



RESPONSE TO THE RIGHT TO RECOVERY CONSULTATION

Questions

About you

1. Are you responding as:

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

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, nonprofit)
 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)

Alcohol Focus Scotland (AFS) is the national charity working to prevent and reduce alcohol harm. We want to see fewer people have their health damaged or lives cut short due to alcohol, fewer children and families suffering as a result of other people's drinking, and communities free from alcohol-related crime and violence. This response represents the views of the organisation and has been informed through consultation with alcohol and drug service providers, advocacy organisations and the human rights sector in Scotland. While access to, and the quality of alcohol treatment and recovery services is our primary concern, at points within our response we draw upon information and evidence relating to the broader field of alcohol and drug treatment or addiction treatment.

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 I would like this response to be considered, but not published ("not for publication")

4. Please provide your name or the name of your organisation

Name: Alcohol Focus Scotland (AFS)

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.

Your views on the proposal

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

It is clear that many people in Scotland continue to face unacceptable discrimination and barriers to access and/or poor quality of experience when seeking support in relation to alcohol and other drugs. As such, AFS supports the overarching aim of the proposal and recognises the good intentions that sit behind it in trying to realise the human rights of those affected by alcohol and other drugs.

AFS welcomes efforts to ensure that people have enforceable rights in Scotland, accompanied by standards and guidance, to help them access the support that is right for them. A human rights-based approach will be critical to address the long-standing problems outlined within the consultation document. AFS also agrees that current funding mechanisms can be convoluted and that there is a pressing need for measures to increase transparency and accountability within the funding system.

However, it is difficult to ascertain from the proposal what the enactment of a 'Right to Recovery' would mean in practice. In particular, the proposal does not outline what is meant by an 'enforceable right' to treatment in Scots law. For example, it is unclear to what extent (if any) this would be a justiciable right, who would be the right holders/duty bearers, or who (if anyone) would be accountable for the realisation of the right.

In addition, although the title of the Bill is about recovery, the consultation document refers at various points to 'a right to addiction recovery', 'a right to treatment', 'a right to necessary addiction treatment', 'a right to necessary treatment', 'a right to recovery treatment', and 'a right to recover approach'. Treatment and recovery are distinct concepts, with the former being more often associated with accessing medical care or a support service for help with an alcohol/drug problem, and the latter with broader and longer-term improvements in a person's mental health and wellbeing. There is little recognition that treatment and support for people with alcohol problems may be different to those with drug issues, for example, detoxification from alcohol can potentially be fatal if not managed appropriately. In addition, 'addiction' is a term that can have different

interpretations and could exclude people whose patterns of alcohol use may be problematic and require support even though they are not dependent drinkers.

While AFS supports the principles that the proposal is seeking to achieve (e.g., improved availability, accessibility and quality of treatment and recovery options), there is currently a lack of information about the needs of local communities and about the range of alcohol services available at local level that people can access to help them when they or a family member needs support. An accurate knowledge of the totality of resources available to provide services will be essential if we are to address issues in the planning and funding of alcohol related services; without thorough data and information on current levels and types of provision across Scotland, there would be no baseline upon which to measure any success in improving availability and access, let alone quality.

There are also wider legislative and policy developments regarding human rights in Scotland which AFS believes may offer the possibility to secure the rights of people accessing support for alcohol and other drugs in a broader and fuller sense than the proposal outlined in the consultation document (see response to Q2 below).

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.

AFS believes that the proposal should be considered within the broader human rights landscape and taking account of emerging legislative and policy developments. In particular, we would highlight that Scotland is currently on a journey of incorporation in relation to a number of internationally recognised human rights. AFS believes that this signals a culture shift that has the potential to transform lives in Scotland - including people seeking support in relation to their alcohol or drug use, and their families.

