



# Patient Rights (Scotland) Act 2011

## 2011 asp 5

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 24th February 2011 and received Royal Assent on 31st March 2011**

An Act to make provision about the rights of patients when receiving health care; to make further provision about eligibility under the scheme made under section 28 of the Smoking, Health and Social Care (Scotland) Act 2005; and for connected purposes.

### *Charter of Patient Rights and Responsibilities*

#### **1 Charter of Patient Rights and Responsibilities**

- (1) The Scottish Ministers must, within 6 months of the coming into force of this section, publish a document to be known as the Charter of Patient Rights and Responsibilities (“the Charter”).
- (2) The Charter must set out a summary of the rights and responsibilities (as existing at the date of publication) of patients and relevant persons.
- (3) The Charter may also include—
  - (a) a summary of the duties of relevant NHS bodies,
  - (b) a summary of the behaviour expected from patients and relevant persons,
  - (c) such other information as the Scottish Ministers consider relevant in relation to health care or the health service (for example, information relating to targets for the periods of time within which patients are to be treated).
- (4) Nothing in the Charter is to—
  - (a) give rise to any new rights,
  - (b) impose any new responsibilities, or
  - (c) alter (in any way) an existing right or responsibility.
- (5) For the purposes of this section and section 2, a “relevant person” is—
  - (a) a person who has a personal interest in the health care of a patient (for example a member of the patient's family or a carer),
  - (b) such other categories of person as the Scottish Ministers consider appropriate.
- (6) The Charter is to be published in such form and manner as the Scottish Ministers consider appropriate.

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- (7) Before publishing the Charter under subsection (1), the Scottish Ministers must—
  - (a) consult such persons as they consider appropriate,
  - (b) lay a copy of the Charter before Parliament.
- (8) The Scottish Ministers must, as soon as reasonably practicable after publication of the Charter under subsection (1), notify each relevant NHS body of the publication of the Charter.
- (9) Each relevant NHS body must make available without charge copies of the Charter to patients, staff and members of the public.
- (10) In carrying out the duty under subsection (9), a relevant NHS body must take account of the particular needs of the persons to whom the Charter is to be made available as to the form of the Charter (for example by making it available in different languages or in Braille or by having regard to the particular needs of adults with incapacity within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4)).

#### Commencement Information

**II** [S. 1](#) in force at 1.4.2012 by [S.S.I. 2012/35](#), [art. 2\(a\)](#)

## 2 Review and revision of Charter

- (1) The Scottish Ministers must carry out a review of the Charter at least once in any period of 5 years.
- (2) The purposes of a review under subsection (1) are—
  - (a) to ensure that the Charter continues to accurately summarise the rights and responsibilities of patients and relevant persons (as existing at the date of review), and
  - (b) to assess how effective the Charter is in raising awareness of the rights and responsibilities of patients and relevant persons.
- (3) When reviewing the Charter under subsection (1), the Scottish Ministers must also review how effective the arrangements for the publication and distribution of the Charter have been in promoting awareness of the Charter and, if they consider it appropriate, take such steps as they consider necessary to improve those arrangements.
- (4) In carrying out a review under subsections (1) and (3) the Scottish Ministers must consult such persons as they consider appropriate.
- (5) The first review under subsection (1) must be completed not later than 5 years from the date on which the Charter is published under section 1(1).
- (6) The Scottish Ministers must revise the Charter where, following a review under subsection (1), the Scottish Ministers consider that the Charter—
  - (a) does not accurately summarise the rights and responsibilities of patients and relevant persons, or
  - (b) is not sufficiently effective in raising awareness of the rights and responsibilities of patients and relevant persons.
- (7) The Scottish Ministers may revise the Charter at any other time if they consider it appropriate to do so (whether following a review under subsection (1) or otherwise).

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- (8) Where the Scottish Ministers revise the Charter under subsection (6) or (7), they must—
- (a) publish it as so revised (in such form and manner as they consider appropriate),
  - (b) notify each relevant NHS body of the publication of the Charter as so revised.
- (9) Before publishing the Charter under subsection (8)(a), the Scottish Ministers must—
- (a) consult such persons as they consider appropriate, and
  - (b) lay a copy of the Charter before Parliament.
- (10) In this Act, a reference to the Charter is a reference to the Charter as it may be revised from time to time.

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**Commencement Information**

**I2** [S. 2](#) in force at 1.4.2012 by [S.S.I. 2012/35](#), [art. 2\(a\)](#)

*Patient rights*

**3 Patient rights**

- (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,
  - (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,
  - (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, taking all reasonable steps to ensure that the patient is supplied with information and support in a form that is appropriate to the patient's needs.
- (3) It is the right of every patient to give feedback or comments, or raise concerns or complaints about health care received.
- (4) The Scottish Ministers, after consulting such persons as they consider appropriate, may by order modify subsection (2).

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**Commencement Information**

**I3** [S. 3](#) in force at 1.4.2012 by [S.S.I. 2012/35](#), [art. 2\(a\)](#)

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#### 4 Patient rights: further provision

- (1) In construing the right of a patient under section 3(1), the matters set out in subsection (2) below must be taken into account.
- (2) The matters are—
  - (a) the rights of other patients under section 3(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 20(1)(a) and (b).

##### Commencement Information

**I4** [S. 4](#) in force at 1.4.2012 by [S.S.I. 2012/35](#), [art. 2\(a\)](#)

#### *Health care principles*

#### 5 Duty to uphold the health care principles

- (1) For the purposes of the rights conferred by section 3, each relevant NHS body must—
  - (a) in performing its health service functions, uphold 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 upholds the health care principles in so far as they are relevant to the service being provided.
- (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”).

##### Commencement Information

**I5** [S. 5](#) in force at 1.4.2012 by [S.S.I. 2012/35](#), [art. 2\(a\)](#)

#### 6 Health care principles

- (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.

##### Commencement Information

**I6** [S. 6](#) in force at 1.4.2012 by [S.S.I. 2012/35](#), [art. 2\(a\)](#)

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## 7 Health care principles: guidance and directions

- (1) A relevant NHS body must, for the purposes of section 5, 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.
- (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.

### Commencement Information

**I7** [S. 7](#) in force at 1.4.2012 by [S.S.I. 2012/35](#), [art. 2\(a\)](#)

### *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.