

# Patient Rights (Scotland) Bill

[AS INTRODUCED]

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**ACCOMPANYING DOCUMENTS**

**Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 42-EN. A Policy Memorandum is printed separately as SP Bill 42-PM.**

# Patient Rights (Scotland) Bill

[AS INTRODUCED]

An Act to make provision about the rights of patients when receiving health care; and for connected purposes.

*Patient rights*

**1 Patient rights**

- 5 (1) It is the right of every patient that the health care received by the patient be as described in subsection (2).
- (2) Health care is to—
- (a) be patient focused: that is to say, anything done in relation to the patient must take into account the patient's needs,
- 10 (b) have regard to the importance of providing the optimum benefit to the patient's health and wellbeing,
- (c) allow and encourage the patient to participate as fully as possible in decisions relating to the patient's health and wellbeing,
- 15 (d) have regard to the importance of providing such information and support as is necessary to enable the patient to participate in accordance with paragraph (c) and in relation to any related processes.
- (3) It is the right of every patient to make complaints and otherwise raise concerns and give feedback about health care received.
- (4) The Scottish Ministers, after consulting such persons as they consider appropriate, may by order modify subsection (2).
- 20

**2 Patient rights: further provision**

- (1) In construing the right of a patient under section 1(1), the matters set out in subsection (2) below must be taken into account.
- (2) The matters are—
- 25 (a) the rights of other patients under section 1(1),
- (b) the desirability of action delivering health care being proportionate, and otherwise appropriate, to the circumstances of each case,

- (c) those specified in section 18(1)(a) and (b).

*Health care principles*

**3 Duty to have regard to certain rights and principles**

- (1) For the purposes of the rights conferred by section 1, each relevant NHS body must—
- 5 (a) in performing its health service functions, have regard to the health care principles in so far as they are relevant to the function being performed, and
- (b) ensure that any person with whom it enters into a contract, agreement or arrangements to provide health care has regard to the health care principles in so far as they are relevant to the service being provided.
- 10 (2) For the purposes of this Act, a “relevant NHS body” is—
- (a) a Health Board,
- (b) a Special Health Board,
- (c) the Common Services Agency for the Scottish Health Service (“the Agency”).

**4 Health care principles**

- 15 (1) In this Act, “health care principles” are the principles set out in the schedule.
- (2) The Scottish Ministers, after consulting such persons as they consider appropriate, may by order modify the schedule.

**5 Health care principles: guidance and directions**

- 20 (1) A relevant NHS body must, for the purposes of section 3, have regard to any guidance issued by the Scottish Ministers in relation to the practical application of the health care principles.
- (2) Before providing guidance in relation to the health care principles, the Scottish Ministers must consult such persons as they consider appropriate.
- 25 (3) The Scottish Ministers may give a relevant NHS body directions as to the practical application of the health care principles; and a relevant NHS body must comply with any such direction.

*Treatment time guarantee*

**6 Treatment time guarantee**

- 30 (1) In pursuance of the right conferred by section 1(1), an eligible patient is to start to receive an agreed treatment within the maximum waiting time.
- (2) The guarantee described in subsection (1) is to be known as the treatment time guarantee.
- (3) A Health Board must take all reasonably practicable steps to ensure that it complies with the treatment time guarantee.
- 35 (4) Those steps include, in particular, steps for—
- (a) monitoring each treatment time guarantee,

(b) making the necessary arrangements for the agreed treatment of the patient to start in accordance with the treatment time guarantee either—

(i) within its area, or

(ii) if it is unable (or anticipates it will be unable) to treat a patient in its own area, through another Health Board or a suitable alternative provider of the treatment.

## 7 Treatment time guarantee: further provision

(1) The Scottish Ministers must by regulations make the further provision about the treatment time guarantee specified in subsection (2).

(2) The further provision is—

(a) the descriptions of patients which are eligible for the treatment time guarantee, and

(b) how waiting time is to be calculated (in particular, specifying the circumstances in which days are not to be counted towards a maximum waiting time).

(3) The Scottish Ministers may by regulations specify—

(a) treatments and services (including categories of treatments and services) in respect of which the treatment time guarantee does not apply,

(b) action that a Health Board is to take to ensure that it complies with a treatment time guarantee,

(c) circumstances in which the maximum waiting time for a patient may be extended or recalculated (and how such extension or recalculation is to be done),

(d) circumstances in which responsibility for a treatment time guarantee may transfer to a different Health Board,

(e) the information that a Health Board is to provide to patients about the treatment time guarantee, including—

(i) how waiting times are calculated,

(ii) the circumstances in which the maximum waiting time may be extended, recalculated or suspended,

(iii) such other information as the Scottish Ministers consider appropriate.

