PATIENT RIGHTS (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Patient Rights (Scotland) Bill (introduced in the Scottish Parliament on 17 March 2010) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sideling in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government 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 schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY OF THE BILL

4. The Patient Rights (Scotland) Bill provides that it is the right of every patient that the health care received is patient-focused, which means that the provision of health care takes into account the patient’s needs. The Bill also provides that the health care received has regard to the importance of providing the optimum benefit to the patient’s health and wellbeing, allows for patient participation in decisions about their healthcare and provides appropriate information and support to allow them to do so.

5. The Bill introduces a guarantee (to be known as the treatment time guarantee) that eligible patients will start to receive treatment within 12 weeks of the treatment being agreed.

6. The Bill also provides for the right of every patient to give feedback or comments or raise concerns or complaints and to have access to support to do so. The Bill provides for the
Common Services Agency of the NHS in Scotland to secure the provision of a patient advice and support service.

COMMENTARY ON SECTIONS

Section Z1: Patient Rights Charter

7. Subsection (1) places a duty on Ministers to make an order which contains a charter of patients’ rights and responsibilities, which is to be known as the Patient Rights Charter (“the Charter”).

8. Subsection (2) provides that the Charter must contain all existing statutory rights and responsibilities, but may also give patients some new rights and responsibilities.

9. Subsection (3) provides that the Charter must not include any rights or responsibilities in relation to specific treatments or medicines. Also, the duty to make an order containing the Charter does not give Ministers any power to create new rights or responsibilities in relation to specific treatments or medicines.

10. Subsection (4) provides that the rights and responsibilities contained within the Charter apply to all NHS patients, but that some of the rights and responsibilities may apply only to specific groups of patients.

11. Subsection (5) places a duty on Scottish Ministers to review the Charter and update or revise it by order, when they consider it appropriate to do so.

12. Subsection (6) places a duty on Scottish Ministers to consult with those they think appropriate before they make an order containing the Charter or make an order to update the Charter.

Section 1: Patient rights

13. Subsection (1) sets out the right for every patient that the health care they receive is to be provided in a certain way, as described in subsection (2).

14. Subsection (2) describes the way in which that health care should be provided. It should be patient focused, which means regard must be had to the patient’s needs; to the importance of providing the optimum benefit to the patient’s health and wellbeing; and the patient should be encouraged to play an active part in decisions relating to their treatment and health care, and they should be provided with appropriate information and support, in a format that is appropriate for their needs, to be able to participate in such decisions. Health care providers must also have regard to and respect for the rights and responsibilities that patients have under the Charter. In practice, this might mean:

- A healthcare professional listening to a patient’s experience of coping with a long-term condition, and taking this into account when considering the best treatment options.
This document relates to the Patient Rights (Scotland) Bill as amended at Stage 2
(SP Bill 42A)

- A patient being encouraged to take their medication regularly or to become more active in order to lose weight and improve their health.
- A deaf patient being provided with a British Sign Language interpreter so that they can discuss their illness and treatment with their doctor, and make an informed decision as to their preferred treatment.

15. Subsection (3) gives patients a right to give feedback or comments, or raise concerns or complaints about the health care they have received.

16. Subsection (4) enables Scottish Ministers to modify subsection (2), following appropriate consultation. For example, bodies that might be consulted could include Health Boards, healthcare workers professional bodies, and members of the public.

Section 2: Patient rights: further provision

17. This section provides that meeting the rights of an individual patient should be balanced with the effect on the rights of other patients in receiving healthcare and should take into account the resources available and should be subject to the exercise of clinical judgement and the effective and efficient use of health service organisation and resources.

Section 3: Duty to uphold certain rights and principles

18. Subsection (1)(a) places a duty on the bodies specified in subsection (2), (which are Health Boards, Special Health Boards and the Common Services Agency for the Scottish Health Service) to uphold the health care principles set out in the schedule and the Charter when providing health care, where relevant to the service being provided. For example, it might be relevant for a hospital consultant to have regard to all of the principles in the schedule when discussing with a patient their diagnosis and treatment. Or, it might be relevant for a healthcare practitioner to check back with a patient that the patient has understood the information they have been given about their medication.

