

Proposed Right to Addiction Recovery (Scotland) Bill



**RIGHT TO
RECOVERY**
**TO TACKLE SCOTLAND'S
DRUG DEATHS**

A proposal for a Bill to enable people addicted to drugs and/or alcohol to access the necessary addiction treatment they require.

Consultation by Douglas Ross, MSP for
Highlands and Islands (Region)

7 October 2021

Contents

Contents	2
Foreword	3
Aim of the Proposed Bill.....	6
Background	7
Drug deaths in Scotland.....	7
Drug related hospital stays	7
Alcohol dependence in Scotland.....	8
Treatment	9
Funding.....	9
Why legislate?	10
Current legislation.....	12
Complaints procedure.....	15
Detail of the Proposed Bill.....	15
Legislative competence	15
Potential impacts of the Bill.....	16
Financial implications.....	16
Equalities implications.....	17
Sustainable development.....	17
Questions	19
About you	19
Your views on the proposal.....	20
Aim and approach.....	20
Financial implications.....	23
Equalities	23
Sustainability.....	24
General.....	24
How to respond to this consultation	25
Format of responses	25
Deadline for responses	26
How responses are handled	26
Other exceptions to publication.....	27
Data Protection	27
Freedom of Information (Scotland) Act 2002.....	27

Foreword



1,339.

According to National Records of Scotland, that was the dreadful and heart-breaking number of people in Scotland who lost their lives to drugs in 2020.¹

With the release of these figures, came statements like: 'largest number ever recorded', 'worst in Europe', 'five times the rate of England and Wales' and 'more than 10,000 lives lost in the last 13 years'.

Behind each of the statements was a mother, father, daughter, son, friend – a person. A person whose death was a tragic loss of life that could have been avoided.

I believe that many people across Scotland would benefit from addiction treatment, but they aren't able to access it.

One of the Scottish Government's own reviews² into residential rehabilitation describes how waiting times can be up to a year, with providers saying existing pathways to secure funding for placements were a 'significant barrier to fulfilling current capacity'. Recovery organisations have even had to seek senior legal counsel to bring cases to court where people were denied access to drug treatment.

That is why the Scottish Conservatives joined with recovery groups and called on the Scottish Government to provide more funding for residential rehabilitation.

While I welcomed the announcement from the Scottish Government in January of a 5-year drug treatment funding package, which was again reiterated in their 2021 Programme for Government, we can and should do more. Families have been failed and entire communities have been left broken by a Scottish Government approach which is in danger of being too little, too late.

Over the past few years, I have asked myself why Scotland has the highest drug death rate of any other country in Europe and problematic levels of alcohol consumption. There are numerous societal and health reasons, but ultimately the system for treating addiction has used an approach that has failed for years. It is not fit for purpose. It

¹ National Records Scotland, *Drug-related deaths in Scotland, 2020*, 30 July 2021, <https://www.nrscotland.gov.uk/files/statistics/drug-related-deaths/20/drug-related-deaths-20-pub.pdf>

² Scottish Government, *Residential Rehabilitation in Scotland Service Mapping Report 2019/20*, 14 December 2020, <https://www.gov.scot/publications/residential-rehabilitation-scotland-service-mapping-report-2019-20/>

fixates on treating problems like heroin use by increasing methadone prescriptions instead of rehabilitation and recovery programmes.

This cannot continue. There have been warnings from stakeholders that the situation on the ground is getting worse and tragically drug death numbers could continue to rise. We must take action now to ensure that more people don't lose their lives – they must get access to the vital treatment that they need.

That is why I am consulting on a proposed Right to Addiction Recovery (Scotland) Bill. I want to ensure that no one is denied addiction treatment ever again by enshrining an enforceable right to treatment in Scots law. I want standards and guidance in place to help people find the support that is right for them. And I want to finally end the convoluted funding system that often sees treatment centres lose out.

I believe these measures can help reduce the tragic and shameful problem of drug deaths in Scotland. We must act now; no more time should be wasted and no more lives should be lost. Everyone must be able to access the necessary treatment they need to survive and get better.

I look forward to hearing your views on these proposals.

Douglas Ross MSP
October 2021

How the Consultation Process works

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<https://parliament.scot/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at Douglas Ross MSP, Scottish Parliament, Edinburgh, EH99 1SP. My office can also be contacted by telephone on 0131 348 6161 or by email at douglas.ross.msp@parliament.scot.

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website (www.parliament.scot) under Parliamentary Business / Bills / Proposals for Members' Bills.

Aim of the Proposed Bill

The aim of this proposed Bill is to ensure that everyone has access to the necessary drug and alcohol addiction treatment they need. This will enable those living with addiction issues to survive, get better and reduce Scotland's shameful drug and alcohol death numbers.

