

RIGHT TO ADDICTION RECOVERY (SCOTLAND) BILL

EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Right to Addiction Recovery (Scotland) Bill, introduced in the Scottish Parliament on 14 May 2024.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 48–FM);
 - a Policy Memorandum (SP Bill 48–PM);
 - a Delegated Powers Memorandum (SP Bill 48–DPM);
 - statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 48–LC).
3. These Explanatory Notes have been prepared by the Non-Government Bills Unit, on behalf of Douglas Ross MSP, the Member who introduced the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or a part of a section does not seem to require any explanation or comment, none is given.

OVERVIEW AND SUMMARY

5. The Bill provides for a right for anyone diagnosed as having a drug and/or alcohol addiction to receive a treatment determination and for the person to be provided with that treatment as soon as reasonably practicable and no later than three weeks from the date of the determination. The Bill provides that the Scottish Ministers must secure the delivery of all of these rights and obliges them to make regulations setting out how they will fulfil that duty. In doing so, it gives the Scottish Ministers the power to confer functions on health boards, special health boards, the Common Services Agency, local authorities and integration joint boards. The Bill also requires the Scottish Ministers to prepare a code of practice to go alongside these regulations. The Bill enables a person who has been diagnosed as having a drug and/or alcohol addiction to participate in the decision making process about their treatment and for that treatment to commence no later than three weeks from the date of the determination. The Bill also requires the Scottish Ministers to report annually

to the Parliament on progress made towards achieving the provision of the treatments under this Bill. The Bill requires the Scottish Ministers, before preparing a report, to consult representatives of patients and people with lived experience of drug and/or alcohol addiction, as well as health boards, special health boards, the Common Services Agency, local authorities and integration joint boards.

6. These Explanatory Notes use the term “relevant health professional” to cover medical practitioners, nurse independent prescribers and pharmacist independent prescribers (as set out in section 9 (interpretation) of the Bill).

7. The Bill is in 11 sections.

COMMENTARY ON SECTIONS

Right to Recovery

Section 1 – Right to recovery

8. Subsection (1) provides that, where a person is diagnosed as having a drug or alcohol addiction, then that person has the right to (a) be informed as to what the appropriate treatment is to be (as required by subsection (3), having gone through the process set out in section 2) and (b) to be provided with it.

9. Subsection (2) provides that a person must be diagnosed as having a drug or alcohol addiction by a relevant health professional. Section 9 (interpretation) defines a relevant health professional as a medical practitioner, nurse independent prescriber or pharmacist independent prescriber.

10. The effect of subsection (4) is that, by bringing in the treatments to be provided under this Bill as a service under the National Health Service (Scotland) Act 1978,¹ the Scottish Ministers may charge those not ordinarily resident in Great Britain for those services. This is the same as for other NHS treatments. As with other NHS treatments, drug or alcohol treatment under this section would be free for those ordinarily resident in Great Britain.

11. Subsection (5) sets out a non-exclusive list of treatments that may be provided. Subsection (6) provides that the Scottish Ministers may add to that non-exclusive list by regulations.

12. Section 8 (Regulations) provides that the regulations under subsection (6) are subject to the affirmative procedure. This means that regulations must be laid in draft before the Parliament for approval by resolution.

¹ [National Health Service \(Scotland\) Act 1978 \(legislation.gov.uk\)](https://legislation.gov.uk)

Section 2 – Procedure for determining treatment

13. Section 2 sets out the procedure the relevant health professional must follow in determining treatment, in particular that they should explain each of these treatments to the person and their suitability to meet the person’s needs, and encourage them to participate in the discussion.

14. Subsection (2) gives the opportunity to the patient to specifically request one or more of the treatments listed in section 1(5) but ultimately the decision as to what the most appropriate treatment is for the patient is for relevant health professional.

15. Subsection (3) applies where a relevant health professional determines that no treatment is appropriate or that a treatment requested by the patient is not appropriate for them, even where the patient is content with the subsequent treatment determination. In that situation, subsection (3)(a) requires the relevant health professional to provide a written statement of reasons to the patient and advise the patient that they have the right to consult another relevant health professional. The form of the statement of reasons is to be provided for by the Scottish Ministers in a code of practice under section 6(6), and, under subsection (4), must include an explanation of this right to consult another relevant health professional and the procedure to be followed.

16. Subsection (5) provides that the procedure for this second option is to be the same as for the first, save that there is no right to a third opinion or corresponding statement of reasons.

Section 3 – Provision of treatment

17. Subsection (1) requires the treatment to be made available to the patient as soon as reasonably practicable and provides a backstop of three weeks from the date of the treatment determination.

18. Section 3(2) sets out that treatment may not be refused to a patient on any matter other than an assessment by a relevant health professional of the best interests of the patient (for procedure see sections 2(3) and 2(4)). Nevertheless, subsection (2) sets out a non-exhaustive list of reasons that may not be used to refuse treatment. The regulation making power in section 3(3) allows Scottish Ministers to add to those reasons in section 3(2) by regulations.

