

Dear Colleague

THE PATIENT RIGHTS (COMPLAINTS PROCEDURE AND CONSEQUENTIAL PROVISIONS) (SCOTLAND) AMENDMENT REGULATIONS 2016 AND THE PATIENT RIGHTS (FEEDBACK, COMMENTS, CONCERNS AND COMPLAINTS) (SCOTLAND) DIRECTIONS 2017

Summary

1. The NHS Scotland Model Complaints Handling Procedure was published on 3 October 2016 by means of [DL \(2016\) 19](#).
2. In that letter, I communicated that the revised procedure would require amendments to relevant Regulations and Directions made under the Patient Rights (Scotland) Act 2011 ("the Act").
3. The Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Amendment Regulations 2016 ("2016 Regulations") and the Patient Rights (Feedback, Comments, Concerns and Complaints) (Scotland) Directions 2017 ("2017 Directions") will come into force on 1 April 2017.
4. The 2016 Regulations were laid in Parliament on 1 December 2016 and are available online at <http://www.legislation.gov.uk/ssi/2016/401/introduction/made>
5. The 2017 Directions are attached with this letter.
6. The Patient Rights (Feedback, Comments, Concerns and Complaints) (Scotland) Directions 2012 ("2012 Directions"), made on 22 March 2012 and brought into force on 1st April 2012, are revoked.

DL (2017) 6

29 March 2017

Addresses

For action

Chief Executives, NHS Boards

For information

NHS Person-Centred Executive Leads
NHS Board Primary Care Leads
NHS Complaints Leads
Members of the NHS Complaints Handling Procedure Steering Group
NHS Employee Directors
Scottish Partnership Forum
SWAG, MSG
Director, Scottish Health Council
SPSO
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Background

7. The Act aims to improve patients' experiences of using health services and to support people to become more involved in their health and health care. Sections 14 and 15 of the Act provide for the encouragement of feedback, comments, concerns and complaints about health care and the arrangements for handling and responding to these.
8. [DL \(2016\) 19](#) describes the process that has been undertaken over the past 18 months to develop the NHS Scotland Complaints Handling Procedure involving the Scottish Public Services Ombudsman (SPSO), representatives from across NHS Scotland, the independent Patient Advice and Support Service (PASS) and Healthcare Improvement Scotland Public Partners.

The 2016 Regulations

9. Key elements of the revised procedure are established by the 2016 Regulations, specifically:
 - New regulation 6A, which replaces regulation 6 of the 2012 Regulations, introduces a distinct, five-day period in which responsible bodies, including NHS boards and service providers, may attempt to resolve complaints early and locally, without the need for an investigation. There is provision for this period to be extended in some circumstances, and the complaint may be escalated to the investigation stage if the responsible body determines it will not be possible to resolve the complaint in this way, or the complainant is not satisfied with the responsible body's response. This brings the NHS complaints procedure more closely into line with other parts of the public sector, including local authorities since 2013, and with the revised procedure for Social Work Complaints, which will be implemented from April 2017.
 - New regulation 6B makes provision for the complaint to bypass early resolution and go straight to the investigation stage, if the responsible body considers it is a serious or complex complaint which cannot be resolved without an investigation.
 - New regulation 6C is designed to allow for investigations to exceed the 20 working day limit if there are clear and justifiable reasons to do so. This is in line with other sectors and ensures that complaints can be investigated thoroughly where additional time is necessary, for example to gather essential statements, or where the person making the complaint has agreed to mediation.
 - New regulation 6D is designed to enable anonymous complaints to be considered as far as possible as part of the NHS complaints procedure. This will support NHS bodies to ensure their complaints data is as complete as possible by systematically recording, monitoring and learning from anonymous complaints.
 - Regulation 7 is amended to introduce flexibility for NHS bodies to offer to apply the complaints procedure in cases even where the complainant has stated in writing that they intend to take legal proceedings. This is intended to increase the use of the NHS complaints procedure as the initial route for resolving disputes, and to support the NHS to resolve people's complaints in the most straightforward and person-centred way possible.