Article 12 of the International Covenant for Economic, Social and Cultural Rights (ICESCR) refers to the **right to the highest attainable standard of physical and mental health**. By ratifying the ICESCR, the UK Government has recognised that this is a fundamental right to which we are all entitled. Within the current constitutional settlement, Scotland's devolved institutions have a key role in implementing and upholding these human rights standards.

It is acknowledged that this right is difficult to achieve in practice in a short period of time, and that states may be subject to resource constraints. The ICESCR therefore imposes a continuing obligation on states to work towards the progressive realisation of this right, as best they can within their means. It also rules out deliberately regressive measures which impede that goal. The normative content of the right to health involves the "availability, accessibility, acceptability, and quality" of public health and health care services. "Availability" means public health and health-care services have to be available in sufficient quantity. "Accessibility" means they must be accessible to all, especially the most vulnerable or marginalised sections of the population, without discrimination.

Although the UK at the national level has agreed to be bound by a number of international treaties, they do not take on enforceable legal obligations unless incorporated into domestic law. The Scottish Government has therefore committed to introduce a new human rights Bill to incorporate four international human rights treaties fully and directly into Scots law – including the ICESCR. The National Taskforce on Human Rights Leadership made 30 recommendations,¹ covering both the content of the proposed new human rights Bill and ways in which it should be developed and implemented, which have been accepted by the Scottish Government.

In addition to the right to health, the new human rights law will include a broad range of rights relevant to people requiring support for alcohol issues, such as the right to education, the right to fair employment conditions, and the right to adequate housing. This recognises the principle of indivisibility i.e., the fulfilment and enjoyment of one right is dependent on the protection and fulfilment of another.

The new human rights law will mean public bodies and others have duties to uphold these rights (including an explicit duty of progressive realisation), and the rights will be enforceable in Scottish courts. A notable difference between this approach and that outlined in the Right to Recovery consultation document is that it focuses on outcomes for individuals and requires the government to take whatever steps are required in order to meet those outcomes, meaning that the right to the highest attainable standard of health would include the "availability, accessibility, acceptability, and quality" of alcohol and drug treatment and support services for anyone who needed them in Scotland. In addition, the new human rights law will recognise that there are certain obligations which are of such importance that they cannot be subject to progressive realisation and availability of resources. These 'minimum core' obligations are intended to guarantee that the very minimum levels of a right are provided by duty-bearers and will be directly enforceable by individuals and/or organisations in Court.

There will be a participatory process to define the core minimum obligations of incorporated economic, social and cultural rights in Scotland, and AFS believes that this provides a key opportunity to ensure that services for people requiring support for alcohol and/or drug use are considered as a 'minimum core obligation' of the right to health, particularly for people whose lives may be at risk. As such, AFS would urge politicians of all parties to work to ensure that the ways in which the new human rights legislation applies to people requiring support for alcohol and drug issues is made explicit in statutory guidance, and that access to quality alcohol and drug support services is included as a 'minimum core obligation' within the legislation.

AFS also believes that it is preferable to ensure that everyone can enjoy the same rights, so as to avoid risking the stigmatisation, 'othering' or negative public perceptions of a specific group if they are afforded rights which do not apply universally.

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).

Accountability is the cornerstone of human rights and AFS believes that change can be driven by a backstop of legal protection and judicial enforcement. However, based on the limited response options provided above, and the detail contained in the consultation document, it is not apparent that the right to treatment could be effectively implemented and enforced.

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

Although well intentioned, the creation of a separate complaints procedure could have the unintended consequence of making the process of raising a complaint less transparent and more confusing for people. For example, people may struggle to understand which bit of the law their complaint falls under or who the relevant person/department is to contact. AFS would support a national single point of access for information about making a complaint or giving feedback about NHS services (including an overview of advocacy and rights and services), to help streamline complaints processes and make them as accessible as possible.

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

AFS would require further detail in order to provide an informed view of this aspect of the proposal as it is unclear what it might mean in practice, or how it would differ from the current situation e.g., what types of services and supports might this apply to and is it envisioned that people could take legal action to ensure access to their desired service?

