

Identity/Definitions

[Click Here for LDAN Bill Consultation: Reach of the Bill and Definitions Easy Read](#)



Background

Existing definitions of learning disability in Scots law are outdated and project a negative impression of people with learning disabilities. For example, the Mental Health (Care and Treatment) (Scotland) Act 2003 lists 'learning disability' under its definition of 'mental disorder'. Many people with learning disabilities find this stigmatising, offensive, and degrading.

The LDAN Bill presents an opportunity to establish new legal definitions for people with learning disabilities and neurodivergent people. It offers an opportunity to set out definitions that are aligned with how people with learning disabilities identify and refer to themselves.



What SCLD wants to see

- Learning disability is clearly defined and visible on the face of the LDAN Bill.
- People with learning disabilities enjoying a positive identity and becoming more visible in society.
- The LDAN Bill clearly setting out who the legislation applies to and in what circumstances.
- Service providers and supporters of people with learning disabilities knowing what their duties are under the LDAN Bill and who this applies to.



What is the consultation proposing?

The Scottish Government LDAN consultation suggests two main options regarding who the LDAN Bill should include:

1. 'People who are Neurodivergent'/'Neurodivergent People'

The Scottish Government thinks that the term 'neurodivergent' would include people with learning disabilities, autistic people, people with Down's Syndrome, people with dyslexia, people with dyspraxia, people with attention deficit hyperactivity disorder (ADHD).

The Government also suggests that using 'neurodivergent' could include people with acquired brain injuries and dementia. However, the Scottish Government does not intend for these groups of people to be within the scope of the LDAN Bill.

2. Including people with specific conditions only in the Bill

The Scottish Government suggests the LDAN Bill could name people with a learning disability, autism and ADHD (attention deficit hyperactivity disorder). People with other conditions could also be added to the Bill.

However, the Scottish Government think by naming groups of people, it would not cover everyone who could benefit from the Bill. The Scottish Government also think that using this option might cause confusion because many neurodivergent people often have more than one condition.



Current SCLD thinking (Jan 2024)

SCLD believes that it is critical that learning disability is clearly defined and visible on the face of the LDAN Bill. We believe that this new definition should not require formal diagnosis for people with learning disabilities to be included within the reach of the Bill.

SCLD has a significant amount of evidence which shows that people with learning disabilities are an invisible minority group and continue to experience many forms of trauma, exclusion, stigma, poor outcomes, and barriers to accessing their human rights across a whole range of issues.¹

The legacy of institutionalisation and segregation has lasted for many years and people with learning disabilities are a population for whom rights are ‘most at risk’ – that is, they experience more discrimination than many other people.

It appears that this discrimination is partly due to their ‘invisibility’ as a population – their needs are not routinely considered by people who make policy and legislation.

At the same time, SCLD believes that ‘learning disability’ has become an important identity which many people with a learning disability have claimed for themselves. A growing number of people with learning disabilities see it as an identity to be proud of, similar to people who identify as belonging to other minority groups.

In contrast ‘neurodivergence’ is not a term that people with learning disabilities are familiar with or identify with.

SCLD is concerned at the prospect of learning disability being subsumed into the terminology of ‘neurodivergence’.

SCLD believes that there would be a real risk that this would result in people with learning disabilities (the significantly disadvantaged group of people who are least able to advocate for themselves), becoming even more invisible and at risk of further exclusion and marginalisation.



Glossary

Duties are things that the law says organisations must do to protect people’s rights.

Institutionalisation is when someone has been taken out of community life to live within a hospital setting. It is for a long period of time or indefinitely and often without a medical reason. Many people who live in institutions like hospitals for a long period of time are said to be institutionalised. This means the rules and routines of the institution have become what is everyday and normal to them.

A **Minority Group** is a group of people who share something that makes them different from most people in society.

¹ [The State of Our Rights, SCLD \(2023\)](#)



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