(4) The Scottish Ministers may by order—

(a) amend the duration of the maximum waiting time for the time being specified in section 10,

(b) specify such different period of time to be the maximum waiting time under section 10 in relation to any treatment or services specified in such order.

## 8 Breach of the treatment time guarantee

(1) This section applies where a Health Board has not complied with a treatment time guarantee.

(2) The Health Board must—

(a) make such arrangements as are necessary to ensure that the agreed treatment starts at the next available opportunity,

- (b) provide an explanation to the patient as to why the treatment did not start within the maximum waiting time,
- (c) give the patient details of—
- (i) the advice and support available (including in particular the patient advice and support service described in section 15), and
- (ii) how to complain.
- (3) In making the arrangements mentioned in subsection (2)(a), the Health Board—
- (a) must not give priority to the start of any treatment where such prioritisation would, in the Health Board’s opinion, be detrimental to another patient with a greater clinical need for treatment,
- (b) must have regard to the patient’s availability, and
- (c) must have regard to other relevant factors.

## 9 Treatment time guarantee: guidance and directions

- (1) Health Boards must, when taking steps to start the treatment of eligible patients, have regard to any guidance issued by the Scottish Ministers which relates to the treatment time guarantee (and in particular, Health Boards’ compliance with it).
- (2) The Scottish Ministers may direct a Health Board to take specified action in relation to its compliance with the treatment time guarantee (including, in particular, the steps it must take).
- (3) The Scottish Ministers may direct that the treatment time guarantee be suspended in such exceptional circumstances and for such period as they consider necessary.

## 10 Treatment time guarantee: key terms

For the purposes of this section and sections 6 to 9—

“agreed treatment” means a specific treatment agreed between an eligible patient and the Health Board;

“eligible patient” means a patient of a description specified in the regulations to be made in pursuance of section 7(2)(a) as being eligible for the treatment time guarantee;

“Health Board” includes the National Waiting Times Centre Board;

“maximum waiting time” is the period of 12 weeks beginning with the date on which the patient agrees to the agreed treatment;

“treatment” means a surgical or medical intervention ordinarily provided by the Health Board (other than such treatments or services as may be specified in regulations made in pursuance of section 7(3)(a));

“treatment time guarantee” has the meaning given in section 6(2).

### *Complaints and other feedback*

## 11 Complaints

- (1) The Scottish Ministers must ensure that each relevant NHS body has adequate arrangements in place for the matters described in subsection (3).

- (2) A relevant NHS body must ensure that each of its service providers has adequate arrangements in place for the matters described in subsection (3).
- (3) The matters are—
- (a) handling complaints made—
    - (i) by or on behalf of patients, and
    - (ii) by or on behalf of such other persons as the Scottish Ministers may specify by regulations made under subsection (4)(a),
  - (b) publicising how complaints are to be made and handled,
  - (c) giving a person who makes a complaint details of the advice and support available to patients,
  - (d) publicising the details of the advice and support available to patients (and, in particular, the patient advice and support service serving the relevant NHS body),
  - (e) monitoring the complaints received with a view to—
    - (i) identifying any areas of concern, and
    - (ii) improving the performance of its functions.
- (4) The Scottish Ministers may—
- (a) by regulations make provision about the—
    - (i) arrangements mentioned in subsections (1) and (2),
    - (ii) matters described in subsection (3),
  - (b) give a relevant NHS body directions about such arrangements or matters.
- (5) In this section, a “service provider” is any person who provides health services for the purpose of the health service under a contract, agreement or arrangements made under or by virtue of the 1978 Act.
- (6) The powers conferred on the Scottish Ministers by virtue of this section are without prejudice to their powers under the 1978 Act.
- (7) Nothing done under or by virtue of this section is to preclude an investigation under the Scottish Public Services Ombudsman Act 2002 (asp 11) in respect of any matter.

