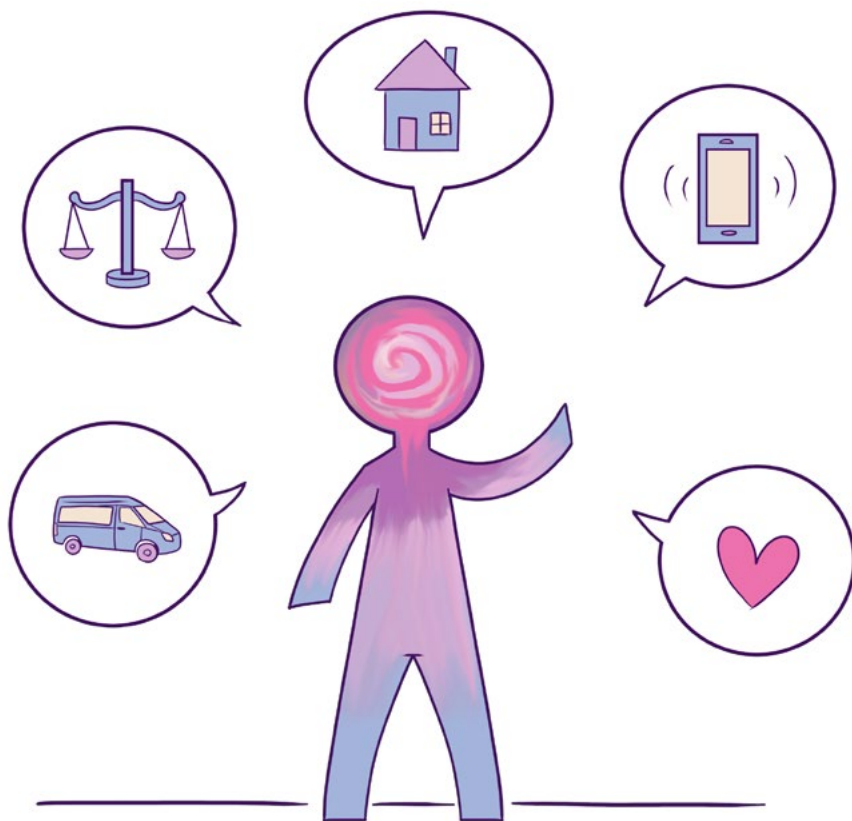


Learning Disabilities, Autism and Neurodivergence Bill: **Consultation**

Short Guide



December 2023

A note on the language we use

We want to respect the preferences which people have in terms of how they are described. This paper uses 'neurodivergent person', 'autistic person' and 'person with learning disabilities', because most people we worked with were comfortable with these and similar terms.

We understand that 'neurodivergence' refers to people whose neurology is different from the supposed majority in society. It does not include people with brain injuries, or people with dementia. As some people with learning disabilities told us they are unhappy with the term 'neurodivergence', we have decided to use the term 'neurodivergent people and people with learning disabilities' throughout this paper.

Introduction

"...We must ensure equality of opportunities for all...
As a government we will be unapologetic about supporting those in greatest need. We will use every power at our disposal to protect the vulnerable in our society."

- First Minister, Humza Yousaf MSP

We know that people with learning disabilities and neurodivergent people can be amongst the most vulnerable and disadvantaged in our society. The objectives of this Bill are to better respect, protect and champion the rights of these groups, and to build a fairer Scotland for everyone.

What do we know about neurodivergent people and people with learning disabilities?

10-15% of the population are estimated to be neurodivergent or have learning disabilities, and there is evidence that they experience significant inequalities and challenges.

People with learning disabilities die on average 20 years earlier than the rest of the population. Autistic people are 9 times more likely to die by suicide. Global rates of gender-based violence suggest that 90% of women with learning disabilities have been subjected to sexual abuse. People with learning disabilities and neurodivergent people are drastically less likely to be in employment, and many people with learning disabilities and autistic people have experienced bullying, discrimination and harassment.

A contributing social factor is stigma. Stigma can lead to hostility towards people with a learning disability, potentially contributing to abuse.

Our approach to developing proposals with neurodivergent people and people with learning disabilities

In our 2021 Programme for Government, we committed to carrying out scoping work for a Bill. That took place between May and July 2022, with 30 different events involving 18 different stakeholder organisations.

We wanted this consultation to be co-designed with people with lived experience. To enable this we established three Bill panels: a Lived Experience Advisory Panel (LEAP), a Stakeholder Panel, and a Practitioner Panel. The LEAP includes 25 people with various conditions including autism, learning disabilities, ADHD, dyslexia, and Down's syndrome.

The proposals included in this consultation represent input from our early scoping work, the LEAP, and the Stakeholder and Practitioner Panels.

The Bill is part of the rights-based Programme we are currently progressing, including work on incorporating four UN human rights treaties into Scots law within the limits of devolved competence through the Human Rights Bill (recently consulted upon), the United Nations Convention on the Rights of the Child (UNCRC) (Incorporation) (Scotland) Bill, the establishment of a National Care Service, the Mental Health and Capacity Law Reform Programme, and the Public Sector Equality Duty Review.

Who should be included in the scope of the Bill?

A Bill has to set out who it will apply to, and in what circumstances. If this isn't defined properly, the legislation won't fully benefit the people it's intended for. The LDAN Bill presents an opportunity to establish legal definitions for various communities under Scots law. Specifically, it presents an opportunity to set out definitions that are aligned with how such people prefer to represent and refer to themselves.

Whatever definitions we use in the Bill, we will also need to think about how we keep them up to date and future-proof the legislation. There may therefore be a benefit in the Bill containing a power to make future changes to definitions by regulations.

The Scottish Government is committed to the social model of disability. Unlike the medical model, where an individual is understood to be disabled by their impairment, the social model views disability as the relationship between the individual and society. In other words, it sees the barriers created by society, such as negative attitudes towards disabled people, and inaccessible buildings, transport and communication, as the cause of disadvantage and exclusion, rather than the impairment itself.

Beyond the definition of disability in the Equality Act 2010, existing definitions covering neurodivergent people and people with learning disabilities in Scotland are not statutory. The Scottish Government has previously used various definitions for neurodivergent people and people with learning disabilities. Whilst none of these have been placed into law, this Bill could provide an opportunity to do so:

Where do we want to get to?

