TRANSFORM Drug Policy Foundation

cranstoun

Release Drugs, The Law & Human Rights

EuroNPUD European Network of People who Use Drugs

The 'Right to Recovery Bill' Consultation:
Response from Cranstoun, Transform Drug Policy Foundation, Release and EuroNPUD

This is a joint response to the Scottish Conservatives consultation for the 'Right to Addiction Recovery (Scotland) Bill'[1] which is being proposed within the Scottish Parliament as a potential act of law.

Introduction

While we recognise the good intentions those proposing this Bill have, if it is delivered in the form and framing suggested by the consultation document, we cannot support it. Our main concerns are highlighted in this response.

The consultation falls short by leaving questions unasked or unanswered, and by appearing to be aiming towards the attainment of a drug free society - something that is impossible to achieve, and the pursuit of which has harmfully distorted policies around the globe. In Scotland, we have previously seen how these strategies can negatively impact the role of medication assisted recovery and treatment, while encouraging stigma around opiate substitution treatment.

Throughout the consultation text there is an evident skew towards favouring a right to access certain types of treatment and health intervention options (specifically; abstinence based rehab and detox services) and marginalisation or absence of others (specifically; a group of interventions commonly grouped under 'Harm Reduction'[2], including needle and syringe programs, substitute prescribing, supervised consumption facilities, drug checking services, heroin assisted treatment etc).

Statements such as:

'[Scotland] fixates on treating problems like heroin use by increasing methadone prescriptions instead of rehabilitation and recovery programmes', and 'The key aim of treatment must be to wean those who suffer from addiction off the substance which they are dependent on' reflects this narrow viewpoint. While 'short-term residential rehabilitation, long-term residential rehabilitation, community based rehabilitation, residential detoxification, community-based detoxification' are all mentioned, notably the phrase 'harm reduction' appears just once in the document, and only in reference to Scotland's 2008 drug strategy. This is despite Harm Reduction being a policy paradigm pioneered in the UK, and now established as best practice across the United Nations

[1] https://www.parliament.scot/bills-and-laws/bills/proposals-for-bills/proposed-right-to-addiction-recovery-scotland-bill

[2] Harm reduction refers to policies, programmes and practices that aim to minimise negative health, social and legal impacts associated with drug use, drug policies and drug laws. For a summary of Harm Reduction, and its history, see https://www.hri.global/what-is-harm-reduction

system, explicitly featuring in the national drug strategies of 98 UN member states.[3] Yet this Bill contains no reference to a right to harm reduction services, beyond the occasional mention of substitute prescribing, based on our expertise, and the global evidence, harm reduction is a core element of any system that seeks to improve the quality of life for people who use drugs.

A full range of treatment and harm reduction services all have important roles in Scotland's drug response, but decisions about appropriate treatment need to be made by clinicians and service users based on evidence of best practice, absent of external political or ideological pressures. A commitment to the right to health should be absolute, but decisions on best practice are rightly the domain of practitioners not politicians.

Policy making needs to ensure service providers meet people who use drugs where they actually are, not where people may wish they were. Otherwise interventions risk being inappropriate for many - and may even have harmful unintended consequences. For example, in Scotland, most problematic drug use and the majority of drug related deaths involve poly drug use.[4] The needs of these people have been overlooked in Scottish drug policy historically, and specifically, the types of rehab and detox emphasised in the consultation will often not be relevant or appropriate for addressing the complex needs of many among these populations. When people who use opiates leave a rehab facility with no/lower tolerance to opioids there is a particular risk of them dying if they relapse. We need to be very careful we are not detoxing people merely for them to overdose upon leaving rehab. As Public Health England put it; 'poor recovery-orientated practice could put people at greater risk [of death]'.[5]

More broadly, there appears to have been little serious attempt to assess the Bill's likely actual impacts, or possible unintended consequences, which is in itself a concern - but this will need rectifying if this Bill proceeds.

Making service provision in the proposed Bill balanced - starting with the title

The current measures in the Bill, and the framing, are unbalanced. We would urge that focus must be placed on key protective factors to reduce harm, to support a reduction in drug deaths and allow people to live healthier lives.