## 12 Patient feedback

- (1) A relevant NHS body is to encourage patients to raise any concerns or give feedback on health care.
- (2) Patients may raise such concerns with or give such feedback to—
- (a) the relevant NHS body, or
  - (b) a Patient Rights Officer.
- (3) Where a concern is raised with or feedback is given to a Patient Rights Officer, the officer may pass such concern or feedback to the relevant NHS body (but may do so only with the consent of the patient).
- (4) The relevant NHS body must consider all concerns raised and feedback received with a view to improving the performance of its functions.

- (5) The Scottish Ministers may give a relevant NHS body directions about the performance of the duties under subsections (1) and (4).

### 13 Repeal of the Hospital Complaints Procedure Act 1985

The Hospital Complaints Procedure Act 1985 (c. 42) is repealed.

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#### *Patient advice and support service*

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

- (1) In the 1978 Act, in section 10(1) (Common Services Agency), after “section” insert “and section 10ZA”.
- (2) After section 10 of that Act insert—

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#### **“10ZA Provision of patient advice and support service**

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- (1) The Agency must secure the adequate provision of the patient advice and support service described in section 15 of the Patient Rights (Scotland) Act 2010 (asp 00) in relation to each relevant body.
- (2) In exercising its function under subsection (1), the Agency must have regard to the desirability of the service being provided in the most efficient and effective manner possible.
- (3) There may be more than one provider of the patient advice and support service.
- (4) The patient advice and support service is not to be provided by—
- (a) a Health Board,
  - (b) a Special Health Board,
  - (c) the Agency.
- (5) Each relevant body must make to its provider of the patient advice and support service, in respect of the provider’s expenses (as respects its activities relating to the service), payments of such amounts, and at such times, as the Scottish Ministers may direct.
- (6) For the purposes of this section, a “relevant body” is—
- (a) a Health Board, and
  - (b) any other body that the Scottish Ministers may by order specify.”.

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### 15 Patient advice and support service

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- (1) The patient advice and support service to be secured by the Agency under section 10ZA of the 1978 Act is to provide advice and support services to patients and other members of the public in relation to the health service.
- (2) In particular, the patient advice and support service is to—
- (a) promote an awareness and understanding of the rights and responsibilities of patients,
  - (b) advise and support persons who wish to make a complaint, raise concerns or give feedback about health care,

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(c) provide information and advice on such matters as it considers likely to be of interest to persons using the health service,

(d) provide such—

(i) other advice or support,

(ii) reports on its activities,

as the Agency may specify.

(3) The persons who carry out the advice and support functions of the patient advice and support service are to be known as Patient Rights Officers.

(4) For the purposes of subsection (2), a reference to the rights of patients is a reference to the rights of patients under this Act.

(5) For the purposes of subsection (2), the responsibilities of a patient include the responsibility of the patient—

(a) for the patient's own health and wellbeing, and

(b) to behave appropriately in the receipt of health care.

(6) The Scottish Ministers may by regulations make further provision about the patient advice and support service and in particular about the services it is to provide.

## 16 Patient Rights Officers

For the purposes of section 15(3), the activities that a Patient Rights Officer may undertake include (in particular)—

(a) providing information and advice about—

(i) the services that the patient advice and support service provides,

(ii) the health service, including its organisation, procedures and specific services that it provides,

(b) explaining the options available for (and the procedures involved in) making complaints, raising concerns or giving feedback,

(c) providing assistance and support to persons making a complaint, raising a concern or giving feedback,

(d) making persons aware of and directing persons to—

(i) other sources of advice and support, or

(ii) persons providing representation or advocacy services,

(e) publicising the patient advice and support service in such a manner as is likely to bring it to the attention of patients and other persons likely to be interested in the service.

## 17 Duties to share information

(1) A relevant body must (where reasonably practicable and otherwise appropriate) give providers of the patient advice and support service information about—

(a) the relevant body (and the health service generally) including its organisation, procedures and specific services that it provides,

(b) any changes to the information mentioned in paragraph (a), and

- (c) such other relevant matters as the patient advice and support service may reasonably request.
- (2) A provider of the patient advice and support service must give the relevant body information about—
- 5 (a) the services that it provides,  
 (b) such other relevant matters as the relevant body may reasonably request.
- (3) No information is to be given under subsection (1) or (2) which would infringe patient confidentiality.
- 10 (4) For the purposes of this section “relevant body” has the same meaning as in section 10ZA(6) of the 1978 Act (provision of patient advice and support service).

