



August 2012

Dear Colleague

PATIENT RIGHTS (SCOTLAND) ACT 2011 - TREATMENT TIME GUARANTEE GUIDANCE

1. This letter attaches the guidance on the Treatment Time Guarantee which was contained in the Patient Rights (Scotland) Act 2011. The Treatment Time Guarantee comes into effect from 1 October 2012.

2. This guidance is issued by Scottish Ministers to assist Boards to understand the Treatment Time Guarantee. In accordance with section 11 of the Patient Rights (Scotland) Act 2011, Boards must have regard to this guidance.

3. The guidance has been developed following discussions with NHS Board Chief Executives and Waiting Times Executive Leads. It provides more detail on how Boards should implement the Treatment Time Guarantee.

Action

4. Chief Executives must ensure that this letter and the attached guidance are brought to the attention of all appropriate staff. In particular ensure that:

- staff are aware that this guidance must be read in conjunction with the Act and the Regulations and Directions.
- staff are trained to ensure that they fully understand the legislation and guidance and its application.
- that local policy documents on waiting times reflect the requirement of the legislation and guidance.

Yours sincerely

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PATIENT RIGHTS (SCOTLAND) ACT 2011

TREATMENT TIME GUARANTEE GUIDANCE

Introduction

The Legislation

Health Boards have a duty placed on them to deliver the treatment time guarantee under the Patient Rights (Scotland) Act 2011 (the Act). The Act establishes a 12 weeks maximum waiting time for the treatment of all eligible patients who are due to receive planned treatment delivered on an inpatient or day case basis. Eligible patients must start to receive that treatment within 12 weeks of the treatment being agreed.

The Patient Rights (Treatment Time Guarantee) (Scotland) Regulations 2012 (the Regulations) and the Patient Rights (Treatment Time Guarantee) (Scotland) Directions 2012 (the Directions) have been made under the Act.

The Regulations set out who are eligible patients, as well as the treatments and services not covered by the treatment time guarantee. The Regulations also set out the calculation of the treatment time guarantee.

The Directions set out the arrangements for monitoring and recording the treatment time guarantee and the required communications with patients.

Purpose of this Guidance

The Act states under section 11(1)

“Health Boards must, when taking steps to start the treatment of eligible patients, have regard to any guidance issued by the Scottish Ministers which relates to the treatment time guarantee (and in particular, Health Boards’ compliance with it)”

This guidance is issued by the Scottish Ministers (Ministers) to assist Boards in understanding the treatment time guarantee. In accordance with section 11 of the Act, Boards must have regard to this guidance. The guidance will also be helpful to NHS staff involved in the delivery of the treatment time guarantee and in the monitoring and recording of the guarantee.

It is important that this guidance is read in conjunction with the Act, the Regulations and Directions. The Regulations and Directions were issued to the Service under CEL 17 (2012) dated 15 May 2012.

Boards should also refer to the NHSScotland Waiting Time Guidance, issued under CEL 33 which sets out the principles which should be adhered to, along with NHSScotland's National Access Policy and Effective Patient Booking for NHSScotland.

What does the Treatment Time Guarantee mean in practice?

Once a patient has been diagnosed as requiring inpatient or day case treatment and has agreed to that treatment, that patient's treatment must start within 12 weeks of the treatment having been agreed with the Health Board.

Ministers anticipate that the vast majority of patients will agree their treatment at an outpatient consultation; from that date, the Board which agreed the treatment will be required in law to ensure that patients start their treatment within 12 weeks. This means that a patient's waiting time clock will start on the date the patient agrees the treatment and will normally stop on the date that the patient's treatment is undertaken.

Communication with patients and carers is also very important. Each patient must be provided with sufficient information about their treatment to facilitate their informed participation in the decision making process. The Regulations specifically state that Health Boards must provide patients with clear and accurate information about how the waiting time is calculated.