The proposed Bill would enshrine the right to necessary addiction treatment in Scots law. It would place an obligation on Scottish Ministers, Health Boards and others to provide treatment and set up reporting arrangements so that the quality and access of treatment provided can be monitored and reported to the Scottish Parliament. This will ensure that individuals may access a preferred treatment option unless it is deemed to be harmful by a medical professional. My proposal is a Bill that would include, but not be limited to, a statutory right to:

- Short-term residential rehabilitation;
- Long-term residential rehabilitation;
- Community-based rehabilitation;
- Residential detoxification;
- Community-based detoxification;
- Stabilisation services;
- Substitute prescribing services; and
- Any other forms of treatment as a health professional may deem appropriate, in line with guidance from the Scottish Ministers.

The Bill would seek to prevent individuals seeking drug and alcohol treatment services from being refused access for reasons including:

- A medical history of substance misuse;
- A criminal history involving substance misuse;
- Automatically on the outcome of a mental health assessment;
- The individual currently being in receipt of substitute prescribing services, regardless of the volume of prescription; and
- The individual currently still undertaking alcohol and/or drug misuse.

In addition, it would see the introduction of new national standards and guidance to increase the accessibility of rehabilitation programmes. I also intend to consider how effective and appropriate the current NHS complaints procedures are, and whether an additional complaints procedure specific to this proposal should be included in the Bill.

The Bill would also aim to establish a national funding scheme to ensure that resources swiftly reach frontline treatment services in areas of acute demand.

Background

Drug deaths in Scotland

In 2020, National Records Scotland reported that drug deaths in Scotland were the highest on record. 1,339 people died following drug use in 2020, a 5% increase on the previous year and almost triple the 455 recorded in 2007. ³The drug death rate in Scotland is now five times worse than the rest of the UK, and the highest in Europe.⁴

The most recent figures from National Records Scotland show that, Greater Glasgow & Clyde had the highest death rate at 30.8 per 100,000 population, followed by Ayrshire & Arran and Tayside with rates of 27.2 and 25.7 per 100,000 population respectively.

After adjusting for age, people in the most deprived areas were 18 times as likely to have a drug-related death as those in the least deprived areas. That ratio has almost doubled in 20 years, from around 10 times in the early 2000s.

63% of all drug-related deaths were of people aged between 35 and 54, with the average age of drug-related deaths increasing from 32 to 43 over the last 20 years. However, drug use affects all age groups. In 2018 drugs and alcohol charity Addaction warned that teenagers as young as 13 were being treated for cocaine addiction in Scotland, due to the plummeting price of the drug.⁵

Scotland's polydrug habit, mixing street drugs with alcohol and prescription pills, caused a large number of deaths, with 93% of all drug deaths being people who took more than one substance.

As mentioned in the foreword, these are shocking statistics and with warnings from recovery groups that the situation is getting worse, action must be taken now to ensure people addicted to drugs and/or alcohol can access the necessary addiction treatment they require.

Drug related hospital stays

Figures from Public Health Scotland show that the rate of drug-related hospital stays per population in Scotland has tripled in the past two decades. In 2019-20 the drug-related hospital stay rate was 282 stays per 100,000 of the population. This has increased more than threefold from the 87 per 100,000 of the population in 1997-98.

³ National Records Scotland, *Drug-related deaths in Scotland, 2020*, 30 July 2021,

<https://www.nrscotland.gov.uk/files/statistics/drug-related-deaths/20/drug-related-deaths-20-pub.pdf>

⁴ Office for National Statistics, *Deaths related to drug poisoning, England and Wales*, 3 August 2021,

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/datasets/death-related-to-drug-poisoning-in-england-and-wales-referencetable>

⁵ *The Big Issue*, 10 July 2018, <https://www.bigissue.com/latest/teens-as-young-as-13-are-being-treated-for-cocaine-addiction-in-scotland/>

About half of the patients with a drug-related hospital stay lived in the most deprived areas in Scotland.⁶

Scotland's NHS has already been under incredible strain in the last year. I believe that the rapid increase in drug-related hospital stays, which have increased exponentially over the last two decades, will have a significant knock-on effect on the NHS' ability to carry out other treatments.

It once again shows that the current approach to tackling Scotland's drug problem is not working and highlights the need for additional drug support services.