The 2017 Directions

10. The 2017 Directions set out further requirements in relation to feedback, comments, concerns and complaints. Many of these are similar to the requirements detailed in the 2012 Directions, but Directions 6, 7, 11 and 14 in particular provide for new or altered elements of the revised procedure.

Part 2: General

Directions 3, 4 and 5 set out the requirements on a relevant NHS body in relation to:

- making information available in writing about arrangements for handling and responding to feedback, comments, concerns and complaints;
- ensuring that anyone giving feedback or comments, or raising a concern or complaint, is treated in a courteous and sympathetic manner; and
- staff training.

The NHS body must ensure that each of its service providers has the above arrangements in place to meet these requirements.

Part 3: Dealing with Complaints

- Direction 6 sets out requirements in relation to the written record of a complaint, which reflect the Scottish Public Service Ombudsman's (SPSO's) guidance on minimum reporting requirements.
- Directions 7 and 11 require a relevant NHS body to communicate the reason for any extension of the time periods for early resolution or investigation to the person making the complaint. The NHS body must also ensure that each of its service providers has arrangements in place to do the same.
- Direction 8 relates to the content of a written acknowledgment of a complaint at the investigation stage.
- Direction 9 requires written records of complaints to be kept separately from patient health records.
- Direction 10 relates to the investigation of a complaint.
- Direction 12 relates to the report of the investigation.
- Direction 13 requires a relevant NHS body to use the complainant's preferred means of communication where reasonably practicable. The NHS body must also ensure that each of its service providers has arrangements in place to do the same.

Part 4: Monitoring and Publicity

- Direction 14 requires a relevant NHS body to prepare quarterly reports in relation to complaints, and annual reports in relation to feedback, comments and concerns. The NHS body must also ensure that each of its service providers does the same.
- Direction 15 requires a relevant NHS body to publish annual reports and send copies to the Scottish Ministers, the PASS, Healthcare Improvement Scotland, SPSO, and, where

appropriate, the Scottish Prison Service. This direction also requires a relevant NHS body to submit its own and its service providers' quarterly complaints reports annually to the Common Services Agency, to allow for the collation of national complaints statistics.

- Direction 16 sets out requirements in relation to publicising the arrangements for feedback, comments, concerns and complaints.
- Direction 17 requires a relevant NHS body to ensure its service providers have arrangements in place for certain Directions.

Part 5: Alternative Dispute Resolution

Directions 18, 19 and 20 require a relevant NHS body to provide alternative dispute resolution in certain circumstances, and relate to how this service should be provided.

Action

11. Chief Executives are asked to note the Regulations and Directions which come into effect from 1 April 2017.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'J. Leitch', with a long, sweeping horizontal line underneath it.

Jason Leitch
National Clinical Director
Scottish Government

NATIONAL HEALTH SERVICE

The Patient Rights (Feedback, Comments, Concerns and Complaints) (Scotland) Directions 2017

The Scottish Ministers make the following Directions in exercise of the powers conferred on them by sections 14(6), 15(4)(b) and (5) and 25(5) of the Patient Rights (Scotland) Act 2011^(a) and all other powers enabling them to do so.

PART 1 INTRODUCTORY

Citation and commencement

1. These Directions may be cited as the Patient Rights (Feedback, Comments, Concerns and Complaints) (Scotland) Directions 2017 and come into force on 1st April 2017.

Interpretation

2.—(1) In these Directions—

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

“the 1978 Act” means the National Health Service (Scotland) Act 1978^(b);

“ADR provider” means a person appointed by virtue of direction 21 of these Directions to conduct alternative dispute resolution;

“alternative dispute resolution” (or “ADR”) means mediation or conciliation;

“area professional committee” means an—

- (a) area medical committee;
- (b) area dental committee;
- (c) area nursing and midwifery committee;
- (d) area pharmaceutical committee; or
- (e) area optical committee,

all within the meaning of section 9 of the 1978 Act;

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

“early resolution stage” means the period during which a responsible body seeks to resolve the complaint as provided for in regulation 6A(1)(b) and (2)(c) of the Regulations;

“feedback and complaints officer” means the person appointed under regulation 3(1) of the Regulations;

^(a) 2011 asp 5.

