

These documents relate to the Treatment of Drug Users (Scotland) Bill (SP Bill 79) as introduced in the Scottish Parliament on 29 September 2006

TREATMENT OF DRUG USERS (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Treatment of Drug Users (Scotland) Bill introduced in the Scottish Parliament on 29 September 2006:

- Explanatory Notes;
- a Financial Memorandum; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 79–PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by Govan Law Centre on behalf of Rosemary Byrne, the member in charge of the Bill. They have been prepared in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

COMMENTARY ON SECTIONS

Section 1

4. Section 1 of the National Health Service (Scotland) Act 1978 (c.29) ('the 1978 Act') places a general duty on the Scottish Ministers to continue to promote a free, comprehensive and integrated health service to secure (a) improvement in the physical and mental health of the people of Scotland and (b) the prevention, diagnosis and treatment of illness. Section 1A of the 1978 Act permits the Scottish Ministers to do anything they consider is likely to assist in discharging the duty to promote the improvement of the physical and mental health of the people of Scotland. **Section 1** of the Bill inserts a new **section 1B** to the 1978 Act to require the Scottish Ministers to promote the integration of existing health and social care services in Scotland to prevent drug misuse, and treat people who are dependent on or misuse drugs.

5. In discharging the duty under **section 1B(1), subsection (2)** requires the Scottish Ministers to introduce a scheme to enable an individual drug user to access a 'care plan'. A 'care plan' is defined by **subsection (9)** to mean a 'package of integrated health and social care services offered to an individual and their family to prevent and treat that individual's drug misuse, and includes the range of services as prescribed under subsection 3(d) to (f)'. The linkage to **subsection 3(d) to (f)** means that a care plan may include detoxification, residential and community based rehabilitation services, substitute prescribing and such other forms of treatment as the Scottish Ministers may think appropriate. A care plan may include employability support to enable drug users to secure employment or voluntary work experience.

6. A care plan may also include social and child care services for the children and families of drug users. The term 'drug user' is defined in **subsection (9)** to mean 'a person who is dependent on, or has a propensity to misuse, drugs'. The definition of 'family' is set out in **subsection (9)** and means a relative, spouse, cohabitee, or child of the drug user who lives in the drug user's only or main residence. A 'child' is defined by **subsection (9)** as a person under the age of sixteen years. 'Drugs' is defined by **subsection (9)** to mean a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971. Section 2 of the 1971 Act is concerned with 'controlled substances' which is any substance or product specified in Part I (Class A drugs), II (Class B drugs), or III (Class C drugs) of schedule 2 to the 1971 Act.

7. Subsection (3) requires the Scottish Ministers to make regulations setting out the detail and operation of the care plan scheme. In particular, **subsection 3(a)** requires the regulations to provide a drug user with a right to be assessed for a care plan within seven days of requesting one. **Subsection 3(b)** provides that a drug user will only have health and social care services provided under a care plan if they are susceptible to treatment, and the Scottish Ministers must make provision for the timeframe under which particular care plans must be implemented. **Subsection 3(c)** requires the Scottish Ministers to prescribe which health and social care professionals can carry out a care plan assessment and what their functions will be during that process. Services provided under **section 1B** will be free in accordance with section 1(1) of the 1978 Act.

8. **Subsections (5) to (8)** require the Scottish Ministers to provide a Code of Practice giving guidance to any person providing care plan services. Any such person must have regard to the Code and in terms of the common law would be expected to follow the guidance in the Code unless they had a good reasonable to depart from it.¹ The Code must be laid before the Parliament and may be revised from time to time.

Section 2

9. **Section 2** of the Bill amends the Proceeds of Crime Act 2002 Act to require that all monies from the proceeds of drug crime in Scotland must be applied to fund care plans for drug users and their families.

FINANCIAL MEMORANDUM

SUMMARY

10. The Bill is expected to result in overall benefits to the Scottish economy by improving the overall health and wellbeing of the people of Scotland by:

- reducing the number of people using drugs and increasing the number of people contributing positively to society.
- reducing the amount of crime and direct effects of crime on the people of Scotland.

11. The Bill is expected to result in overall savings to the costs of public administration in Scotland by:

- reducing the cost to the police, criminal justice and prison system of drug related crime.

¹ *Mazzaccherini v. Argyll and Bute Council* 1987 SCLR 475; *Kelly v. Monklands District Council* 1986 SLT 169; *R v. Wyre Borough Council ex parte Joyce* (1984) 11 HLR 73; *R v. West Dorset District Council ex parte Phillips* (1984) 17 HLR 336; and *R v Islington London Borough Council, ex p Rixon* [1997] ELR 66

- reducing the time and costs to drugs related service providers of chasing funding by providing a more uniform funding framework.