- The Bill must make a difference to how neurodivergent people and people with learning disabilities are seen and treated.
- Neurodivergent people and people with learning disabilities should feel more visible as a result of the Bill.
- Everyone providing support or services to neurodivergent people and people with learning disabilities must be clear about their duties under the Bill.
- People without a formal diagnosis should know how the Bill applies to them.

What can the LDAN Bill do?

There are 3 potential approaches to who should be included in the Bill:

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

'Neurodiversity' encompasses all of humanity. 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'

'Neurodivergent' means having a mind that functions in different ways to the minds of the majority of people in society. This is a broad term that can encompass both innate differences, such as autism and dyslexia, and acquired alterations to brain functioning.

We could consider how to put some further definitions in the Bill around how we define "neurodivergent" to ensure that it does not become too wide. For example, we do not propose that the Bill covers people with an acquired brain injury. It will cover people if they, for example, have a learning disability as a result of their injury. This approach could also allow us to define neurodivergence by reference to common barriers or behaviours faced or expressed by various groups.

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. However, if a condition was not specifically listed and defined, then that population would be excluded.

Overarching Themes

1. Statutory strategies

There is currently no formal or legislative requirement for national or local strategies specifically aimed at neurodivergent conditions or learning disabilities.

What can the LDAN Bill do?

While previous strategies have tended to focus on single conditions, the Scottish Government wants to use this Bill to take a broad approach. Although there will always be a need for distinct policies applying to certain conditions, a wider approach will recognise the whole person and the way that services and support are delivered.

We could:

- Require the Scottish Government to produce a national strategy.
- Require public bodies, such as health and social care partnerships and local authorities, to produce local strategies.
- Produce guidance for national and local strategies.
- Ensure strategies are reviewed on a regular basis.
- Make sure that people with lived experience are involved.
- Consider whether any new accountability mechanism introduced by the Bill should include a duty to review national and local strategies and their effectiveness.

Mandatory training in the public sector

One of our key findings is that there needs to be greater awareness and understanding of neurodivergent people and people with learning disabilities across public bodies. This will improve services, reduce stigma, and lead to better outcomes.

Currently, the availability of relevant training in Scotland is inconsistent, and largely voluntary. 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. In England this is sometimes called the Oliver McGowan Training.

LEAP members thought that disability awareness training is needed across all of the public sector, and training specific to neurodivergence and learning disabilities is also needed. People with lived experience should help develop this.

Where do we want to get to?

- Public sector staff who work directly with members of the public have confidence and skills in being able to understand the needs of neurodivergent

people and people with learning disabilities, resulting in improved services and communication and reduced health inequalities.

- Neurodivergent people and people with learning disabilities feel listened to, valued and understood by public sector staff who take account of their individual needs

What can the LDAN Bill do?

Having access to staff who are informed and able to understand and communicate with people effectively can make a significant difference. We therefore want to consider how we make training mandatory for public-facing staff in some public services.

We would like to follow England in placing a mandatory training requirement on health and social care staff. We could consider extending this to other public sector areas, such as the justice system, the police, and the prison service. We will aim to ensure that people with lived experience are involved in developing these training programmes. We want to consider this covering wider neurodivergence and learning disabilities (not just autism and learning disabilities).

2. Inclusive communication

Inclusive communication means sharing and receiving information in a way that everybody can understand. The use of inclusive communication is vital in allowing neurodivergent people and people with learning disabilities to know and exercise their rights, to live independently and to participate fully in life.

LEAP members commented on negative experiences regarding communication with public authorities and health services. They highlighted a need for a better understanding of communication needs, and more use of alternative formats, including easy-read editions. Some new communication methods were tried by public bodies during the COVID pandemic, and our members would like to see some of these used as standard practice in the future.

We're committed to improving and embedding inclusive communication within Government, and across the public sector.

The Equality Act 2010 introduced the Public Sector Equality Duty (PSED). This requires public authorities to work towards

- eliminating unlawful discrimination, harassment and victimisation
- advancing equality of opportunity
- fostering good relations between people who share a protected characteristic and those who don't

The Scottish Government is currently progressing two new initiatives that will help to protect and uphold rights around inclusive communication and information - the Human Rights Bill (recently consulted upon), and the Public Sector Equality Duty Review, which includes specific duty regulations for Scotland.

Where do we want to get to?

- A culture where inclusive communication and accessible information is considered the norm, thought about proactively by public authorities, and provided automatically in reasonable circumstances without the need for a person to request alternative formats.
- Professionals who work for public authorities and service providers are knowledgeable and confident when communicating with a range of neurodivergent people and people with learning disabilities.
- When inclusive information is not automatically provided, it is easy for neurodivergent people and people with learning disabilities to request alternative formats, methods of communication and adaptations that work best for them as individuals.
- Neurodivergent people, and people with learning disabilities, are able to communicate with professionals who work for public authorities and service providers and feel heard, respected and understood.

What can the LDAN Bill do?

The Bill could provide a stronger focus on how public authorities can meet the communication and information needs of neurodivergent people and people with learning disabilities. Although we focus on public bodies for the Bill, we should also think about promoting accessible communications to other organisations.

The Bill could:

- 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.
- Provide for people 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.
- Provide 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.
- Local and national strategies could include consideration of, and reporting on, how the specific communications needs of neurodivergent people and people with learning disabilities have been met.
- 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 LDAN Bill could provide for an Accessible Information Standard to be enforceable in Scotland.

It's important that neurodivergent people and people with learning disabilities are able to make complaints in the same way as everyone else. We need to consider further how far existing complaints systems meet the needs of neurodivergent people and people with learning disabilities, improving and adapting provision where it's needed.

3. Data

Better data collection and reporting will improve understanding of the requirements of neurodivergent people and people with learning disabilities.

The lack of data can restrict evidence-based policy making, and disrupt planning. It is important that neurodivergent people and people with learning disabilities are visible in data collection in relevant areas, for example in employment data.

LEAP members felt that data collection needed to improve on key issues, including health and wellbeing. Action could include making organisations responsible for the collection of data, and involving people with lived experience in the process. Neurodivergent people should have the right to access their own data, although currently some services make this difficult.

Where do we want to get to?

- We collect sufficient and adequate data and measure outcomes to properly inform the development of national policies.
- We collect the right kind of information and data to know how many people with learning disabilities and neurodivergent people need local supports and services and what they need.
- Definitions of neurodivergent people, and people with learning disabilities, in data collections, are correct.

What can the LDAN Bill do?

The Bill could provide a legal basis for data collection where it would help understand and respond to the circumstances and needs of neurodivergent people and people with learning disabilities.

- 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.
- We could place 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.

