

PATIENT RIGHTS (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Patient Rights (Scotland) Bill introduced in the Scottish Parliament on 17 March 2010. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 42-EN.

BILL OVERVIEW

2. The Patient Rights (Scotland) Bill will provide that the health care that patients receive should meet certain criteria, according to a set of health care principles. The Bill will legislate for a patient advice and support service and Patient Rights Officers, for a treatment time guarantee, and will establish a right to make complaints.

POLICY OVERVIEW

3. The Scottish Government wants Scotland to become a world leader in person-centred health care, to improve patient experience and support people in participation in their health care. The Patient Rights (Scotland) Bill is intended to reinforce and strengthen the Scottish Government's commitment to place patients at the centre of the NHS in Scotland.

CONSULTATION

4. The consultation on the Bill proposals was launched in September 2008 and closed in January 2009. The Scottish Government sought to ensure that the consultation document was widely circulated and also made available as an easier-read summary version. An external company organised and facilitated national events and focus groups, and analysed the consultation responses. Health Boards were invited to submit a bid for funding to advertise, organise and facilitate local consultation events. Six Health Boards sought additional funding, other Health Boards funded events out of their own budgets. Further details of the national events and focus groups are in the consultation analysis.

5. The consultation proposals gave background on patient rights and entitlements; the document then covered 8 areas (access, respect, safety, communication, information, participation, privacy, and independent support and redress), with patient rights, entitlements and responsibilities in each section. Specific questions were asked in relation to each area, and respondents could also suggest other key rights which they would like to see included in the Bill. A 12-week waiting time guarantee was noted under the access section and a possible no-fault compensation scheme was noted under the independent support and redress section.

6. There were 230 written submissions in response to the consultation. In addition, 102 people attended the national events and 68 people participated in the focus groups. Hundreds of people also attended events organised by Health Boards and Public Partnership Forums, which is one of the main structures for Community Health Partnerships¹ to involve patients, carers, the public and voluntary groups in the work that they do. Further details of responses are available online and in the consultation analysis.

7. The Patients' Rights Bill Consultation Analysis Report, the Consultation Analysis Research Findings, the Scottish Government Response to the Consultation Analysis Report and quick read summaries can be accessed at the following links:

- Consultation Analysis Report: <http://www.scotland.gov.uk/Publications/2009/06/10131759/0>
- Research Findings: <http://www.scotland.gov.uk/Publications/2009/06/10131718/0>
- Scottish Government Response to the Consultation Analysis Report: <http://www.scotland.gov.uk/Publications/2009/06/17113955/0>
- Consultation Analysis Report and Scottish Government response - Quick Read Summaries: <http://www.scotland.gov.uk/Publications/2009/07/08160314/0>

8. There was broad support for the proposals from all groups of respondents. There were also concerns raised, in particular from those organisations who will be involved in implementing the rights and by people who felt that the proposals did not cover their particular issues. The Scottish Government response to the consultation explored work in other areas which may resolve some of these issues.

9. One of the concerns raised by consultation respondents was that legislation is unnecessary. However, the Scottish Government believes that patient rights are extremely important and that they should be given the prominence and priority that primary legislation affords.

10. The consultation proposals said there would be provision for a Charter of Mutual Rights. The feedback received on this was muted although there was enthusiasm for the concept of mutual rights. It was decided to take this forward in a different way, through a set of principles and through implementation plans.

11. Since the end of the formal consultation period, officials have continued to meet with stakeholders and to consider research on a range of issues related to patient rights.

BACKGROUND

12. Existing legislation places general duties on Ministers and Health Boards to provide health care according to population need. Health Boards are expected to plan strategically, to

¹ Community Health Partnerships provide a focus for the integration between primary care and specialist services and with social care, and ensure that local population health improvement is placed at the heart of service planning and delivery.

assess the impact of their work and to see that the delivery of it is suitable to the needs of their local population.

13. Previous policies, strategies and legislation laid the policy groundwork for the principles in the Patient Rights (Scotland) Bill. The Bill builds on these and implementation of it will work in conjunction with existing and developing work, such as the NHSScotland Quality Strategy² and the *Better Together* patient experience programme³.

