



# Patient Rights (Scotland) Act 2011

## 2011 asp 5

### *Treatment time guarantee*

#### **8 Treatment time guarantee**

- (1) In pursuance of the right conferred by section 3(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.
- (4) Those steps include, in particular, steps for—
  - (a) monitoring each treatment time guarantee,
  - (b) appropriately prioritising the start of the patient's agreed treatment taking account of the patient's clinical needs and the clinical needs of other eligible patients awaiting agreed treatments in accordance with the treatment time guarantee,
  - (c) 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.
- (5) The treatment time guarantee is in addition to, and does not affect, any duty of a Health Board to—
  - (a) comply with any orders, regulations or directions made by the Scottish Ministers (whether under the 1978 Act or otherwise) which relate to targets for periods of time within which treatments or services are to be provided, or
  - (b) have regard to any guidance issued by the Scottish Ministers which relates to such targets.

## **9 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 13,
  - (b) specify such different period of time to be the maximum waiting time under section 13 in relation to any treatment or services specified in such order.

## **10 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 18), and
    - (ii) how to give feedback or comments or raise concerns or complaints.
- (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.

## **11 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).

## **12 Treatment time guarantee: suspension**

- (1) This section applies where the Scottish Ministers consider that exceptional circumstances exist.
- (2) The Scottish Ministers may direct that the treatment time guarantee be suspended for such period as they consider necessary.
- (3) But such period of suspension must not exceed 30 days.
- (4) The Scottish Ministers may by order—
  - (a) extend the duration of a period of suspension under subsection (2) beyond the 30 day limit in subsection (3) for such further period as they consider necessary,
  - (b) suspend the treatment time guarantee for such period in excess of 30 days as they consider necessary.
- (5) An order made under subsection (4) (other than one to which subsection (7) applies)—
  - (a) must be laid before the Scottish Parliament, and
  - (b) ceases to have effect at the expiry of the period of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order has been approved by resolution of the Parliament.
- (6) Subsection (7) applies to an order made under subsection (4) consisting only of—
  - (a) provision revoking an earlier order under subsection (4), or
  - (b) such provision and provision made by virtue of section 25(1)(c).
- (7) An order to which this subsection applies is subject to annulment in pursuance of a resolution of the Parliament.
- (8) In reckoning for the purposes of subsection (5)(b) any period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—
  - (a) dissolved, or
  - (b) in recess for more than 4 days.
- (9) Subsection (5)(b) is without prejudice to—
  - (a) anything previously done by reference to—

- (i) a direction under subsection (2),
- (ii) an order under subsection (4), or
- (b) the making of a new order under subsection (4).

### **13 Treatment time guarantee: key terms**

For the purposes of this section and sections 8 to 12—

“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 9(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 9(3)(a));

“treatment time guarantee” has the meaning given in section 8(2).