19. Subsection (1)(b) means that bodies specified in the subsection must also ensure that any person they enter into a contract, agreement or arrangement with also upholds the health care principles and the Charter, in so far as they are relevant to the service being provided. For example, this may apply to cleaning and catering services in hospitals, where they have patient contact, and to services provided at a primary care level, such as GP practices that are contracted by Health Boards. For example, it might be relevant for a member of catering staff to treat patients with dignity and respect when serving them food. However, ensuring that health care is based on current clinical guidance would not be relevant to a member of catering staff as they would not provide clinical care.

Section 5: Health care principles and Charter: guidance and directions

20. Subsection (1) provides that any body with a duty under section 3 must have regard to any guidance issued by Scottish Ministers about the practical application of the health care principles and the Charter. Subsection (2) provides that Scottish Ministers must consult relevant people or organisations before giving that guidance. For example, Scottish Ministers
may provide guidance about practical ways to implement Health Care Principle 5 “Support necessary to receive or access health care is available”, which might include ensuring patients are aware that they can have a third party with them to support them, such as a friend, relative or partner etc, or ensuring that patients are aware of translation, interpreting and communication support services and how to access them.

21. Subsection (3) provides that Scottish Ministers may give the bodies directions on how the health care principles and the Charter should be applied in practice.

Section 6: Treatment time guarantee

22. Section 6(1) and (2) establishes a maximum waiting time for eligible patients, known as the treatment time guarantee. The maximum waiting time is set out in section 10. Eligible patients should start to receive that treatment within 12 weeks of the treatment being agreed between the patient and the Health Board.

23. Subsection (3) provides that Health Boards must take all reasonably practicable steps in order to comply with the treatment time guarantee and subsection (4) gives examples of actions a Health Board must take to deliver the treatment time guarantee for its eligible patients. Health Boards must monitor the guarantee, take account of the patient’s clinical needs and the clinical needs of other eligible patients awaiting agreed treatments when arranging the patient’s treatment start date, make arrangements for the agreed treatment to start within its area or if it is unable to treat the patient in its own area, make arrangements either with another Health Board, with the National Waiting Times Centre Board or with another suitable provider such as the NHS in England or a private healthcare provider.

Section 7: Treatment time guarantee: further provisions

24. Subsections (1) and (2) place a duty on Scottish Ministers to, by regulations, provide a description of those patients who are eligible for the treatment time guarantee and show how the waiting time is to be calculated, specifying the circumstances in which days are not to be counted towards the maximum waiting time.

25. Subsection (3) gives Scottish Ministers power to make regulations providing for other matters relating to the treatment time guarantee, including the treatments and services and categories of treatments and services in relation to which the guarantee will not apply.

26. Subsection (4) allows Scottish Ministers to change the length of the treatment time guarantee by order. For example, this could be to make the maximum waiting time shorter, as services become more efficient. Different periods could be specified for different treatments, for example if some treatments should be delivered within a shorter time.

Section 8: Breach of the treatment time guarantee

27. This section sets out what will happen if a Health Board does not deliver the treatment time guarantee. Subsections 8(2)(a) and subsection (3)(a) mean that the Health Board will be required to offer the patient treatment in a way that will ensure the patient is admitted quickly
for treatment but will not distort the clinical priority of patients whose condition requires more urgent treatment. Subsections (3)(b) and (c) provide that the patient’s availability and anything else that is relevant should also be taken into account when making arrangements for the patient to be treated at the next available opportunity. Subsection (2)(c) places a duty on the Health Board to give the patient details of the advice and support that is available to them and information about how to give feedback or comments or raise concerns or complaints.

Section 9: Treatment time guarantee: guidance and directions

28. Section 9(1) provides that that Health Boards must have regard to any guidance issued by Scottish Ministers in terms of the treatment time guarantee.

29. Section 9(2) provides that Scottish Ministers may direct a Health Board to take action specified in the directions in relation to the guarantee.

30. Section 9(3) allows Scottish Ministers by direction to suspend the treatment time guarantee in exceptional circumstances. For example, an exceptional circumstance could be a public health emergency that required the treatment time guarantee to be suspended for a short period, to allow Health Boards to respond to the situation and concentrate all resources on dealing with the emergency, such as in the case of a severe outbreak of pandemic flu.

Section 10: Treatment time guarantee: key terms

31. This section defines the key terms referred to in sections 6 to 9 including specifying that the maximum waiting time for eligible patients for an agreed treatment is 12 weeks. The period of 12 weeks runs from the date on which the patient agrees the treatment to the date on which the treatment begins.

Section 12: Encouragement of patient feedback etc.