- We could include a duty to make returns to the Scottish Government on this information.
- We could give consideration to the development of a Scottish version of the LeDeR programme. Similar to Child Death Reviews, a programme could be established to ensure when someone with a learning disability dies, that a review happens to identify why they died and share the learnings of how it could have been prevented. Teams would need to be established to undertake this work, including the appropriate training. We would use examples of good practice to share across the country. This helps reduce inequalities in care for people with a learning disability. It could reduce the number of people dying sooner than they should.

4. Independent advocacy

Independent advocacy is about helping people secure their rights by allowing their voices to be heard in society.

We know that neurodivergent people and people with learning disabilities often don't know what rights they have, and when they do know, they sometimes struggle to access them. Independent advocacy can help people understand and access their rights.

The right to independent advocacy in the Mental Health (Care and Treatment) Scotland Act 2003 ("the 2003 Act") applies to every person with a 'mental disorder', but the 2003 Act does not specify the circumstances in which the right should apply. People have told us that they want more rights to accessible independent advocacy, and that it should be clearly signposted and available across the country.

The Mental Welfare Commission for Scotland published a report in 2023 on the provision of advocacy, and the Scottish Mental Health Law Review highlighted concerns with access to advocacy, including recommendations in a separate report published in 2022. This proposed introducing a consistent approach and definition of independent advocacy across different pieces of legislation.

LEAP members expressed a view that the Bill should provide a right to independent advocacy in a range of settings, including health and social care, education, employment, benefits and housing. If a Commission is created, it should be responsible for ensuring the provision of independent advocacy.

Where do we want to get to?

Neurodivergent people and people with learning disabilities:

- know what their rights are
- are communicated with in a way that is inclusive and accessible to help them secure their rights; and,
- can access support when needed, including independent advocacy.

What can the LDAN Bill do?

The Scottish Government is examining how we can improve rights through independent advocacy along with the creation of a National Care Service, and in response to the Scottish Mental Health Law Review.

We want to make sure our approach is consistent, and we want to involve people with lived experience. This work will take place across Government, and we will ensure that it includes specific consideration of the rights of neurodivergent people and people with learning disabilities.

We are not therefore currently proposing a broad right to independent advocacy for neurodivergent people and people with learning disabilities. However, we think there are things we could explore in the Bill, particularly as the right to advocacy currently applies only to the State Hospital, Health Boards and local authorities.

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.
- 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: where women with a learning disability have been subject to gender-based violence; and, access to good-quality, accessible advice and advocacy when discussing housing options.

Specific Themes

1. Health and wellbeing

Neurodivergent people and people with learning disabilities experience poorer health outcomes than the general population. This discrepancy results in below-average life expectancy, and increased rates of death by preventable conditions.

People with learning disabilities have some of the poorest health of any group in Scotland and die on average 20 years earlier than the rest of the population according to research by the Scottish Learning Disabilities Observatory.

The life expectation for people with Profound and Multiple Learning Disabilities (PMLD) is further reduced, there are still many premature deaths of people

with PMLD caused by the lack of reasonable adjustments to facilitate their survival, causing delay or problems with diagnosis or treatment .

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

Action must be taken if neurodivergent people and people with learning disabilities are to fairly and fully share the benefits of our health services, including preventative health screening programmes aimed at the whole population. The Scottish Government is currently rolling out annual health checks for people with learning disabilities, with everyone eligible to be offered a check by March 2024.

LEAP members suggested there was a need for guidance and training for health and social care staff in dealing with neurodivergent people and people with learning disabilities. Our Panel would like to see a wider choice in how to attend appointments, including online consultations.

Where do we want to get to?

- Neurodivergent people and people with learning disabilities have improved health and wellbeing, live longer lives and are able to choose to be active members of society.
- The health and social care workforce is knowledgeable and skilled in treating neurodivergent people and people with learning disabilities.
- Neurodivergent people and people with learning disabilities access health care, services and supports without undue stress and the risk of traumatising or retraumatising experiences.
- Neurodivergent people and people with learning disabilities are empowered with knowledge and understanding, choice and control over their health care and treatment.

What can the LDAN Bill do?

The Bill can create the right conditions for neurodivergent people and people with learning disabilities to access health care services. This must include access to preventative screening programmes. The Bill could:

- In statutory local strategies, ask Health Boards, Integration Authorities and Local Authorities to set out how their workforce planning and service planning has taken into account the needs of the neurodivergent and learning disability populations.
- Introduce mandatory training for health and social care staff, including ensuring this covers neurodivergence and not just learning disabilities and autism.

- As part of access to inclusive communications ensure that appointment letters are automatically produced in easy read and other key documents.
- We also propose legislating for an Accessible Information Standard for Scotland which would be applicable to NHS Scotland organisations.
- 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 PAMIS's Digital Passports.
- Consider including the delivery of annual health checks for people with learning disabilities as a specific legal duty in the LDAN Bill.
- Consider including a duty in the Bill which, in effect, extends the current annual health checks for people with learning disabilities to autistic people. We would want to first gather more evidence of the need for this.

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.

We have heard strong views that people with learning disabilities and autistic people should not fall within the definition of 'mental disorder', as life-long conditions cannot be 'treated' in the same way that mental illness can.

LEAP members said that autism and learning disabilities should not be considered a mental disorder, which is upsetting, degrading, and insulting and the LEAP believes this disrespects the human rights of people with learning disabilities and autistic people.

Where do we want to get to?

We want to update and modernise our mental health and capacity legislation to enhance the protection, respect and championing of people's rights.

Mental health and incapacity law in Scotland has been the subject of two major reviews in recent years, but these have recommended different approaches. New

work is underway as part of the Mental Health and Capacity Reform programme, and this may help to achieve a clear view of what changes are needed.

What can the LDAN Bill do?

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. We will continue to fully involve people with lived experience in the process as we develop any proposals for future consultation.

3. Social care

For people who need it, social care is vital in enabling a full and healthy life. People with learning disabilities and neurodivergent people are more likely to present with care and support needs than the general population.

In 2021, a report by the Fraser of Allander Institute concluded that more needed to be done in Scotland to deliver social care and support for adults with learning disabilities. A further Independent Review of Adult Social Care in Scotland set out proposals for reform. It reported on several key themes, including access, eligibility and assessment.

LEAP members said that there should be mandatory training on working with neurodivergent people and people with learning disabilities for social care staff. They also called for better signposting and awareness of what social care support was available, and a programme of monitoring and evaluation on how well the needs of neurodivergent people and people with learning disabilities are met.