CONTENTS

- 1. Patients covered by the Treatment Time Guarantee**
- 2. Responsibility for the Treatment Time Guarantee**
- 3. Actions to Comply with the Treatment Time Guarantee**
- 4. Calculation of the Treatment Time Guarantee**
 - 4.1 Start Date**
 - 4.2 End Date**
 - 4.3 How will a one-stop service apply in relation to the Treatment Time Guarantee?**
- 5. Periods of Time not to be counted towards the Treatment Time Guarantee**
 - 5.3 Indefinite Unavailability**
 - 5.4 Known Unavailability**
 - 5.4.2 Medical Unavailability**
 - 5.5 Patient Advised Unavailability**
 - 5.6 Specific Treatment Location**
 - 5.7 Named Consultant**
 - 5.8 Visiting Practitioner Service**
- 6. Treatment out of Area**
 - 6.6 Travel Costs**
- 7. Offer of Appointment (reasonable offers including resetting the calculation/ referral back to GP)**
- 8. Resetting the Calculation of Waiting Time/ Referral Back to GP (CNA/DNA)**
 - 8.1 Patient Cancelled (CNA)**
 - 8.2 Patient Did Not Attend (DNA)**
- 9. Exceptions to the Treatment Time Guarantee**
- 10. Breach of Treatment Time Guarantee**
- 11. Transfer to a Different Health Board**
- 12. Communications with Patients**
- 13. Suspension of the Treatment Time Guarantee**

1. Patients covered by Treatment Time Guarantee

1.1 Regulation 2 of the Regulations sets out which patients are eligible for the treatment time guarantee.

1.2 Eligible patients are those who are due to receive planned inpatient or day case treatment; these may be undertaken by, for example, a health care professional who is employed by a Health Board or by any other contracted health care provider on behalf of the NHS.

1.3 In most cases a diagnostic test will not fall under the definition of a 'treatment' in the Act, and as such the treatment time guarantee will not apply to such a test. However, in a small number of cases it may be clinically appropriate to undertake the diagnostic procedure and the treatment at the same time. In such a case the treatment would be covered by the treatment time guarantee, although in fact this would record a zero-wait as agreement to treat would be the same day as the treatment was undertaken.

1.4 Treatments in an outpatient setting are not covered by the treatment time guarantee. Ministers would not expect to see a significant shift of treatments previously performed on a day case basis, being performed on an outpatient basis from 1 October 2012. (The meaning of treatment being delivered on an "inpatient" and "day case" basis is set out in regulation 2(2) of the Regulations).

1.5 For continuity, it is anticipated that any treatment classed as an inpatient or day case on 30 September 2012 will still be recorded as an inpatient or day case from 1 October 2012 and would be covered by the treatment time guarantee. Nevertheless, it is likely that subsequent service redesign and changes to clinical practice may see a shift on how services are delivered over time as clinical practice evolves.

2. Responsibility for the Treatment Time Guarantee

2.1 Responsibility for delivery of the treatment time guarantee will generally rest with the Board whose clinician agrees the treatment with the patient. In agreeing the treatment, the Board (clinician) must ensure that each patient is provided with appropriate information to enable them to fully participate in decisions about their treatment.

2.2 A visiting practitioner service is where a Board commissions another Board to provide a service in the commissioning Health Board's area. This often occurs in remote and rural areas, where services are relatively infrequent. In such a scenario the responsibility for ensuring the treatment time guarantee is delivered rests with the commissioning Health Board. More details about visiting practitioner services are provided in section 5.8

2.3 Where a patient has a treatment time guarantee with a Board and then moves to another (new) Health Board area and they request to be treated in the new Health Board of residence then responsibility for the treatment time guarantee will transfer to the new Board. More details are provided in section 11.

3. Actions To Comply With The Treatment Time Guarantee

3.1 Section 8(3) and (4) of the Act sets out the steps a Board must take to comply with the treatment time guarantee. In particular, section 8(4) (b) states:

A Health Board must take all reasonably practicable steps for "... 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."

3.2 This means that it is for clinicians to prioritise each individual patient's start of treatment based on clinical need whilst ensuring that the treatment time guarantee is delivered for all patients. As now, the urgency accorded to each patient's diagnosis and treatment remains a clinical decision.