14. Patient rights are not a new concept or exclusive to Scotland. Internationally, there has been a move towards considering patient rights in an explicit form. The Australian Charter of Healthcare Rights was adopted in 2008 and in England the Department of Health published its NHS Constitution (which sets out the rights and responsibilities of patients and staff when using the NHS in England) in January 2009, and has since consulted on additional rights. The UK Government's Health Act 2009 places a duty on providers and commissioners of NHS services to have regard to the NHS Constitution. However, the NHS constitution itself is not set out in primary legislation and in this respect we believe the Patient Rights (Scotland) Bill has the potential to effect change in a more substantive way.

15. Discussions on the Bill have been informed by the context of the Human Rights Act (1998), the European Convention of Human Rights (ECHR) and Article 12 of the UN's International Covenant of Economic, Social and Cultural Rights, which says that "the States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Scottish Government strategic aims and objectives are already in line with the progressive nature of Article 12, and some of the conditions necessary to achieve this progressive right are actually outwith health care. In order to take this forward within health care settings it is believed that setting out health care principles in the schedule to the Bill and the planned implementation work will help to ensure that everyone in Scotland is able to access health care services in a way that takes into account their individual needs.

16. Development of the Bill included the best way to ensure that patient responsibilities were also considered, and the right of NHS staff to be treated with dignity and respect. There are often complex reasons why a patient cannot or does not fulfil their responsibilities, and patients should always receive the highest possible standard of health care; the Bill does not seek to change that, but the Scottish Government was keen to ensure that consideration is given to developing patients' understanding of their role in their own treatment as well as the rights of others. When rights are being met, it's also key to remember that organisations meet these in the context of aiming to provide for many others, so resource and capacity constraints need to be factored in, as well as what is proportionate in each individual case.

² The Quality Strategy aspires to create high quality person-centred, clinically effective and safe healthcare service that is world-leading in approach. It will be published in 2010.

³ *Better Together* is Scotland's Patient Experience Programme. It supports Health Boards, frontline staff and patients in driving forward service improvement through the systematic collection and use of patient experience information. The programme also helps best practice to be shared between different services.

POLICY OBJECTIVES

Rights and Principles

17. There are existing rights for patients and expectations on them but these are articulated in disparate ways and are not always known or understood by patients or by staff. The Scottish Government wants to be in a position where:

- patients recognise their rights and have independent support and advice available to ensure these are met;
- patients work in partnership with staff to support their own health, where this is possible;
- staff fully recognise that patients have rights and feel comfortable with patients articulating them; and
- patients recognise and accept that they have responsibilities on them to support their own health and in their use of the health care system.

18. The Scottish Government is keen to ensure that the Bill provides an underpinning to an increased focus on person-centred, safe and effective treatment, to mutuality, and to a partnership between the NHS and the people of Scotland. The approach taken in the Bill seeks to avoid duplication of existing legislation, although some respondents to the consultation wanted some of the existing rights pertinent to health care reiterated in the Bill. It is anticipated that a greater emphasis on a patient's individual needs and working in partnership with patients will contribute over the long term to improved patient experience and increased patient satisfaction and participation in health care, as well as a greater sense of ownership of the NHS for everyone in Scotland.

19. The Bill provides that the healthcare received should meet certain criteria that cover patient focus, optimum benefit, patient participation, and information and support. These are underpinned by a schedule of health care principles on patient focus, quality care and treatment, participation, communication, information, complaints, and avoidance of waste. The Bill also has provisions on a right to make complaints, raise concerns, and give feedback, and on patient advice and support and Patient Rights Officers. It also establishes a treatment time guarantee for eligible patients.

20. The patient-focus principles in the schedule cover the patient's needs and regard to their abilities, characteristics and circumstances, dignity and respect, privacy and confidentiality, care and compassion, and the availability of support necessary to receive or access health care.

21. Patient rights are upheld when people are treated with dignity and respect, their privacy and confidentiality are upheld appropriately and the diversity of their individual needs, abilities and circumstances is met. The Scottish Government knows the importance of care and compassion to patients and so there is a principle on this, which also helps to emphasise one of the key attributes of health care staff. Care and compassion are vital elements of the health care experience and can have a direct impact on outcomes for patients.