The Scottish Government is already working to deliver a range of policies, including developing a National Care Service Charter of Rights and Responsibilities, establishing a complaints and redress process, and developing a consistent approach to inclusive communication.

Where do we want to get to?

- The ambitions of the National Care Service (NCS) are delivered for those neurodivergent people and people with learning disabilities who need it.
- Neurodivergent people and people with learning disabilities have improved health and wellbeing, live longer lives and are able to choose to be active members of society.

- The health and social care workforce is knowledgeable and skilled in treating and caring for neurodivergent people and people with learning disabilities.
- Neurodivergent people and people with learning disabilities can access care, services and supports through the new NCS without undue stress and the risk of traumatising or retraumatising.
- Neurodivergent people and people with learning disabilities are empowered with knowledge and understanding, choice and control over their care.

What can the LDAN Bill do?

The Bill could take additional action to improve social care provision for neurodivergent people and people with learning disabilities:

- The Bill could require Integration Authorities and local authorities in mandatory strategies 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.
- We propose to legislate for a mandatory training requirement for health and social care staff in the LDAN Bill. We could also take a wider neurodivergent approach to the training so that it focusses on neurodivergence and learning disabilities, and not just autism and learning disabilities.
- We propose to legislate for neurodivergent people and people with learning disabilities to be able to request access to alternative means of communication and to ensure 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 NHS Boards and HSCPs to require appointment letters to automatically be produced in easy read.

4. Housing and independent living

Appropriate housing for neurodivergent people and people with learning disabilities enables people to live safe and independent lives. Unsuitable housing can have a negative impact on mobility, mental health, and employment opportunities.

Neurodivergent people and people with learning disabilities tell us that good-quality and timely housing advice and support services are extremely important in enabling them to live independently.

We know that there is currently only a limited supply of specialist supported housing available. In 2018, a report by the Equalities and Human Rights Commission found that many disabled people lived in homes that did not meet their requirements, and called for urgent action. A more recent report from the Scottish Commission for

Learning Disabilities highlighted the particular challenges faced by people with learning disabilities in being able to choose where and how they live.

LEAP members reported that getting homes adapted appropriately can be a lengthy process, and knowing who to speak to and how can be challenging. Neurodivergent people and people with learning disabilities are unlikely to know about their housing rights, and there is a need for clear and accessible information.

Existing housing standards, covering aspects such as tenancy rights, planning and regulation of the housing sector, are covered by a range of legislation. The Scottish Government is progressing initiatives to better protect and uphold rights around housing and independent living.

Where do we want to get to?

- Neurodivergent people and people with learning disabilities understand their rights around housing and to independent living, are empowered to access and exercise those rights, have clear and effective routes to redress, know where to go for housing advice and support, and are able to easily access services, independent advocates and housing officers.
- Housing systems and processes, in particular allocations and adaptations, are streamlined and made easier for neurodivergent people and people with learning disabilities to navigate.
- The supply of accessible housing across Scotland is increased.
- Housing services are knowledgeable and have the training they need to communicate and engage with neurodivergent people.
- Relevant public authorities should set clear policies to address the housing needs of neurodivergent people and people with learning disabilities, which promote access and inclusion.

What can the LDAN Bill do?

The LDAN Bill could provide a stronger focus on how public authorities' duties around housing and independent living can best meet the needs of neurodivergent people and people with learning disabilities:

- We could consider the introduction of specialist advocacy services for housing support.
- 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.
- We propose introducing a statutory requirement for learning disabilities and neurodivergence training for professionals who work in health and social care. We could consider extending this requirement to housing service professionals.
- We could consider improvements in relation to data collection on housing and independent living.
- We think there is likely to be a need for some documents in relation to housing to be available in easy read formats.

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.

We have heard from people with learning disabilities and complex care needs that they want to be supported to live in their own homes and communities, and want to be involved in the decision making process around this. We have heard that there are existing barriers to this.

LEAP members were concerned about the number of people experiencing delayed discharge from hospital, and felt they were being let down by public bodies. One member said they knew from experience about the staffing challenges faced by the NHS, and that the Bill could help with this by increasing accountability.

The Scottish Government is currently carrying out work to address these issues through the Coming Home programme. This includes proposals to introduce a Dynamic Support Register to improve planning and monitoring, a National Support Panel to provide professional advice to health boards and other bodies, and a peer support network for health and social care professionals and other stakeholders.

Where do we want to get to?

- People with learning disabilities who have complex care needs, and the people supporting them, know that their choices and wishes are at the heart of the decision making process.
- People with learning disabilities, who have complex care needs, know that they are supported by the best possible services to enable them to lead high quality lives
- Local staff know who is in hospital or in an out-of-area placement (or at risk of being admitted to hospital or placed in an inappropriate out-of-area placement) and what actions are required.
- There is full accountability for people with learning disabilities and complex care needs.

What can the LDAN Bill do?

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.

The National Support Panel recommendation in the Coming Home Implementation Report is about improving accountability for people with learning disabilities and complex care needs. The primary purposes of a National Support Panel should be:

- to work with Integration Authorities and partner organisations by providing support and expertise for their decision making and solutions for individuals in a collaborative forum
- to provide checks and balances to ensure that people with learning disabilities are receiving the best care in the most suitable environment
- to understand and hear from families and individuals about their individual circumstances

Although we have thought about setting up a panel that would look at individual cases, 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, therefore taking them away from their other jobs supporting people. We think this would make the situation worse for people who need quick solutions.

We have thought about workable options for a panel –

- A Legislative Panel Conducting Individual Reviews within Defined Parameters made up of sector experts who have current knowledge of the Scottish

approach to complex care, and who are committed to a human rights based approach. 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 broad scope of the type of cases that it could investigate and there would be some flexibility built into this but not everyone would get an individual review.

- A Legislative Panel Conducting Peer Reviews of Local Processes with a group of experts who could be brought in to conduct peer reviews of the systems and processes of Health Boards, Local Authorities and Integration Authorities in relation to this population. The Panel would go to a local area to conduct the review and provide recommendations or decisions based on the review that the Health Board, Local Authority and Integration Authority would have to implement in order to improve their practices around complex care. The Panel would provide follow up support and would monitor progress.
- A Non-legislative 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 law.

6. Relationships

Neurodivergent people and people with learning disabilities can face barriers which make it difficult to enjoy healthy and fulfilling relationships, resulting in loneliness, social isolation, and poor mental health.