The title of the Bill itself is problematic: 'Right to Addiction Recovery (Scotland) Bill'. 'Recovery' means different things to different people, and there is no clear definition provided. But in any case, the term has become loaded in the debate around how best to tackle drug issues, often meaning just abstinence based approaches. If as suggested in other forums, this Bill is actually about a right to access all kinds of treatment and harm reduction it is crucial the title reflects that e.g. 'Right to Comprehensive Drug Treatment and Harm Reduction Bill'.

The Recovery agenda promoted by the Drug Strategy 2010, and defined as being "drug free", had a significant impact on the sector, and in our view is one factor in the high level of drug related deaths we are witnessing. In 2012 a coalition of charities and NGOs[6], including Release and Transform, warned that recovery in the context it was being defined would put people's lives at risk, unfortunately we were right - this approach coupled with austerity has created a public health crisis in drug related deaths. Some have also suggested this agenda may have been a factor in Scotland's burgeoning problems with illegal benzodiazepines.[7]

With that in mind, the following proven harm reduction measures currently missing must as a bare minimum be included and given equal weighting in the text and framing with abstinence based approaches if the Bill proceeds:

[3] 'The Global State of Harm Reduction 2020', HRI, (2021) https://www.hri.global/global-state-of-harm-reduction-2020

[4] 'Drug-related deaths in Scotland in 2020', NRS, (30 July 2021) https://www.nrscotland.gov.uk/files/statistics/drug-related-deaths/20/drug-related-deaths-20-pub.pdf

[5] 'Understanding and preventing drug-related deaths', PHE, (2016) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669308/Understanding_and_preventing_drug_related_deaths_report.pdf

[6] 'Putting Public Health First', letter from UK Recovery Federation, UK Harm Reduction Alliance and the National Users Network (20 April 2012) https://www.ukhra.org/putting_public_health_first/

[7] 'From the clinic to the street: the changing role of benzodiazepines in the Scottish overdose epidemic', A McAuley et al, (Nov 2021) International Journal of Drug Policy https://www.sciencedirect.com/science/article/abs/pii/S0955395921004308?via%3Dihub

heroin assisted treatment[8], overdose prevention centres (safer injection facilities)[9], long term optimal dose methadone prescribing, benzodiazepines prescribing, drug checking services[10], and access to housing that has safer use policies in place[11]. There is also no mention of supporting diversion schemes[12] proven to help reduce harms to individuals who are caught in possession of drugs. Diversion both reduces the threat of criminalisation as well as providing a pathway for vulnerable individuals to access services, which should also be of a good standard for all referred to them. While formal *de jure* decriminalisation of people who use drugs is not currently within the Scottish Government's power, it should be referred to as an aspiration, and to future proof the Bill in case the law changes. Harms resulting directly and indirectly from criminalisation are a key aspect of what we, drug user networks, and most academics and professionals feel must be addressed. Criminalisation is acknowledged as an obstacle to treatment access, while decriminalisation is backed by all 31 UN Agencies[13] and acknowledged by the World Health Organization as a 'critical enabler' of service access[14].

Opioid Substitution Treatment

To focus on Opioid Substitution Treatment (OST) in particular, on the Scottish Conservative website which promotes this consultation, a statement reads: *"The SNP's system for treating addiction is simply not fit for purpose. It focuses on treating problems like heroin use by increasing methadone prescriptions, rather than by rehabilitation and recovery programmes."*[15]

This clearly indicates that the Scottish Conservatives' purpose in promoting this Bill is at least in part to attack OST provision, and those who support it.

We fundamentally disagree with this statement and the intent behind it. One of the key measures to save lives and reduce both individual and societal harms from illegal drugs should be increasing access to methadone (and buprenorphine and diamorphine) prescribing. It also fails to recognise those who are on OST can have full and productive lives. This idea of being 'parked' on methadone is stigmatising and would not happen in any other field of medicine. If someone is on insulin but is not adhering to dietary recommendations we do not, and should not, demean them but this is done to people on OST. People on OST should be considered in 'recovery' if they have stable lives measured by engagement with families and community, looking after their children or other care-giving, being in education or employment, volunteering for organisations – these are the kind of outcomes that should be considered "success" - not simply being "drug free".

