

Right to Addiction Recovery (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by the Non-Government Bills Unit, on behalf of Douglas Ross MSP, the Member in charge of the Bill, in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Right to Addiction Recovery (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 48–EN);
 - a Financial Memorandum (SP Bill 48–FM);
 - a Policy Memorandum (SP Bill 48–PM);
 - statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 48–LC).
3. This Memorandum has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

Outline of Bill's provisions

4. The Bill provides that, where a person is diagnosed as having an addiction to drugs and/or alcohol, they have the right to be informed by a health professional, having had the opportunity to participate in the process, as to what the appropriate treatment for them would be and to start receiving that treatment within three weeks of that decision (sections 1 to 3).
5. The Bill places a corresponding duty on the Scottish Ministers to secure the delivery of that right and in so doing obliges them to make regulations and a code of practice setting out how, in practice, that duty will be fulfilled (sections 4 and 6). The Bill also contains a reporting requirement (section 5).

This document relates to the Right to Addiction Recovery (Scotland) Bill (SP Bill 48) as introduced in the Scottish Parliament on 14 May 2024

Rationale for subordinate legislation

6. The Bill contains six delegated powers provisions (five regulation making powers including ancillary provisions and commencement provisions and one power to issue a code of practice), described in more detail below.

7. In considering what should be left to subordinate legislation, the Member has had regard to the need to strike a balance between the importance of ensuring full Parliamentary scrutiny of the policy that the Bill seeks to deliver whilst recognising the relatively better position of the Scottish Ministers when compared with an individual member in making decisions as to how the various public bodies, working together, can deliver this right in practice.

Delegated powers

Section 1(6): Right to recovery

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

8. Section 1(5) provides a non-exhaustive list of the treatments for alcohol or drug addiction that a “relevant health professional” (defined in section 9(1) as meaning a medical practitioner, nurse independent prescriber or pharmacist independent prescriber) might consider appropriate. It is the decision (the “treatment determination”) that forms the basis of the right to treatment. Whilst section 1(5)(g) maintains the relevant health professional’s discretion to decide that another form of treatment other than those listed may be appropriate, subsection (6) allows the Scottish Ministers to add to the list of treatments in subsection (5).

Reason for taking power

9. The Member considers that it is important to have the main types of treatment that may be considered appropriate to treat drug or alcohol addiction set out on the face of the Bill and for patients to have these various treatments, and their appropriateness for their individual needs, explained to them (as required by section 2(1)(a)). As new treatments may come to the fore in future the Member considers the power to add (but not to subtract) from this list as being important in keeping the treatment options up-to-date and transparent.

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Choice of procedure

10. Section 8(2) provides that any regulations made under section 1(6) would be subject to the affirmative procedure. As the regulations would be amending primary legislation, the use of the affirmative procedure is considered appropriate.

Section 3(3): Provision of treatment

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

11. Section 3(2) sets out that treatment may not be refused to a patient on any matter other than an assessment by a health professional of the best interests of the patient. Nevertheless, section 3(2) then sets out a list of reasons that may not be used to refuse treatment. The Member considers that, currently, these reasons are often used to deny treatment and so, whilst the right is absolute, he wants to set out these reasons expressly so that there can be absolutely no doubt that they cannot be used. The regulation making power in section 3(3) allows Scottish Ministers to add to those reasons in section 3(2) by regulations.

Reason for taking power

12. The Member considers that it is important that the Bill signals, on its face, the common reasons for which treatment has hitherto been denied. If treatment were to be refused in future on the basis of another reason (albeit that the right is absolute) then the Member considers the list of reasons in section 3(2) ought to be capable of being added to.

Choice of procedure

13. Section 8(2) provides that any regulations made under section 3(3) would be subject to the affirmative procedure. As the regulations would be amending primary legislation by adding to the list in section 3(2), the use of the affirmative procedure is considered appropriate.

Section 4(2): Duty to secure delivery

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

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14. Section 4(1) places the duty on the Scottish Ministers to deliver the right to receive treatment for addiction. Section 4 comes into force the day after Royal Assent and subsection (2) requires the Scottish Ministers, within two months of that date, to lay draft regulations before the Parliament setting out the arrangements by which they intend delivering that right. Subsection (3) provides that the Scottish Ministers may confer functions on certain bodies which are defined in section 9(2) with reference to the National Health Service (Scotland) Act 1978.

