Policy Note

THE PATIENT RIGHTS (COMPLAINTS PROCEDURE AND CONSEQUENTIAL PROVISIONS) (SCOTLAND) AMENDMENT REGULATIONS 2016

SSI 2016/401

The above instrument was made in exercise of the powers conferred on the Scottish Ministers by section 15(4) of the Patient Rights (Scotland) Act 2011. The instrument is subject to negative resolution procedure.

Background

The Patient Rights (Scotland) Act 2011 ("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. The Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Regulations 2012 ("the 2012 Regulations") provide more detail about the arrangements required by virtue of section 15(1) and (2) of the Act, and the matters described in section 15(3).

The Scottish Health Council's report 'Listening And Learning: How Feedback, Comments, Concerns and Complaints Can Improve NHS Services in Scotland' was commissioned by the Scottish Government and published in April 2014. It found that all Boards had made progress in respect of the requirements of the Act, but that there was evidence of variation across the country in how complaints were handled. The Scottish Government subsequently agreed the report's recommendation that the Complaints Standards Authority should lead on the development of a more succinctly modelled, standardised and person-centred complaints process for NHS Scotland in collaboration with the public, NHS Boards and the Scottish Health Council.

Policy objectives

The revised NHS complaints procedure is intended to support NHS providers to deliver a consistently person-centred service and to bring a sharper focus to the early, local resolution of complaints wherever appropriate. It will bring the NHS into line with other public service sectors by introducing a distinct, five working day stage for frontline resolution of certain complaints ahead of the 20 working day stage for complaint investigations, and allow for anonymous complaints to be considered, as far as possible, within the procedure.

The proposed changes reflect the broader ambition for the NHS in Scotland to be an open, learning organisation that listens and acts when people provide feedback or complain. They complement the Apologies (Scotland) Act 2016, the Duty of Candour provisions in the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, and the ongoing implementation of a national approach to reviewing and learning from adverse events.

Key elements of the revised procedure are established by amendments made by this instrument to the 2012 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. Complaints 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 is due to 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.

It is also intended to publish revised Directions and issue detailed guidance to support the implementation of this new procedure. The guidance will include an NHS model complaints handling procedure which mirrors those in use in other sectors.

Stakeholder and public engagement

The Scottish Health Council's 'Listening and Learning' review engaged during 2014 with patients and the general public about their knowledge of how to share their experiences with the NHS and their preferences for doing so. The review engaged specifically with groups representing differing interests and experience (listed at

Annex 2 of the report), to ensure diversity among these responding, and with all of Scotland's NHS Boards.

The revised NHS complaints handling procedure has been developed by a Steering Group chaired by the Complaints Standards Authority, which is based within the SPSO, and involving three working groups focused on drafting the procedure, agreeing requirements for recording and reporting, and developing a programme of education and training to support implementation. These groups have included representatives from across NHS Scotland including representatives of NHS territorial boards, the Scottish Health Council, NHS Education for Scotland, NHS National Services Scotland, the National Prison Healthcare Network and the NHS Complaints Personnel Association Scotland (NCPAS). The independent Patient Advice and Support Service (PASS) and Healthcare Improvement Scotland public partners have also been actively involved. Further engagement has taken place throughout the development process with NHS Chief Executives and Nurse Directors, person-centred and complaints leads within NHS Boards, NHS staff and regulatory bodies.

A consultation on the secondary legislation proposed to support implementation of the Patient Rights (Scotland) Act 2011 took place in July 2011 - http://www.gov.scot/Publications/2011/07/21152328/0 and the Scottish Government response was published in December 2011 - http://www.gov.scot/Publications/2011/12/09110025/0

Impact assessments

A Health Inequalities Impact Assessment (HIIA), a Child Rights and Wellbeing Impact Assessment (CRWIA), and a Privacy Impact Assessment (PIA) have been undertaken for this instrument. They are available on the Scottish Government website at http://www.gov.scot/NHScomplaintsimpactassessments .

A HIIA workshop was held at the Thistle Centre in Edinburgh in August 2016, facilitated by NHS Health Scotland. This was a full day workshop involving NHS Equalities Leads from territorial and special Boards, a Healthcare Improvement Scotland Public Partner, and representatives from Alzheimer Scotland, Youth Link Scotland, the Scottish Public Services Ombudsmen, the Health and Social Care Alliance Scotland, Child Poverty Action Group and the Scottish Independent Advocacy Alliance. The Scottish Council on Deafness contributed to the process by email. The workshop considered a wide range of evidence, including national complaints statistics, research findings and good practice guidelines, together with the experience and insights offered by participants. A small sub-group comprising NHS equalities leads, Scottish Government, SPSO and NHS Education for Scotland subsequently met to consider and prioritise actions from the HIIA and CRWIA scoping processes, including a programme of education and awareness-raising events and materials, to be developed by NHS Education for Scotland in collaboration with the SPSO.

The Privacy Impact Assessment has been undertaken for this instrument by the Scottish Government in consultation with the Chair of the Data Recording and Reporting Subgroup.

A Business and Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on the costs of business.

An Environmental Impact Assessment has not been prepared for this instrument as there will be no significant environmental effects from implementing it.

Directorate for Healthcare Quality and Improvement
The Scottish Government

30th November 2016