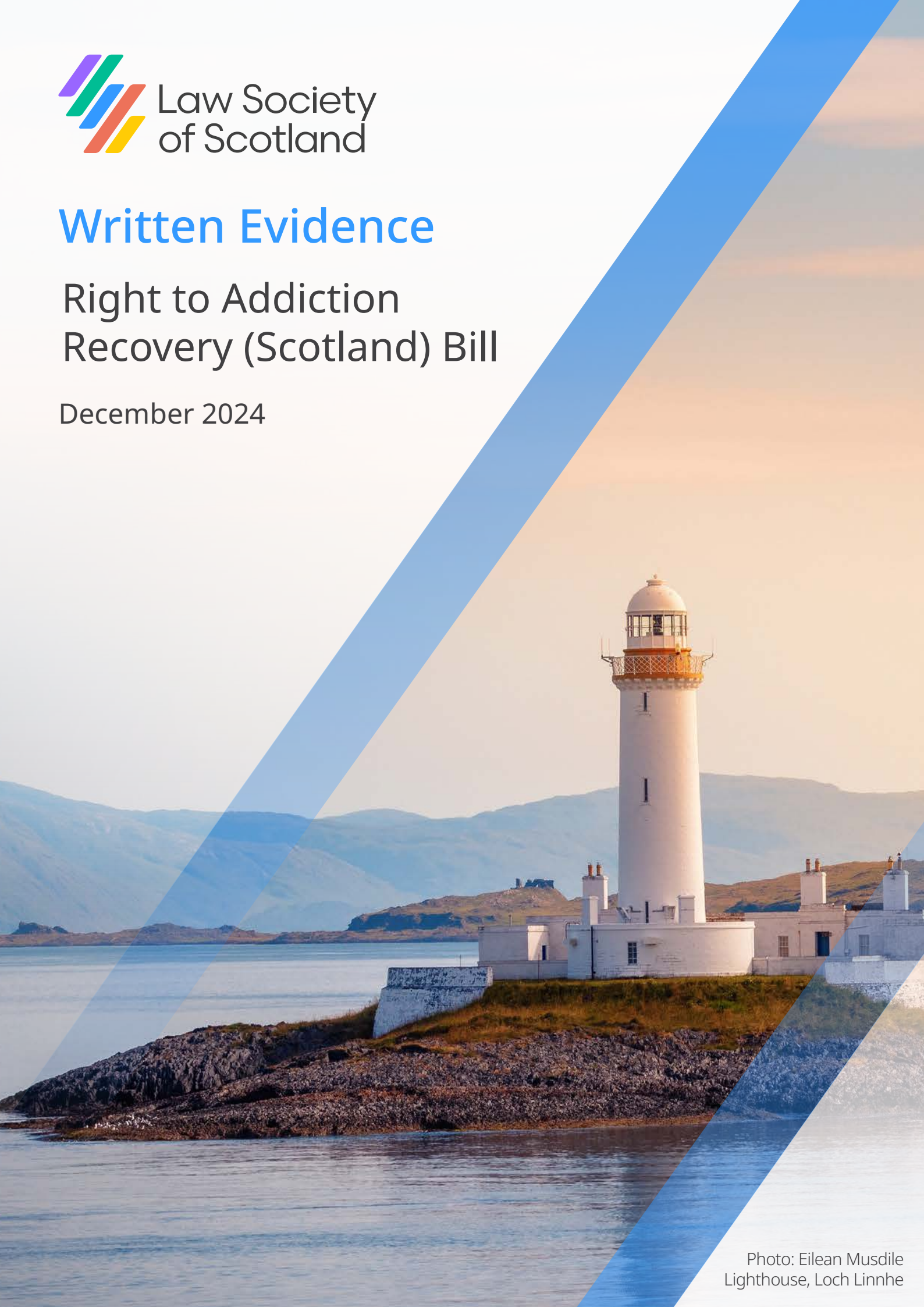


Written Evidence

Right to Addiction Recovery (Scotland) Bill

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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.

Our Health and Medical Law sub-committee welcomes the opportunity to consider and respond to the Scottish Parliament's Call for Written Evidence on the Right to Addiction Recovery (Scotland) Bill.¹ The sub-committee has the following comments to put forward for consideration.

¹ [Right to Addiction Recovery \(Scotland\) Bill - Call for Written Evidence - Scottish Parliament - Citizen Space](#)

Call for Written Evidence Questions

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

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.

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?

No comments.

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?

No comments.

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?

Section 2 (1) (a) states that the health professional must ensure they explain each of the treatment options. It is our understanding that, *Montgomery v Lanarkshire Health Board 2015*, found that a doctor does not have to discuss a treatment option which is, in their opinion, inappropriate. 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 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. Its omission from Section 3 could result in futile treatment.

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

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.

There are concerns that making treatment within 3 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. This will give rights of redress to addicted patients not afforded to others. Addiction could be addressed in the same way by Government setting standards for Health Boards.



We note there is an assumption in Section 5 (2) (c) (iv) that in some cases the 3 week guarantee will not be met. If this is a legal requirement there will be reputational and financial consequences for Health Boards.

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

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.

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

No comments.

8. Do you have any other comments to make on the Bill?

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.



For further information, please contact:

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