This briefing summarises Parliamentary scrutiny of the Patient Rights (Scotland) Bill prior to stage 3 proceedings due to take place on 24th February 2011.

The briefing outlines in more detail:

- The Health and Sport Committee’s findings at stage 1
- The substantive amendments agreed at stage 2
- Substantive issues raised at stage 2 but which did not result in the amendment of the Bill at that stage
- Commitments made prior to stage 3 and some of the main amendments lodged.
EXECUTIVE SUMMARY

The Bill As Introduced

The Patient Rights (Scotland) Bill [as introduced] contained a number of key provisions which received scrutiny by the Health and Sport Committee, namely:

- The creation of new statutory rights for those using the health service and the creation of a set of principles which should underpin the delivery of health care
- The creation of a statutory maximum treatment time guarantee of 12 weeks for eligible patients.
- The introduction of a legal right to complain
- The creation of the Patient Advice and Support Service to be staffed by a newly created post of Patient Rights Officer.

Stage 1

The overall conclusion of the Committee at stage 1 was that it was unable to make a recommendation to Parliament. This was down to a division of opinion in the Committee as to the appropriateness of using primary legislation as a vehicle to promote patient rights. While some thought it would strengthen patient rights, others thought it might only serve to confuse matters. Underlying this concern was the fact that the Bill did not seek to enshrine all rights available to patients and also because the new rights could not be legally enforced through the civil courts. The Committee was also divided on other parts of the Bill, including the Treatment Time Guarantee.

Stage 2

The main amendments agreed at stage 2 included:

- A duty for Ministers to make an order to be known as a Patient Rights Charter which would be inclusive of all existing statutory patient rights and responsibilities and may confer new ones
- The removal of the sections which would create the post of Patient Rights Officer
- A duty for NHS Boards to ‘uphold’ the health care principles as opposed to ‘having regard to them’
- The extension of the scope of the Bill at sections 11 and 12 to include reference to patient feedback, comments, concerns and complaints. This is similar to the system in place at the State Hospital which refers to the 4 ‘Cs’ – Compliments, comments, concerns and complaints.

The main amendments withdrawn, not moved or not agreed to at stage 2 included:
• provisions outlining the responsibilities of patients

• replacing the treatment time guarantee with a patient guarantee where the maximum wait would be set by the patient’s General Practitioner

• the creation of a system of no-fault compensation

Stage 3

The main amendments lodged in advance of stage 3 include:

• Revised sections on the Charter for Patient Rights and Responsibilities. This would remove the section on the Patient Rights Charter inserted at stage 2, and replace it with a duty to publish a Charter summarising all rights and responsibilities of patients and relevant persons. The Charter would summarise rights and responsibilities established elsewhere. It will not be able to create new or alter any existing rights and responsibilities.

• A provision which clarifies that the operation of the Treatment Time Guarantee is without prejudice to the duties of Health Boards to comply with other waiting time targets (where they are set out in Regulations or Directions) or have regard to any guidance regarding other waiting time targets.

• The addition of a new section which makes clear that the Patient Advice and Support Service may promote patient rights not contained in the Bill and provide advice on matters outwith the health service as long as this does not compromise its core duty to provide advice and support in relation to the health service

• Amendments to the Smoking, Health and Social Care (Scotland) Act 2005 which would allow Ministers create new categories of people eligible for payments made to those affected by Hepatitis C infection from NHS blood/blood products.
INTRODUCTION

The Patient Rights (Scotland) Bill [SP Bill 42] aims to “reinforce and strengthen the Scottish Government’s commitment to place patients at the centre of the NHS in Scotland” (Scottish Parliament, 2010b, para 3). The main provisions of the Bill sought to:

- create new statutory rights for those using the NHS and to establish a set of principles which should underpin the delivery of healthcare
- create a statutory maximum treatment time guarantee (TTG) of 12 weeks for eligible patients.
- The introduction of a legal right to complain
- create a national ‘Patient Advice and Support Service’ (PASS) to be staffed by a newly created post of ‘Patient Rights Officer’

The Health and Sport Committee (the Committee) was designated lead Committee on the Bill. It commenced taking evidence on 8 September 2010 and reported on 4 November 2010 (Scottish Parliament Health and Sport Committee, 2010a). The Scottish Government responded on 24 November 2010 (Scottish Government, 2010).

The overall conclusion of the Committee at stage 1 was that it was unable to make a recommendation to Parliament on the general principles of the Bill. This was primarily down to a division of opinion on the use of primary legislation as a vehicle to promote patient rights. While some members thought it would bring a renewed focus to patient rights, others felt that it would not achieve a patient focused health service and could potentially confuse patients. This was because the Bill did not seek to enshrine all rights available to patients and also because the new rights could not be legally enforced through the civil courts.