22. Patients may require different types of support in order to access health care and that is why there is a principle on availability of support necessary to receive or access health care. Health Boards are already expected to provide access to non-clinical third party support such as

translation, interpreting and communication support (TICS) services through their standard resource allocation and the NHS publicly commits to arrange interpreting help if it can. The Scottish Government is providing additional funding to aid the development of TICS services, to support this principle and also support the principles on communication and participation. It was also clear from the consultation that people were concerned that some patients would need the extra support that advocacy services can provide to help ensure that their rights under the Bill could be realised. In order to help delivery of the patient focus principle of access to support, and because there is a provision about directing patients to support such as advocacy, the Scottish Government is putting additional funding into the provision of advocacy. Like the additional funding for TICS, this supports not just the patient-focused principle but also the principles on participation and communication.

23. The Bill legislates for support in other ways also. The Patient Advice and Support Service and the Patient Rights Officers will support patients in their dealings with the NHS and in other matters affecting their health. See below paragraphs 41- 45 for more detail on this provision.

24. The quality care and treatment principle in the schedule covers regard to the importance of providing the optimum benefit to the patient's health and wellbeing, consideration of the range of options, and health care based on current recognised clinical guidance.

25. The Scottish Government recognises that all treatment carries a level of inherent risk and that any treatment undertaken should aim to provide optimum benefit to the patient's health and wellbeing and be based on clinical need, taking into account the health board's duty, under the National Health Service (Scotland) Act 1978, to deliver health care to the population of its area as a whole. Guidance from the General Medical Council states that doctors should discuss with patients their condition and treatment options; care and treatment that are intended to help patients are fundamental to clinical practice and regulated healthcare professionals are expected to follow their statutory professional regulators' codes of conduct, performance and ethics (these invariably include requirements relating to serving the interests of service users). The quality care and treatment principle will help to provide added status for quality as well as quantity of care.

26. The principle on participation aims to take forward patient participation in their own health care. Health care professionals aim to work in partnership with patients at all times, making sure that patients understand their health care needs and participate in decisions about what care is planned for them; better health outcomes are achieved when patients are fully informed partners in decisions about their treatment and care. This is underpinned in the Bill.

27. To facilitate participation in care and treatment, health care professionals need to ensure that a patient receives information in a way that he or she can understand. Research notes that tailoring information to patients' needs and characteristics is important.⁴ Tailoring information might include providing translation, interpreting or communication support (TICS) services. As noted earlier, because an increase in demand for TICS services as a result of the provisions in the Bill is anticipated, the Scottish Government is providing additional funding to support the development of TICS throughout NHS Scotland. In addition, NHS 24 is taking forward

⁴ Coulter A, and J Ellins, 2006, *Patient-focused interventions: a review of the evidence*. London: Health Foundation, p.27

planning for further development of the website *healthinmylanguage*, which offers translated information about health and health services in Scotland.

28. Key to participation is that staff and health care practitioners are reciprocally treated with dignity and respect by patients. The Scottish Government acknowledges the difficulties in legislating for this and has decided to take it forward with a principle whereby Health Boards encourage patients to treat staff with dignity and respect. This is allied to the patient focused principle on patients being treated with dignity and respect; together, these two principles are meant to contribute to building mutual trust, understanding and respect between patients and healthcare staff.

29. The Scottish Government believes that improving patient participation and appropriate communication will lead, over time, to patients having a better understanding of their health care and treatment and being better able to manage their health condition. It is also believed that it will improve individual's experience of the health service; from Scottish Public Services Ombudsman's reports on complaints it is known that communication is a concern. Through the work on the Quality Strategy and through the underpinning provided by the Bill, the Scottish Government would expect to see a positive change in such data over time and, it is anticipated, an eventual reduction of complaints relating to communication. Implementation of the Bill should also contribute to more effective and appropriate communication through a proposed staff training element on patient rights, and through public awareness raising.