^(b) 1978 c.29.

^(c) Regulation 6A was inserted by S.S.I. 2016/401.

“feedback and complaints manager” means the person appointed under regulation 3(3) of the Regulations;

“Healthcare Improvement Scotland” means the body established under section 10A(a) of the 1978 Act;

“investigation stage” means the period of investigation of a complaint as provided for in regulation 6A(4) and 6B(1)(b) of the Regulations (including any extension provided for in regulation 6C(c));

“the PASS” means the patient advice and support service secured by the Agency under section 10ZA(d) of the 1978 Act;

“primary care provider” means a person or body who—

- (a) provides primary medical services in accordance with the 1978 Act;
- (b) provides general dental services in accordance with arrangements made under section 25 of the 1978 Act;
- (c) provides personal dental services in accordance with a pilot scheme;
- (d) provides general ophthalmic services in accordance with arrangements made under section 26 of the 1978 Act;
- (e) provides pharmaceutical services in accordance with arrangements made under section 27 of the 1978 Act, or additional pharmaceutical services in accordance with directions made under section 27A of the 1978 Act;

“the Regulations” means the Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Regulations 2012(e);

“service provider” means any person who provides health services for the purposes of the health service under a contract, agreement or arrangements made under or by virtue of the 1978 Act;

“SPSO” means the Scottish Public Services Ombudsman;

“staff” means any person employed by a relevant NHS body (or by a service provider as the case may be), or otherwise engaged to provide services to such a body (whether under a contract, agreement or other arrangement);

“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.

(2) Unless the context otherwise requires, other words and phrases used in these Directions have the same meaning as they do in the Act.

(3) Unless the context otherwise requires, in these Directions—

- (a) words in the singular include the plural; and
- (b) words in the plural include the singular.

(a) Section 10A was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8).

(b) Regulation 6B was inserted by S.S.I. 2016/401.

(c) Regulation 6C was inserted by S.S.I. 2016/401.

(d) Section 10ZA was inserted by section 17(2) of the Patient Rights (Scotland) Act 2011 (asp 5), and amended by S.S.I. 2015/157.

(e) S.S.I. 2012/36, as amended by the Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Amendment Regulations 2016 (S.S.I. 2016/401) with effect from 1st April 2017.

PART 2

GENERAL

Arrangements in writing

3. Each relevant NHS body must make information available in writing, to any person who requests such information, as to the arrangements for handling and responding to feedback or comments given, or concerns or complaints raised.

Handling feedback, comments, concerns, complaints

4. Each relevant NHS body must take reasonable steps to ensure that any person who gives feedback or comments, or raises a concern or complaint under the arrangements is treated in a courteous and sympathetic manner by any person handling the feedback, comments, concern or complaint.

Staff training

5. Each relevant NHS body must ensure that—

- (a) all frontline staff who could potentially be the first point of contact for a patient, are aware of the arrangements and are able to signpost patients appropriately pursuant to sub-paragraph (b)(ii); and
- (b) all staff who handle feedback, comments, concerns and complaints under the arrangements—
 - (i) receive relevant training and guidance in order to do so; and
 - (ii) are aware of the advice and support available to persons who give feedback or comments, or raise concerns or complaints, specifically the role of the feedback and complaints officer and the PASS.

PART 3

DEALING WITH COMPLAINTS

Written record of a complaint

6.—(1) Pursuant to regulations 6A(1)(a) and 6B(1)(a) of the Regulations, each relevant NHS body must ensure that a written record of a complaint specifies (where known and where relevant and appropriate)—

- (a) the complainant's name, address, and email address (where that is their preferred method of communication);
- (b) the patient's name (where the patient is not the complainant) and Community Health Index number;
- (c) in the event that the complainant is making the complaint on behalf of another person, whether that other person has given consent for the complaint to be made on his or her behalf;
- (d) the date when the complaint was received;
- (e) the subject matter of the complaint and the date on which the matter which is the subject of the complaint occurred;
- (f) how the complaint was received;
- (g) the service the complaint refers to;
- (h) the date the complaint was closed at the early resolution stage;

- (i) the date the complaint was escalated to the investigation stage;
- (j) action taken at the investigation stage;
- (k) the date the complaint was closed at the investigation stage;
- (l) the outcome of the complaint at each stage; and
- (m) the underlying cause of the complaint and any remedial action taken.

