

MYTH BUSTING THE BILL



MYTH BUSTING THE BILL



Is the Bill is against Safe Consumption Rooms?

No, it's not against one thing over the other. Such a claim would be as absurd as stating it's against Hospitals or Doctor's Surgeries.

The Bill is a proposed amendment to the current NHS (Scotland) Act and so would include all agreed treatment-based interventions, leaving room for future treatment options to be added in future. The proposed Bill would allow anyone attending these services help when they ask for it.

#MakingRightsReal





MYTH BUSTING THE BILL



What if Safe Consumption Rooms aren't classed as a treatment option?

In future, if SCR's are not classed as a treatment option, for whatever reason, then a further Bill can be proposed to allow such consumption facilities and the current proposed Bill does not affect this in any way shape or form as it would be a separate piece of legislation.

#MakingRightsReal





MYTH BUSTING THE BILL



Is the proposed Bill is about abstinence over harm reduction?

The term “recovery” in the Bill seems to have thrown opinion before content was read. But this is not true — the proposal is about ALL available treatment options that are already available. These would be available to ALL people who seeking treatment, regardless of any other fact.

How will this be implemented?



This would give the legal right to form a person-centred care plan of choice that cannot push someone towards anything they do not want. If any disagreement of this then the person can ask for the reasons in writing, to be scrutinised by advocacy workers or advisors. Legal challenges may ensue but in other sectors rarely reach that stage.

#MakingRightsReal





MYTH BUSTING THE BILL



It doesn't include the rights of a family member.

It did. It also included housing/accommodation, voluntary and psychosocial support. But these were removed as a member bill due to having too wide a scope (to many different laws affected). Only Government bills can have such a scope, although we are hoping the consultation leads to these being inserted back in as we believe only a fully holistic approach will work.

#MakingRightsReal





MYTH BUSTING THE BILL



Scotland's treatment system lacks the quality, diversity and capacity to fulfil its potential in protecting people from substance use related harms including drug-related deaths.

The proposed Bill does address this by underpinning the right to treatment in law. It therefor ensures equal funding must be provided to allow local authorities/NHS health boards to perform its duties under this Act.

It also shifts the balance of power from opinion of individual decision makers and to the right of the person to choose what their plan is and have the right to challenge any negative decision (if warranted) through the courts by way of Judicial review.

#MakingRightsReal





MYTH BUSTING THE BILL



This Bill would further disempower people presenting to treatment services as it would establish an oppositional rather than a therapeutic relationship between the treatment provider and the person engaging in treatment.

Shifting power to the service user by enshrining the right to treatment of choice in law does not create such a thing. This power imbalance and relationship already exists in many quarters across the country, a legal right to treatment will equalise this.

What are the examples of this relationship?



Homeless people, children, mental health - are just some examples where a relationship between worker and service user is not affected just because the service user has legal rights NOR does it mean that every single case is taken through the courts as often they rights are upheld by all.

#MakingRightsReal





MYTH BUSTING THE BILL



The proposed Bill further consolidates the idea that people with an addiction are not to be extended the rights afforded under the Equality Act as it does with people with other significant health conditions

Addiction is exempt from the protections enshrined within the Equality Act 2010, under Regulation 4(1)(b), already. So, unless they have an additional impairment (disability) as recognised in the same Act people in addiction would not come under it's protection, unlike people who suffer other life changing impairments. The proposed Bill offers a legal right to treatment for anyone who needs it.

#MakingRightsReal





MYTH BUSTING THE BILL



So how would this proposed Bill work alongside the Equality Act 2010 then?

The rights enshrined in this proposed Bill would bring a statutory duty for all people seeking treatment. As is the case with any public function the Equality Act 2010 would add subsequent rights to those suffering from a recognised impairment under the Act. This rights in the proposed Bill is extended to **ANYONE** seeking treatment and not just those suffering from an impairment.

As opposed to arguing that it shouldn't then exists at all the sector would do well to look at the current exemption and lobby for it to be changed.

#MakingRightsReal





MYTH BUSTING THE BILL



But this right to healthcare doesn't exist for anyone else.

It's distasteful to suggest that because some people don't have a right means no-one should have a right.

We should ask why people with any life threatening conditions all don't have this right, not the other way round.

#MakingRightsReal





MYTH BUSTING THE BILL



The proposals run counter to the rights-based approach of current strategy on which there is a broad consensus and replace it with a legislative approach.

No. The proposal wouldn't "replace" anything, it would underpin them in law as exists already in other sectors.

The proposal would underpin any strategy or policy in law, meaning the balance of power shifts to the person seeking treatment. Like other sectors any guidance, policy or strategy would be enforceable although legal action is a small % of cases.

Other sectors don't speak in this way or wish they didn't have legal underpinning (see homeless sector).

#MakingRightsReal





MYTH BUSTING THE BILL



The proposed Bill threatens the cross-party and broader consensus which is essential not only in delivering the National Mission but in progressing wider public health priorities on substance use.

We are unsure what this means. The “Bill” hasn’t been debated at a cross-party level other than get the support it did to pass the first motion, as the sector has been quick to remind everyone. But agreement that people should have a legal right to a chosen treatment option, in law, is only a starting point. If we all agree on that then the content can be what everyone agrees on.

But, as above, any Act would only be a foundation where any policy or strategy would be built. It doesn’t create or hinder any of this.

#MakingRightsReal





MYTH BUSTING THE BILL



The rights in this proposal would further disempower people with a drug problem seeking treatment by giving others the power of veto over their treatment choice.

"Veto" is what happens now, with no challenge. People's choices are routinely ignored. Under these proposed rights someone cannot "veto" without their consent or without giving good reason, in writing. That decision can then be challenged by Law Centres or Advocacy workers (whoever is trained in the new rights).

