The Scottish Parliament
Pàrlamaid na h-Alba

Douglas Ross MSP
16 October 2024
By email

Stuart McMillan MSP
Convener
Delegated Powers and Law Reform Committee
By email

Dear Convener,

Thank you for your letter of 27 September 2024 seeking further explanation of certain provisions relating to the delegated powers in the Right to Addiction Recovery (Scotland) Bill. My response is as follows:

Section 1(6): Right to recovery; and
Section 3(3): Provision of treatment

Your committee asked for further explanation as to why I consider it necessary that the powers in sections 1(6) and 3(3) include the power to make incidental, supplementary, consequential, transitory or saving provisions and to make different provision for different purposes (provided for in section 8(1)). I welcome your comments on this matter. Whilst this provision was added to give the Scottish Ministers flexibility to implement the provisions of the Bill in such manner as they see fit, I accept that the particular provision in section 8(1) in relation to sections 1(6) and 3(3) may not strictly be deemed necessary, given that the lists in sections 1(6) and 3(3) are non-exhaustive.

In relation to your other question about whether anything further could be added to the face of the Bill to clarify or emphasise that the lists are non-exhaustive, it is my view that the Bill already makes it sufficiently clear that those lists are non-exhaustive. For example, section 1(5) contains the phrase “but not limited to” and section 3(2) uses the word “including”. I would of course give any further suggestions from the Committee full consideration in advance of Stage 2.

Section 4(2): Duty to secure delivery

Your committee also asked for further clarification in relation to the duty to secure delivery in section 4(2). Specifically, the committee asked whether the power could be narrowed in order to limit the functions that may be conferred under this power; and whether any work has been done to establish what regulations made under this power may look like.

The duty on Scottish Ministers, and consequently on the bodies charged with delivering the right to recovery, is key to delivering the policy intent behind my Bill. I have not been overly prescriptive as to the contents of the regulations which may well need to be broad-ranging to ensure compliance with the duty to deliver rights. I would anticipate that the regulations would include provisions for processes for bodies such as Health Boards and Alcohol and Drugs Partnerships to follow to ensure they deliver the provisions of the Bill and also to ensure that they can demonstrate that they are delivering the provisions of the Bill. I would anticipate it would be likely that guidance for healthcare professionals and other professionals involved in these processes would stem from the regulations. It is important that the regulations are subject to rigorous parliamentary scrutiny. As such the regulations are to be laid in draft before the Scottish Parliament in order that your committee, and relevant subject committees, can carefully scrutinise the approach taken by the Scottish Ministers.

I am satisfied that the powers in section 4(2) do not require to be narrowed in order to limit the functions that may be conferred under this power. However, I will of course consider carefully any specific suggestions the Committee makes on this matter.

Section 6: Code of practice

Finally, your committee asked for further clarification in relation to the code of practice, and specifically whether the intention is that there will be an opportunity for Members to make representations on the code when it is laid in draft.

As you indicate in your letter, the code of practice will be laid in draft before the Scottish Parliament. As with any document laid in draft before the Parliament, it will be for Members, through your committee and the relevant lead committee, to decide on the extent to which they wish to make representations, and therefore to shape, the draft code, as well as scrutinising the draft regulations. The regulations will be scrutinised at the same time under the affirmative procedure, so I would anticipate that the contents of the code will be scrutinised carefully and consideration of its contents would also contribute to the scrutiny of the regulations under the affirmative procedure. I am very keen that the code of practice is scrutinised carefully, and that, in scrutinising the code, the Parliament makes representations on behalf of the bodies that will have to implement the provisions of the code. Therefore, should your committee consider that a specific procedure be added to the Bill to set out a scrutiny process for the code of

practice separate to the regulations, I would be very supportive of this and content to lodge a Stage 2 amendment to establish such a procedure.

I hope that the committee finds this response to be helpful in its further deliberations on the Delegated Powers Memorandum and any report to the lead committee at Stage 1.

Yours sincerely

DOUGLAS ROSS MSP