Research indicates that autistic people experience a high incidence of sexual violence, physical violence and bullying. A 2020 survey in Scotland showed that social isolation is a reality for many people with learning disabilities. It is estimated that between 40% and 60% of parents with a learning disability have their children removed from their care.

LEAP members called for a need for support in making and maintaining relationships with friends, family and the wider community. Members said that people should be able to express their gender and sexuality freely, and noted the increased risk of mental health issues among those with LGBT identities. They also noted that neurodivergent parents need more support, and that their needs should be recognised when interacting with schools and healthcare providers. The Panel felt that any approach towards eliminating violence towards women, girls, and people assigned female at birth should be preventative and empowering.

Where do we want to get to?

- Neurodivergent people and people with learning disabilities are supported to make and maintain healthy relationships, express their gender and sexuality, and live well in their communities.
- Parents with learning disabilities and neurodivergent parents, carers, and families are given the support they need and their children are not unfairly removed from their care.

- Neurodivergent people and people with learning disabilities have equal access to RSHP (relationships, sexual health and parenthood) education.
- Access to justice and specialised support is provided where neurodivergent people and people with learning disabilities experience gender-based violence and abuse

What can the LDAN Bill do?

Various initiatives are already underway and making progress. However, there are still barriers and challenges to overcome, and the Bill could help strengthen our work in a number of ways:

- Access to Independent Advocacy:
 - a. where a parent with learning disabilities is at risk of their child being taken into care;
 - b. where a neurodivergent person or person with learning disabilities have disclosed gender-based violence or abuse.
- Better data collection:
 - a. Data collection and reporting on gender-based violence affecting women with learning disabilities.
 - 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.
- Inclusive communications:
 - 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 this could include information automatically being provided in easy-read, and support provided by professionals who have specialist training in learning disabilities.
- Neurodivergent and Learning Disabilities Strategies

Strategies could include the following:

- 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. Local authorities to set out how RSHP education is provided to all Additional Support Needs learners.
- c. 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.

d. If extended to Police Scotland: Police Scotland to set out how people with learning disabilities are provided with specialist support to report crimes, including gender-based violence and abuse.

- Accountability - 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.

7. Access to digital technology

Digital access has become increasingly important to the way we live in recent years. Learning and employment opportunities, as well as transactions in areas of life like banking and transport, rely more and more on digital access. The technology also helps us all keep in touch with our family, friends and community.

Neurodivergent people and people with learning disabilities are at particular risk of being digitally excluded. There is a need for awareness and training in terms of how to use technology safely, and as digital technologies advance, developments must consciously address the needs of those who are already digitally excluded, including people with learning disabilities.

LEAP members emphasised the importance of digital technology in enabling them to participate in society, and in reducing isolation and loneliness. We also learned that digital exclusion was a significant issue, particularly for young people with learning disabilities.

Where do we want to get to?

- Digital inclusion for all Scottish citizens, including those who are most at risk of being digitally excluded, such as people with learning disabilities and neurodivergent people.
- Increased confidence and safety for people who are at risk of being vulnerable online.

What can the LDAN Bill do?

We want to see a greater focus on how public bodies can use inclusive communication to best meet the needs of neurodivergent people and people with learning disabilities. We would expect this to have a positive impact on digital access. We could:

- consider how to ensure that training is available to people with learning disabilities in digital skills
- gather clear data on the number of people with learning disabilities and neurodivergent people accessing and using technology
- consider how to make more support available to directly help people with learning disabilities and neurodivergent people access and use technology.

8. Employment

As well as providing an income, employment contributes to independent living, and helps people feel valued. Opportunities and choices for work are important to everyone.

The Scottish Government aims to support people into work and while working, with a particular focus on those who face challenges in securing and maintaining employment. However, we know that many neurodivergent people and people with learning disabilities continue to face barriers.

In 2016, the Scottish Government committed to halving the Disability Employment Gap, which in recent figures stands at 31.9 percentage points (ONS Annual Population Survey, Jan-Dec 2022). There is a lack of robust data on employment rates for people with learning disabilities, but it is estimated that their employment rate is as low as 7%, with 16% for autistic people.

We have heard that neurodivergent people, and people with learning disabilities, often feel excluded from the world of work. We have also heard that they want support to find work and hold down a job so they can contribute to, and feel part of, society.

LEAP members told us that workplaces are often poorly adapted to the needs of neurodivergent people and people with learning disabilities. There is a lack of clarity on what reasonable adjustments should look like, and there needs to be more consistency on what employers can be expected to do. Members suggested that clear advice could be set out in a booklet or other communication.

Other suggestions included a higher number of part-time and flexible roles, better training for employers in working alongside neurodivergent people and people with learning disabilities, and a review of recruitment processes to make them more inclusive. The idea of public sector contracts including a requirement to hire neurodivergent people and people with learning disabilities was also discussed.

Where do we want to get to?

- A workplace culture of inclusivity, understanding and acceptance, where there is no stigma surrounding neurodivergence or learning disabilities.
- More neurodivergent people and people with learning disabilities in employment.
- Reasonable adjustments being more easily understood, with neurodivergent people and people with learning disabilities empowered to ask for them.
- Reasonable adjustments effected quickly and appropriately.
- Recruitment exercises being more accessible and inclusive.
- Data on employability services and employment support disaggregated.

What can the LDAN Bill do?

The Equality Act 2010 provides a legal framework to protect the rights of individuals and advance equality for all. The Scottish Parliament's power to legislate on equalities is limited, as equal opportunities is a matter generally reserved to the UK Parliament in the Scotland Act 1998 ("the 1998 Act").

The Scottish Parliament also does not generally have the power to legislate on employment and industrial relations, which is reserved to the UK Parliament in the 1998 Act.

The Scottish Government's commitment to at least halve the disability employment gap to 18.7 percentage points by 2038 (from 37.4 in the 2016 baseline year) aligns with the intention and ambitions of the 2010 Act.

Work is underway to help reform workplace culture and promote inclusivity, understanding and acceptance.

The Scottish Government is simplifying the employability system through the implementation of No One Left Behind. No One Left Behind aims to support people with health conditions, disabled people (including neurodivergent people and people with learning disabilities) and others who are disadvantaged in the labour market.

We have set out actions in our refreshed Fair Work Action Plan. This incorporates actions on tackling the gender pay gap, the disability employment gap, and is complemented by our Anti-Racist Employment Strategy. It includes investing almost £1m into our Public Social Partnership, working to improve the recruitment and retention of disabled people; delivering all-age, person-centred, tailored employability services and in-work support, through either Supported Employment or Individual Placement and Support.