#MakingRightsReal





MYTH BUSTING THE BILL



This would potentially damage the establishment and development of the relationship between service user and worker, on which the success of all drug treatment ultimately depends.

This doesn't happen in any other sector just because the person has a legal right, so why would this be any different. We already see relationships being managed in the children's sector, homelessness and mental health — where a legal right of choice already exists. If anything, having the legal right (service user) and the resources (worker) fosters better relationships.

#MakingRightsReal





MYTH BUSTING THE BILL



The MAT standards are what should be negotiated — an informed choice in the context of expert advice and support.

The MAT Standards only go so far as to what medical treatment someone should be entitled to; it does not include ALL options.

Regardless, a legal right would underpin this in law, similar to the Code of Guidance used in the homeless sector is backed by the Housing (Scotland) Act 1987.

The MAT Standards, like any other existing guidance, does not allow for a legal challenge where necessary.

#MakingRightsReal





MYTH BUSTING THE BILL



This Bill is neither radical nor bold enough to achieve its aims.

We are unsure as to the context of this concern, a proposal for new protective legislation is one of the boldest thing's society can do. Never has there been such a rights-based approach put forward, one that ensures all of the good work being done in the sector is underpinned in law.

#MakingRightsReal





MYTH BUSTING THE BILL



People with a drug problem will have the rights they need and deserve, when they are fully recognised under the Equalities Act — an act which currently enshrines in law their stigmatisation and marginalisation by explicitly excluding them.

The equality Act 2010 has no bearing on a proposed change to Scottish Law, one doesn't need to change for the other to happen.

Even if the Equality Act was to include addiction, all it would do is add additional protection to those seeking treatment.

The rights proposed in the Bill would be the rights extended to anyone seeking treatment, pending their own circumstances — they wouldn't need an impairment or be nearly dead to have rights.

#MakingRightsReal





MYTH BUSTING THE BILL



The proposed Bill doesn't give legal clarity on what remedies would be available where a breach of statutory duty has occurred.

Remedies available would be civil litigation and especially in judicial review. Judicial review is not an appeal, nor as costly to the public purse as raising through current negligence routes, nor is it suing the authorities. Even if it was to reach the courts it would usually result in a quick case and so relatively lower the current costs

#MakingRightsReal





MYTH BUSTING THE BILL



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.

Judicial review would at best mean the courts would order; a reduction on a decision (that that public body has to take it again if for example if there has been a defective decision-making process); issue a public statement that a public body has acted unlawfully, called a declarator; award damages (unusual in Scotland); Issue an interim order suspending a public bodies decision pending a legal case.

Current remedies are costly and also not extended to everyone, only certain cases fit the criteria for legal action.

#MakingRightsReal





MYTH BUSTING THE BILL



Even if someone is right to take legal action, what about the costs?

This may be down to each public body. However, public authorities have separate budgets for the provision of services, legal fees, etc and there are clear limits on what certain money can be spent on. So, what is budgeted into addiction services can't then pay for legal costs on a case where they have been found at fault.



Who would be liable for them?

Note that expenses would only follow success. That means that if a legal challenge was made, the public body opposed it, and the case was successful — then and only then would the public body be liable for the costs. It should be known that many petitions for judicial review are resolved at an early stage on the basis of no expenses due to or against any party. Meaning legal teams would negotiate the outcome out of court — as often happens in homeless breach of duty cases.

#MakingRightsReal





MYTH BUSTING THE BILL



Could legal costs end up coming out of individual commissioned providers budgets?

No. Legal costs are ringfenced in a different budget.

Looking at costs to the person raising the action. In Scotland, legal aid would likely apply in most cases, similar to other sectors dealing with vulnerable people. The SLAB would consider:

Is there a legal basis of the case, is there a strong legal argument? Would it be reasonable to grant legal aid?

The legal aid board will consider matters such as the vulnerability of the applicant, the complexity, the prospects of success and the impact on the individual. So, it would be anticipated that legal aid could be granted if the legal provisions in the Bill were passed in law.

#MakingRightsReal





MYTH BUSTING THE BILL



Legal challenges would cost money and divert it from treatment budgets and anyway there are other legal routes someone can take.

A very confusing statement. Raising concerns about legal challenges costing money (that could be spent on other matters) but adding other routes by which to challenge providers is a difficult argument to make. Many of the "other rights" touted, such as negligence, involve many days of hearings and expert evidence, costing a lot of money. Judicial reviews are decided on written documents and heard by a judge in one day.

Under the Bill challenges would cost public bodies less than the other legal routes mentioned.

#MakingRightsReal





MYTH BUSTING THE BILL



The Bill doesn't include an aspiration to decriminalise drugs

Correct - the point of the bill is to provide legally enforceable rights for people seeking treatment for their addiction. These other matters are contained within other laws which are not devolved to Scotland.

Decriminalisation, whether people agree or disagree, is devolved to Westminster and so "outwith competence". It is also outwith the scope of the NHS (Scotland) Act and inserting this would likely result in Presiding Officer stating it is outwith competence or the UK Government seeking a referral to the Supreme Court - wasting the same public money many seem to be concerned about.

#MakingRightsReal





MYTH BUSTING THE BILL



People will be able to just pop off to rehab as soon as the ask or feel like it.

No. In forming of a care plan, like any other health sector, due consideration should be taken into that person's specific needs and the urgency of such a request. It may be likely that someone at high risk of overdose, or who has overdosed, asks to go to such a facility — they may be considered as a priority. But otherwise the care plan should plan towards this.

What the proposal wouldn't allow, is to be told no, or we don't fund rehab here.

#MakingRightsReal

