

2012 No. 36

NATIONAL HEALTH SERVICE

The Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Regulations 2012

Made - - - - - *8th February 2012*

Laid before the Scottish Parliament *10th February 2012*

Coming into force - - - *1st April 2012*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 15(4)(a) and 25(1) of the Patient Rights (Scotland) Act 2011(a) and all other powers enabling them to do so.

PART 1

COMMENCEMENT AND INTERPRETATION

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Regulations 2012 and come into force on 1st April 2012.

(2) In these Regulations—

“the 2005 Directions” means the Directions to Health Boards, Special Health Boards and the Agency on Complaints Procedure, made on 31st March 2005 and brought into force on 1st April 2005;

“the Act” means the Patient Rights (Scotland) Act 2011;

“arrangements” means, unless the context otherwise requires, arrangements that are required by virtue of section 15 of the Act;

“relevant complaints procedure” means—

(a) any complaints procedure required prior to 1st April 2012 by any of the following provisions—

(i) part 6 of Schedule 5 to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(b);

(ii) part 6 of Schedule 1 to the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004(c);

(a) 2011 asp 5.
(b) S.S.I. 2004/115.
(c) S.S.I. 2004/116.

- (iii) paragraph 11 of Schedule 1 to the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006(a);
- (iv) paragraph 12 of Schedule 1 to the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009(b);
- (v) paragraph 36 of Schedule 1 to the National Health Service (General Dental Services) (Scotland) Regulations 2010(c);

“responsible body” means a relevant NHS body and a service provider;

“service provider” means 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 National Health Service (Scotland) Act 1978;

“writing” includes any communication sent by electronic means if it is received in a form which is legible and capable of being used for subsequent reference.

PART 2

GENERAL

Duty to have arrangements in place

2. Each responsible body must have arrangements in place for the matters described in section 15(3) of the Act.

Feedback and Complaints Officer and Manager

3.—(1) Each responsible body must appoint a feedback and complaints officer to manage the arrangements.

(2) The functions of the feedback and complaints officer may be performed personally or by a person authorised by the relevant responsible body to act on the feedback and complaints officer’s behalf.

(3) Each relevant NHS body must appoint a feedback and complaints manager, to ensure compliance with the arrangements, and in particular to ensure that the feedback, comments, concerns or complaints received are monitored with a view to improving the performance of functions.

(4) The functions of the feedback and complaints manager must be performed by the person who acts as the chief executive of the relevant NHS body, or by an appropriately senior person authorised by the relevant NHS body to act on the chief executive’s behalf.

Persons who may give feedback or comments, or raise concerns or complaints in relation to health care

4. Any person who is, or is likely to be affected by an act or omission of a responsible body is specified for the purposes of section 15(3)(a)(ii) of the Act.

(a) S.S.I. 2006/135. Paragraph 11 was amended by S.S.I. 2006/329 and 2007/193.

(b) S.S.I. 2009/183.

(c) S.S.I. 2010/208.

PART 3

DEALING WITH COMPLAINTS

Period for raising a complaint

5.—(1) Regulations 6 and 7 apply where a complaint is raised orally or in writing within six months from the date on which the subject matter of the complaint comes to the complainant's notice, provided that is no later than twelve months after the date on which the subject matter of the complaint occurred.

(2) The periods specified in paragraph (1) may be extended if the feedback and complaints officer (appointed under regulation 3(1)) considers it would be reasonable in the circumstances.

Requirement to deal with complaints

6.—(1) In dealing with a complaint other than one specified in regulation 7(2), the responsible body must—

- (a) make a written record of the complaint;
- (b) send the complainant a written acknowledgement of the complaint within 3 working days of the date on which the complaint is received, or as soon as reasonably practicable;
- (c) send the complainant a report of the investigation into the complaint within 20 working days of the date on which the complaint is received, or as soon as reasonably practicable.

(2) Where a complaint is resolved to the complainant's satisfaction within 3 working days of the date on which the complaint is received, paragraph (1)(b) and (c) does not apply.

7.—(1) In dealing with a complaint specified in regulation 7(2), the responsible body must as soon as reasonably practicable notify the complainant in writing—

- (a) that such a complaint will not be investigated under the arrangements; and
- (b) of the procedures for raising such a complaint.