The more detailed conclusions of the Committee on the different parts of the Bill are outlined below, alongside the main changes which took place at stage 2 and some relevant amendments lodged at stage 3.

SECTIONS 1-5: PATIENT RIGHTS AND HEALTHCARE PRINCIPLES

As Introduced

Sections 1-5 of the Bill set out a number of new rights which would be in addition to existing patient rights, as well as a set of principles to underpin the delivery of health care. NHS Boards would not have a specific duty to comply with the rights in the Bill but they would have a duty to “have regard to” the principles. None of the rights or principles could be legally enforced through the civil courts, although patients could seek a declaratory judicial review.

Stage 1

The Committee supported fostering a patient centred health service as well as the Government’s aim to avoid creating a ‘Charter for Lawyers’. However, it expressed concern that the Bill was potentially contradictory as it set out new rights but also made express provisions to ensure they could not be enforced. The Committee thought this may raise unrealistic expectations and so recommended that if the Bill proceeded beyond stage 1 then non-litigious remedies such as ‘alternative dispute resolution’ should be explored further at stage 2. Some Members thought the objectives of the Bill would be better pursued in a revised and comprehensive Patients’ Charter.
Stages 2 and 3

The following tables detail the main amendments on this part of the Bill at stage 2 and 3. Table 1 details the amendments agreed to while table 2 details some of the main amendments which were debated but either withdrawn, not moved or not agreed to. Both tables also detail any relevant amendments subsequently lodged at stage 3.1

Table 1: Main amendments agreed to at stage 2 on sections 1-5: Patient Rights and Principles, and relevant amendments lodged at stage 3

<table>
<thead>
<tr>
<th>Issue and Reference</th>
<th>Amendment and Outcome</th>
<th>Relevant Stage 3 amendments lodged</th>
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<tbody>
<tr>
<td>Patient Rights Charter (Scottish Parliament Health and Sport Committee, 2010b, Col 3819)</td>
<td>Amendment 19 in the name of Dr Richard Simpson MSP, gave Scottish Ministers a duty to make an order containing a charter of patient rights and responsibilities. The amendment sought to ensure that the charter should include all existing statutory rights and responsibilities and may confer new ones. Also, it should not include a right to specific treatments or medicines although it could include rights and responsibilities for specific patient groups. Ministers would also have to review the charter from time to time and revise it when they think appropriate. The Cabinet Secretary for Health and Wellbeing (the Cabinet Secretary) agreed with the amendment in principle but urged the Member not to press the amendment in order to work with him prior to stage 3 to get a group of amendments that were mutually acceptable. Her concerns included that the charter would include rights covered by reserved legislation and therefore the charter may breach legislative competence. The Member moved the amendment and it was agreed to following a vote (For-5, Against-3).</td>
<td>Amendments 1 and 2 have been lodged by Dr Richard Simpson MSP to remove the section on the patient rights charter that was inserted at stage 2. The revised section would provide that the charter must outline a summary of patient rights and responsibilities. It also states that nothing in the charter should give rise to any new rights or responsibilities or alter existing ones in any way. Therefore, although the charter could be amended and updated, it could not be used to create any new rights or responsibilities. Instead it would be used to reflect rights and responsibilities existing at the time of publication. It may also contain information about duties on relevant NHS Bodies, a summary of behaviour expected of patients, and any other relevant information, such as information about waiting times. Before publishing the Charter, ministers must consult appropriate persons and lay a copy of the finalised Charter before Parliament. Amendment 2 is aimed at giving Ministers a duty to carry out a review of the charter at least once every 5 years, and to assess how effective the Charter is at raising awareness of the rights and responsibilities of patients.</td>
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1 Please note that at the time of writing, a marshalled list had not yet been produced for stage 3 and therefore this table may contain amendments not selected for debate.
Table 2: Main amendments withdrawn, not moved or not agreed to at stage 2 on sections 1-5: Patient Rights and Principles, and relevant amendments lodged at stage 3

<table>
<thead>
<tr>
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<td>Health care principles (Scottish Parliament Health and Sport Committee, 2010b, Col 3830)</td>
<td>Amendments 29, 30, 32 and 33 in the name of Dr Richard Simpson MSP sought to make additions to the health care principles which would outline responsibilities for patients. The lack of clear patient responsibilities in the Bill was a matter criticised by some at stage 1 of the Bill. The amendments were not moved following representations from the Cabinet Secretary that Schedule 1 outlining the health care principles was not the best place to outline patient responsibilities as it is NHS Boards and not patients who have a duty to have regard to the principles. The Government committed to dealing with the issue of patient responsibility in the Patient Charter.</td>
<td>Amendments 1 in the name of Richard Simpson seeks to revise the section on the ‘Patient Rights Charter’ to become the ‘Charter of Patient Rights and Responsibilities’. This charter would summarise all of the existing responsibilities of patients.</td>
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</tbody>
</table>