Extension of time for early resolution

7. Where, pursuant to regulation 6A(2) of the Regulations, there is an extension of the period of 5 working days for completion of the early resolution stage, the relevant NHS body must communicate the reason for the extension to the complainant.

Written acknowledgement of a complaint

8. Pursuant to regulation 6A(4)(b) of the Regulations, each relevant NHS body must ensure that a written acknowledgement of a complaint includes the following information—

- (a) contact details of the feedback and complaints officer or the person authorised to act on his or her behalf;
- (b) details of the advice and support available to the complainant including the PASS;
- (c) information on the role of and contact details for the SPSO;
- (d) a statement confirming that the complainant will be—
 - (i) sent a report of the investigation into the complaint within 20 working days, or as soon as reasonably practicable; and
 - (ii) notified in the event that it is not possible to send such a report within 20 working days, provided with an explanation as to why there is a delay and, where possible, provided with a revised timetable.

Recording complaints

9. Written records of complaints kept pursuant to regulations 6A(1)(a) and 6B(1)(a), and any copies of correspondence relating to complaints, must be kept separately from patient health records.

Investigation of a complaint

10.—(1) A complaint may be investigated pursuant to the arrangements in any manner which is appropriate for resolving the complaint efficiently and effectively, and may include, in particular, offering the complainant—

- (a) a meeting with senior staff;
- (b) the use of alternative dispute resolution services as set out in Part 5 of these Directions.

(2) In so far as it is appropriate and reasonably practicable, each relevant NHS body must ensure that during the investigation of the complaint—

- (a) the complainant; and
- (b) any person who was involved in the matter which is the subject of the complaint,

are informed as to the progress of the investigation, and are given the opportunity to comment on the investigation.

Extension of time for investigation of a complaint

11. Where, pursuant to regulation 6C of the Regulations, there is an extension of the period of 20 working days for completion of the investigation stage, the relevant NHS body must notify the complainant of the extension and the reason for the extension.

Report of the investigation

12.—(1) The report of the investigation provided pursuant to regulation 6A(4)(c) or regulation 6B(1)(d) of the Regulations must—

- (a) include the conclusions of the investigation and information as to any remedial action taken or proposed as a consequence of the complaint; and
- (b) be signed by an appropriately senior person.

(2) Each relevant NHS body must ensure, in so far as it is appropriate and reasonably practicable to do so, that any person who was involved in the matter which is the subject of the complaint is given feedback following resolution of the complaint.

Form of communication

13. When investigating a complaint pursuant to the arrangements, each relevant NHS body must ascertain the complainant's preferred method of communication and, where reasonably practicable, communicate with the complainant by this means.

PART 4

MONITORING AND PUBLICITY

Monitoring

14.—(1) For the purposes of monitoring the arrangements, each relevant NHS body must—

- (a) prepare a report in accordance with paragraphs (2) and (3) every 3 months;
- (b) ensure that each of its service providers—
 - (i) prepares a report in accordance with paragraphs (2) and (3) every 3 months; and
 - (ii) submits that report to it as soon as reasonably practicable after the end of the 3 month period to which the report relates;
- (c) prepare a report at the end of each year summarising action taken as a result of feedback, comments and concerns received in that year;
- (d) ensure that each of its service providers—
 - (i) prepares a report at the end of each year summarising action taken as a result of feedback, comments and concerns received in that year; and
 - (ii) submits that report to it as soon as reasonably practicable after the end of the year to which the report relates.