We have mainstreamed data through the recently published Employability Shared Measurement Framework⁸ to allow us to better measure the reach of our services for people with learning disabilities and autistic people.

We are also reviewing the PSED in Scotland and intend to deliver on two key regulatory changes - revising the current pay gap reporting duty to include reporting on ethnicity and disability pay gaps, and, introducing a new duty on listed public bodies which will seek to ensure inclusive communication is embedded proportionately across their work when they are communicating with the public.

Given the work that is currently ongoing, we are not currently proposing any legislative changes. Instead, we will 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 undertake disability equality training, including more specialist training for line

managers on individual conditions, such as neurodivergence and learning disabilities, where this would enable appropriate support and reasonable adjustments to be provided to staff.

- Training for job coaches through the Review of Supported Employment within Scotland.
- Review the language within condition level (employability) data that the Scottish Government collects on employability.

9. Social Security

Social security is a human right, and essential in helping to tackle inequality.

We know that neurodivergent people and people with learning disabilities are less likely to be in employment than the general population, and more likely to need social security support. Employed people who cannot work full-time, or who need help with the additional costs of being disabled, as well as neurodivergent children and young people and those with learning disabilities, and their families, may also need social security support.

The latest full year data estimated the employment rate for disabled people aged 16 to 64 at 50.7%, while for non-disabled people the rate was 82.5%. In 2021 the Fraser of Allender report highlighted that unemployment data did not distinguish between different kinds of disability, but employment rates for those with learning disabilities were estimated to be in the region of 4.1 to 8.4%.

LEAP members criticised the limit of 16 hours of work per week before social security benefits can be taken away. They said the limit made it very difficult to find employment. Members also made the point that being repeatedly re-assessed for benefits was undignified and stressful. They would like to see social security rules and processes simplified, and better communication and information provided. A key point was that the eligibility criteria for disability payments needed to be clarified.

Social security is a human right protected by a range of international laws and standards. Social Security Scotland delivers a range of benefits, but the key social security benefits that neurodivergent people and people with learning disabilities are likely to rely on are delivered by the UK Government. These include Income Based Employment and Support Allowance (ESA), New Style ESA, Universal Credit and Tax Credits. The DWP is, however, in the process of migrating people from Income Based ESA and Tax Credits to Universal Credit.

The Scottish Government continues to call upon the UK Government to make changes to reserved benefits which impact on people in Scotland.

Where do we want to get to ?

- Our social security system supports people in line with the values of dignity, fairness and respect.

- Clear information and guidance is available on the right to social security and how to apply, including for people without a formal diagnosis.
- People who are eligible for social security benefits are provided with proactive support wherever possible, and people who are eligible receive the benefits they are entitled to.
- There are better transitions into and out of employment.

What can the **LDAN Bill** do?

Although many of the concerns raised by LEAP members cannot be addressed by the Scottish Government as they are retained in Westminster, others are already being actioned through the new Social Security system for Scotland.

We could consider the following:

- 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.
- With regard to Social Security Scotland, we are aware that there is likely to be a large proportion of neurodivergent people and people with learning disabilities 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.
- 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 ADP in Scotland has a category for “autism and other developmental disorders” but does not report on learning disabilities, ADHD, FASD or other conditions separately.

10. Justice

We use the term ‘justice’ in this document to refer to both the civil and criminal justice systems. Civil justice covers disputes about life and business and is meant to correct unfair situations. Criminal justice is concerned with offenders who break the law, as well as victims, witnesses and others who may be affected.

Several reports and surveys have shown evidence of an increased likelihood of neurodivergent people and people with learning disabilities coming into contact with the criminal justice system, both as victims and witnesses, and as offenders.

People with adverse childhood experiences and those with less understanding of legal issues find it much harder to access the services and information they need to resolve their issues. Those who say their lives are limited by disability are particularly vulnerable.

The SOLD (Supporting Offenders with Learning Disabilities) network aims to reduce offending and improve support for offenders with significant communication needs. The network is funded by the Scottish Government, and led in partnership by People First, ARC Scotland and the National Autistic Society.

Youth justice is a distinct area within the justice system. Scotland is already doing a lot to address issues for younger people, including pursuing an approach that aligns with the UN Convention on the Rights of the Child. Scotland's Youth Justice Improvement Board is looking at addressing priorities around children's rights within the youth justice system, and some areas within Scotland are developing youth courts. The Scottish Children's Reporter has developed a disability toolkit that allows for the identification of additional needs in the children's hearing system.

LEAP members recommended a requirement on the Scottish Prison Service to report publicly on neurodivergent people and people with learning disabilities currently held in prison. They also suggested that Police Scotland and other public bodies should provide disability awareness training to staff. The use of the term 'mental disorder' within legislation was criticised, and it was felt that this should be redefined so that it did not apply to people with autism and learning disabilities.

Where do we want to get to?

- Neurodivergent people and people with learning disabilities are better identified at any key point of contact within the civil and criminal justice system, and information is passed on to other relevant partners.
- Neurodivergent people and people with learning disabilities are given access to accessible and inclusive information throughout the civil and criminal justice system.
- Neurodivergent people and people with learning disabilities who need additional support have confidence that this will be identified and access to an Appropriate Adult and advocacy support considered.
- Partners in the civil and criminal justice system have a better understanding of the impact of neurodivergence and learning disabilities on an individual.
- People are diverted from the criminal justice system where it is appropriate, and any underlying needs are addressed in an effective way.
- People working in the civil and criminal justice system have confidence, based on training, that they can effectively identify and work with neurodivergent people and people with learning disabilities.

What can the LDAN Bill do?

There are many developments happening across the civil and criminal justice system that could be very positive for neurodivergent people and people with learning disabilities. Some of those changes are broad, but trauma-focused work is a key theme that can be built upon.

The Bill could help bring together a single national strategy to deal with neurodivergence and learning disabilities in justice, with a beneficial impact on the many complex interactions between different parts of the civil, youth and criminal systems.

The Bill could also

- Potentially place a duty on public bodies such as the Police, 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
- Provide 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 e.g. 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 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.
- Consider extending the requirement for mandatory training to police, prison, COPFS and relevant courts and tribunals staff. 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.
- 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.
- As with others, neurodivergent people and people with learning disabilities may benefit from the use of Diversion from Prosecution where they are alleged to have committed offences. 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.