Duties on relevant NHS bodies (Scottish Parliament Health and Sport Committee, 2010b, Col 3827) | Amendments 23 and 25 in the name of Mary Scanlon MSP gave NHS bodies a duty to ‘uphold’ the health care principles, instead of having a duty to ‘have regard to’ them. They were agreed to unanimously by the Committee | Amendments 7 and 8 have been lodged by Richard Simpson MSP for stage 3. These amendments change the wording of the two principles inserted at stage 2. Most notably, the principle on providing care in a clean and safe environment at all times has been reworded to “clean and safe as is reasonably possible”. This was in light of concerns raised by the Cabinet Secretary at stage 2 over how such a principle would apply to health care delivered in emergency situations e.g. at the scene of an accident. |
**Health care principles** (Scottish Parliament Health and Sport Committee, 2010b, Col 3830)

Amendment 31 sought to change the wording of one of the principles which outlined that patients should be encouraged to have respect for NHS staff. The amendment wished to change the word “encouraged” to “expected”. Amendment 31 was not agreed to following a committee vote (For-3, Against-5)

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**SECTIONS 6-10: TREATMENT TIME GUARANTEE**

**As Introduced**

The Bill sought to introduce a guaranteed maximum treatment waiting time of 12 weeks for eligible patients. The Bill did not specify who would be eligible for the TTG as this was to be established in regulations. However, the accompanying documents indicated it would apply to all planned and elective inpatient and day case treatment, but with some exceptions such as obstetrics, organ transplantation and fertility services. If breached, NHS Boards would need to write to patients explaining why and make necessary arrangements for the procedure to go ahead at the next available opportunity.

**Stage 1**

Again there were diverging views in the Committee on this part of the Bill. While some Members thought the guarantee would be beneficial and provide reassurance for patients, others thought it would add little to the non-statutory 18 week target and could potentially skew clinical priorities. In addition, these Members questioned the value of a guarantee that could not be enforced. The Committee as a whole expressed concern at the exclusion of mental health services from the TTG. While the Committee accepted the Government’s point that it would not be appropriate to deliver crisis care in such a way it was disappointed that services such as cognitive behavioural therapy could not be included. In its response to the Committee’s report, the Government pointed out that mental health services are not specifically excluded from the treatment time guarantee (Scottish Government, 2010).

**Stages 2 and 3**

The following tables detail the main amendments on this part of the Bill at stages 2 and 3. Table 3 details the amendments agreed to while table 4 details some of the main amendments which were debated but either withdrawn, not moved or not agreed to. Both tables also detail any relevant amendments subsequently lodged at stage 3.

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2 Please note that at the time of writing, a marshalled list had not yet been produced for stage 3 and therefore this table may contain amendments not selected for debate.
### Table 3: Main amendments agreed to at stage 2 on sections 6-10: Treatment Time Guarantee, and relevant amendments lodged at stage 3

<table>
<thead>
<tr>
<th>Issue and Reference</th>
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<th>Relevant Stage 3 Amendments</th>
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<tbody>
<tr>
<td><strong>Treatment Time Guarantee</strong>&lt;br&gt;(Scottish Parliament Health and Sport Committee, 2010b, Col 3833)</td>
<td>Amendment 1 in the name of the Cabinet Secretary sought to include a provision to require NHS Boards to take into account the clinical needs of all patients and prioritise appropriately when trying to meet the TTG. This was lodged in response to concerns that the guarantee may skew clinical priorities. This was agreed to unanimously by the Committee.</td>
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### Table 4: Main amendments withdrawn, not moved or not agreed to at stage 2 on sections 6-10: Treatment Time Guarantee, and relevant amendments lodged at stage 3