30. The Scottish Government anticipates that the Bill's measures and its implementation could lead over time to a reduction in waste of resources in the provision of health care. More emphasis on patient focus and greater partnership between patients and staff should help to ensure that the communication and timing of appointments is more suitable to the requirements of the patient so that patients are able to attend appointments or to cancel in advance if they are unable to attend. In addition, if staff are aware in advance that a patient cannot make an appointment, then resources can be employed more efficiently. The implementation measures will include a focus on patient responsibilities and subsequent more efficient use of health care resources.

The Treatment Time Guarantee (TTG)

31. The consultation proposals referred to the waiting time guarantee; this is now known as the treatment time guarantee (TTG) in the Bill. The Scottish Government is keen to reduce, as much as possible, periods of waiting and anxiety for patients by providing them with a treatment time guarantee, to remove risk of unacceptably long waits following diagnosis, as well as reducing the amount of time that might be spent in pain from the condition.

32. Waiting for admission to hospital for an operation can be a time of anxiety, worry and stress for patients, it is therefore important that the patient is fully aware of what the waiting time will be and has assurance that it will be delivered. This is why the TTG is a key part of the Bill. The Scottish Government intends that this TTG will be set at a maximum wait of 12 weeks from agreement to treatment to the commencement of that treatment, for eligible patients.

33. The 12 weeks maximum length of the waiting time is in primary legislation. The TTG will apply to planned and elective care, delivered on an inpatient or day case basis; details will

be specified in secondary legislation. Placing these in secondary legislation will make it easier to alter categories in response to progress on waiting times and treatment times.

34. Health Boards will be expected to deliver the TTG where it applies, as it will be a legal obligation. Health Boards will be supported in their efforts to meet the TTG through the current support mechanisms on meeting waiting times as provided by the Scottish Government.

35. The Bill and secondary legislation will set out the measures the Scottish Ministers expect Health Boards to take in order to meet the TTG; Health Boards will be expected to take into account clinical need and best value principles in deciding which options to use. Where a patient's TTG is not met, Health Boards will be expected to ensure that the patient is provided with an explanation for the delay, information about the Patient Advice and Support Service (see below paragraphs 41-45) and the complaints process. The patient should also be given confirmation that they will begin treatment at the next available opportunity, taking into account clinical priority and availability; this may involve using other Health Boards and other providers. The emphasis is on how the situation will be rectified and the treatment delivered; there is no financial penalty for the Health Board nor financial compensation for the patient should the patient's TTG not be met.

36. There will be a small number of services excluded from the TTG, to be in secondary legislation. These are explored below:

- Assisted conception: this is covered by separate guidance and standards, however, the Scottish Government is aware that there is inequity in access to this service and it is the intention to work towards introducing a maximum waiting time. An Expert Group is to be formed to advise on all aspects of assisted conception treatment.
- Obstetrics: it would not be logical to apply a maximum 12 week waiting time to the process of birth and delivery.
- Complementary and alternative medicines, including homeopathy, provided on the NHS: these are made available on the NHS on the basis of local priorities and clinical judgement. By their nature, these services are likely to be in addition to the diagnosis and clinical care which a patient receives and will not be the primary basis of a referral for diagnosis and treatment.
- Organ/tissue transplants: these procedures are dependent on organ/tissue availability.
- Direct access services: patients do not wait for direct access services. These services mainly relate to diagnostic tests, for example, x-rays. A GP can send a patient directly to get an x-ray at the direct access service and there would be no wait to access this service. This enables the GP to ascertain whether they are able to treat the patient's condition or if the patient needs to be referred to a hospital consultant for treatment.