(2) The following complaints are specified—

- (a) a complaint raised by a relevant NHS body about the exercise of another relevant NHS body's functions;
- (b) a complaint raised by a service provider about any matter connected with the contract or arrangements under which that service provider provides health services;
- (c) a complaint raised by an employee of a responsible body about any matter relating to that employee's contract of employment;
- (d) a complaint which is being or has been investigated by the Scottish Public Services Ombudsman;
- (e) a complaint arising out of an alleged failure to comply with a request for information under the Freedom of Information (Scotland) Act 2002(a);
- (f) a complaint about which the complainant has stated in writing that the complainant intends to take legal proceedings;
- (g) a complaint about which a responsible body is taking or proposing to take disciplinary proceedings against the person who is the subject of the complaint; and
- (h) a complaint, the subject matter of which has previously been investigated under—
 - (i) the arrangements;
 - (ii) the 2005 Directions, in relation to a complaint raised under those Directions prior to 1st April 2012; or

(a) 2002 asp 13.

(iii) a relevant complaints procedure, in relation to a complaint raised under such a procedure prior to 1st April 2012.

(3) Where a complaint specified in paragraph (2) is connected with another complaint which is not so specified, the other complaint is to be dealt with in accordance with regulation 6(1).

Form of communications

8. Any communication which is required by these Regulations to be made to a complainant may be sent to the complainant electronically where the complainant—

- (a) has consented to this in writing; and
- (b) has not withdrawn such consent in writing.

PART 4

TRANSITIONAL, SAVING AND CONSEQUENTIAL PROVISIONS

Transitional provision in respect of former complaints

9.—(1) Where a complaint has been raised prior to 1st April 2012 it must be handled or continue to be handled in accordance with any former complaints legislation.

(2) Where, following 1st April 2012, a complainant requests a review of a complaint which was dealt with before that date, it must be handled in accordance with former complaints legislation.

(3) In this regulation, “former complaints legislation” means the Hospital Complaints Procedure Act 1985(a), the 2005 Directions, as in force prior to 1st April 2012, and a relevant complaints procedure.

(4) The Schedule (consequential provisions) has effect.

NICOLA STURGEON
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
8th February 2012

(a) 1985 c.42. This Act is repealed by section 11 of the Act.

SCHEDULE

Regulation 9(4)

CONSEQUENTIAL PROVISIONS

Amendment of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004.

1.—(1) Schedule 5 (other contractual terms) to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(a) is amended as follows.

(2) For paragraph 82 (complaints procedure) substitute—

“Complaints, concerns, comments, feedback

82. The contractor must have arrangements in place which operate in accordance with section 15 of the Patient Rights (Scotland) Act 2011, and any regulations or directions made under that Act.”.

(3) Omit paragraphs 83, 84 (making of complaints), 85 (period for making complaints), 86 (further requirements for complaints procedures) and 88 (provision of information about complaints).

(4) In paragraph 87 (co-operation with investigations)—

- (a) in sub-paragraph (2), after “any Health Board”, insert “or Special Health Board or the Common Services Agency”;
- (b) in sub-paragraph (3), for “Health Board” in each place it occurs, substitute “NHS body, local authority or Scottish Public Services Ombudsman”.

(5) In paragraph 94(2)(a) (variation of a contract: general), after “Act” in each place it occurs insert “or the Patient Rights (Scotland) Act 2011”.

Amendment of the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004.

2.—(1) Schedule 1 (content of agreements) to the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004(b) is amended as follows.

(2) For paragraph 47 (complaints procedure) substitute—

“Complaints, concerns, comments, feedback

47. The provider must have arrangements in place which operate in accordance with section 15 of the Patient Rights (Scotland) Act 2011, and any regulations or directions made under that Act.”.

(3) Omit paragraphs 48, 49 (making a complaint), 50 (period for making complaints), 51 (further requirements for complaints procedures) and paragraph 53 (provision of information about complaints).

(4) In paragraph 52 (co-operation with investigations)—

- (a) in sub-paragraph (2), after “a Health Board”, insert “or Special Health Board or the Common Services Agency”;
- (b) in sub-paragraph (3), for “Health Board” in each place it occurs, substitute “NHS body, local authority or Scottish Public Services Ombudsman”.

(a) S.S.I. 2004/115.

(b) S.S.I. 2004/116.

(5) In paragraph 59(2)(a) (variation of an agreement: general), after “Act” in each place it occurs insert “or the Patient Rights (Scotland) Act 2011”.

Amendment of the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006.

3.—(1) The National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006(a) are amended as follows.

(2) In regulation 2 (interpretation), omit the definition of “record of complaints”.

(3) In paragraph 2 (incorporation of provisions) of Schedule 1 (terms of service)—

(a) in sub-paragraph (f), omit “and”;

(b) after sub-paragraph (g), insert—

“; and

(h) the Patient Rights (Scotland) Act 2011 and any regulations or directions made under that Act, so far as relevant to contractors and ophthalmic medical practitioners and opticians as providers of services under the health service.”.