Less than 40% of people who require it are connected to any form of treatment in Scotland (compared with 60% in England and Wales, itself too low). Yet getting people into OST is the globally recognised gold standard way[16] [17] to reduce drug death risk, underpinned by a huge body of evidence. Methadone is one of the most researched medications in the world, it is on the WHO Essential Medicines list and has been proven, along with

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[8] Heroin Assisted Treatment https://transformdrugs.org/drug-policy/uk-drug-policy/heroin-assisted-treatment

[9] Overdose Prevention Centres/Supervised |Drug Consumption Rooms https://transformdrugs.org/drug-policy/uk-drug-policy/overdose-prevention-centres

[10] 'Drug Checking Works', Prof Fiona Measham and Gavin Turnbull (2021) https://transformdrugs.org/blog/drug-checking-works-new-evidence-from-the-loop/?amp

[11] For example the 'Housing First' model backed by both the Scottish and UK Governments https://www.crisis.org.uk/ending-homelessness/the-plan-to-end-homelessness-full-version/solutions/chapter-9-the-role-of-housing-first-in-ending-homelessness/#:~:text=The%20Housing%20First%20model%20prioritises%20getting%20people%20quickly%20into%20stable%20homes.&text=It%20focuses%20on%20first%20giving,with%20complex%20and%20multiple%20needs

[12] For information and links to evidence underpinning police drug offence diversion schemes see https://transformdrugs.org/drug-policy/uk-drug-policy/diversion-schemes

[13] UN Systems Chief Executives Board for Coordination Position Statement (2018) https://unsceb.org/sites/default/files/imported_files/CEB-2018-2-SoD.pdf

[14] 'Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations' WHO, (2014) https://www.who.int/publications/i/item/9789241507431

[15] https://www.scottishconservatives.com/policies/our-right-to-recovery-bill/

[16] 'Risk factors for mortality, hospitalisation and imprisonment in substance misuse patients', Colette Montgomery Sardar et al, The Pharmacy Journal, (2018) https://pharmaceutical-journal.com/article/research/risk-factors-for-mortality-hospitalisation-and-imprisonment-in-substance-misuse-patients

[17] "There are a number of evidence-based approaches that can be used to reduce the risk of death among people who use opioids. The strongest evidence supports the provision of opioid substitution treatment (OST) of optimal quality, dosage and duration." Advisory Council on the Misuse of Drugs, 'Reducing Opioid-Related Deaths in the UK' (2016) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/576560/ACMD-Drug-Related-Deaths-Report-161212.pdf

buprenorphine, to be the only treatment response that can prevent overdose and opioid related death[18] (the research did not include other forms of OST).

One of the key goals of Scottish drug policy must be to get more people into optimal level substitute prescribing, and keep them there until they feel ready. In many cases that will involve increasing current dosing for those in treatment already, which provides stability and reduces the need to rely on supply from unregulated markets. Far more people are dying because they are not on OST, than are staying on it longer than might be ideal for them. This is not properly addressed, and should be central to the Bill in both content and framing.

Costings

We agree that drug treatment and harm reduction are cost-effective, and strongly support fully funded services. While the consultation suggests costs shouldn't be capped but met according to need, no attempt we are aware of has been made to assess what those costs would actually be. Drug treatment services have been underfunded in Scotland. However, unless funding is unlimited, there is a risk a law so heavily focussed on rehab would end up taking money away from the harm reduction and treatment system. In the event of providers lacking the funds to deliver every desired intervention, who would decide who got priority, and using what criteria? So clarity is needed over how much it would actually cost, and what the impact would be if additional costs significantly exceed existing budgets.

Fair access and distorting clinical decisions

If people can take legal action to ensure their desired service access, how will fair access for the most vulnerable be protected? It is widely accepted that in society, more privileged public service users with higher social and cultural capital (education, networks, skills and resources) are better at negotiating with service providers. If people can, and indeed are encouraged to take or threaten legal action by this Bill, how will fair access for the most vulnerable, who lack this social capital, be protected? There are those who won't want to take legal action because they are intimidated by the system, or are not in a position to do so even if they wished to. The Bill could result in entrenching privileged access, by handing people with higher cultural capital a new legal tool while leaving the most vulnerable even more disadvantaged as resources are skewed away from them.

We also think there is a risk that the Bill, if enacted, could distort clinical decisions as experience in other areas suggests those under threat of legal action will become more risk averse, and shape their decisions to avoid legal action, perhaps even delivering suboptimal treatment options and outcomes to those who do get what they want. How will this issue be addressed?

