Law Society of Scotland

Stage 1 Briefing

Right to Addiction Recovery (Scotland) Bill

October 2025

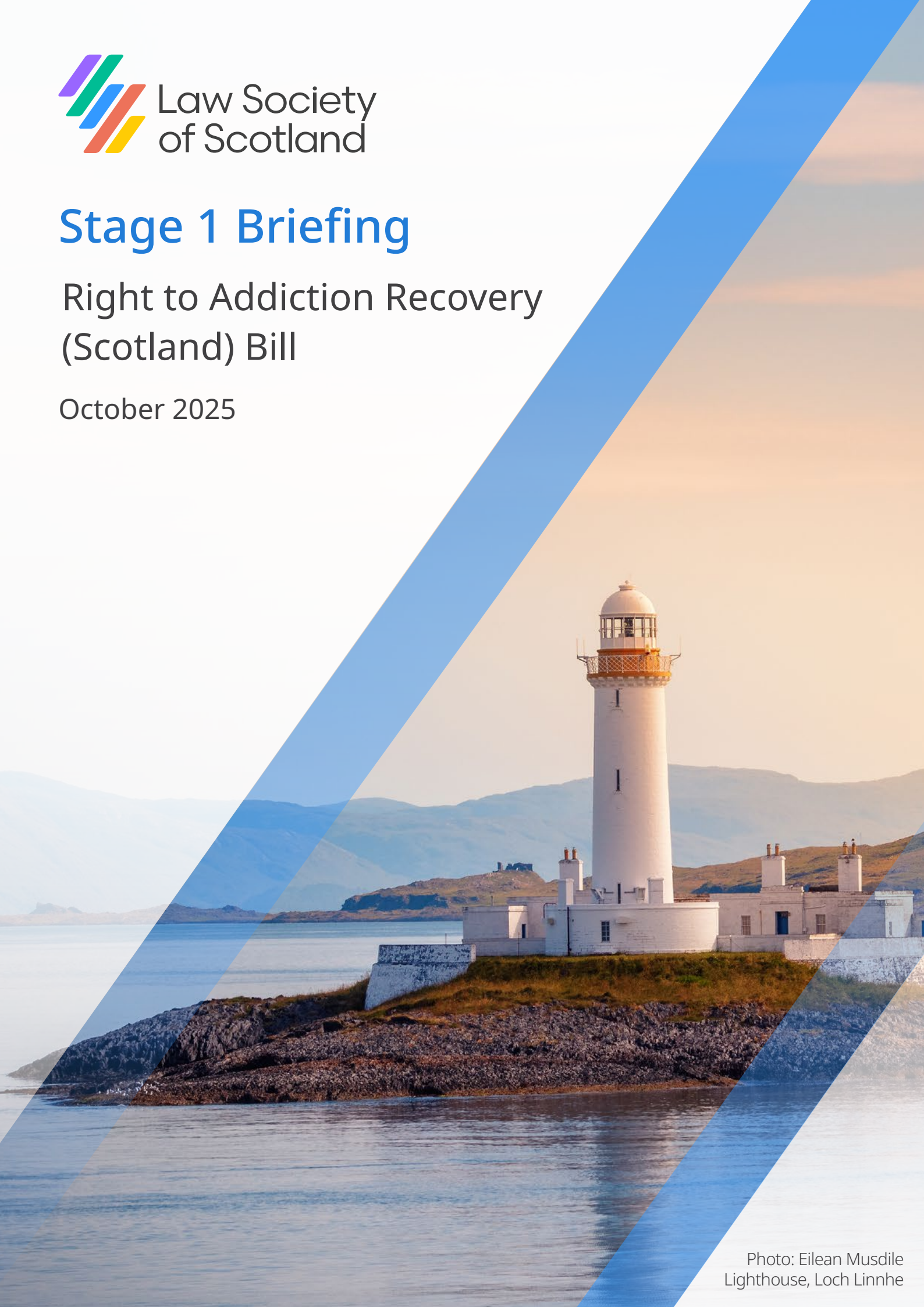

Photo: Eilean Musdile Lighthouse, Loch Linnhe

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Right to Addiction Recovery (Scotland) Bill[1] (the Bill) is a Member's Bill and was introduced on 14 May 2024 by Douglas Ross MSP. We previously submitted written evidence,[2] and then provided oral evidence in March 2025,[3] to the Health, Social Care and Sport Committee of the Scottish Parliament as part of its Stage 1 consideration of the Bill.

The Health, Social Care and Sport Committee's Stage 1 Report on the Bill (the Stage 1 Report)[4] was published on 23 September 2025.

Our Health & Medical Law sub-committee welcomes the opportunity to consider and provide comment on the Bill ahead of the Stage 1 debate scheduled for 9 October 2025.