(2) The report referred to in paragraph (1)(a) and (b) must, in relation to the 3 month period to which it relates, specify as far as reasonably practicable—

- (a) the total number of complaints received other than complaints specified in regulation 7(2) of the Regulations;
- (b) in relation to complaints closed at the early resolution stage—
 - (i) the number of complaints closed at that stage, as a percentage of all complaints closed;
 - (ii) the number of complaints upheld, partially upheld and not upheld, as a percentage of complaints closed at that stage;
 - (iii) the average time in working days for a full response to a complaint to be issued;
 - (iv) the number of complaints closed within 5 working days, as a percentage of complaints closed at that stage;

- (v) the number of complaints closed at that stage where an extension was applied as provided for in regulation 6A(2) of the Regulations, as a percentage of complaints closed at that stage;
 - (c) in relation to complaints closed at the investigation stage which were not escalated from the early resolution stage—
 - (i) the number of complaints closed at that stage, as a percentage of all complaints closed;
 - (ii) the number of complaints upheld, partially upheld and not upheld, as a percentage of complaints closed at that stage;
 - (iii) the average time in working days for a full response to a complaint to be issued;
 - (iv) the number of complaints closed within 20 working days, as a percentage of complaints closed at that stage;
 - (v) the number of complaints where an extension was applied as provided for in regulation 6C of the Regulations, as a percentage of complaints closed at that stage;
 - (d) in relation to complaints closed at the investigation stage which were escalated from the early resolution stage—
 - (i) the number of complaints closed at that stage, as a percentage of all complaints closed;
 - (ii) the number of complaints upheld, partially upheld and not upheld, as a percentage of complaints closed at that stage;
 - (iii) the average time in working days for a full response to a complaint to be issued;
 - (iv) the number of complaints closed within 20 working days, as a percentage of complaints closed at that stage;
 - (v) the number of complaints where an extension was applied as provided for in regulation 6C of the Regulations, as a percentage of complaints closed at that stage.
- (3) The report referred to in paragraph (1)(a) and (b) must, in relation to the 3 month period to which it relates, include—
- (a) a statement outlining changes or improvements to services or procedures as a result of consideration of complaints;
 - (b) a statement summarising complainants’ experience in relation to the complaints service provided; and
 - (c) a statement reporting on levels of staff awareness and training.
- (4) In relation to the reports referred to in paragraph (1)(a) and (b), the relevant NHS body must—
- (a) review the reports with a view to identifying any area of concern and whether any further action is required in order to improve the exercise of its functions or the exercise of its service providers’ functions as the case may be;
 - (b) ensure that the feedback and complaints manager or suitably senior person acting on his or her behalf is involved in these reviews; and
 - (c) ensure that where appropriate the review considers any recommendations made by SPSO in relation to the investigation of NHS complaints.
- (5) In this direction, a complaint is “escalated from the early resolution stage” where the complaint is investigated as provided for in regulation 6A (3) and (4) of the Regulations.

Annual reports

15.—(1) At the end of each year, each relevant NHS body must publish a report—

- (a) summarising the reports which have been prepared that year by virtue of direction 14(1)(a) and (b); and

- (b) including details summarising the action which has been taken or is to be taken to improve services as a result of feedback, comments or concerns received and handled in relation to health care in that year and reported by virtue of direction 14(1)(c) and (d).
- (2) In paragraph (1), “year” means a period of 12 months ending with 31st March.
- (3) Each relevant NHS body must ensure that—
 - (a) the details referred to in direction 14(1)(a) and (b) are submitted to the Agency within 3 months of the year end to which the details relate, in an appropriate format to allow collation and publication of national complaints statistics; and
 - (b) that the details referred to in paragraph (1)(a) and (b) are sent to—
 - (i) the Scottish Ministers;
 - (ii) the PASS;
 - (iii) Healthcare Improvement Scotland;
 - (iv) SPSO; and
 - (v) where appropriate, the Scottish Prison Service,
 as soon as is reasonably practicable after the end of the year to which the details relate.