- Diagnostic tests: targets for these are part of the whole treatment journey under the Scottish Government's 18 weeks referral to treatment target⁵.
- Treatments undertaken in a hospital outpatient department: many outpatient treatments will be undertaken at the outpatient consultation and will have only a short wait. These treatments will not only include minor surgical procedures but also include the prescription of medicine. This will be covered by the 18 weeks referral to treatment target.
- Certain designated national specialist services (scoliosis): the Scottish Government is keen to ensure that there is no perverse impact on patient care because of the TTG. Certain designated national specialist services are delivered by very few clinicians and the timing of planned/elective treatment can be dependent on availability of these staff. The Scottish Government does not want a patient to be offered a treatment only on the basis that it can be delivered within the TTG where a longer wait for a particular designated national specialist service would be more appropriate. For this reason it is intended to exclude the designated national specialist service for scoliosis and for this to be regularly reviewed, since treatments can move out of this category over time.
- Services on the Department of Health's specialised service definitions list where no equivalent clinical services are offered in Scotland: for similar reasons as for certain designated national specialist services, it is intended to exclude services on the Department of Health's specialist service definitions list where no equivalent clinical services are offered in Scotland. As health care in Scotland and in England are devolved, it cannot be ensured that the NHS in England delivers Scotland's treatment time guarantee. Where it is most appropriate that the patient receive a treatment outwith Scotland, the Scottish Government would not wish them to receive a less appropriate treatment in order to meet the TTG.
- Alcohol and drug misuse services: there is already a new HEAT target⁶ for drug treatment waiting times which is that by March 2013, 90% of clients will wait no longer than 3 weeks from referral received to appropriate drug treatment that supports their recovery. Waiting times appropriate to alcohol treatment will be defined and incorporated into a target covering both drugs and alcohol by April 2011. To include alcohol and drug misuse services within the TTG could result in perverse outcomes, where services focus on getting all clients treated within 12 weeks for legal purposes, but as a result do not achieve the 3 week target.

37. Some services delivered on an inpatient basis, for example, assessments, where the person is an inpatient, are not covered by the proposed planned/elective definition of the TTG.

38. From the consultation it was clear that a number of stakeholders were concerned about access to mental health services and the coverage of the TTG to these. Through secondary legislation, the Scottish Government intends that the TTG will apply to planned and elective care

⁵ The referral to treatment target is the Scottish Government commitment to deliver by the end of December 2011 an 18 weeks whole journey waiting times target from referral to start of treatment.

⁶ HEAT Targets are the Cabinet Secretary's key operational targets and performance measures for NHSScotland and describe the contribution that the NHS makes towards meeting the Scottish Government's purpose and outcomes.

delivered on an inpatient or day case basis; where people are not already receiving treatment for a mental illness, access to mental health services is generally on an unplanned basis, often in the context of crisis, and that is almost exclusively the case for admissions on an inpatient basis, (whether on a voluntary or compulsory basis). For those patients who are unplanned admissions, it would not be appropriate to have a maximum waiting time of 12 weeks. Care/treatment delivered on an outpatient or day patient basis is primarily about ongoing care or programmes of care for those who already have access to treatment, rather than the one-off elective focus of the treatment time guarantee. There are some aspects of child and adolescent mental health services that may take place on a planned basis, in particular admissions to inpatient care, and those would be covered by the TTG and associated secondary legislation.

Advice and support, Patient Rights Officers, and the Right to Make Complaints

39. Research on patients and carers' experiences of the NHS complaints system⁷ has informed the development of the Bill. A number of the research recommendations can be taken forward without the need for legislation but it was decided that there needed to be an explicit 'right to make complaints' to try and address the concern that many patients have about even raising an issue or making a complaint; it was also thought that some issues with the complaints processes, including the link up with independent advice and support, could be improved in order to address some of the issues raised.

40. Many people feel vulnerable when they interact with the health service. The Scottish Government intends to build on the current support provision, which includes independent advice and support services, advocacy and translation, interpreting and communication support services, to help ensure that people who need it have access to the appropriate support to help them to access their rights.

41. The Bill provides for an advice and support service, to be called the Patient Advice and Support Service and to be staffed by Patient Rights Officers, to support patients in the realisation of their rights and to raise awareness of their responsibilities, and to support patients if they need assistance to take forward a complaint. In the consultation, some respondents were keen for this service to be independent of Health Boards whilst others were not; some respondents also thought that this role could be effectively delivered by advocacy services. We think there is a role for both the advice and support service and for advocacy. There is a Bill provision on making people aware of or directing to advocacy and the Scottish Government is making further funding available to support provision of advocacy. As many patients value the arms length nature of the current advice and support service, the Bill notes that the Patient Advice and Support Service is not to be provided by a Health Board, Special Health Board or the NHS's Common Services Agency (which will be securing the provision of the advice and support service).