Alcohol dependence in Scotland

Scotland also has problematic levels of alcohol consumption. NHS Scotland's most recent Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS) monitoring report stated that a quarter of adults in Scotland, drink more than the recommended 14 units of alcohol per week.⁷

Recent figures by National Records of Scotland show that deaths caused by alcohol are at the highest level since 2008, 1,316 people died that year. The number of alcohol-specific deaths has increased by 17 per cent to 1,190 in 2020, up from 1,020 in 2019.⁸

Alcohol Focus Scotland said alcohol is the third leading risk factor for death and disability after smoking and high blood pressure. It added that on average in Scotland, people drink more than people in England and Wales, and more than many other European countries. Scotland also suffers more alcohol-related harm than these countries. Scotland's relationship with alcohol led to it having one of the fastest growing rates of liver disease in the world. Life expectancy in some parts of Scotland varies and alcohol plays a part in these inequalities.⁹ For example, statistics from National Records Scotland state that for both males and females born in 2016-2018, life expectancy was highest in East Renfrewshire Council area and lowest in Glasgow City Council area, with 7.3 fewer years of life for males and 4.9 fewer years of life for females in Glasgow City compared with East Renfrewshire.¹⁰

⁶ Public Health Scotland, *Drug-Related Hospital Statistics Scotland 2019/20*, 15 June 2021, <https://beta.isdscotland.org/media/9218/2021-06-15-drhs-report.pdf>

⁷NHS Scotland, *MESAS Report 2020*, 17 June 2020, <https://publichealthscotland.scot/publications/mesas-monitoring-report-2020/>

⁸ National Records Scotland, *Alcohol Deaths*, 17 August 2021, <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/deaths/alcohol-deaths>

⁹ *Alcohol Focus Scotland*, <https://publichealthscotland.scot/publications/mesas-monitoring-report-2020/>

¹⁰National Records Scotland, *Life expectancy in Scottish areas 2016-2018*, 11 December 2019, <https://www.nrscotland.gov.uk/files/statistics/life-expectancy-areas-in-scotland/16-18/life-expectancy-16-18-publication.pdf>

Treatment

In Scotland if a person needs treatment for drug and/or alcohol addiction, they are entitled to NHS care in the same way as anyone else who has a health problem.

There are 31 local partnerships (Alcohol and Drug Partnerships – ADPs) throughout the country working with health boards, local authorities, police and voluntary agencies which work to reduce the use of and harms from alcohol and drugs.¹¹ However, an evaluation of ADPs by the Care Inspectorate in 2017, revealed that many services found it hard to demonstrate the impact they were having on their local communities. The report found that more could be done by ADPs to improve community engagement.¹²

The majority of residential rehab facilities in Scotland are provided by the third sector. The latest figures show that there is a total of 365 residential rehabilitation beds across 18 facilities across Scotland. However, around 100 of these beds were estimated to be taken up by residents out with Scotland during 2019/20. During the same time period, there was also a large variance in the numbers referred for treatment across ADP areas which was not fully explained by their different population sizes or estimated need.¹³

Funding

In 2015 the Scottish Government transferred the funding of ADPs from the justice portfolio to the health portfolio. This led to a 22.25% reduction in funding from £69.2 million in 2015-16 to £53.8 million in 2016-17.¹⁴ Groups such as the British Medical Association (BMA) criticised the move. In a submission to the Scottish Parliament's Health and Sport Committee, the BMA criticised ministers for not restoring the funding in the 2017-18 budget, adding it would 'only increase pressures on the health service and general practice in particular'¹⁵. The Scottish Government announced additional investment of £20 million in the 2018-19 Scottish Budget¹⁶ and again in the 2019-20 Scottish Budget¹⁷, but funding concerns remain.

¹¹ Scottish Government, Alcohol and Drug Partnerships: delivery framework, 19 July 2019, <https://www.gov.scot/publications/partnership-delivery-framework-reduce-use-harm-alcohol-drugs/>

¹² Audit Scotland, *Report: Drug and alcohol services: an update*, 21 May 2019, <https://www.audit-scotland.gov.uk/report/drug-and-alcohol-services-an-update>

¹³ Scottish Government, *Residential Rehabilitation in Scotland Service Mapping Report 2019/20*, 14 December 2020, <https://www.gov.scot/publications/residential-rehabilitation-scotland-service-mapping-report-2019-20/>

¹⁴ SFD, *Drug and Alcohol Services Funding Timeline 2015-17*, <https://www.sdf.org.uk/wp-content/uploads/2017/09/CPG-ADP-Funding-Timeline-2.pdf>

¹⁵ *Scottish Conservatives*, 12 September 2017, <http://www.scottishconservatives.com/2017/09/doctors-slam-snp-over-cuts-to-alcohol-and-drug-funding/>

¹⁶ Scottish Government, *Scottish Budget 2018-2019*, 14 December 2017, <https://www.gov.scot/publications/scottish-budget-draft-budget-2018-19/>