12. The Member in Charge would anticipate an initial increase in the budget allocated by the Scottish Executive to NHS health boards and Local Authorities for the treatment and rehabilitation of drug users of between £10 million and £20 million a year, for 2 to 3 years, in order to satisfy the requirements of the Bill. This would in part be met by reallocating a percentage of monies seized under the Proceeds of Crime Act 2002 to the NHS health boards.

13. Within 3 years of the implementation of the provisions drawn up by the Minister following the introduction of the Bill, the Member in Charge would expect, on the basis of previous studies², the initial increase in the NHS health board and Local authority budgets to be more than covered by budgetary savings in the areas outlined in paragraph 3 particularly the costs of drug related crime, thus providing an ongoing saving in the costs of Public Administration in Scotland.

COSTS ON THE SCOTTISH ADMINISTRATION

14. The Bill would place a duty on Ministers to promote the treatment of drug users. Specifically it asks the Minister to by regulation, make provision for:

- A scheme to assess the needs of drug users to determine an appropriate package of integrated health and social care services to treat their addiction and for the drug user to be assessed for the care plan within seven days of requesting one.
- A timeframe in which a care plan shall be implemented for a drug user who is susceptible to treatment.
- The appointment and functions of persons designated to carry out an assessment.
- The delivery of such health, social care and employability services as may be necessary to treat and rehabilitate drug users.
- The types, forms and packages of social and child care services for the families of drug users.
- A complaints procedure for drug users and their families.

² Godfrey C., Stewart D., Gossop M. Economic analysis of costs and consequences of the treatment of drug misuse: 2 year outcome data from the National Treatment Outcome Research study (2004). Extract from Abstract “**Aims** Some economic costs and consequences of drug misuse and treatment were investigated among clients recruited to the National Treatment Outcome Research Study (NTORS). **Design** This was a longitudinal prospective cohort design comprising 549 clients recruited from 54 residential and community treatment programmes: data were collected from interviews conducted at treatment intake, at 1 year and at 2-year follow-ups. **Measurements** Treatment costs included index and other drug treatments. Costs were estimated for use of health and social care services, criminal activity and the use of criminal justice resources. Costs were based upon self-reported data collected by structured face-to-face interviews combined with unit cost estimates taken from a variety of sources. **Findings** Addiction treatment was costed at £2.9 million in the 2 years prior to index treatment, and a further £4.4 million in the subsequent 2 years. Economic benefits were largely accounted for by reduced crime and victim costs of crime. Crime costs fell by £16.1 million during the first year and by £11.3 million during the second year. Health-care costs were relatively small but approximately doubled during the course of the study. The ratio of consequences to net treatment investment varied from 18 : 1 to 9.5 : 1, depending on assumptions. This is likely to be a conservative estimate of the benefit–cost ratio because many potential benefits were not estimated. **Conclusions** The data showed clear economic benefits to treating drug misusers in England.”

15. The Member in Charge would expect the Minister to be able to draw up regulations without conducting further studies or incurring new costs.

16. In order to effectively implement the regulations, however, some time may be required and implementation and recurring costs will be incurred associated with:

- Training of the person or persons designated to carry out the assessment.
- Upgrading the service provision in those parts of the country where health, social care, employability and child care services do not currently meet the provisions set out by the Minister.
- A uniform complaints procedure covering health and local authority services.

17. It is impossible for the Member in Charge to determine in advance the costs identified above as these will depend on the nature of the regulations drawn up by the Minister. However, given the inadequacy of provision in parts of the country and the overall lack of uniformity of service provision, then were the Minister to adopt regulations for service provision based on best practice, the Member in Charge would expect the cost of the existing provision in these areas to rise considerably during the implementation period.

18. In general terms what is being sought is an integrated cross departmental provision for drug rehabilitation, involving Health boards, Local Authorities and voluntary services. Cost to local authorities and Health Boards would increase at least in the first years of implementation; however, these increased costs would be more than recovered from savings in the criminal justice system.

SCOTTISH EXECUTIVE - HEALTH CARE COSTS

19. In 2005-6, £66.7 million was allocated by the Scottish Executive to tackle drugs. £32 million of that was allocated to NHS health boards for the treatment and rehabilitation of drug users. The Member in Charge estimates that the adoption of best practise uniformly across the health boards may increase this cost by between 25% and 50% in the first and second year of the implementation of the provisions, that is, by between £8 million and £16 million in each of those years. This additional cost would in part be met by reallocating a percentage of monies seized under the Proceeds of Crime Act 2002 to the NHS health boards.