42. An evaluation of the existing Independent Advice and Support Service (IASS) suggests that IASS is accessed mainly by people on a comparatively low income, living on their own, a high proportion of who have mental or physical health problems.⁸ Analysis of case studies and user experiences also suggests that IASS provides a valuable resource of support for people who

⁷ *Making It Better: complaints and feedback from patients and carers about NHS services in Scotland*, June 2009, Scottish Health Council, <http://www.scottishhealthcouncil.org/shcp/924.html>

⁸ Fiona Myers, 2009, *The Independent Advice and Support Service: An Analysis of Patterns of Activity, Usage and Client Profiles for Citizens' Advice Scotland: Final Report*. p50 <http://www.cas.org.uk/newsandupdates.aspx>

may be vulnerable.⁹ We also know that where an IASS worker becomes involved in a complaint, that in over half of cases the complaint is resolved or no further action is taken. Although the figures could not establish to what extent IASS performs a preventative role, tackling issues early enough so that they don't need to become the subject of more formal procedures,¹⁰ it might be speculated that this is the case.

43. The current Independent Advice and Support Service assists people in taking forward complaints about NHS services, provides information and advice about NHS service provision and procedures, advises people on what they can expect from the NHS and provides general information and advice to assist patients. The new PASS will build on this. It will promote an awareness and understanding of patient rights and responsibilities, provide advice and support in relation to local resolution if things go wrong and signpost people to advocacy or other sources of advice and support. Health Boards will be expected to publicise advice and support services, under the right to make complaints provision. It is intended that the NHS Common Services Agency will be required to secure the provision of a patient advice and support service, to enable greater consistency in the provision across Scotland. Through contract specification, the new service will be required to provide an annual report on its activities to Health Boards.

44. There will be at least one Patient Rights Officer (PRO) per Health Board (although these may not be full time), based on an assessment of need undertaken by individual Health Boards. The PRO will not be limited to supporting patients only from their own geographical health board but will also support patients in their dealings with Special Health Boards or Health Boards outwith their own region, where treatment has taken place in another Board area or where the patient finds it easier to meet with a PRO in another Board area.

45. The PASS and its PROs will:

- promote an understanding of patient rights and responsibilities,
- provide advice and support for patients,
- explain options available when, for example, giving feedback or making a complaint,
- make people aware of and direct them to advocacy and other sources of support, where appropriate.

Complaints

46. Some consultation respondents flagged up unsatisfactory experiences of the complaints system and that people may not always be satisfied with the resolution of a complaint or the way a complaint is handled. There were also concerns about the length of time medical negligence claims can take, and the adversarial nature of the process. It is important to note that where there is a medical negligence claim or some form of criminality this is taken forward separately from the NHS Complaints process in accordance with relevant protocols, rules and procedures; the Patient Rights (Scotland) Bill does not deal with such claims.

47. The Scottish Government is working to address these issues through a number of avenues, including legislating for the PASS and the PROs, and establishing a group to consider

⁹ Ibid. p51

¹⁰ Ibid. p50

and report on a system of no-fault compensation (this latter action is outwith the Bill). It is anticipated that the proposals to provide enhanced independent support to patients going through the complaints process and the measures to enhance patient participation will encourage improvements in the ways in which complaints are dealt with. These are also underpinned through a principle in the schedule to the Bill that issues of concern are dealt with reasonably, promptly and according to proper procedures.

48. The Bill also provides for a specific right to make complaints. The aim is to improve patients' awareness of their right to lodge a formal complaint and also to help ensure that patients have a better understanding of how their complaint will be dealt with. The Bill repeals the Hospital Complaints Procedure Act 1985 which placed a duty on health authorities in England and Wales and Health Boards in Scotland to establish a complaints procedure for hospital patients. This will be replaced with the measures outlined in the Bill and with further measures in secondary legislation. The Bill also legislates for the handling and monitoring of complaints and how these can be used to improve health services. It is intended that when a patient makes a complaint they should be informed also of the advice and support available to them.

