

**2016 No. 401**

**NATIONAL HEALTH SERVICE**

**The Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Amendment Regulations 2016**

*Made* - - - - - *29th November 2016*

*Laid before the Scottish Parliament* *1st December 2016*

*Coming into force* - - - *1st April 2017*

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

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Amendment Regulations 2016 and come into force on 1st April 2017.

(2) In these Regulations, “the 2012 Regulations” means the Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Regulations 2012(b).

**Amendment of the 2012 Regulations**

2.—(1) The 2012 Regulations are amended as follows.

(2) In regulation 1(2) (interpretation) after the definition of “arrangements” insert—

““feedback and complaints officer” means the officer appointed by a responsible body under regulation 3(1);”.

(3) In regulation 5(1) (period for raising a complaint) for “and” substitute “to”.

(4) In regulation 5(2) delete “(appointed under regulation 3(1))”.

(5) For regulation 6 (requirement to deal with complaints) substitute—

**“Complaints capable of being resolved without investigation**

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

- (a) make a written record of the complaint; and
- (b) seek to resolve the complaint to the satisfaction of the complainant within 5 working days of the date on which the complaint is received.

(2) The period of 5 working days referred to in paragraph (1)(b) may be extended to 10 working days if the feedback and complaints officer considers—

- (a) that the complaint cannot be resolved to the satisfaction of the complainant within 5 working days; and
- (b) that extending the period is likely to result in the complaint being so resolved.

(3) Paragraph (4) applies where—

- (a) the responsible body determines that it will not be possible to resolve the complaint as provided for in paragraph (1)(b) or (2); or
- (b) the responsible body has provided a response to the complainant and the complainant has notified the responsible body, within the period specified in regulation 5(1), or as the case may be, the period extended by virtue of regulation 5(2), that the complainant is not satisfied with the response.

(4) The responsible body must—

- (a) investigate the complaint;
- (b) send the complainant a written acknowledgement of the complaint within 3 working days of the determination or, as the case may be, the notification;
- (c) subject to regulation 6C, send the complainant a report of the investigation within 20 working days of the determination or, as the case may be, the notification.

(5) In this regulation a complaint is taken to be resolved “to the satisfaction of the complainant” if the responsible body has provided a response to the complaint, and the complainant has either—

- (a) indicated that they are satisfied with the response; or
- (b) not responded to the responsible body.

**Complaints requiring investigation**

**6B.**—(1) In dealing with a complaint specified in regulation 6B(2), the responsible body must—

- (a) make a written record of the complaint;
- (b) investigate the complaint;
- (c) send the complainant a written acknowledgement of the complaint within 3 working days of the day on which the complaint is received;
- (d) subject to regulation 6C, send the complainant a written report of the investigation within 20 working days of the day on which the complaint is received.

(2) A complaint is specified if—

- (a) it is a complaint which is not specified in regulation 7(2); and
- (b) the responsible authority considers that it is a serious or complex complaint which is not capable of being resolved without an investigation.

### **Extension of time for investigation**

**6C.** The period of 20 working days referred to in regulations 6A(4)(c) and 6B(1)(d) may be extended if the feedback and complaints officer considers that a longer period is necessary to complete the investigation into the complaint.

### **Modification of procedure for anonymous complaints**

**6D.—**(1) A complaint is an “anonymous complaint” if the complainant does not disclose sufficient information about the complainant’s identity to enable the responsible authority to correspond about, or investigate, the complaint.

(2) If a complaint which is required to be dealt with under regulation 6A or 6B is an anonymous complaint, those regulations apply subject to the following modifications.

(3) A requirement to communicate with or send any information to the complainant only applies to the extent that it is reasonably practicable for the responsible authority to do so.

(4) A requirement to investigate the complaint only applies to the extent that the responsible authority is able to determine the facts and circumstances giving rise to the complaint.”.

(6) Before regulation 7, as a heading, insert “Complaints not to be dealt with under the arrangements”.

(7) In regulation 7(2)—

(a) in sub-paragraph (f), for the words after “complainant”, where it first occurs, to the end substitute “has commenced legal proceedings (whether or not those proceedings have concluded)”;

(b) after sub-paragraph (f) insert—

“(fa) a complaint which in the opinion of the feedback and complaints officer should not be investigated under the arrangements because legal proceedings are likely to be commenced in respect of the complaint;”.

(8) In regulation 7(3) for “regulation 6(1)” substitute “regulation 6A or 6B, as the case may be”.

### **Transitional Provision**

**3.** Where a complaint has been raised before 1st April 2017 the responsible body is to handle the complaint in accordance with arrangements made under the 2012 Regulations as they applied immediately before that date.

St Andrew’s House,  
Edinburgh  
29th November 2016

*SHONA ROBISON*  
A member of the Scottish Government

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make changes to the requirements as to how relevant NHS bodies (Health Boards, Special Health Boards and the Common Services Agency) and service providers to the NHS are to deal with complaints received from, or on behalf of, patients or service users.

Regulation 2 sets out amendments to the Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Regulations 2012 (“the 2012 Regulations”). Paragraph (5) provides for the insertion of revised procedures for investigating different types of complaints. Regulation 6 of the 2012 Regulations is substituted with new provisions setting out a procedure for seeking to resolve a complaint within 5 or 10 days. New Regulation 6A sets out the procedure which applies to complaints which are not serious or complex. If such a complaint is not resolved within 5 or 10 days, the body handling the complaint is to investigate the complaint.

New regulation 6B sets out the procedure for acknowledging and investigating a complaint which is serious or complex.

Where a complaint is to be investigated, new regulations 6A and 6B specify that a report of the investigation is to be provided to the complainant within 20 days. New regulation 6C stipulates that this period may be extended.

New regulation 6D provides that certain requirements of the process for handling complaints are modified as necessary to allow the recording or investigation of a complaint made by a person who has not provided contact details or identifying information – referred to as an “anonymous complaint”.

Regulations 2(6) to (8) make changes to regulation 7 of the 2012 Regulations, which specifies certain complaints which are not to be dealt with under the NHS complaints procedure. In particular, the amendments will introduce a discretion for relevant bodies to investigate a complaint in respect of which the complainant has indicated that they intend to pursue legal action.

Regulation 3 makes transitional provision in respect of complaints which are raised, but not fully investigated, before the date on which these regulations come into force. The procedure under the 2012 Regulations which was applicable immediately before these Regulations came into force will apply to such complaints.

The following impact assessments have been prepared in respect of these Regulations:

- Equality Impact Assessment
- Privacy Impact Assessment
- Child Rights and Wellbeing Impact Assessment

A copy of each of those is available at - <http://www.gov.scot/nhscomplaintsimpactassessments>

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