

Health, Social Care and Sport Committee

Right to Addiction Recovery (Scotland) Bill - Stage 1

Scottish Human Rights Commission Submission

January 2025

The Scottish Human Rights Commission was established by the Scottish Commission for Human Rights Act 2006 and formed in 2008. The Commission is the National Human Rights Institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland.

1. Introduction

The Scottish Human Rights Commission (SHRC) welcomes the opportunity to respond to the Health Social Care and Sport Committee's Stage 1 call for evidence on the proposed Right to Addiction Recovery (Scotland) Bill. The SHRC is clear that drug and alcohol deaths in Scotland are unacceptable and avoidable and notes the policy intent of the Bill is to reduce this loss of life by increasing access to State provided interventions for those who are affected by drug and/or alcohol use. In this response, the SHRC has outlined the human rights framework in relation to the Bill to inform the Committee's assessment of the proposed Bill's compliance with Scotland's human rights obligations, areas where the Bill might be strengthened to better meet these obligations, and the importance of undertaking a human rights budget assessment of the proposed Bill's financial implications.

2. Human Rights Framework

There are several key human rights articles which can be relevant in the treatment of substance use as highlighted by the proposed Right to Recovery Bill.

This includes:

- The right to life (ECHR, Article 2)¹
- The right to freedom from inhuman and degrading treatment (ECHR, Article 3)²
- The right to respect for private and family life (ECHR, Article 8)³
- The right to freedom from discrimination in the enjoyment of other rights (ECHR, Article 14)⁴.
- Right to the highest attainable standard of physical and mental health (ICESCR, Article 12)⁵.

For the purposes of this response, we have focused our analysis on both Article 2 European Convention on Human Rights (ECHR) and Article 12 of the International Convention on Economic Social and Cultural Rights (ICESCR).

2.1. Article 2 ECHR

Article 2 of the ECHR protects the right to life. Acts and omissions of State authorities in the field of healthcare may, in certain circumstances, engage the State's responsibility under the Convention.

The State has several obligations under Article 2, which are both substantive and procedural. The State must refrain from the taking of life, unless this occurs in the very narrow circumstances. This is known as the negative duty. The State also has positive obligations under Article 2. This means they must take particular action to comply with the right to life. These positive obligations can be summarised as: ensuring the effective protection of the right to life through effective domestic law and punishment; and the duty to protect life through the taking of specific action. Finally, when a life has been lost in circumstances that may engage State responsibility, there is a duty to undertake effective investigations. This is often referred to as the procedural aspect of Article 2.

The European Court of Human Rights (ECtHR) has stated that the State must develop and effectively implement a legal framework which adequately safeguards the right to life during medical treatment. The obligation to “take appropriate steps” to protect life is relevant in the health and social care field.

In the 2017 case of *Lopes de Sousa Fernandes v Portugal*⁶, the ECtHR stated that the obligation to take appropriate steps to safeguard life applies in the public health sphere. The Court noted the obligation requiring regulations compelling hospitals and healthcare settings to adopt appropriate measures for the protection of patients’ lives and stated that where a death occurs because of medical negligence, this will not generally violate the positive obligation to protect life. However, the Court stressed that the ECHR does not exclude the possibility that acts and omissions of state authorities in the context of public health policies may, in certain exceptional circumstances, engage State responsibility under Article 2. These circumstances are:

- where life is “knowingly put in danger by denial of access to life-saving treatment”⁷ or,
- where a “systemic or structural dysfunction in hospital services results in a patient being deprived of access to life-saving emergency treatment, and the authorities knew or ought to have known about this risk and failed to undertake the necessary measures to prevent that risk materialising”⁸.

The duty under Article 2 does not extend to providing a particular form of treatment to an individual, where it is not otherwise generally available⁹. Therefore, Article 2 has not been comprehensively considered in the context of treatment for substance use. However, the general requirements outlined above are relevant where a State has accepted the obligation, to ensure regulation and minimisation of risk to life during treatment and to provide treatment to an individual.

The proposed Bill therefore would support the State in meeting its obligations under Article 2 of the ECHR.

2.2. Article 12 ICESCR

Article 12 ICESCR protects the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The right to health is not a guarantee of being healthy, but rather the right to access all the conditions and services necessary to achieve the highest attainable standard of health.

The right to health encompasses both physical and mental well-being as is realised not only through the provision of adequate healthcare, but also by addressing a wide range of socio-economic factors that collectively create conditions for a healthy life. These underlying factors include access to adequate food and nutrition, housing, safe and portable water, adequate sanitation, safe and healthy working conditions, and a health environment.

Health services, goods and facilities must be provided to all without any discrimination and must be available, accessible, acceptable and of good quality. States must take deliberate, concrete and targeted steps towards the full realisation of the right to health and must avoid retrogression, unless in very specific circumstances. The UN Special Rapporteur on the right to health, Tlaleng Mofokeng, recently restated the importance of equal access to healthcare and treatment for drug dependency or drug use disorders¹⁰.

It is likely that the proposed Bill would support State compliance with the requirements of Article 12 of the ICESCR.