¹⁷ Scottish Government, *Scottish Budget 2019-2020*, 12 December 2018, <https://www.gov.scot/publications/scottish-budget-2019-20/pages/4/>

Funding is especially a concern for residential rehabilitation. In 2019-20, the Scottish Government funded only 13 per cent of residential rehabilitation places in Scotland.¹⁸ The Scottish Conservatives have repeatedly campaigned for £20 million in additional funding for facilities.¹⁹ Given this, I welcomed the announcement from the Scottish Government in January this year of an extra £20 million a year for residential rehab facilities. The measures were announced as part of a £250 million package over five years, aimed at tackling Scotland's shocking drug death figures.²⁰

Following the publication of the latest drug death figures, Minister for Drug Policy, Angela Constance said in a statement to the Scottish Parliament that since March 2021 the Scottish Government had provided £3.5 million in new funding to 80 projects which focused on improving services, increasing capacity and improving access to residential rehabilitation. She also said the Scottish Government had provided an uplift in funding to alcohol and drug partnerships and 'over and above that, £4 million for specific improvements' to implement and meet the medication assisted treatment standards, which were published in May 2021.²¹

In September 2021, the Scottish Government's Programme for Government reiterated the £250 million package over five years announced earlier in the year and added that, this year it would ensure people have access to same-day treatment and a wider range of treatment options, and provide a rolling guarantee of £18 million for grassroots organisations to help people in their communities.²²

Why legislate?

I believe that in Scotland today people are still being denied access to the addiction treatment that they need.

Waiting times for residential rehabilitation are notoriously long. The Scottish Government's report into residential rehabilitation provision stated that in 2019-20, 'the majority of facilities have a waiting list for their services, ranging from a few days to a

¹⁸ Scottish Government, *Residential Rehabilitation in Scotland Service Mapping Report 2019/20*, 14 December 2020, <https://www.gov.scot/publications/residential-rehabilitation-scotland-service-mapping-report-2019-20/>

¹⁹ *The Herald*, 14 December 2020, <https://www.heraldscotland.com/news/18943056.scotland-drug-deaths-call-20m-rehab-beds-funding> ; *Scottish Conservatives*, 27 November 2018, <http://www.scottishconservatives.com/2018/11/scottish-conservatives-unveil-new-strategy-to-reduce-drug-deaths/>

²⁰ Scottish Government, 20 January 2021, <https://www.gov.scot/news/more-than-gbp-250-million-for-drug-deaths-emergency/>

²¹ *Official Report*, 3 August 2021, <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=13260&i=120223>

²² Scottish Government, *A Fairer, Greener Scotland: Programme for Government 2021-22*, 7 September 2021, <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/>

year'.²³ The number of NHS admissions to one of Scotland's leading rehab facilities has declined dramatically over the past 20 years. In 2002, Castle Craig addiction rehabilitation centre received 257 NHS admissions, this dropped to 145 in 2008 and just 5 in 2019.²⁴ Last year, the founder of Castle Craig said: 'We opened up 32 years ago in Scotland to treat Scots and now we're not able to unless they can pay for it'.²⁵

Behind these statistics are the more personal and heart-breaking stories of drug users being denied treatment. Recently, a Scottish addiction charity, dealt with a case where a man had been trying to get into treatment for two years, but kept hearing that he was 'not appropriate for rehab'. He grew up in the care system and took part in the Scottish Government's Independent Care Review after suffering from extreme PTSD (post-traumatic stress disorder). He first became addicted to heroin in his 20s and has been on and off methadone since. The process of trying to get him treatment was described as hitting 'brick wall after brick wall' adding that 'the system is broken, there is no doubt about that'.²⁶ This is an individual case, but it is being repeated all over the country.

I know that residential rehabilitation might not be the best path for every person with an addiction. The key aim of treatment must be to wean those who suffer from addiction off the substance which they are dependent on. But to do this they must have the opportunity and choice of treatment. People must be provided with a choice and opportunity to overcome their addiction and get well. Right now, this isn't happening at the rate it should and too many people are being denied access to treatment.

The First Minister has admitted that 'we are not yet in the place where we want to be in terms of drug treatment and services generally, and in terms of drug rehabilitation services, in particular'.²⁷ The system is fundamentally broken and I believe that enshrining a right to necessary treatment in law, with the obligation placed on Scottish Ministers, Health Boards and others as appropriate to ensure this, will stop the denial of access and get people the treatment they desperately need.

I welcomed the publication of the Drug Medication Assisted Treatment (MAT) standards in May this year. They are evidence-based standards which aim to enable the consistent delivery of safe, accessible, high-quality drug treatment across Scotland. They are relevant to people and families accessing or in need of services, and health

²³ Scottish Government, *Residential Rehabilitation in Scotland Service Mapping Report 2019/20*, 14 December 2020, <https://www.gov.scot/publications/residential-rehabilitation-scotland-service-mapping-report-2019-20/>

²⁴ Castle Craig - Figures available on request.