32. This section provides for Health Boards, Special Health Boards and the Common Services Agency for the Scottish Health Service to encourage patients to give feedback, comments, concerns or complaints on healthcare, and that patients can provide this to a Patient Rights Officer, or the relevant body. This section is also intended to ensure that when feedback is given to a Patient Rights Officer (PRO) that the PRO must make sure that the feedback is passed back to the relevant body. For example, if a patient felt more comfortable about giving feedback about their health care to a person who sits outwith the Health Board, there is a way for them to do this (via the PRO) and for Health Boards to be informed of that feedback.

33. Subsection (3) establishes that feedback should only be provided to the relevant body with the patient’s consent.

34. Subsection (4) means that NHS bodies must consider all feedback, comments, concerns or complaints to see how they could improve the delivery of their services.
35. Subsection (4A) means that NHS bodies may be required by the Scottish Ministers to provide information to Ministers on their performance in relation to encouraging patients to provide feedback, etc. and how this has been considered.

36. Subsection (5) means that Scottish Ministers may direct NHS bodies in how they should perform their duties in dealing with feedback, comments, concerns or complaints.

**Section 11: Arrangements for handling and responding to patient feedback etc.**

37. Subsection (1) provides that Scottish Ministers must ensure that each Health Board, Special Health Board and the Common Services Agency for the Scottish Health Service has: a suitable process in place for: handling and responding to feedback, comments, concerns or complaints on health care; publicising this process; identifying best practice; telling the complainant about the advice and support available to patients; publicising the advice and support available; and monitoring complaints.

38. Subsection (2) provides that those bodies must also ensure that anyone providing a health service on its behalf (such as GPs) must have suitable processes in place to deal with these matters.

39. Subsection (3) sets out the matters which the processes for handling feedback, complaints, concerns, or comments must deal with.

40. Subsection (4) gives Scottish Ministers power to give directions to NHS bodies and make regulations about the processes which must be in place. This enables Scottish Ministers to direct a Health Board to take appropriate actions. For example, if a particular Health Board had not been publicising its process adequately, Scottish Ministers could direct the Health Board to publicise the process via a series of posters and leaflets situated in hospitals and health centres.

41. Subsection (4A) provides that directions given by Scottish Ministers to NHS bodies may include provision for the resolution of complaints by conciliation or mediation.

42. Subsection (5) sets out what is meant by a “service provider”. For example, a “service provider” could be a GP practice.

43. Subsection (7) provides that nothing done in terms of section 11 excludes the Scottish Public Services Ombudsman’s (SPSO) right to carry out investigations, and the right of a person who has made a complaint to go to the Ombudsman. A complainant will normally still have had to exhaust (or at least invoke) the complaints mechanism provided before seeking a SPSO investigation.
Section 13: Repeal of the Hospital Complaints Procedure Act 1985

44. This section repeals the Hospital Complaints Procedure Act 1985 in full. The provisions of this Act are replaced by the measures around feedback and complaints outlined in the Bill.

Section 14: Patient advice and support service: establishment and funding

45. Section 14 amends the National Health Service (Scotland) Act 1978 by inserting a new section 10ZA. The functions of the Common Services Agency for the Scottish Health Service are extended to its new functions under section 10ZA. This, read with section 10(7) of the National Health Service (Scotland) Act 1978, means that there is a specific provision which states that in carrying out its functions the Agency shall act subject to, and in accordance with, such directions as may be given by the Scottish Ministers.

46. Section 10ZA requires the Common Services Agency for the Scottish Health Service to secure the provision of a patient advice and support service in relation to each Health Board, and any other body that Scottish Ministers specify in an order. In order to do this, the Agency will procure the service from a provider or providers. The service may be supplied by more than one provider, but not by a Health Board, a Special Health Board or the Agency itself.

Section 15: Patient advice and support service

47. Section 15 outlines the services that the patient advice and support service will provide to patients and members of the public.

48. Subsection (2)(a) and (b) place a duty on the patient advice and support service to promote awareness and understanding of the rights and responsibilities of patients and to advise people who want to complain, raise concerns or give feedback about healthcare. In practice, this might mean, for example, advising a patient who wanted to complain about their GP how to do so, and providing guidance to the patient as to whether the complaint is a matter for the GP practice complaints system, or whether it is a regulatory matter that should be referred to the regulatory body.