3. The Function of the Bill

Question 1: The Bill focuses on drugs and alcohol addiction. Do you agree or disagree with the purpose and extent of the Bill?

Question 2: What are the key advantages and/or disadvantages of placing a right to receive treatment, for people with a drug or alcohol addiction, in law?

The SHRC is not well placed to comment on how well the proposals would achieve its policy intent. However, the SHRC recognises the scope and scale of the issue the proposed Bill seeks to address and welcomes its ambition given the 12% increase in drug deaths in Scotland between 2022 and 2023 (1,172 drug related deaths)¹¹ and the high levels of alcohol-related deaths in Scotland in 2023 (1,277)¹².

The Commission is clear that every one of these numbers reflects a person who has lost their life, and the families and loved ones they leave behind and that action to address this issue has human rights implications.

As stated, Article 12 of ICESCR entitles everyone to the highest attainable standard of physical and mental health, with no discrimination. This is supported by the international guidelines on Human Rights and Drugs Policy, which outlines States' obligations to improve the life expectancy of those impacted by drug use:

"Take positive measures to increase the life expectancy of people who use drugs, including adequate steps to provide scientific, evidence-based information, facilities, goods, and services on drug use prevention, overdose prevention and response, and harm reduction, including reducing such harms as overdose, HIV, viral hepatitis, and other infections and injuries sometimes associated with drug use."

International Guidelines on Human Rights and Drug Policy (2019)¹³

We accept the principle of establishing a legal right to access treatment for those impacted by substance use. Our own work examining justice in Scotland has identified issues in realising rights and accessing justice when things go wrong. If developed well and implemented correctly, including a focus on harm reduction, this Bill could support the protection of a right to the highest attainable standard of health.

Further consideration of the role of the wider human rights at stake may also be beneficial. For example, the Committee should consider the work the National Collaborative has undertaken via the Charter of Rights for People Affected by Substance Use, which was to be enshrined in law via the new Human Rights Bill for Scotland. This Charter has the potential to go beyond access to treatment and cover additional rights, including the right to family life, freedom from torture and other cruel, inhuman, or degrading treatment or punishment and freedom from arbitrary arrest and detention. Given the uncertain future of the proposed Human Rights Bill and with the rising number of drug and alcohol deaths, we recognise that other options may need to be explored. If this is the case, the Committee may therefore wish to consider strengthening the proposed Right to Addiction Recovery (Scotland) Bill to ensure the best outcome for rights holders.

4. Strengthening the Bill

Question 3: Section 1 of the Bill defines "treatment" as any service or combination of services that may be provided to individuals for or in connection with the prevention,

diagnosis or treatment of illness including, but not limited to: residential rehabilitation, community-based rehabilitation, residential detoxification, community-based detoxification, stabilisation services, substitute prescribing services, and any other treatment the relevant health professional deems appropriate. Do you have any comments on the range of treatments listed above?

Question 4: Section 2 of the Bill sets out the procedure for determining treatment. It states that: A healthcare professional must explain treatment options and the suitability of each to the patient's needs; that the patient is allowed and encouraged to participate as fully as possible in the treatment determination and will be provided with information and support. The treatment determination is made following a meeting in person between the health professional and the patient and will take into account the patient's needs to provide the optimum benefit to the patient's health and wellbeing. Do you have any comments on the procedure for determining treatment?

Question 5: Are there any issues with the timescales for providing treatment, i.e. no later than 3 weeks after the treatment determination is made?

Question 6: Is there anything you would amend, add to, or delete from the Bill and what are the reasons for this?

To strengthen the legislation, the SHRC recommends drawing from the World Health Organisation (WHO) and the United Nations Office on Drugs and Crime International Standards for the Treatment of Drug Use Disorders (2020)¹⁴. These standards outline that treatment for substance use should be based on seven principles, including accessible and appropriate treatment, ethical standards of care, coordination of services, evidence-based treatment, responding to the needs of different groups, ensuring clinical governance and support for an integrated treatment approach, based on monitoring and evaluation (question 6.)

In response to question 3, we would direct MSPs to principle 1 of the International Standards, which outlines that treatment should be available, accessible, attractive, and appropriate. While the Commission's expertise and remit do not permit us to comment on the scope of treatments provided, we did note the omission of mental health support in the listed treatments with the proposed Bill.

The Mental Welfare Commission in 2022¹⁵ highlighted the importance of joined-up support for individuals experiencing mental ill health and those experiencing substance use. The importance of accessing support for mental health was also highlighted in the findings from the National Collaborative's Call for Evidence about people's experiences of substance use and human rights¹⁶. In this, participants

highlighted they could not access mental health treatment because of accessing treatment for drug dependency and a lack of integrated approaches, with one participant stating,

"Need to address policy and legislation, but also need to crack attitudinal change from service providers, particularly the dual diagnosis of mental health and addiction; people are being bounced around like pinballs in a pinball machine, and then we wonder why they disengage".