²⁵ The Herald, 26 February 2020, <https://www.heraldscotland.com/news/18258330.nhs-referrals-drug-rehab-record-low-despite-scotlands-spiralling-overdose-crisis/>

²⁶ STV News, 17 June 2021, <https://news.stv.tv/west-central/man-left-at-deaths-door-by-broken-drug-addiction-services?top>

²⁷ Official Report, 17 June 2021, <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=13260&i=120223>

and social care staff responsible for delivery of recovery-oriented systems of care.²⁸ They are an important move in the right direction, but they are not game changing and they don't give drug users any enforceable rights. Unless they are given a legal basis, they are, in effect, optional and can be overlooked. That is why I am proposing a Bill that would require the production of national standards and referral guidance. By putting standards in legislation, I believe it will increase the accessibility to treatment programmes.

As seen from the funding section on page 9, funding has remained an ever-present issue when it comes to treatment. That is why I am also proposing legislating to tackle the problem of securing funding for addiction recovery treatment.

While I welcomed the funding announcement by the Scottish Government in January this year, I believe it still does not change the inherent problems with the treatment funding system. The Scottish Government's report into residential rehabilitation stated that rehab providers find navigating ADP funding pathways 'difficult' and that they 'took a long time and would welcome a more simplified and centralised route to apply for funding'.²⁹

These are problems which ultimately restrict people's access to the treatment they need. That is why I am also proposing that the Bill would require the Scottish Government to establish a dedicated autonomous national funding scheme which would bypass the current broken ADP system.

Current legislation

There is currently no specific statutory right to addiction treatment.

There is a general duty to provide a health service within The National Health Service (Scotland) Act 1978 referenced below:

Section 1 of The National Health Service (Scotland) Act 1978 places a general duty on the Scottish Ministers to continue to promote a free, comprehensive and integrated health service to secure:

- a) improvement in the physical and mental health of the people of Scotland and
- b) the prevention, diagnosis and treatment of illness.

Although section 1 provides a general, overarching basis for provision of health services, it is not one that deals specifically with a right to addiction treatment.

²⁸ Scottish Government, *Drug Medication Assisted Treatment (MAT) standards: access, choice, support*, 31 May 2021, <https://www.gov.scot/publications/medication-assisted-treatment-mat-standards-scotland-access-choice-support/>

²⁹ Scottish Government, *Residential Rehabilitation in Scotland: A status report on current levels of capacity*, 19 February 2021, <https://www.gov.scot/publications/residential-rehab-scotland-status-report-current-levels-capacity>

In the last few years the Scottish Government has brought forward numerous policy proposals aimed at tackling drug and alcohol addiction.

In 2008, the Scottish Government's drug strategy, *The Road to Recovery*, set out the intention to reduce drug misuse in Scotland.³⁰ The strategy recognised the importance of prevention, law enforcement, child protection and harm reduction. But the key focus was recovery. The Scottish Government committed to providing a broad range of person-centred treatment and support options across Scotland. The strategy identified that integrating health and social services was an important principle in ensuring that people seeking treatment get the physical and mental health support they need.³¹

In 2014, health and social care integration was established in law in Scotland through *The Public Bodies (Joint Working) (Scotland) Act 2014*. The Act created public bodies, known as Integration Authorities with a statutory responsibility to coordinate local health and social care services.

Alcohol Drug Partnerships (ADPs) sit within this structure and report to Integration Authorities.³² Performance-reporting requirements were developed and published in agreements between ADPs, COSLA and the Scottish Government. An Audit Scotland report into Scotland's drug and alcohol services noted, 'these publications were intended to help plan and improve the quality of services at local level, so ADPs could assess how they were performing and link the services they were providing to outcomes. They also intended to help reporting at a national level to enable benchmarking and provide a national overview of progress towards alcohol and drug prevention and treatment'.³³

In November 2018, the Scottish Government published the 'Rights, respect and recovery' alcohol and drug treatment strategy. When published the strategy aimed to take a health approach to substance misuse and ensure services treat people as individuals. This included 'diverting drug users out of the criminal justice system where appropriate, and tackling people's wider issues such as housing, employment and mental health'. As part of the implementation of the strategy, the Scottish Government stated they would be reviewing the current reporting structure for ADPs.