Reason for taking power

15. As mentioned in paragraph 7 above, the Member is cognisant of the fact that the Scottish Ministers are best placed to know how health services are delivered in practice and how the various bodies listed in subsection (3) work together. The detail of how, in practice, the rights conferred by this Act are to be delivered, is therefore left to the Scottish Ministers to set out in regulations.

Choice of procedure

16. Section 8(2) provides that regulations made under section 4(2) would be subject to the affirmative procedure. As it is anticipated that the regulations would be substantial in nature, imposing duties on public bodies, the use of the affirmative procedure is considered appropriate to allow for parliamentary scrutiny.

Section 6: Code of practice

Power conferred on: Scottish Ministers
Parliamentary procedure: Laid, no procedure

Provision

17. Section 6 provides that Scottish Ministers must prepare a code of practice to be laid in Parliament in draft at the same time as the draft regulations under section 4 are laid.

Reason for taking power

18. The power is required to oblige the Scottish Ministers to prepare and lay a draft code of practice before the Parliament and to publish the code when the regulations are made. The timing is to enable the Parliament to consider the regulations and the code of practice together. The code of practice is intended to be an operational resource for those bodies on whom the Scottish Ministers confer functions by regulations made under section 4. As an operational resource, it is anticipated that it may require to be adapted and to respond to changes in circumstances, hence the ability in subsection (7) for the Scottish Ministers to revise the code of practice.

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Choice of procedure

19. There is no parliamentary procedure but the Scottish Ministers are required to lay the code of practice in draft along with the draft regulations under section 4.

Section 7(1): Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

20. Section 7 enables the Scottish Ministers, by regulations, to make incidental, supplementary, consequential, transitional, transitory or savings provision for the purposes of, in connection with, or for giving full effect to the Bill.

21. This is a standalone power enabling ancillary provision to be made where the Scottish Ministers consider it appropriate to ensure the Bill can be given its full effect.

Reason for taking power

22. As with any new body of law, the Bill may give rise to a need for further provision to be made to ensure that policy objectives can be achieved.

23. Whilst the Member has given careful consideration to the provisions of the Bill, the detail of how it will operate in practice will be set out by the Scottish Ministers in regulations under section 4 and a code of practice under section 8, there may, in addition, be some ancillary provisions that require to be made in order for the policy to be fully delivered. This power ensures that issues of an ancillary nature which may arise can be dealt with effectively by the Scottish Ministers.

Choice of procedure

24. As the ancillary power is limited and does not extend to modifying “any enactment (including this Act)” (“enactment” being defined in the Interpretation and Legislative Reform (Scotland) Act 2010 as including primary and secondary legislation), the negative procedure is considered appropriate.

Section 10: Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

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Provision

25. Section 10 sets out when the provisions will come into force (i.e. begin to have effect). Section 4 and sections 6 to 11 will come into force on the day after Royal Assent. Sections 1 to 3 and section 5 will come into force on the day, or days as the Scottish Ministers appoint in regulations.

26. Regulations under this section will be laid before the Parliament but will not otherwise be subject to any parliamentary procedure (see section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010).

27. In addition, this section provides that commencement regulations may include transitional, transitory or saving provision and may make different provision for different purposes. In particular, this allows different sections of the Bill to be commenced on different days.

Reason for taking power

28. Whilst sections 4 and 6 require the Scottish Ministers to lay draft regulations and a draft code of practice before the Parliament within two months of the day after Royal Assent setting out how they will secure the delivery of the rights (set out in particular in section 1(1)), sections 1 to 3 (right to recovery, procedure for determining treatment and provision of treatment) and section 5 (duty to report to Parliament) will come into force on a day or days to be decided by the Scottish Ministers. This will allow the Scottish Ministers to ensure that these provisions come into force at the same time as the regulations and code of practice under sections 4 and 6. Such provisions may require to make transitional or transitory provision, or the saving of repealed or amended provisions.

Choice of procedure

29. As is usual for commencement regulations, the default laying requirement in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies.

30. Commencement regulations bring into force provisions, the substance of which have already been considered by the Parliament during the passage of the Bill. Any regulations under this section will be laid before the Parliament as soon as practicable after being made (and in any event before the legislation is due to come into force).

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