[1] Right to Addiction Recovery (Scotland) Bill
[2] 24-12-20-hea-right-to-addiction-recovery-s-bill-written-evidence-draft.pdf
[3] More information can be found here.
[4] Stage 1 report: Right to Addiction Recovery (Scotland) Bill

General Remarks

We note the overall purpose of the Bill is to provide a right for anyone diagnosed as having a drug and/or alcohol addiction to receive a treatment determination, and for that person to be provided with the treatment as soon as reasonably practicable, and no later than three weeks from the date of determination.[5]

We would suggest Consideration must be given to resourcing, infrastructure and funding if the aims of this Bill are to be met, given pressures that already exist for those working in this area. If the practicalities of this Bill are not considered, litigation for breaches and increased legal costs for health boards could be a consequence, and the Bill could risk not helping the end users as intended.

Comments on sections of the Bill

Section 1

Section 1 sets out that if a person is diagnosed with a drug or alcohol addiction, they have the right to be informed about the appropriate treatment available and to be provided with that treatment.

We are not aware of a legal right to treatment for other health conditions and consideration should be given to the consequences of bringing this in solely for drugs and alcohol addiction, as well as considering the ability of the NHS to resource these changes.

We would suggest at the end of the first line of 1(1) inserting - “who has been assessed by a relevant health professional as being committed to being treated for their addiction and likely to engage with treatment” or words to that effect, with the aim of making sure the legislation is workable in practice.

Section 2

Section 2 of the Bill provides the procedure the relevant health professional must follow in determining treatment.

Section 2(1)(a) states that the health professional must ensure they explain each of the treatment options. It is our understanding that the UK Supreme Court, in *Montgomery v Lanarkshire Health Board* (*2015)*, found that a doctor does not have to discuss a treatment option which is, in their opinion, inappropriate.[6] The Supreme Court decision *McCulloch and Others v Forth Valley Health Board 2023* UKSC 26 has clarified the law relating to treatment options. A doctor is not

[5] Explanatory Notes accessible 5
[6] *Montgomery v Lanarkshire Health Board* (2015) UKSC 11, para 85

required to tell a patient about all treatment options but those which in the doctor's clinical judgement, supported by a reasonable body of medical opinion, are appropriate. It appears that the Bill could be seen as contrary to the Supreme Court decision, and thought should be given as to how the Bill sits with previous judgements. It also gives a patient a right to request specific treatments, which makes this group of patients different from others.

Section 2(3)(b) gives the patient a right to a second opinion. Although GMC Good Medical Practice states 'you must .... respect their right to seek a second opinion' and any reasonable doctor is likely to do so, we are not aware that in any other context a second opinion is a legal right.

It is also possible that the healthcare professional carrying out the assessment will be of the opinion that, at that stage in the patient's illness, no treatment is likely to be effective. Section 2(3) does not provide 'no treatment' as a possible option. It's omission from Section 2 could result in futile treatment.

Section 3

Section 3 sets out the duty to provide treatment as soon as reasonably practical, and no later than three weeks after the determination of treatment.

Thought should be given to those suffering with addiction and how they currently engage with medical services when considering whether a rigid timescale is suitable or practical to implement. We note the stage 1 report recommends that, if the Bill is to progress to stage 2, further consideration should be given to the concerns that a three-week timescale may not be appropriate in all circumstances, and whether there may be a more flexible approach available that distinguishes between different types of treatment.[7] We agree that further consideration to the rigid three-week timescale is necessary.

There are concerns that making treatment within three weeks a legal requirement in an under resourced health service, could result in resource implications including the possibility of diversion of resources from other areas where there is no such time limit enshrined in statute. It is recognised in the stage 1 report by the lead Committee that the Bill may have the unintended consequence of a significant rise in litigation through creating a legal right to treatment, and if that legal right is unmet, could be subject to legal action on grounds of clinical negligence.[8] We share these concerns in that the Bill will give rights of redress to addicted patients not afforded to others. We would suggest that addiction may be addressed in the same way by Government setting standards for Health Boards.

[7] Stage 1 report, para 265
[8] Stage 1 report, para 186

Section 4

Section 4 makes provision giving Scottish Ministers a statutory duty to ensure the rights established in the Bill are delivered.

We have no specific comment on this section.

Section 5

Section 5 sets out provisions requiring Scottish Ministers to report annually to the Scottish Parliament on the progress made towards providing treatment for addiction recovery, and publish a report.

We note there is an assumption in Section 5(2)(c)(iv) that in some cases the three week guarantee will not be met. If this is a legal requirement there will be reputational and financial consequences for Health Boards.

Section 6

Section 6 makes provision requiring Scottish Ministers to prepare a code of conduct on how the duty to fulfil the right to treatment will be carried out.

We have no specific comment on this section.

Sections 7-11 – Final provisions

We have no specific comments on these sections.

For further information, please contact:

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