In 2019, the Drug Deaths Taskforce was introduced. At the time, then Minister for Public Health, Sport and Wellbeing, Joe Fitzpatrick MSP, said the group would examine the factors behind the deaths and advise on action.³⁴ However, a year after its creation,

³⁰ Scottish Government, *Road to Recovery*, 29 May 2008, <https://www.gov.scot/publications/road-recovery-new-approach-tackling-scotlands-drug-problem/>

³¹ Audit Scotland, *Drugs and alcohol: an update*, 2019, https://www.audit-scotland.gov.uk/uploads/docs/report/2019/briefing_190521_drugs_alcohol.pdf

³² UK Legislation, *The Public Bodies (Joint Working) (Scotland) Act 2014*, 2014, <https://www.legislation.gov.uk/asp/2014/9/contents/enacted>

³³ Audit Scotland, *Drugs and alcohol: an update*, 2019, https://www.audit-scotland.gov.uk/uploads/docs/report/2019/briefing_190521_drugs_alcohol.pdf

³⁴ *Scottish Government*, July 2019, <https://www.gov.scot/groups/drug-deaths-task-force/>

recovery groups warned that Scotland was going backwards with its efforts in tackling drug deaths.³⁵

In January of this year, the First Minister announced a 'new national mission to reduce drug related deaths and harms' supported by an additional £50 million per year, over the next 5 years. Angela Constance MSP was appointed as the dedicated Minister for Drug Policy.³⁶ Drug Medication Assisted Treatment (MAT) standards, which were mentioned earlier in this consultation were included within this latest policy announcement.

More recently, following the publication of the latest drug death figures, Minister for Drug Policy, Angela Constance announced a new residential rehabilitation facility to support families affected by drug use in North Ayrshire. Funding for this service will be run by the charity and housing association Phoenix Futures. The facility will provide rehabilitation services for twenty families at any one time. She also announced an urgent review into the use of 'street benzos'³⁷ after latest statistics showed the drugs were implicated in 73% of drug-related deaths in 2020.³⁸

In a recent Scottish Parliament debate, brought forward by my colleagues, the Minister for Drug Policy, Angela Constance, said she was 'happy' to consider any proposal on the right to addiction recovery closely. However, she emphasised that her focus was on 'the MAT standards and increased capacity in residential rehabilitation over the next five years.'³⁹

For the reasons mentioned elsewhere in this document I do not believe that any of these proposals are enough to tackle Scotland's addiction problem or get people the treatment they deserve.

³⁵ *The Scotsman*, 29 July 2020, <https://www.scotsman.com/health/scotland-going-backwards-tackling-drug-deaths-2927589>

³⁶ Scottish Government, *Drugs policy - update: statement by the First Minister*, 20 January 2021, <https://www.gov.scot/publications/update-drugs-policy/>

³⁷ Benzodiazepines are only legally available through prescription, 'street Benzos' are ones which are bought illicitly.

³⁸ *Official Report*, 3 August 2021, <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=13260&i=120223>

³⁹ *Official Report*, 29 September 2021, <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=13332&i=120955>

Complaints procedure

Regarding NHS complaint's procedure, currently patients can make a complaint in writing, by phone, by email, in person or using an online complaints form.⁴⁰ This consultation will allow further consideration of the current available complaint mechanisms to assess if they are likely to be fit for purpose to deal effectively with complaints about access to rehabilitation treatment.

Detail of the Proposed Bill

The principle which underlies my proposed Member's Bill is to ensure that people who are addicted to drugs and/or alcohol are able to access the necessary addiction treatment they require. In order to achieve this, my proposed Bill will enshrine the right to necessary addiction treatment in Scots law. It would place an obligation on NHS Health Boards, Scottish Ministers and others as appropriate to provide treatment and set up reporting arrangements so that the quality and access of treatment provided can be monitored and reported to the Scottish Parliament.

I propose that the Bill would deliver the aims of the proposal by:

- establishing a right to recovery treatment;
- adding strength to that right/enforceability by placing duties on NHS Health Boards, Scottish Ministers and others;
- allowing those with addiction issues to choose their preferred treatment option (unless deemed harmful by a medical professional);
- ensuring that access to treatment is not denied unless there is a strong medical case;
- establishing national standards and guidance;
- establishing a complaints procedure for those with addiction issues/their families to pursue if the right is being denied – if the current procedures are not deemed suitable for this proposal;
- establishing a national funding scheme;
- requiring the relevant bodies responsible to report progress to the Scottish Parliament.

Legislative competence

Provision of addiction treatment services cuts across a number of devolved policy areas (e.g. health, housing, communities, and education). The Misuse of Drugs Regulations

⁴⁰ NHS Scotland, <https://www.nhsinform.scot/care-support-and-rights/health-rights/feedback-and-complaints/feedback-complaints-and-your-rights>

2001 made further to section 7 of the Misuse of Drugs Act 1971, deal with the lawful possession, prescription and supply of controlled drugs. The subject-matter of the 1971 Act is a reserved matter (Section B1 of Schedule 5 of the Scotland Act). As the proposal develops, the wording of draft Bill provisions will be considered further against any relevant reserved matters.