20. The Bill stipulates that “where the accused has been convicted of an offence concerning the possession, supply or trafficking of controlled drugs, proceeds recovered under this Part shall be applied to fund care plans for drug users”. In their response to the consultation exercise on this Bill, the Association of Scottish Police Superintendents stated that £3.35 million had been recovered in 2005 under the Proceeds of Crime Act 2002. The proportion of that money which relates to drug crime as defined above is not known, however, given the prominence of drug related crime, the Member in Charge speculates that it exceeded £1 million in 2005 and will rise in the next few years.

21. The evidence from the Godfrey study³ is that over the course of a 2 year period during which time individuals undergoing drug rehabilitation were being monitored, the cost of their use of health resources, other than drug rehabilitation, doubled from the period before treatment

³ Godfrey, Stewart and Gossip *ibid.* Exact figures for health care were not given, see note 1.

started, albeit at a low overall cost. There are no longer term studies into costs to the health service for people undertaking drug treatment and rehabilitation services. The Member in Charge speculates that over time the effective treatment of and rehabilitation of drug users will reduce their long term cost to the health service by reducing their chances of serious illness brought on by drug misuse. On this basis the Member in Charge believes there could be savings in the longer term health care costs of drug users who have received drugs rehabilitation. This would reduce the additional overall costs to the health service.

22. The specification of standard levels of service and regularising the funding of health care provision in the area of drug related care will reduce the requirement for agencies to spend time and resources securing funding. This will result in more effective use of resources and improve the likelihood of overall savings being made.

23. Health boards already have complaints procedures covering a number of their services. As the envisaged complaints procedure will cover all services including local authority services affecting the treatment and rehabilitation of drug users a new type of procedure will be required. Whilst this will involve careful design, and clear information about their rights to be presented to all users of the services, the Member in Charge does not envisage any significant new costs to Health Boards involved in administering the scheme.

24. In summary, the Member in Charge anticipates that the introduction of uniform and monitored standards of service will, depending on the provisions made by the Minister, require the allocation of an additional between £8 million and £16 million a year to the Health services drug treatment and rehabilitation service. This funding requirement will in part be met by reallocating a percentage of monies seized under the Proceeds of Crime Act 2002, to the NHS health boards. This is expected to exceed £1 million a year. The more effective use of resources by agencies freed from securing funding will also in part reduce this cost. Although initially drug rehabilitation will lead to an increase in the costs to the non drug treatment parts of the health service, over time the Member in Charge believes it probable that rehabilitated drug users will reduce their use of health service resources through improved health prospects. The combination of these measures could substantially reduce the additional costs of providing an effective drug treatment service.

SCOTTISH EXECUTIVE – CRIMINAL JUSTICE COSTS

25. One of the major costs of drug use is the cost of detecting, prosecuting, sentencing and imprisoning drug users who commit crimes. There were 41,823 (9.5%) drug related crimes recorded by police in 2004/05 out of 438,093 crimes in total (100%)⁴.

26. The Scottish Executive Criminal Justice budget for 2006-07 excluding the police amounts to £1,054 million, the Police Grant is budgeted at £514 million and Police Grant Aided Expenditure amounts to £1,045 million. In round figures the Criminal justice system costs around £2,600 million a year.

27. Although there is no detailed breakdown of the costs within the Justice Budget which directly relate to drug related crimes, on a pro rata basis these costs may be estimated at £247

⁴ Scottish Executive Statistical Bulletin CrJ/2005/10.

million (9.5%) a year. This excludes the direct cost to the public of burglary, theft and higher insurance premiums and the cost of increased fear of crime.

28. Academic studies⁵ give an estimate that for every £1 spent in treatment services, £9.50 is saved in the criminal justice system. This results from the rehabilitation of drug users, their improved social environment and employability and hence a dramatic reduction in the amount of crime they commit. Moreover, these savings materialise from the start of additional investment in treatment and rehabilitation being translated into actual treatment of those seeking drug assessment. Taking account of the time required to train staff and roll out programmes, the Member in Charge anticipates that these savings will materialise by the end of year 3 after the Ministerial regulations are in place.

29. If these savings of £9.50 for every £1 spent in treatment services were realised in Scotland, then the additional investment of £8 million to £16 million each year would result over time in savings of between £76 million and £152 million a year in criminal justice costs.