49. Subsection (2)(c) and (d) provides that the patient advice and support service may also provide other information and advice on subjects that might be of interest to people using the health service.

50. Subsection (5) sets out the patient responsibilities of which the patient advice and support service is to raise awareness and understanding. An example of such a patient responsibility might be to attend an agreed appointment or to cancel if necessary, well in advance, so that an appointment can be offered to another patient.
Section 17: Duties to share information

51. Section 17 subsection (1) places a duty on relevant bodies (such as Health Boards) to share information with the patient advice and support service, and allows the patient advice and support service to ask for any other information that it would find helpful. For example, the patient advice and support service might seek clarification on procedures or services offered in a particular area.

52. Subsection (2) means that the Agency must ensure that providers of the patient advice and support service give information on its services to the relevant bodies. It also means that these bodies can request information from the patient advice and support service. An example might be a Health Board asking its local patient advice and support service for statistical information on the numbers of women and men using the service because it wanted to compare that with the gender profiles of patients in the Health Board area.

53. Subsection (3) requires that when sharing information, patient confidentiality must be respected.

Section 18: Protections and limitations

54. Subsection (1) provides that the Bill does not prejudice the exercise of clinical judgement; the effective and efficient use of the health service organisation or resources or any relevant legislation or rule of law.

55. Subsection (1A) provides that nothing in the Bill affects any other relevant legislation or rule of law. This is, however, subject to the provisions of sub-section (2), which excludes the right to pursue specified legal remedies to enforce the rights in the Bill.

56. Subsection (2)(a) provides that the rights set out in the Bill are not of a nature that will impose any liability on any person to pay damages. This means that a patient could not claim damages from a Health Board for an alleged failure to deliver health care in the manner set out in the Bill.

57. Subsection 2(b), (ba), (c) and (d) provide that no person could enforce the rights set out in the Bill by an action for specific implement, specific performance of a statutory duty, interdict or suspension.

58. The interaction of the provisions in subsections (1A) and (2) do not alter or affect a person’s rights to take action to enforce rights which they have on grounds other than those conferred by this Bill, for example a right to claim damages in the case of medical negligence.

59. Subsections (3) and (4) clarify that patients have other rights when receiving health care (beyond those rights set out in the Bill) and that the Bill does not affect those other rights.
Section 18A: Powers of the Scottish Ministers

60. This section means that the ministerial powers available under sections 76 to 78A of the National Health Service (Scotland) Act 1978 will also be available to the Scottish Ministers in the context of the Bill. Sections 76 to 78A of the National Health Service (Scotland) Act 1978 relate to powers of inquiry, and default and emergency powers which are available to the Scottish Ministers, for example, where they consider that a Health Board (or other relevant body) is not adequately fulfilling its functions.

Section 19: Interpretation

61. This section provides legal definitions for key terms that have been referred to in the Bill.

Section 20: Ancillary provision

62. This section gives Scottish Ministers the power to make consequential, supplemental, incidental, transitional, transitory or saving provisions by order for the purpose of giving full effect to the Bill.

Section 21: Orders, regulations and directions

63. Subsection (1) provides that all regulations and orders under the Bill are to be made in the form of a statutory instrument and that regulations and orders may make different provisions for different purposes.

64. Subsection (2) provides that (i) orders made under sections 1(4), relating to changes in how healthcare is delivered, 4(2) relating to changes in the healthcare principles, 7(4) relating to the maximum length of time a patient should wait for treatment under the treatment time guarantee or section 20, relating to ancillary provision, and (ii) regulations made under section 7(1) or (3), relating to the treatment time guarantee, are to be subject to affirmative procedure.

65. Subsection (3) provides that any other statutory instrument made under the Bill (apart from under section 22(3), relating to the date that the provisions come into force) is to be subject to negative procedure.

66. Subsections (4) and (5) make provision for the way in which Scottish Ministers can exercise their powers of direction under the Bill.

Section 22: Short title and commencement

67. Subsection (2) means that that sections 20, 21 and 22 will come into force on the date of Royal Assent. The remaining provisions will come into force on a date or dates appointed by Scottish Ministers.
Schedule: Health care principles

68. The schedule sets out the health care principles. Section 3 of this Bill places a duty on Health Boards to uphold these principles when delivering healthcare. The principles should ensure that health services are provided in a way that places the patient and their needs and experiences at the centre of an interaction with health services, and which also ensures that patients are encouraged and provided with support to participate in decisions about their treatment and health care.