19. Section 8 provides that regulations under section 3(3) are subject to the affirmative procedure. This means that regulations under subsection (3) must be laid in draft before the Parliament for approval by resolution.

Duties of Scottish Ministers

Section 4 – Duty to secure delivery

20. Subsection (1) places a duty on the Scottish Ministers to ensure that the rights in the Bill are realised. To do this, subsection (2) requires Ministers to lay draft regulations before the Parliament within two months of this section coming into force. These regulations are to set out the detailed arrangements to be put in place to ensure compliance with the duty to deliver the right. Subsection (3) provides that these arrangements may include conferring functions on health

boards, special health boards,² the Common Services Agency,³ local authorities⁴ and integration joint boards.⁵

21. Section 8 (Regulations) provides that regulations made under subsection (2) are subject to the affirmative procedure. This means that regulations under subsection (2) must be laid in draft before the Parliament for approval by resolution.

22. Under section 10(1), section 4 comes into force on the day after Royal Assent. Therefore, the Ministers must lay regulations under subsection (2) within two months of the day after Royal Assent.

Section 5 – Duty to report to Parliament

23. Section 5 requires the Scottish Ministers to report annually on the progress made towards providing the treatments for addiction recovery and to publish this report and lay it before the Scottish Parliament. Subsection (5) defines a reporting period as being the period of 12 months starting from the day that the regulations required by section 4(2) come into force⁶ and each successive one-year period.

24. Subsection (2) sets out the information that must be included in the report.

25. Subsection (3) provides for consultation to be part of the process of reporting, in particular that the Scottish Ministers must consult patient representatives, people with lived experience of drug and/or alcohol addiction and the bodies on whom the Scottish Ministers may have conferred functions in the regulations made under section 4.⁷ In practice, “representatives of patients” may mean patients themselves, family members of patients or groups representing patients. People with lived experience of drug or alcohol addiction could include, for example, not only those who have been addicted themselves but also people who have a family member who is or has been addicted, as well as people who have a family member who has died as a result of addiction to alcohol and/or drugs.

Section 6 – Code of practice

26. Section 6 requires the Scottish Ministers to prepare a code of practice alongside the regulations, setting out further how the duty to fulfil the right to treatment will be carried out. Subsections (1) and (2) provide that this code of practice must be prepared in draft and laid before the Parliament at the same time as the draft regulations under section 4.⁸

² Health boards and special health boards are constituted under section 2 of the National Health Service (Scotland) Act 1978. Available at: [National Health Service \(Scotland\) Act 1978 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1978/11/section/2).

³ The Common Services Agency is constituted under section 10 of the National Health Service (Scotland) Act 1978. Available at: [National Health Service \(Scotland\) Act 1978 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1978/11/section/10).

⁴ Local authorities are councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994. Available at: [Local Government etc. \(Scotland\) Act 1994 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1994/12/section/2).

⁵ Integration joint boards are established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014. Available at: [Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2014/12/section/9).

⁶ Regulations under section 4(2) come into force on the day after Royal Assent.

⁷ Health boards, special health boards, the Common Services Agency, local authorities and integration joint boards.

⁸ Health boards, special health boards, the Common Services Agency, local authorities and integration joint boards.

27. Subsection (3) provides that the Scottish Ministers must publish the code of practice at the same time as the Scottish Ministers make regulations under section 4 (i.e. once they have been approved by the Parliament then the Minister can “make”, i.e. sign them.) Subsection (4) provides that the Scottish Ministers must then lay the code of practice before the Parliament as soon as practicable after it is published.

28. Subsection (7) allows the Scottish Ministers to revise the code, following the same procedure.

Final provisions

Section 7 – Ancillary provision

29. This section allows the Scottish Ministers, by regulations, to make ‘standalone’ ancillary provision in relation to the Act or any provision made under it. However, this ancillary provision does not extend to being able to modify Acts. This type of power is used to ensure that the Bill has its full intended effect.

Section 8 – Regulations

30. This section provides that the various regulation making powers under the Act may make different provision for different purposes and includes the power to make a range of ancillary provision (that is: incidental, supplementary, consequential, transitory, transitional or saving provision). The ability to make different provision for different purposes enables a regulation making power to be used in different ways in different circumstances. This section does not apply to commencement regulations which have a more limited range of ancillary powers (relating to making transitional, transitory or saving provision).

Section 9 – Interpretation

31. This section contains definitions of terms used in the Bill. Such terms have been explained in these Notes in relevant places.

Section 10 – Commencement

32. Section 10 sets out when the provisions of the Bill will come into effect as a matter of law. It provides that the sections on duty to secure delivery, regulations, code of practice, ancillary provision, interpretation, commencement and short title will automatically come into force on the day after the Bill receives Royal Assent. All other sections of the Bill will take effect in accordance with regulations made by the Scottish Ministers. Those regulations will require to be laid before the Scottish Parliament but, by virtue of section 8(4), they will not otherwise be subject to any parliamentary procedure.

Section 11 – Short title

33. Section 11 is the short title of the Bill so needs no further explanation.

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

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