
DIRECTIONS

NATIONAL HEALTH SERVICE

The Patient Rights (Treatment Time Guarantee) (Scotland) (No.2) Directions 2022

The Scottish Ministers give the following Directions in exercise of the powers conferred by sections 11(2), 25(4) and (5) of the Patient Rights (Scotland) Act 2011(a) and all other powers enabling them to do so.

Citation, commencement and application

1.—(1) These Directions may be cited as the Patient Rights (Treatment Time Guarantee) (Scotland) (No.2) Directions 2022 and come into force on 10 October 2022.

(2) These Directions apply to a patient —

- (a) who is entitled to the Treatment Time Guarantee, and
- (b) whose name is on the Health Board's waiting list on or after 10 October 2022.

Interpretation

2.—(1) In these Directions—

“the 2012 Regulations” means the Patient Rights (Treatment Time Guarantee) (Scotland) Regulations 2012(b) as amended by the Patient Rights (Treatment Time Guarantees) (Scotland) Amendment Regulations 2014(c);

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

“estimated treatment date” means an approximate date or range of dates, which fall after a patient's maximum waiting time has expired, by which a Health Board expects to be able to provide treatment to the patient;

“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 and in the 2012 Regulations.

Monitoring and recording the treatment time guarantee

3.—(1) In pursuance of section 8(4)(a) of the Act, the responsible Health Board must, in relation to each treatment time guarantee, record the following:—

- (a) the date on which the patient agrees to proceed with the agreed treatment;
- (b) the date on which the patient starts to receive the agreed treatment;
- (c) any period of time when:—

(a) 2011 asp 5.
(b) S.S.I. 2012/110.
(c) S.S.I. 2014/93.

- (i) the patient is unavailable for treatment for a known period, including a specified period as per regulation 4(3) of the 2012 Regulations; and
- (ii) the reason for that unavailability,
(noting the start and end date of that period of time and, where appropriate, noting the anticipated date when the patient's condition will be reviewed);
- (d) any period of time that is not to count towards the calculation of waiting time where the circumstances in regulation 4A(1) (specific practitioner and specific location) of the 2012 Regulations apply (noting why it was considered to be reasonable and clinically appropriate to offer an alternative appointment);
- (e) any period of time when the treatment time guarantee is suspended in accordance with a direction or an order made under section 12(2) or (4) of the Act (noting the start and end date of the suspension period);
- (f) any date when the patient contacts the Health Board to cancel an agreed appointment for the agreed treatment (noting whether or not the patient has given the Health Board reasonable notice that he or she will not attend the appointment);
- (g) any date when the patient does not attend an appointment for the agreed treatment and has not given the Health Board reasonable notice that he or she would not attend;
- (h) any date when the patient has refused an offer of an appointment for the agreed treatment;
- (i) any date when responsibility for the agreed treatment transfers to a different Health Board in accordance with regulation 9 of the 2012 Regulations, in which case the new responsible Health Board must also record the details of that transfer and the consequences for the calculation of that patient's treatment time guarantee; and
- (j) any date where the treatment time guarantees ceases to apply to the patient because the patient is indefinitely unavailable within the meaning of regulation 3 of the 2012 Regulations.

(2) A Health Board must provide at each public meeting which it holds, a general report on its compliance with the treatment time guarantee.

Monitoring when patient is unavailable

4.—(1) In circumstances when a treatment has been agreed between a patient and a Health Board, but the patient is unavailable for such treatment, the responsible Health Board must—

- (a) ensure that the availability of the patient for the agreed treatment is reviewed within 12 weeks from the date when the patient was first unavailable for treatment; and
- (b) record the outcome of any such review.

(2) Where a patient is still unavailable for treatment following a review in paragraph (1)(b) above—

- (a) the responsible Health Board must ensure that the availability of the patient for the agreed treatment is reviewed again within 12 weeks from the date of the first review; but
- (b) if, following that second review the patient is still unavailable and there is no indication as to when the patient may become available for treatment, the responsible Health Board must refer the patient back to that patient's referring clinician.

Recording of reasons for waiting time resets and referrals

5.—(1) In circumstances where the responsible Health Board—

- (a) resets the calculation of waiting time to zero pursuant to regulations 5 or 6(2) of the 2012 Regulations; or
- (b) refers a patient back to that patient's referring clinician pursuant to regulation 6(1) of the 2012 Regulations,

the Health Board must record why this was reasonable and clinically appropriate in all the circumstances.