30. Although the academic studies quoted are the most comprehensive conducted to date, they are nevertheless localised. Moreover, it may be that circumstances in Scotland, either the structure of health provision or organisation of services mean that the precise ratio of cost savings in criminal justice to treatment costs would not be achieved.

31. The Member in Charge does, however, believe that the relationship of effective drug treatment, as promoted in the Bill, resulting in rehabilitation and reducing crime is established beyond doubt and that considerable savings in Criminal Justice costs would result from introducing the proposals in the Bill. Indeed the very strong likelihood is that the savings annually in criminal justice costs will, from year 2 after implementation of the Minister's regulations, exceed the additional costs involved in implementing the provisions in both the health care and other service areas.

32. Savings of £16 million would be achieved by reducing by 6.5% the pro rata cost to the Justice system of drug related crimes. It should be noted that the Godfrey study measured savings of £16.1 million in the first year of rehabilitation treatment of just 549 drug users.

33. By the end of year 3 the Member in Charge would expect that the rolling costs of the provisions across all the Scottish Executive budgets to show a net saving.

34. Thus over a 3 year period the Member in Charge expects there to be no net cost of the proposals to the Scottish Executive and over a longer period expects there to be savings to the Scottish Executive particularly in the area of Criminal Justice.

LOCAL GOVERNMENT – SOCIAL CARE, EMPLOYABILITY AND CHILD CARE COSTS

35. All local authorities provide social care and child care services. Some local authorities provide employment training services, in other authorities this service is provided by voluntary services. In relation to drug users, some authorities provide cross agency services. There are no

⁵ Godfrey, Stewart and Gossip *ibid.*

consistent figures available for the total expenditure at present by local authorities on social care, employability and child care services in relation to drug users.

36. The Member in Charge has no specific information on the likely costs of the Minister specifying regulations for the effective standards of social care, employability and child care services in relation to drug users. The Member in Charge would speculate that the adoption of uniform standards of service across Scotland in these areas would result in a more effective service and improved staff morale. If this resulted then there need be no long term budgetary impact.

37. In addition if as expected, the effective treatment of drug users results in their rehabilitation, then in the longer term their requirement for social care, employability and child care services will be reduced. If this happened then a reduction in demand for these services would result and improved service levels could be achieved with the same or indeed less resources.

38. As drug treatment and rehabilitation are envisaged as cross agency responses, providing an integrated service will in the short term require more resources from local authorities. The Member in Charge believes the additional resources will be greater within the health care sector or using health care budgets, some of which are spent in partnership with local authorities. Direct local authority additional costs are estimated at a $\frac{1}{4}$ of health costs, that is between £2 million and £4 million a year for 2 to 3 years.

39. Overall, the Member in Charge would expect a requirement for a short term budgetary increase over 2 to 3 years for these services, with an eventual improved service with the same or lower budget than at present. This budgetary increase would in part be met by reallocating a percentage of monies seized under the Proceeds of Crime Act 2002 to the agencies involved.

40. The specification of standard levels of service and regularising the funding of social care, employability and child care services in relation to drug users will reduce the requirement for voluntary and community agencies to spend time and resources securing funding. This will result in more effective use of resources and improve the likelihood of overall savings being made.

41. Local authorities and health boards already have complaints procedures covering a number of their services. As the envisaged complaints procedure will cover all services including local authority services affecting the treatment and rehabilitation of drug users a new type of procedure will be required. Whilst this will involve careful design, and clear information about their rights to be presented to all users of the services, the Member in Charge does not envisage any significant new costs involved in administering the scheme.

COST IMPLICATIONS FOR OTHER ORGANISATIONS AND INDIVIDUALS

42. The Bill is expected to result in overall benefits to the Scottish economy by improving the overall health and wellbeing of the people of Scotland by:

- Reducing the number of people using drugs and increasing the number of people contributing positively to society.
- Improving the living standard of families of current drug users who are rehabilitated.

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- Improving the well being of the children of current drug users who seek treatment.
43. Reducing the amount of crime and direct effects of crime on the people of Scotland.
44. As well as reducing the direct cost of say theft, there may be indirect savings from reduced insurance costs as areas deeply affected by drugs increasingly are populated by rehabilitated drug users. People may feel less in fear of crime and be able to more fully play an active part in their community thus benefiting the social and economic wellbeing of the community overall.

PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE

45. On 27 September 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Treatment of Drug Users (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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