Legal detail

The consultation does not provide legal clarity on what remedies would be available where a breach of statutory duty has occurred. It does not provide any detail on who would be held liable, when a breach would occur, and what the standard of liability would be. Similarly, there is currently no assessment of potential legal costs resulting from the Bill (presumably payable for both sides if treatment providers lose). Would these be payable from the treatment budget?

There are already a number of legal routes someone could take against a provider where harm has been caused, for example an action for negligent conduct or, in the case of concerns of how a decision affecting a person has been reached, through an action for judicial review. In these situations, the problem is not the lack of legal protection, it is about people being empowered to take that action and fully supported throughout that legal process. There is no clarity in the consultation about how this Bill would deliver better outcomes than existing legal routes.

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[18] 'Comparative Effectiveness of Different Treatment Pathways for Opioid Use Disorder', Wakeman et al, JAMA Network (5 Feb 2020) https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2760032

The devil is in the detail, and unfortunately, the detail is absent from this consultation.

Conclusion

While welcoming the commitment to improving services and service access, we cannot support the 'Right to Addiction Recovery (Scotland) Bill' without clarity over a number of legal issues and functional details, but perhaps more significantly due to a combination of concerns around balancing of content, and framing.

It is hard to reconcile politicians saying they want to take the politics out of the drug policy debate with the apparently ideological and unevidenced attacks on OST included in the consultation document by the Scottish Conservatives. The Scottish Conservative Leader Douglas Ross declined to address this point when challenged three times on it at the Scottish Parliament Cross-Party Group on Drug and Alcohol Use on the 22nd Dec 2021. We are therefore concerned that this Bill, and potentially inadvertently anyone who supports it, will be used by opponents of increased access to OST and Harm Reduction as a political vehicle to further their harmful agenda.

It is crucial that if the Bill does proceed, at the very least, the title, framing and content is changed to overtly give equal weight to all forms of treatment and harm reduction. Failure to do so risks further fuelling a harm reduction *or* recovery debate that is both unhealthy and damaging to those people trying to access help, rather than a useful discussion about where the optimum combination of both approaches lies.

We firmly believe that while residential rehabilitation is one important element of the system which we fully support, we also need a greater focus on safe supply and harm reduction for those unwilling or unable to stop using drugs - something that has been lost both in Scotland and across the UK over the last decade. We now have to do things differently, and follow the evidence, to make a real impact on reducing drug related deaths.

So whether this Bill proceeds or not, we call on the Scottish Conservatives in particular to reverse their attacks on OST, and work cross-party in the Scottish Parliament to ensure the Scottish Government delivers a fully funded balanced health-led approach to drugs. That should include residential rehabilitation, implementation of Medication Assisted Treatment standards including same-day and increased access to OST, Overdose Prevention Centres, Heroin Assisted Treatment, police drug offence diversion schemes, Housing First and tolerated use in some hostels among other measures. And ultimately evidence-based *de jure* decriminalisation of possession of drugs for personal use, to end the criminal justice revolving door so many are caught in and free-up further resources for treatment.

We hope to continue to work with people and organisations from across the recovery and treatment spectrum, on our shared mission of reducing drug related harms and deaths in Scotland.

Notes

Release is the UK's centre of expertise on drugs and drug laws, providing free and confidential legal and drug services to people who use drugs and/or those caught up in the criminal justice system. The organisation campaigns for evidence-based drugs policies and for reform of the UK's current drug policy, with a specific call for the end of criminal sanctions for possession offences. Release has Consultative Status with the UN Economic and Social Council.

Transform Drug Policy Foundation is a UK based organisation that operates nationally and internationally, advising and supporting governments, national and local bodies, including holding ECOSOC Special Consultative Status at the UN. We seek a world where drug policy promotes health, protects the vulnerable and puts safety first.

Cranstoun offer a wide range of services, including substance use services, housing support, specialist services for young people and families and carers, domestic abuse services and criminal justice provision.
Our skilled and compassionate teams work with service users, families and communities, helping them to make positive changes. We've been making a difference since 1969 by combining our expertise with innovative approaches and putting people at the heart of what we do.

EuroNPUD has evolved in order to challenge the widespread misinformation, discrimination and marginalisation of people who use drugs in communities throughout the European Union. As part of a long and proud history of drug user organising in Europe, EuroNPUD aims to provide a platform for networks and groups from across the EU to act collectively on issues of political and social importance

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