Communications with patients

6. –(1) As part of a Health Board’s obligation to provide patients with clear and accurate information about how waiting time is calculated, a Health Board must ensure that patients are advised in writing when—

- (a) they are eligible for the treatment time guarantee in accordance with regulation 2 of the 2012 Regulations;
- (b) they are unavailable for treatment for a known period in accordance with regulation 4(1)(a), (2) or (3) of the 2012 Regulations (noting the start and end date of that known period and, where appropriate, noting the anticipated date when the patient’s condition will be reviewed);
- (c) a period of time is not to count towards the calculation of waiting time in the circumstances in regulation 4A(1) (specific practitioner and specific location) of the 2012 Regulations; and
- (d) the responsible Health Board is unable to meet the patient’s treatment time guarantee within its own area.

(2) If at any time after a Health Board has written to a patient to advise them that they are eligible for the treatment time guarantee, the Health Board believes it is more likely than not that it will be unable to meet a patient’s treatment time guarantee (whether by providing treatment within its own area or in another area), the Health Board must in writing—

- (a) offer an apology to the patient;
- (b) explain the reason or reasons for the delay to the patient;
- (c) provide the patient with details of an online platform where the patient can access further information about the waiting time at the time of writing for the agreed treatment in the responsible Health Board area;
- (d) provide the patient with a point of contact for advice regarding the waiting time at the time of writing for the agreed treatment in the responsible Health Board area in the event that the patient is unable to access the online platform;
- (e) provide the patient with a point of contact for advice regarding management of their condition pending receipt of the agreed treatment; and
- (f) provide the patient with details of a place or person they should contact in the event that their symptoms or condition worsen before the agreed treatment is received.

(3) If a period of twelve months has passed since the Health Board has written to a patient in accordance with paragraph 6(2) and the patient has not received an estimated treatment date, the Health Board must in writing—

- (a) offer an apology to the patient ;
- (b) explain the reason or reasons for the delay to the patient;
- (c) provide the patient with either an estimated treatment date if this is possible or details of an online platform where the patient can access further information about the waiting time at the time of writing for the agreed treatment in the responsible Health Board area;
- (d) provide the patient with a point of contact for advice regarding the waiting time at the time of writing for the agreed treatment in the responsible Health Board area in the event that the patient is unable to access the online platform;
- (e) provide the patient with a point of contact for advice regarding management of their condition pending receipt of the agreed treatment; and
- (f) provide the patient with details of a place or person that they should contact in the event that their symptoms or condition worsen before the agreed treatment is received.

(4) Letters must be issued to the patient by the Health Board at least every twelve months thereafter containing the information set out in paragraph 6(3) until an estimated treatment date which is a single date has been identified.

(5) Subject to paragraph (6), a Health Board must make all reasonable endeavours to provide the patient with an estimated treatment date which is a single date as soon as the Health Board is able to do so

(6) A Health Board must inform the patient of an estimated treatment date which is a single date not less than 30 days in advance of that proposed single date, unless that treatment date has become available less than 30 days in advance.

7.—(1) This paragraph applies when—

- (a) the patient did not attend an appointment for the agreed treatment and had not given the Health Board reasonable notice that he or she would not attend;
- (b) the patient has refused two or more offers of an appointment for the agreed treatment; or
- (c) the patient has on three or more occasions cancelled an agreed appointment for the agreed treatment; and

pursuant to regulation 6(1) of the 2012 Regulations, the Health Board has accordingly decided to refer the patient back to that patient's referring clinician.

(2) When paragraph 7(1) applies, the Health Board must as soon as reasonably practicable notify the following persons in writing of that decision, and of the consequences of that decision for the calculation of the patient's treatment time guarantee—

- (a) the relevant patient;
- (b) that patient's referring clinician; and
- (c) where appropriate, that patient's carer.

Form of communication

8. Any communication which is required by these Directions to be made to a patient or the patient's carer in writing, may be sent electronically where the patient, or carer as the case may be—

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

Suspension of the treatment time guarantee: form of application

9.—(1) In the event that a Health Board considers that the treatment time guarantee should be suspended in its area in accordance with section 12 of the Act, the person who acts as the chief executive of the Health Board, or an appropriately senior person authorised by the Health Board to act on the chief executive's behalf, must send a request to that effect in writing to the Scottish Ministers.

(2) A request referred to in paragraph (1) above must set out—

- (a) the exceptional circumstances which exist to justify the suspension of the treatment time guarantee; and
- (b) the estimated period of time for which a suspension is considered necessary.

Revocation

10. The Patient Rights (Treatment Time Guarantee) (Scotland) Directions 2022 are revoked.

St Andrew's House,
Edinburgh
6 October 2022

John Burns, Chief Operating Officer NHS Scotland