Potential impacts of the Bill

If passed, the Bill has the potential to have a transformative impact in aiming to give individuals the best chance to recover from addiction or substance misuse.

The Bill will have other impacts, such as those on finances, equalities issues and sustainability.

Financial implications

The proposed Bill would give individuals a positive right, and seek to give effect to that right, to access rehabilitation services. In this respect, the Bill would move the provision of treatment services from being effectively capped by Scottish Government rehabilitation funding to being demand-led. This will clearly have financial implications which will ultimately fall to the Scottish Government, but I believe that this is the bold action required if Scotland is to properly tackle and reduce the rising number of drug deaths each year.

Given that it is a funding model based on demand it is difficult to set an exact cost. The Scottish Government estimated that the average minimum cost per rehabilitation treatment place in Scotland was £17,800 in 2019-20. It also noted that 830 individuals were resident in Scotland prior to starting a residential rehabilitation placement in that same year.⁴¹ From this we can assume a minimum cost of £14.8 million annually, however a significant proportion of this cost is already being funded and will therefore not be new. It should be noted that this is well within £50 million annual spending that the Scottish Government intends to spend on drug treatment in each of the next five years.⁴² Additional costs would be expected around the role of medical professionals and potentially setting up a complaints procedure.

A new right to recover approach would see a new national funding scheme created which is separate from the existing Alcohol and Drug Partnerships model.

⁴¹ Scottish Government, *Residential Rehabilitation Working Group: recommendations on drug and alcohol residential treatment services*, December 2020, p8+10, <https://www.gov.scot/publications/residential-rehabilitation-working-group-preliminary-recommendations-drug-alcohol-residential-treatment-services/>

⁴² Scottish Government, 20 January 2021, <https://www.gov.scot/news/more-than-gbp-250-million-for-drug-deaths-emergency/>

Equalities implications

In drawing up my proposal, I have carried out an initial assessment of its potential impact on equalities. I am mindful of the negative impact that the current situation is having on many people with protected characteristics under the Equality Act 2010 (Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex, and Sexual Orientation).

The 2020 report on drug-related deaths in Scotland highlighted particular issues relating to age and sex. In relation to age, the 2020 report stated that almost two thirds of all drug-related deaths were of people aged between 35 and 54 and that the average age of drug-related deaths has increased from 32 to 43 over the last 20 years. Also, in 2018, it was reported that children as young as 13 were being treated for cocaine addiction.⁴³ In terms of sex, the 2020 report found that, after adjusting for age, males were 2.7 times as likely to have a drug-related death as females in 2020 (37.3 deaths per 100,000 population compared to 13.6). However, over time this gap has decreased – in the early 2000s males were more than 4 times as likely to have a drug-related death as female. The report also showed that there has been a recent disproportionate increase in the number of drug deaths among women.

Other characteristics may also be impacted currently. In terms of sex, and pregnancy and maternity issues, the Minister recently told the Parliament “...we know that there is a strong link between women having children removed from their care and the risk of drug-related death.” There have also been some reports around patterns of drinking in LGBT communities⁴⁴, and within different racial⁴⁵ and religious communities, and how issues such as stigma may vary between different groups and communities.

I am very interested in hearing views on how the proposal may affect anyone with a protected characteristic under the Equalities Act 2020 and there is a specific question about this in this consultation.

Sustainable development

The Bill would have a positive impact on those that have drug and alcohol addictions. It aims to end the situation where people seeking to get off drugs can't actually get the treatment they need. This would reduce the number of people addicted to drugs and increasing the number of people contributing positively to society.

I would expect the Bill to bring benefits to Scotland by reducing the: amount of crime and direct effects of crime on the people of Scotland; cost to the police, criminal justice

⁴³ *The Big Issue*, 18 July 2018, <https://www.bigissue.com/latest/teens-as-young-as-13-are-being-treated-for-cocaine-addiction-in-scotland/>

⁴⁴ <https://www.shaap.org.uk/images/shaap-glass-report-web.pdf>
<https://www.dailyrecord.co.uk/news/scottish-news/lgbt-campaign-launched-highlight-high-22267605>

⁴⁵ <https://www.hi-netgrampian.org/wp-content/uploads/2017/10/Alcohol-Services-Acceptable-Accessible-Ethnic-Minorities-Report-GREC-March-2017.pdf>

and prison system of drug related crime; and costs to drugs related service providers of chasing funding by providing a more uniform funding framework.