The Charter of Patient Rights and Responsibilities currently summarises what people are entitled to when using NHS services and receiving NHS care in Scotland. This sets out a clear expectation that people's needs and preferences will be taken into account and respected when using NHS services. It includes the 'right' for people to ask those providing their care whether the care they suggest is the right option for them, and whether they can suggest any alternatives. However, it also emphasises that, when considering individual preferences, health boards must also consider the rights of other patients, medical opinion, and the most efficient way to use NHS resources.

As a general principle, AFS considers that decisions about care and treatment should be made jointly by clinicians/healthcare professionals and patients/service users based on an open and respectful discussion of treatment options, informed by evidence of effectiveness and by the person's needs and preferences. We have concerns that the possibility of litigation is unlikely to foster a more collaborative approach and may have unintended and unhelpful consequences for the therapeutic relationship.

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

AFS firmly believes that everyone should be able to access quality alcohol and drug support services when and where they need them, no matter where they live in Scotland. It is clear that current service provision falls well short of need. A 2014 report,² commissioned by NHS Health Scotland, suggested fewer than one of four people with alcohol dependence were accessing treatment at that time. This ratio is unlikely to have improved given the pandemic has affected both levels of service provision and exacerbated alcohol problems, particularly for heavier drinkers.

However, people requiring support for their alcohol use, and their families, may require access to a broad range of services, delivered across the statutory, private and third sectors, depending on their needs. This could include alcohol-specific services such as detoxification, residential rehabilitation, supported living and aftercare support, or other types of service that are not specifically alcohol-focused, e.g., mental health, learning disability, criminal justice and homelessness. The consultation document appears to have a narrow focus on alcohol and drug treatment, with a particular emphasis on abstinence-based rehabilitation and detoxification services, to the exclusion of harm reduction and preventative interventions which can also support people to live healthier lives. If we are to address the long-standing problems seen within the current provision of alcohol support services, it will be absolutely critical that a broad range of services and supports are available to people based on their own specific needs.

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

It is stated in the consultation document that the Bill would require the Scottish Government to establish a dedicated autonomous national funding scheme which would bypass the 'current broken ADP system', which raises a number of important issues.

A key benefit of ADPs is that they are multi-agency groups which bring together representatives from statutory and voluntary sector organisations at the local level, including health, police, fire and rescue, social work, and education. They also include people with lived experience. Where these partnerships work well, they can support the development of multi-agency approaches in relation to issues such as prevention and early intervention (with individuals, families and communities) and reducing health inequalities. They also support partners to identify trends in alcohol use and related

support needs at a local level, and to be more agile, coordinated and effective in responding to any emerging issues. Their broad membership positions ADPs particularly well to consider and develop innovative responses to any challenges being experienced locally.

In 2017, the Care Inspectorate reviewed³ ADPs against the Quality Principles set out in the Performance Framework⁴. It found that most ADPs had reviewed the way they delivered services to support recovery and were committed to the principle of a shift in delivering care from traditional clinic-based services to providing services in the community.

However, it would appear that while there are pockets of good practice, this is not consistent across the country. The aforementioned evaluation of ADPs by the Care Inspectorate in 2017, found variation in the way services had adopted the Scottish Government's quality principles and many services found it hard to demonstrate the impact they were having on their local communities. The report highlighted that more could be done by ADPs to improve community engagement and also partnership working; examples included working with housing, child protection and mental health services to improve shared assessment, recovery plans and reviews. Audit Scotland has also identified⁵ that the outcomes and performance across ADPs vary widely and that it is not clear how the Scottish Government has used performance information to develop and plan services at a national level.

The Scottish Government recently consulted on proposals for a National Care Service (NCS) for Scotland, which included consideration of whether the responsibilities of ADPs be integrated into the work of Community Health and Social Care Boards (the delivery body of the NCS). If the proposals are taken forward it could mean that Community Health and Social Care Boards will provide the governance, finance and procurement functions for ADPs in the future.