(4) For paragraph 11 (complaints) of Schedule 1 substitute—

“Complaints, concerns, comments, feedback

11. A contractor must have arrangements in place which operate in accordance with section 15 of the Patient Rights (Scotland) Act 2011, and any regulations or directions made under that Act.”.

(5) For paragraph 12 (co-operation with investigations) for “directions given under section 2(5) of the Act” substitute “section 15 of the Patient Rights (Scotland) Act 2011”.

Amendment of the National Health Service (Discipline Committees) (Scotland) Regulations 2006.

4.—(1) The National Health Service (Discipline Committees) (Scotland) Regulations 2006(b) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1), omit the definition of “complaint”;

(b) omit paragraph (2).

(3) In regulation 4 (provisions relating to the start of disciplinary proceedings) omit paragraphs (4) and (5).

(4) In regulation 6 (time limits)—

(a) omit paragraph (1);

(b) in paragraph (5), for “(1), (2), (3) or (4)”, substitute “(2), (3) or (4)”.

(5) In paragraph 6(5) (procedure at the hearing) of Schedule 2 (procedure for investigation by discipline committees), for “the investigation of the complaint” in each place it occurs, substitute “consideration as part of the hearing”.

Amendment of the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009

5.—(1) Schedule 1 (terms of service for pharmacists and pharmacy contractors) to the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009(c) is amended as follows.

(a) S.S.I. 2006/135.

(b) S.S.I. 2006/330.

(c) S.S.I. 2009/183.

(2) In paragraph 3 (incorporation of provisions of regulations, etc)—

(a) in sub-paragraph (d), omit “and” where it last occurs;

(b) after sub-paragraph (e), insert—

“; and

(f) the Patient Rights (Scotland) Act 2011 and any regulations or directions made under that Act, so far as relevant to pharmacists and pharmacy contractors as providers of services under the health service.”.

(3) For paragraph 12 (complaints) substitute—

“Complaints, concerns, comments, feedback;

12. A pharmacy contractor must have arrangements in place which operate in accordance with section 15 of the Patient Rights (Scotland) Act 2011, and any regulations or directions made under that Act.”.

(4) In paragraph 13 (complaints) for “directions given under section 2(5) of the Act”, substitute “section 15 of the Patient Rights (Scotland) Act 2011”.

Amendment of the National Health Service (General Dental Services) (Scotland) Regulations 2010

6.—(1) Schedule 1 (terms of service for dentists) to the National Health Service (General Dental Services) (Scotland) Regulations 2010(a) is amended as follows.

(2) In paragraph 2 (incorporation of provisions of regulations)—

(a) in sub-paragraph (c), omit “and” where it last occurs;

(b) after sub-paragraph (d), insert—

“; and

(e) the Patient Rights (Scotland) Act 2011 and any regulations or directions made under that Act, so far as relevant to contractors and dentists as providers of services under the health service.”.

(3) For paragraph 36 (complaints) substitute—

“Complaints, concerns, comments, feedback

36. A contractor must have arrangements in place which operate in accordance with section 15 of the Patient Rights (Scotland) Act 2011, and any regulations or directions made under that Act.”.

(4) In paragraph 37 (co-operation and investigation) for “directions given under section 2(5) of the Act” substitute “section 15 of the Patient Rights (Scotland) Act 2011”.

(5) Omit paragraph 38 (returns re complaints).

(a) S.S.I. 2010/208.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the arrangements to be put in place in terms of section 15 of the Patient Rights (Scotland) Act 2011 (“the Act”) in relation to the handling of feedback, comments and concerns received in relation to health care, and, in particular for the purposes of dealing with complaints raised in relation to health care.

Regulation 2 provides that each responsible body must have arrangements in place for the matters described in section 15(3) of the Act.

Regulation 3 provides that each responsible body must appoint a feedback and complaints officer to manage the arrangements required under section 15 of the Act; and each relevant NHS body must appoint a feedback and complaints manager to ensure compliance with such arrangements.

Regulation 4 sets out who is specified for the purposes of section 15(3)(a)(ii) of the Act.

Regulation 5 sets out the timescales within which a complaint must be raised.

Regulations 6 and 7 provide for how complaints are to be dealt with. Where regulation 6 applies, subject to paragraph (2), the responsible body must make a written record of the complaint, acknowledge the complaint and send the complainant a report of the investigation into the complaint. In the case of complaints specified in regulation 7(2), the responsible body must write to the complainant, notifying that such a complaint will not be investigated under the arrangements.

Regulation 8 sets out the form of communications for any communication required by virtue of these Regulations.

Regulation 9 makes transitional and saving provisions for the purposes of complaints made prior to 1st April 2012, and gives effect to the consequential amendments in the Schedule.

The Schedule makes consequential amendments which are required to other legislation as a result of these Regulations and the Act.

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