11. Restraint and seclusion

We know that neurodivergent people and people with learning disabilities, of any age, can have negative experiences where restraint or seclusion is used inappropriately. This can happen in places like schools, hospitals and care settings, but it is not acceptable for anyone to be subject to the misuse of restrictive practices.

Where do we want to get to?

- Neurodivergent children and young people and those with learning disabilities in schools have their needs met by people who are trained and understand how to change the environment to minimise distress.
- People with learning disabilities and neurodivergent people are not subject to restraint, seclusion or other restrictive practices unless as a last resort to keep themselves or others safe.

Several Acts in Scotland set out offences regarding the use and misuse of restraint in certain settings, and the Mental Welfare Commission has published guidance. The Scottish Government is currently developing new rights-based non-statutory guidance on the use of restraint in schools and, if necessary, legislative options will be considered. For adults, our Mental Health and Capacity Reform Programme will scope work to reduce the use of coercion and restrictive practices. Our first delivery plan will be published in early 2024.

12. Transport

Travel can help people enjoy a fulfilling life, and reduce social isolation. Transport is also important in enabling people to access work, health, and education opportunities. However, neurodivergent people and people with learning disabilities in Scotland face barriers in accessing travel and transport.

The National Transport Accessibility Steering Group, together with the Mobility and Accessibility Committee for Scotland, bring lived experience to the heart of transport policy making in Scotland. These groups, which include neurodivergent people and people with learning disabilities, have worked with Transport Scotland to develop and implement Delivery Plans under Scotland's Accessible Travel Framework.

While developing the Framework, disabled people told Transport Scotland that they wanted more involvement in the design and development of transport policies and services. They also highlighted the need to prevent bullying and harassment so that disabled people could feel comfortable and safe while using public transport.

Members of the National Improvement Network (NIN), a group supported by ARC Scotland, prepared a report on the issues they have getting out and about in June 2023. It set out the challenges around transport specifically for neurodivergent people and people with learning disabilities, which include:

- reliability of public transport
- behaviour of other passengers

- cuts in services
- unhelpful drivers
- anxiety

The Scottish Commission for People with Learning Disabilities gathered lived experience for the report, A Connected Scotland. The report heard that people wanted better and more accessible information about services and timetables, the removal of physical barriers at stops and stations and on vehicles, and greater awareness and training for transport staff.

Our LEAP members commented that people with learning disabilities had to plan ahead to make even a simple journey, which limited freedom and choice. They saw a need for greater promotion and information about the services available, and training for support workers and carers in helping neurodivergent people and people with learning disabilities access and use public transport.

Where do we want to get to?

- A Scotland where all disabled people, including neurodivergent people and people with learning disabilities, can travel with the same freedom, choice, dignity and opportunity as other citizens. This is our vision as set out in the ATF.
- More neurodivergent people and people with learning disabilities are able to make successful door-to-door journeys, more often.
- Neurodivergent people and people with learning disabilities are more involved in the design, development and improvement of transport plans and services.
- Everyone who provides transport information and services will help make it easier for neurodivergent people and people with learning disabilities.
- Neurodivergent people and people with learning disabilities feel comfortable and safe using public transport and are not be bullied and harassed when travelling.

What can the LDAN Bill do?

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

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

- Regional transport Partnership's (RTPs) were established to strengthen the planning and delivery of regional transport and 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.

- Various actions and commitments around disability awareness training for transport staff are in place or are currently being progressed. We could 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.
- We could consider extending the mandatory training requirement to transport staff in Scotland.

13. Education

This section relates to children and young people in early years, primary and secondary school education settings. Higher and further education is covered in the next section, called '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.

Concerns have consistently been raised 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 the context of an inclusive education system, the Education (Additional Support for Learning) (Scotland) Act 2004 sets out rights, duties and obligations pertaining to children and young people with additional support needs (ASN) for learning. This broad definition in practice includes neurodivergent children and young people, and children and young people with learning disabilities who need additional support to benefit from school education.

In 2017, the then Education and Skills Committee undertook a short inquiry on how Additional Support for Learning was working in practice. It was encouraged by figures on positive outcomes for those with ASN, although a number of concerns and recommendations were raised. In 2020, the Morgan Review of Additional Support for Learning concluded that implementation was inconsistent, and that some children and young people were not getting the support they needed to flourish and fulfil their potential.

The Morgan Review made several recommendations on key themes including resources, workforce development and support, and leadership and strategic planning. More recently, the Scottish Parliament's Education, Children and Young People Committee has agreed to undertake another inquiry, which will focus on the impact of the COVID-19 pandemic, among other issues.

The Morgan Review noted that there was, at the time, minimal requirement for focus on additional support for learning as part of Initial Teacher Education (ITE). Probationary teachers reported that they felt ill prepared in terms of knowledge, understanding and practice skills. The report highlighted concerns about both ITE and Continued Professional Development, and recommended nationally specified practice and skills development for all teachers.

LEAP members provided a range of views and suggestions. Among many other comments, we heard that there should be a right to inclusive education, there should be more focus and better training on neurodiversity and learning disabilities in teacher training, and access to online learning should be improved.

Where do we want to get to?

- An education system that ensures all children and young people have the same opportunity to thrive and succeed, including those who are neurodivergent or have learning disabilities.
- An education system that is comprised of teachers, practitioners and other educators who are confident and well trained to educate neurodivergent children and young people, and children and young people with learning disabilities

Work is underway including on inclusive education, Additional Support for Learning, and disability strategies. Other initiatives are helping to explore and develop independent advocacy, teacher training, co-ordinated support plans and other strategies.

What can the LDAN Bill do?

ASN legislation was independently reviewed in 2020, and was not found to be deficient. However, there was a gap between the policy intention and its implementation. Since then, a comprehensive Additional Support for Learning Review Action Plan has been progressed, in partnership with COSLA and the Association of Directors of Education in Scotland.

Whilst there is a comprehensive and robust action plan in place, the Bill 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.
- There is a duty on each local authority and health board to publish a Children's Services Plan Annual Report which demonstrates what progress has been made to improve wellbeing outcomes for children, young people and families living in that area. We could also consider whether to require that these Annual Reports should include specific consideration of neurodivergent children and young people and children and young people with learning disabilities.

- 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 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 CPD.

- 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. 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 and to understand the size of these populations.

14. Transitions to adulthood

Growing up and becoming an adult means different things to different young people. It's not a single event, like leaving school, but a process that unfolds over several years and involves many emotional, physical and physiological changes. There is evidence that the planning and support for disabled young people making the transition to young adult life could be improved.