<table>
<thead>
<tr>
<th>Issue and Reference</th>
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<tbody>
<tr>
<td><strong>Patient guarantee</strong>&lt;br&gt;(Scottish Parliament Health and Sport Committee, 2010b, Col 3833)</td>
<td>Amendment 37 in the name of Dr Richard Simpson MSP sought to change the treatment time guarantee to a ‘patient guarantee’. The purpose of this amendment was to make the guarantee less prescriptive and to also break it down into the different parts of the patient’s journey (e.g. GP referral to outpatient appointment - to diagnostic test - to treatment). The maximum waiting time would be set by the patient’s General Practitioner.&lt;br&gt;Amendment 37 was not moved following a commitment from the Cabinet Secretary that she would work with the Member to achieve a better set of amendments.</td>
<td>Amendment 12 in the name of the Cabinet Secretary has been lodged for stage 3. This amendment sets out that the TTG is in addition to (i) any other order, regulation or direction made by the Scottish Ministers in relation to targets and by which NHS Boards must comply, and (ii) any other guidance issued by the Scottish Ministers relating to such targets, to which Boards must have regard.&lt;br&gt;This will ensure that once inpatient treatment has been agreed, hospitals will need to ensure the treatment starts in 12 weeks. This will provide a back-up guarantee for those patients where a more prolonged diagnosis may have taken them beyond the 18 week referral to treatment target.</td>
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SECTIONS 11-13: COMPLAINTS AND FEEDBACK

As Introduced

The Bill sought to repeal the existing legislation covering hospital complaints procedures and give patients a legal right to complain, raise concerns and give feedback. It also provided that Ministers must ensure that relevant NHS bodies (and in turn their service providers) should have adequate arrangements in place for handling, publicising and monitoring complaints. NHS bodies must also encourage patients to raise concerns or give feedback on the healthcare they have received.

Stage 1

The Committee was unanimously of the opinion that the NHS should develop a more open and accessible system of patient feedback and that appropriate arrangements should be in place to handle patient complaints in a sensitive and supportive manner. However, the Committee was unclear as to what practical difference the Bill’s provisions would have for those who wanted to give feedback, raise a concern or complain. The Committee felt that patients already have the right to complain, although the Government pointed out that this is not set out in primary legislation (Scottish Government, 2010).

Stages 2 and 3

Table 5 details the main amendments agreed to on this part of the Bill at stage 2. It also details any relevant amendments subsequently lodged at stage 3. There were no other significant amendments withdrawn, not moved or not agreed to on this part of the Bill.

Table 5: Main amendments agreed to at stage 2 on sections 11-13: Complaints and Feedback, and relevant amendments lodged at stage 3

<table>
<thead>
<tr>
<th>Issue and Reference</th>
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<th>Relevant Stage 3 Amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rights of patients to give feedback or comments, or raise concerns and complaints and the handling of them (Scottish Parliament Health &amp; Sport Committee, 2010b, Col 3824)</td>
<td>Amendment 22 and a number of further amendments in the name of Dr Richard Simpson MSP, sought to place in the Bill the type of complaints and feedback system developed at the State Hospital. This is based on the 4 ‘Cs’; Compliments, Comments, Concerns and Complaints.</td>
<td>A number of consequential amendments have been lodged by Richard Simpson MSP at stage 3 to ensure consistent wording throughout the Bill.</td>
</tr>
</tbody>
</table>

3 Please note that at the time of writing, a marshalled list had not yet been produced for stage 3 and therefore this table may contain amendments not selected for debate.
### Issue and Reference

Rights of patients to give feedback or comments, or raise concerns and complaints and the handling of them (Scottish Parliament Health & Sport Committee, 2010b, Col 3824)

### Amendment and Outcome

Amendment 2 in the name of Nicola Sturgeon MSP, gave Ministers the power to issue directions to Health Boards which may include provision for the resolution of complaints by conciliation or mediation. This was in response to the Committee’s stage 1 recommendation that alternative dispute resolution be explored further.

### Relevant Stage 3 Amendments

#### SECTIONS 14-17: PATIENT ADVICE AND SUPPORT SERVICE AND PATIENT RIGHTS OFFICERS

**As Introduced**

The Bill provided for the creation of the Patient Advice and Support Service (PASS) which would be responsible for promoting the rights and responsibilities of patients, as well as advising and supporting those who wish to complain, raise a concern or give feedback. The Bill also sought to create a new post of Patient Rights Officer (PRO) who would staff the PASS. At present, a broadly similar function to PASS is carried out by the Citizens Advice Bureaux who provide the Independent Advice and Support Services (IASS) through locally negotiated contracts with NHS Boards. The PASS would be commissioned on a national basis with at least one PRO in each NHS Board area. PROs would be responsible for providing information and advice about the PASS, the health service, making complaints and giving feedback. They would also have a role in directing people to other sources of support such as advocacy.

**Stage 1**

While the Committee recognised there is variation in funding and delivery of the Independent Advice and Support Service between different NHS Board areas, it was of the opinion that a more effective and efficient approach to replacing the current service could be to build on its current structure by developing it through a new national contract. This would retain the best elements of the service while addressing the inconsistencies.