This proposal has the potential to have a positive impact on many areas relating to sustainability, and in particular to issues such as: ensuring a strong, healthy and just society; achieving a sustainable economy; promoting effective, participative systems of governance; and ensuring policy is developed on the basis of strong scientific evidence.

The proposal has the potential to improve the outcomes and life choices available for those suffering from addiction issues who recover, as well as of their carers and supporters – families, friends and wider communities. This could include increasing the chances of sustained employment.

The 2020 report shows that those with addiction issues living in the most deprived areas of Scotland are 18 times as likely to have a drug related death as those in the least deprived areas. This ration has doubled in the last 20 years. This proposal would work towards helping those with addictions living in the most deprived areas to be able to access more quickly appropriate recovery treatment. This in turn would help their families and local communities which might be suffering through crime and/or unemployment in the area.

Those suffering from addiction issues are also likely to suffer from a negative perception/stigma in families and wider communities and therefore recovery may improve connections between people. The proposal also has the potential to improve participation and accountability by empowering people suffering from addiction issues to choose the treatment they wish to have and that they consider to be right for them. Given that people in the most deprived parts of the country are currently 18 times as likely to die from a drug-related death as those in the least deprived, this increase in participation and decision-making would involve many of those who are seldom heard.

I am interested in hearing your views on what impact the proposal would have on sustainability issues, and, again, there is a specific question on this in this consultation.

Questions

About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:

- an individual – in which case go to Q2A
- on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)

- Politician (MSP/MP/peer/MEP/Councillor)
- Professional with experience in a relevant subject
- Academic with expertise in a relevant subject
- Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
- Commercial organisation (company, business)
- Representative organisation (trade union, professional association)
- Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
- Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:

- I am content for this response to be published and attributed to me or my organisation
- I would like this response to be published anonymously
- I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

5. Data protection declaration

- I confirm that I have read and understood the [Privacy Notice](#) which explains how my personal data will be used.

If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

- Please tick this box if you are under 12 years of age.

Your views on the proposal

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

Aim and approach

1. Which of the following best expresses your view of the proposed Bill?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response. We would welcome comments on any experience you have had of accessing, or trying to access, addiction treatment.

2. Do you think legislation is required, or are there are other ways in which the proposed Bill's aims could be achieved more effectively? Please explain the reasons for your response.

3. How do you think the right to treatment established in the Bill would be most effectively implemented and enforced? Tick all options that apply.

- Duty on Scottish Ministers
- Duty on Health Boards
- Duty on Integration Joint Boards (IJB's)
- Established targets/standards
- Requirement for the Scottish Government to report progress on duty
- Other (For example Local Authorities - please specify below).

Please explain the reasons for your response.

4. Which of the following best expresses your view of creating a specific complaints procedure, in addition to the existing NHS complaints procedure?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response. We would welcome comments on any experience you have had with the existing NHS complaints procedure.

5. Which of the following best expresses your view of allowing those suffering from addiction to choose a preferred treatment option, and for them to receive that option unless deemed harmful by a medical professional?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response. We would welcome suggestions about how this could work in practice

6. Which of the following best expresses your view of the proposed Bill seeking to prevent treatment being refused?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response. We would welcome suggestions about how this could work in practice

7. Which of the following best expresses your view of requiring the Scottish Government to establish a national funding scheme?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

Financial implications

8. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

- a significant increase in costs
- some increase in costs
- no overall change in costs
- some reduction in costs
- a significant reduction in costs
- don't know

Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc). You may also wish to suggest ways in which the aims of the Bill could be delivered more cost-effectively.

Equalities

9. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response. Where any negative impacts are identified, you may also wish to suggest ways in which these could be minimised or avoided.

Sustainability

10. In terms of assessing the proposed Bill's potential impact on sustainable development, you may wish to consider how it relates to the following principles:

- living within environmental limits
- ensuring a strong, healthy and just society
- achieving a sustainable economy
- promoting effective, participative systems of governance
- ensuring policy is developed on the basis of strong scientific evidence.

With these principles in mind, do you consider that the Bill can be delivered sustainably?

- Yes
 No
 Unsure

Please explain the reasons for your response.

General

11. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/RightToAddictionRecovery/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above or here: [Privacy Notice](#).

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

douglas.ross.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Douglas Ross
Scottish Parliament
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the Privacy Notice (set out below).

You may also contact my office by telephone on 0131 348 6161.

Deadline for responses:

All responses should be received no later than **11.59pm on Wednesday 12 January 2022**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website <https://www.douglasross.org.uk/>

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The [Privacy Notice](#) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published.

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The [Privacy Notice](#) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The [Privacy Notice](#) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA. Further information about Freedom of Information can be found at: www.itspublicknowledge.info.