In February 2023 we published an independent literature review on the experiences of young disabled people, including young people with learning disabilities and young neurodivergent people, which found that many suffer stress and uncertainty during their transition to adulthood. Some contributing factors were inadequate planning, changes in support, a lack of clear information, and poor collaboration between different services.

In October 2023, the Scottish Parliament's Education, Children and Young People Committee noted its concerns about some of the evidence it had received on the poor experiences of transitions for many disabled young people, and recognised the need to act on these issues to improve disabled children and young people's experiences of transitions.

LEAP members feel that more needs to be done to support neurodivergent young people, and young people with learning disabilities, to experience a positive transition into adulthood. Concerns were raised about a lack of appropriate college courses, the sudden withdrawal of support when leaving school, and a general lack of support in higher education.

Where do we want to get to?

There are already a range of legislation, plans and policies in place that support the objective of improving transitions to adulthood, and we are committed to doing more

to make the transitions journey for every young person a smoother and more positive one.

In the 2021 Programme for Government, we committed to introducing Scotland's first National Transitions to Adulthood Strategy in this Parliamentary term to ensure there is a joined-up approach so all disabled young people can experience a supported and positive transition to adult life. This commitment was reaffirmed in April 2023 in First Minister's Policy Prospectus.

In September 2023 we published our Statement of Intent which is based on what we have heard through our research and engagement to date. It sets out the proposed scope, vision, and priorities for a National Transitions to Adulthood Strategy for disabled young people.

What can the LDAN Bill do?

As a great deal of work is already underway, we are not proposing new legislation in relation to transition to adulthood as part of the Bill. However, some of our overarching proposals are relevant to this area. These include our proposals around inclusive communications and mandatory training for professionals. We will also consider our approach to data collection, with the goals of better understanding how neurodivergent young people and young people with learning disabilities experience the transition to young adult life.

Accountability

We have heard many different views on how people think their rights can best be enforced. One thing most neurodivergent people and people with learning disabilities agree on is that they often have trouble knowing and accessing 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 want to see greater accountability within existing public bodies, or a specific role within an existing body, such as the Scottish Human Rights Commission.

Our LEAP members generally supported creating a new Commission. They liked the idea of several commissioners taking responsibility for different groups, and said it would be important to include people with learning disabilities and neurodivergent people on the board of the Commission. They also suggested that parents and carers should be represented. Members wanted a body with the power to conduct investigations, and with formal responsibilities to promote and secure rights.

Support for a new Commission was not unanimous, however. Some members thought that adding specialist members to an existing body might be a better solution, particularly if this included representation by neurodivergent people and people with learning disabilities themselves.

The Scottish Government has conducted and published research on the role of existing Commissions and Commissioners.

Where do we want to get to?

- Neurodivergent people and people with learning disabilities know what their rights are.
- Neurodivergent people and people with learning disabilities have confidence that their rights will be respected and upheld when they need supports or services.
- Public bodies providing supports, services or information always make sure they are accessible to neurodivergent people and people with learning disabilities and respect their human rights.
- When rights are not respected there is a clear route to redress and improvement.

What can the LDAN Bill do?

This Bill could be used to ensure better accountability for the delivery of rights. There are different ways to do this, and we have set out five options. These are

- i. A new Commission or Commissioner. This would be independent of Government, and its powers and duties would be set out in the Bill. The Commission or Commissioner would consult and involve neurodivergent people and people with learning disabilities, promote human rights, conduct research, bring court proceedings, publish annual plans and accounts, and hold the Government and other public bodies to account.
- ii. Better resourcing and additional duties for an existing Commission or Commissioner. Rather than setting up a new body, we could provide additional resources, powers and duties that would allow an existing body to play a more comprehensive role.
- iii. Champions and Advocates within public bodies. This could involve people with lived experience of neurodivergence or learning disabilities, or people selected by them, raising awareness of rights within public bodies like local councils, healthcare providers, and the police.
- iv. Better resourcing for existing organisations. This would mean helping existing Disabled People's Organisations to support and advocate for the rights of neurodivergent people and people with learning disabilities.
- v. Supporting good practice through standards and guidance, while investing in co-production. This could involve the Scottish Government working with people with lived experience to produce national standards and guidance to schools, universities, councils, healthcare providers, the police, and others.

Next steps

Everyone should have an opportunity to offer their views in order to inform this Bill. The Scottish Government is therefore holding a consultation for four months from the date of this publication, closing on 21 April 2024.

This will include a series of local discussion events across Scotland as well as online events. We will seek to meet with neurodivergent people and people with learning disabilities, and will work with organisations that represent their lived experience. We will publish accessible information packs, and where possible develop accessibility resources that enable as many people as possible to get involved.

The Lived Experience Advisory Group (LEAP) will continue to meet throughout the consultation period and over the rest of the Bill development process.

The views provided during the consultation, alongside the feedback we received throughout the consultation development process, will inform of us of where to place particular focus.

How to respond

We are inviting responses to this consultation by 10pm on Sunday 21 April 2024.

We encourage you to submit a response, regardless of how many questions you would like to answer.

If you are able to, please respond using Citizen Space, the Scottish Government's online consultation hub. Here you will be directed to the 'About You' page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will not publish it.

The LDAN Bill consultation on Citizen Space can be found [here](#).

Written response:

If you are unable to respond online, please complete the Respondent Information Form and send with your completed questionnaire to:

By Post: FREEPOST – LDAN BILL
(simply put form in an envelope and add address above – 3 words – all in capital letters - to post your response free from any postage costs)

Or by email: LDAN.Bill@gov.scot

You can submit any written form of response this way too, so long as you have provided answers to the About You questions on pages 1-4 of the Respondent Information 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 set out.

Responding by audio or video:

You are welcome to submit a response in an audio clip, video, or BSL video file – please email these to LDAN.Bill@gov.scot.

As part of your response, you must include answers to the About You questions in pages 1-4 of the respondent information form so that we can accept your response. Please always supply a way to contact you so we can reach 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: [Privacy - gov.scot \(www.gov.scot\)](http://www.gov.scot/privacy).

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made under the Act for information relating to responses made to this consultation exercise. However, personal data would never be disclosed.

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us understand the views and issues. Responses will be published only where we have been given permission to do so. An analysis report will also be made available.

For information on how to make a complaint please visit: [Make a complaint - gov.scot \(www.gov.scot\)](http://www.gov.scot/make-a-complaint)