**Stages 2 and 3**

The following tables detail the main amendments on this part of the Bill at stages 2 and 3. Table 6 details the amendments agreed to while Table 7 details some of the main amendments which were debated but either withdrawn, not moved or not agreed to. The tables also detail any relevant amendments subsequently lodged at stage 3.

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4 Please note that at the time of writing, a marshalled list had not yet been produced for stage 3 and therefore this table may contain amendments not selected for debate.
Table 6: Main amendments agreed to at stage 2 on sections 14-17: Patient Advice and Support Service, and relevant amendments lodged at stage 3

<table>
<thead>
<tr>
<th>Issue and Reference</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Patient Advice and Support Service (Scottish Parliament Health and Sport Committee, 2010b, <a href="#">Col 3840</a>)</td>
<td>Amendments 72 and 73 in the name of Dr Richard Simpson MSP removed the provisions which would create the post of Patient Rights Officers. The amendments were agreed to following a Committee vote (For-5, Against-3)</td>
<td>A number of amendments have been lodged at stage 3 to remove remaining reference to the Patient Rights Officers.</td>
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</tbody>
</table>

Table 7: Main amendments withdrawn, not moved or not agreed to at stage 2 on sections 14-17: Patient Advice and Support Service, and relevant amendments lodged at stage 3

<table>
<thead>
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<tbody>
<tr>
<td>Patient Advice and Support Service (Scottish Parliament Health and Sport Committee, 2010b, <a href="#">Col 3840</a>)</td>
<td>Amendment 71 in the name of Richard Simpson MSP sought to insert a provision in the Bill which specifically mentioned that the new national Patient Advice and Support Service (PASS) could be provided by the Citizens Advice Bureaux (CAB). This amendment was withdrawn following concerns raised by the Cabinet Secretary that making specific mention of one provider could breach procurement law. The Cabinet Secretary agreed to work with the Member to come up with an alternative amendment at stage 3.</td>
<td>Amendments 23 and 29 have been lodged by the Cabinet Secretary for stage 3. Amendment 23 ensures that the provider of the Patient Advice and Support Service links in with the work of other providers of advice and support. Amendment 29 makes it clear that the Patient Advice and Support Service is not restricted to providing advice and support in relation to the Health Service only (albeit that the provision of such other advice and support must not compromise its core duty to provide advice and support in relation to the health service).</td>
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</table>
MISCELLANEOUS AMENDMENTS

STAGE 2

No-Fault Compensation

Amendment 74 in the name of Dr Richard Simpson MSP sought to create a system of no-fault compensation in the NHS in relation to patient rights. This is a matter that is being pursued by the Scottish Government separately to the Bill. The amendment would provide an enabling power with the details of such a scheme to be established in regulations. The member explained that this would provide some form of redress for patients without leading to a ‘lawyer at every bedside’.

The amendment was withdrawn following assurances from the Cabinet Secretary that the Government would soon be responding to the report of an expert group convened to examine the matter of no-fault compensation. She also stated that as it is such a complex topic it would be desirable to bring it forward in separate legislation.

STAGE 3

Payments to or in respect of certain persons infected with hepatitis C as a result of NHS treatment etc.: eligibility

Amendment 31 in the name of Nicola Sturgeon MSP seeks to amend section 28 of the Smoking, Health and Social Care (Scotland) Act 2005. The purpose of the amendment is to include additional categories of people in the eligibility for payments made by Scottish Ministers to those affected by Hepatitis C infection through NHS Blood treatment/products.

This follows the Contaminated Blood review in England which contained recommendations on the provision of additional support to patients and others associated with them. The UK Department of Health made announcements in January 2011 on how it would implement the recommendations in England, this included allowing the families of those who died before 29 August 2003 (previously ineligible) to make posthumous claims for compensation.

On 8 February 2011, the Cabinet Secretary outlined in a letter to the convener of the Health and Sport Committee that she is still in discussions with patient representatives about the review’s recommendations but will announce Scottish plans in the near future (Cabinet Secretary for Health and Wellbeing, 2011). However, if a new category of claimant is to be added, the 2005 Act would need to be amended to allow this to happen and therefore amendment 31 seeks to use the Patient Rights (Scotland) Bill as a vehicle to affect this change. This would allow any claims for support to be administered more quickly than waiting for the first legislative opportunity after the election.
SOURCES

Cabinet Secretary for Health and Wellbeing. (2011) *Letter from the Cabinet Secretary for Health and Wellbeing on certain Stage 3 amendments to the Patient Rights (Scotland) Bill – Dated 8 February 2011* [Unpublished].


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RELATED BRIEFINGS

Robson, K. (2010) SB10-52 Patient Rights (Scotland) Bill

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