49. Through secondary legislation and directions, the Scottish Government will set out clearer monitoring procedures and feedback mechanisms, to assist in using complaints to improve the health service, and will amend timescales to respond to complainants with the result of an investigation. From the *Making It Better* research on the complaints process, it was apparent that differences between hospital complaints processes and primary care complaints processes may be confusing for complainants, and that there was some concern about the capacity to properly investigate a complaint within the shorter timescale in primary care complaints processes.

Protections and limitations

50. There has been concern that the Bill might be 'a charter for lawyers' or encourage 'a lawyer by every bedside'. In the consultation responses it was clear that people did not want the NHS in Scotland to be crippled by compensation claims at the expense of front line services.

51. The Bill does not establish individual rights for individual patients (e.g. access to a particular treatment). The rights set out in the Bill are also not enforceable by legal action; this means that patients or their representatives would not be able to seek redress through the legal system (including claiming compensation) if they considered that their rights as set out in the Bill had not been met. This is because, as noted above, we do not want the NHS in Scotland, and its services, to be crippled by compensation claims as a result of the Patient Rights (Scotland) Bill. The option of pursuing a declaratory judicial review will still be available. Any rights which patients have under any other legislation or rule of law (for example a right of action to claim damages for personal injury) are not affected.

ALTERNATIVE APPROACHES

52. It would be possible to achieve some of the aims of the Bill through other means, such as directions or regulations under the National Health Service (Scotland) Act 1978. However, this option would not offer the opportunity to give prominence to patient rights through legislating for them in primary legislation; it would also not give the opportunity to provide a right to make

complaints and establish advice and support, such as the Patient Rights Officers, in primary legislation. The Scottish Government believes that legislating for these will help to level out the balance of power between health care staff and patients.

53. The consultation proposals raised the issue of a scheme of no-fault compensation and the Scottish Government response to the consultation analysis noted respondents' concerns. A group has been established to consider the introduction of a no-fault compensation scheme for injuries as a result of medical treatment; it will report in October 2010 and is outwith the Patient Rights (Scotland) Bill.

See <http://www.scotland.gov.uk/Topics/Health/NHS-Scotland/No-faultCompensation>

EVALUATION AND MONITORING

54. The Scottish Government intends to monitor compliance with patient rights legislation through a number of existing or soon to be established measures outwith the Bill. These include the Participation Standard, which Health Boards in Scotland will have to meet from April 2010 to show that they are involving the people who use their services. This Standard focuses on three key areas: Patient Focus, Public Involvement, and Corporate Governance of Participation.

55. *Better Together*: Scotland's Patient Experience Programme will provide a measure of progress against the delivery of patient focused services by Health Boards, which reflect the principles raised in the Bill. Results from the patient experience surveys will be published by different equality strands where it is statistically valid to do so.

56. In addition, as part of the work developing the Quality Strategy for NHS Scotland, a range of measures are being explored that will demonstrate improvements in the delivery of patient focused care, including the possibility of using a patient-reported outcome measures (PROMS)-based approach to do this. PROMS gives an insight into the way patients perceive their health and the impact that treatments or adjustments to lifestyle have on their quality of life.

57. It is intended that the contract specification for the PASS, which will be drawn up by the Common Services Agency, will include details of how the service will be monitored and the statistical information that Health Boards should receive from the service, which will include equality monitoring. Currently, the Scottish Health Council has a role to monitor the IASS and it is envisaged that this role will continue in regard to PASS.

EFFECTS ON EQUAL OPPORTUNITIES

58. The Patient Rights (Scotland) Bill will have a positive effect on equal opportunities. An Equality Impact Assessment has been carried out and is published on the Scottish Government website at <http://www.scotland.gov.uk/Topics/People/Equality/18507/EQIASearch>. The Scottish Government has considered any unintended effects created by the Bill, and has taken steps to mitigate and eliminate these, including by providing additional targeted resources to, for example, advocacy and translation, interpreting and communication support, and by considering how the eventual implementation and communication of the rights set out in the Bill will be undertaken.