AFS believes that many of the proposals contained in the NCS consultation document are welcome and could potentially help to address some of the problems that the Right to Recovery consultation highlights. However, both proposals are insufficiently detailed at present to enable for a full assessment of what they might mean in practice, or whether they might bring about improvements or have any unintended negative consequences.

In addition - as commented in our response to Q1 - there is currently a lack of information about the needs of communities and the range of alcohol services available at local level, and it is difficult to assess how alcohol services are currently funded. It will be vital that this situation is addressed in order to equip alcohol services with the information they need to provide better outcomes.

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.

The Bill is likely to require a significant increase in investment by Scottish Government, NHS Scotland and possibly also local authorities, in alcohol and drugs services. Scottish Government has already substantially increased investment in reducing drug-related deaths, however, it is unclear how far this investment is intended to, or is in practice, delivering improved access to support for those with alcohol issues. AFS believes that further investment in treatment services and recovery support for those with alcohol problems is required, recognising that their needs and the appropriate treatment options may be different to those with drugs issues. However, as outlined under Q6, such support also needs to address people's wider needs and not be limited to alcohol-specific services. Focusing purely on the latter is unlikely to be the most effective or cost-effective way of supporting people in their long-term recovery.

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

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

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)?

The human rights of individuals and the related obligations of government and the public sector are in statute and must be upheld. However, while legal protections are an important aspect of any human rights framework, human rights are also about the decisions we make and situations we experience on a daily basis.

In order to realise the right to health for everyone in Scotland, the Scottish Government, local authorities, and the public sector need to adopt a human rights framework for health-related laws, policies and services to ensure that effective treatment, prevention and promotion programmes are available to people when and where they need them. For this to happen, people must first accept and understand that they have human rights in Scotland which require to be protected and respected by the State. The Government and public services also need to mainstream human rights into service design and delivery and focus on establishing a human rights culture.

However, at present, people accessing alcohol and drug services can struggle to understand their human rights and how they can use them to help bring about improvements in their lives. Across the public sector in Scotland, there is also an absence of evidence that human rights have been used as an ethos, both corporately and by individual staff, and as a framework to improve the delivery of public services.

As such, AFS believes that an integrated approach towards incorporation of the international treaties would go further to ensure improvements in alcohol and drug support/treatment in Scotland than the Right to Recovery proposal. The policy objective of incorporation in Scotland will be to facilitate the operationalisation of the rights and duties within the new law, including implementation plans, reports and impact assessments. This will be advanced through the provision of statutory and non-statutory guidance. As outlined in Q2, AFS would also urge politicians of all parties to ensure that quality alcohol and drugs support services is included as a 'minimum core obligation' within the legislation, and that statutory guidance makes clear how any new human rights legislation applies to people requiring support for alcohol and drug issues.

AFS would also stress that legislative measures to strengthen right protections should also be supported through accompanying actions, such as awareness raising campaigns, to inform people about their human rights and why they are relevant. It is only by taking such an approach that we can hope to deliver a rights-based culture change in practice, continually driving up standards and encouraging best practice to ensure that everyone can access quality alcohol and drug treatment and support services relevant to their needs.

¹ National Taskforce for Human Rights: leadership report, Scottish Government, 2021.

<https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/documents/>

² Assessing the availability of and need for specialist alcohol treatment services in Scotland. Drug & Alcohol Findings: Research Analysis; Clark, I., & Simpson, L., 2014.

<http://www.healthscotland.com/documents/24408.aspx>

³ Alcohol and Drug Partnerships: A report on the use and impact of the Quality Principles through validated self-assessment; Care Inspectorate, 2017.

⁴ The Quality Principles: Standard Expectations of Care and Support in Drug and alcohol services, Scottish Government, 2014.

⁵ Drug and Alcohol Services: An update, Audit Scotland, 2019