Publicity

16.—(1) Each relevant NHS body must take reasonable steps to ensure that the persons listed in paragraph (2) below are informed of—

- (a) the arrangements;
- (b) the name and postal and email addresses of the relevant feedback and complaints officer; and
- (c) the details of the advice and support which is available to patients, including the role of the PASS.
- (2) The persons referred to in paragraph (1) above are—
 - (a) patients and carers;
 - (b) staff of the relevant NHS body;
 - (c) persons exercising functions of the relevant NHS body under a contract or other arrangement with it; and
 - (d) where appropriate, the PASS.

Application to service providers

17. Each relevant NHS body must ensure that each of its service providers has arrangements in place pursuant to directions 3 to 13, 14(1)(b) and (d), 14(2) and (3), and 16 (but as if references to a “relevant NHS body” in those directions were to a “service provider”).

PART 5

ALTERNATIVE DISPUTE RESOLUTION

Requirement to provide alternative dispute resolution services

18.—(1) Each Health Board must provide alternative dispute resolution services in accordance with this Part if—

- (a) a request is made, orally or in writing, to the Health Board by a primary care provider or a complainant;
- (b) any of the circumstances set out in paragraph (2) apply; and

- (c) the complainant (or, where the complainant is acting on behalf of another person, that other person) and the person subject to the complaint have agreed that alternative dispute resolution services should be provided.
- (2) The circumstances are that—
 - (a) a person wishes to raise a complaint about a primary care provider;
 - (b) a complaint has been made about a primary care provider; or
 - (c) the complainant wishes to request further clarification of the findings or conclusions of an investigation into a complaint, or of the decision about a complaint.
- (3) In this direction, the reference to a “complaint” means a complaint other than a complaint specified in regulation 7(2) of the Regulations.

Referral to ADR provider

19. Where—

- (a) it is agreed pursuant to direction 10(1) that alternative dispute resolution is appropriate; or
- (b) the Health Board is required to provide such services in accordance with direction 18,
- (c) the feedback and complaints officer of the relevant NHS body must, as soon as practicable, refer the matter to the ADR provider.

Appointment of ADR provider and assistants

20.—(1) Each relevant NHS body must appoint independent and impartial persons as ADR providers for a period to be agreed between the relevant NHS body and the ADR provider of not more than one year (without prejudice to any re-appointment), to conduct the process of alternative dispute resolution upon referral of the matter in accordance with direction 19.

(2) Without prejudice to paragraph (3), each relevant NHS body must ensure that adequate numbers of ADR providers are appointed with regard to the likely number of matters referred under direction 19.

(3) A pool of ADR providers may be appointed and organised jointly between relevant NHS bodies.

(4) Each relevant NHS body must, after consultation with any relevant area professional committee or such bodies as appear to it to be appropriate, establish and maintain a list of persons from among whom an ADR provider may nominate a person (“a professional adviser”) to assist them in the process of alternative dispute resolution in respect of a complaint.

(5) A professional adviser nominated under paragraph (4) must be a member of the same profession as the person who performed the service with which the subject matter of the complaint is most closely connected.

Alternative dispute resolution procedure

21. The ADR provider may, in consultation with the parties involved, adopt such procedures as the provider considers appropriate for conducting the alternative dispute resolution process.

Conclusion and report of alternative dispute resolution

22.—(1) In so far as it is appropriate, on conclusion of the alternative dispute resolution process, the ADR provider must notify the results of the process in writing to—

- (a) the complainant;
- (b) any person who was involved in the matter which is the subject of the complaint; and
- (c) the relevant NHS body.

(2) Each relevant NHS body must require the ADR provider to submit on an annual basis an anonymised report, which will provide a statement of the result of ADR services provided by virtue of direction 19.

PART 6

REVOCATIONS

23. The Patient Rights (Feedback, Comments, Concerns and Complaints) (Scotland) Directions 2012, made on 22 March 2012 and brought into force on 1st April 2012, are revoked.

Elizabeth Sadler

A Member of the Staff of the Scottish Ministers

Planning and Quality Division

Healthcare Quality and Improvement Directorate

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March 2017