59. The Bill will provide an excellent opportunity to promote equality of opportunity. The Bill aims to underpin a patient-focused NHS, in which individual needs are considered and where patients feel that they have a say in their own treatment, and that their wishes are listened to and respected. The Bill will contribute to building a mutual NHS, in which patients are affirmed as partners in their care, where possible, and help to ensure that all those who work for NHSScotland respect the expertise of patients and their carers and improve the ways in which they communicate with and involve them in the decisions that affect them.

60. A training programme for staff on the rights of patients is being planned. Training and awareness raising will include equality issues across all equality strands, and it is envisaged that this will particularly emphasise to staff the importance of access and communication issues.

61. As described in paragraph 22, it is proposed to provide additional funding to NHS Health Scotland to support the development of TICS. This will have a positive effect on equal opportunities and will help to enable people to access services more easily, leading to patients who need these services being communicated with in an appropriate manner that allows them to be partners in their own care and to understand their rights and responsibilities.

62. Providing additional funding to support advocacy services' provision will also help to enable more people who cannot uphold their rights on their own to be supported when using the health service, or when making a complaint. The Patient Advice and Support Service, Patient Rights Officers and the complaints process will also promote equality of opportunity by providing support and advice to people who may not otherwise be able to, or know how to, raise a complaint or issue about the health service.

HUMAN RIGHTS

63. As discussed above, the Bill takes a principles-based approach to patient rights, and has been developed and constructed to take account of the Human Rights Act (1998) and the European Charter on Human Rights. Consideration has also been given to Article 12 of the International Covenant on Economic, Social and Cultural Rights.

ISLAND COMMUNITIES

64. The Patient Rights (Scotland) Bill will apply to all communities across Scotland, including island communities. Placing emphasis on responding to individual needs and circumstances will help to ensure that the needs of island populations are taken into account when accessing health services.

65. The treatment time guarantee (TTG) includes provision that if the TTG cannot be met within 12 weeks, then an option is for the patient to be treated in another health board area. This has the advantage that patients in island or rural communities will receive the service that they are entitled to, although potentially this could mean being away from home for treatment. If this is unavoidable, the patient should be made aware of this as early as possible. Where a patient has to travel for their TTG, appropriate transport arrangements for patient and carer (if necessary) should be resourced by the patient's Health Board. As part of the implementation of the Bill, the Scottish Government is reviewing guidance on this issue so that patients in island or rural areas are not disadvantaged.

66. The Patient Advice and Support Service (PASS) will operate in each health board area, including those covering island communities. Patients and their supporters will be able to use the PASS service that is most convenient for them, even if they were treated by different Health Board, or a Special Health Board. The aim is to make the service as accessible as possible for patients, including those in island communities.

LOCAL GOVERNMENT

67. As the services proposed and the changes introduced by the Bill relate to NHS services and will be implemented by Health Boards, the Bill will have minimal impact on local government. Officials met with representatives from COSLA to explore any impact on local government and COSLA agreed that the impact would be minimal.

SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL CONCERNS

68. The Bill will have no negative impact on sustainable development, and will have a strong positive effect on the health and wellbeing of the people of Scotland, by helping to make health care services more accessible and more responsive to individual needs.

69. The environmental impact of the Bill has been considered, and the Scottish Government considers the policies within the Bill as a qualifying plan within the meaning of section 5(4) of the Environmental Assessment (Scotland) Act 2005. However, it is considered that the Bill is likely to have minimal effect in relation to the environment and, as such, exempt for the purposes of section 7 of the 2005 Act. A pre-screening report has been completed, which confirmed that the Bill will have minimal or no impact on the environment and consequently that a full Strategic Environmental Assessment did not need to be undertaken. The pre-screening report will be published on the Scottish Government website at:

<http://www.scotland.gov.uk/Topics/Environment/SustainableDevelopment/14587/Register>

This document relates to the Patient Rights (Scotland) Bill (SP Bill 42) as introduced in the Scottish Parliament on 17 March 2010

PATIENT RIGHTS (SCOTLAND) BILL

POLICY MEMORANDUM

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