*Protections and limitations*

**18 Protections and limitations**

- (1) Nothing in this Act prejudices—
- 15 (a) the exercise of clinical judgement,  
 (b) the effective and efficient use of the health service organisation and resources,  
 (c) any other enactment or rule of law.
- (2) Nothing in this Act gives rise to—
- 20 (a) any liability to pay damages,  
 (b) any right of action for specific implement,  
 (c) any right of action for interdict,  
 (d) any right of action for suspension.

*General*

**19 Interpretation**

- (1) In this Act, unless the contrary intention appears—
- 25 “the 1978 Act” means the National Health Service (Scotland) Act 1978 (c. 29);  
 “the Agency” has the meaning given by section 3(2)(c);  
 “health care” means services provided under the health service;  
 “health care principles” has the meaning given by section 4(1);  
 “the health service” means the health service established in pursuance of section 1  
 30 of the National Health Service (Scotland) Act 1947 (c. 27);  
 “health service function” means any function under or by virtue of the 1978 Act which is a function concerned with, or connected to, the health service;  
 “patient advice and support service” is to be construed in accordance with section  
 15(1);  
 35 “relevant NHS body” has the meaning given by section 3(2).
- (2) In this Act, unless the contrary intention appears, terms used in this Act and the 1978 Act have the same meaning as they have in the 1978 Act.

**20 Ancillary provision**

- 5 (1) The Scottish Ministers may by order make such consequential, supplemental, incidental transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for the purposes of giving full effect to, any provision of this Act.
- (2) An order under this section may modify any enactment, instrument or document.

**21 Orders, regulations and directions**

- 10 (1) Any power conferred by this Act on the Scottish Ministers to make an order or regulations—
- (a) must be exercised by statutory instrument,
- (b) may be exercised so as to make different provision for different purposes (including different areas),
- 15 (c) includes power to make such consequential, supplemental, incidental, transitional, transitory or saving provision as appears to the Scottish Ministers to be necessary or expedient.
- (2) No order is to be made under—
- (a) section 1(4) or 4(2), or
- (b) section 20 containing provisions which add to, omit or replace any part of the text of an Act,
- 20 unless a draft of the order has been laid before, and approved by resolution of, the Parliament.
- (3) Any other statutory instrument containing an order or regulations under this Act (except an order under section 22(3)) is subject to annulment in pursuance of a resolution of the Parliament.
- 25 (4) Any power to make directions under this Act includes power to vary or revoke such directions.
- (5) Any power to make directions under this Act may be exercised—
- (a) generally or to meet the circumstances of a particular area or matter,
- 30 (b) either in relation to all cases to which the power extends, or in those cases subject to exceptions, or in relation to any specified cases or classes of case, and
- (c) subject to such other exceptions or conditions as the Scottish Ministers think fit.

**22 Short title and commencement**

- (1) This Act may be cited as the Patient Rights (Scotland) Act 2010.
- (2) This section and sections 20 and 21 come into force on Royal Assent.
- 35 (3) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by order appoint; and different days may be appointed for different purposes.

SCHEDULE  
(introduced by section 4(1))

HEALTH CARE PRINCIPLES

*Patient focus*

- 5     1     Anything done in relation to the patient takes into account the patient's needs.  
2     2     Patients are treated with dignity and respect.  
3     3     Privacy and confidentiality are respected.  
4     4     Health care is provided in a caring and compassionate manner.  
5     5     Support necessary to receive or access health care is available.  
10    6     The patient's abilities, characteristics and circumstances are considered.

*Quality care and treatment*

- 7     7     Regard is had to the importance of providing the optimum benefit to the patient's health and wellbeing.  
8     8     The range of options available in the patient's case is considered.  
15    9     Health care is based on current recognised clinical guidance.

*Patient participation*

- 10    10    Patients participate as fully as possible in decisions relating to the patient's health and wellbeing.  
20    11    Patients are provided with such information and support as is necessary to enable them to participate in accordance with paragraph 10 and in relation to any related processes (general or specific).  
12    12    Patients are encouraged to treat any person involved in the delivery of health care with dignity and respect.

*Communication*

- 25    13    Communication about a patient's health and wellbeing is clear, accessible and understood.  
14    14    Communication about general services and processes and decisions is clear, accessible and understood.

*Complaints*

- 30    15    Issues of concern are dealt with reasonably, promptly and in accordance with proper procedures.

*Other*

- 16    16    Waste of resources in the provision of health care is avoided.