National Collaborative Call for Evidence: Analysis Report (2023)¹⁷

As the importance of ensuring mental health treatment is also outlined in the international guidance, we believe the legislation should be clear that for those experiencing mental ill health and drug and alcohol use, both treatment options should be available in line with the right to the highest attainable standard of health which focuses on both physical and mental health¹⁸.

In considering question 4, on determining treatment, the SHRC is concerned about how the proposed Bill will ensure both a robustness and consistency of professional decision-making regarding who is offered treatment. Again, we would direct MSPs to the International Standards (Principle 2 and Principle 6). Principle 2 focuses on treatment processes and procedures, including the right to withdraw from treatment and Principle 6 on good clinical governance, including the following two standards:

"Written service policy and treatment protocols should be available, known to all staff and guide the delivery of treatment services and interventions." (Standard 6.2)

"Staff working in specialised services for drug use disorders should be adequately qualified and receive ongoing evidence-based training, certification, support and clinical supervision. Clinical supervision, mentoring, safety protection measures and other forms of support are needed to prevent 'burnout' among staff members." (Standard 6.3)

International Standards for the Treatment of Drug Use Disorders (2020)¹⁹

Finally, a key omission in this proposed Bill is how individuals seeking treatment can challenge decisions or access justice if they do not receive the treatment in line with human rights standards and the significant accountability gap this creates. In line with international human rights standards, the proposed Right to Addiction Recovery (Scotland) Bill must legislate for appropriate enforcement mechanisms, or there will

continue to be insufficient routes to access justice for those experiencing substance use in Scotland. This is an area of wider concern for SHRC, regarding a lack of access to justice across a range of rights, particularly for those who are marginalised and whose rights are most at risk.

5. Financial Implications of the Bill

Question 7: Do you have any comments on the estimated costs as set out in the Financial Memorandum?

In reviewing the financial memorandum, the SHRC acknowledges the already complex programme of drug and alcohol service funding across health boards, alcohol and drugs partnerships, charity grants, and government-managed funds totalling over £140m. The costs associated with the Bill mean an estimated increase in spending between £28.5m and £38m, taking the overall spending to over £190m.

The Commission is clear it would support any increased expenditure that ensured the fulfilment highest attainable standard of health. However, to demonstrate the best value for money, we would suggest a human rights budgeting assessment²⁰ is undertaken concerning drug and alcohol treatment services and the proposals in this bill. This is particularly relevant given critiques of the Bill to date from some civil society organisations that it would not guarantee any new services. Therefore, an assessment must be undertaken to ensure that the spending on this bill and other treatment options truly supports rights' realisation through effective allocation and spend those respects, protects, and fulfils rights for all.

This is in line with the International Standards on Human Rights and Drug Policy, which recommend that human rights review and budget analysis be part of the process, and that States should:

- "i. Consider undertaking a transparent review of drug laws and policies to assess human rights compliance.
- ii. Subject all proposed drug control legislation and policies to transparent human rights risk and impact assessments.
- iii. Undertake a budgetary review to ensure the progressive realisation of the right to health in relation to drug use and dependence.
- iv. Carefully consider and justify any cuts in the allocation of resources for drug treatment."

6. Summary

The policy intent of this Bill is laudable, and as drafted, this proposed Bill is likely to support State compliance with its human rights obligations, particularly Article 2 of the ECHR and the requirements of Article 12 of the ICESCR.

However, the Bill as proposed would benefit from further work to align with the international human rights standards outlined above, including the International Guidelines on Human Rights and Drug Policy. Only with those steps, including a human rights budget assessment of the proposed impact, can legislators ensure a consistent approach to treatment, which protects and promotes the highest attainable standard of health for those experiencing substance use in Scotland.

7. For more information

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8. Endnotes

¹ See: [European Convention on Human Rights](#)

² See: [European Convention on Human Rights](#)

³ See: [European Convention on Human Rights](#)

⁴ See: [European Convention on Human Rights](#)

⁵ See: [International Covenant on Economic, Social and Cultural Rights](#)

⁶ See: [Lopes de Sousa Fernandes v Portugal](#)

⁷ See: [Lopes de Sousa Fernandes v Portugal](#) (191)

- ⁸ See: [Lopes de Sousa Fernandes v Portugal \(192\)](#)
- ⁹ See: [Hristozov and Others v. Bulgaria](#)
- ¹⁰ See: [Human Rights Council \(2024\)](#)
- ¹¹ See: [Public Health Scotland \(2024\)](#)
- ¹² See: [Scottish Government \(2024\)](#)
- ¹³ See: [United Nations \(2019\)](#)
- ¹⁴ See: [World Health organisation and United Nations Office on Drugs and Crime \(2020\)](#)
- ¹⁵ See: [Mental Welfare Commission \(2022\)](#)
- ¹⁶ See: [National Collaborative \(2023\)](#)
- ¹⁷ See: [National Collaborative \(2023\)](#)
- ¹⁸ See: [Office of the High Commissioner for Human Rights \(2000\)](#)
- ¹⁹ See: [World Health organisation and United Nations Office on Drugs and Crime \(2020\)](#)
- ²⁰ See: [Scottish Human Rights Commission](#)
- ²¹ See: [United Nations \(2019\)](#)