4. Calculation of the Treatment Time Guarantee

4.1 **Start Date** – the calculation of the treatment time guarantee will start from the date on which the clinician and patient agree to the treatment. For the vast majority of patients the agreement will be made at an outpatient appointment and this would be recorded as the clock start date for the treatment time guarantee.

4.1.1 However, before the treatment can be agreed, some patients may be required to undergo a diagnostic test. The patient will be contacted about the test result, normally by phone or at a return outpatient

appointment. In such cases, the treatment would be agreed at that time, which would be the start date of the treatment time guarantee.

4.1.2 Should the patient indicate they would like to have time to consider whether to go ahead with the treatment, then the calculation of the treatment time guarantee will not start until the patient agrees to proceed with that treatment. Good practice would be to ascertain from the patient how long they wish to take to consider the treatment and agree a date when the hospital will contact them to discuss this further and agree treatment.

4.1.3 In such circumstances the contact date should be noted and the patient should be contacted on that date. If the patient agrees the treatment at that point, then that is the clock start date for the treatment time guarantee. Should the patient wish for more time to consider the treatment, then good practice would be for a discussion to be held with the appropriate clinician to determine if a further contact date should be agreed, or if the patient should be referred back to the GP (i.e. the referring clinician).

4.1.4 Pre-operative assessment cannot be taken as the date of agreement to treat as the clinician and the patient will have reached agreement to treat prior to this, normally at the outpatient appointment. The pre-operative assessment appointment is intended to ensure that a patient is fit for treatment which has already been agreed, and does not constitute agreeing to treatment. The start date, based on agreement to treat, is clear in legislation and this must be applied at all times.

4.2 End Date – the calculation of waiting time ends on the date on which the patient starts to receive the agreed treatment. Normally the patient will be admitted to hospital on the day of treatment, and the treatment time end point will be recorded as such. This must be within 12 weeks of the date the patient agreed the treatment.

4.2.1 In some circumstances, a patient may be admitted for treatment the day before their actual surgery. Where this occurs in order to start the initial stages of treatment, for example, to administer medication or to clinically prepare the patient, this date should be recorded as the end date (i.e. the start of treatment).

4.2.2 However, if, having been admitted, the treatment has not been completed, for example, the actual surgery is unexpectedly cancelled, then the patient cannot be recorded as having received treatment. The

patient must still undergo that treatment within the 12 week guarantee period. Good practice would be that Boards should, wherever possible, offer treatment dates within approximately 9 weeks (as currently) to safeguard the legal treatment time guarantee in the event of unexpected cancellations.

4.3 How will a one-stop service apply in relation to the Treatment Time Guarantee?

4.3.1 A one-stop service provides a consultation, diagnosis and treatment at one appointment and as such the patient will not agree treatment until they attend the clinic. The date the patient agrees to the treatment and the date of the treatment will be the same, and the patient will have had a zero-wait against the treatment time guarantee.

4.3.2 For the small number of patients who attend a one-stop service and a treatment has been agreed between the patient and the clinician, but the treatment cannot be undertaken on that day, then the date of the clinic will be the clock start date for the treatment time guarantee and treatment must be provided within a maximum of 12 weeks.

5 Periods of time not to be counted towards the Treatment Time Guarantee

5.1 Where a patient is unavailable for treatment, this will have an impact on the calculation of waiting time as per regulations 3 and 4 of the Regulations. There are only two reasons as to why a patient may be unavailable for treatment: medical reasons or patient advised reasons.

5.2 The Regulations refer to both indefinite periods of unavailability and known periods of unavailability.

5.3 “Indefinite unavailability”

5.3.1 Indefinite unavailability is when the likely period of unavailability (whether that be for medical or patient advised reasons) cannot be determined (regulation 3(3) of the Regulations).

5.3.2 In cases when a patient is indefinitely unavailable for treatment before the waiting time clock has started, the waiting time clock will simply not start. An example of this may be where a treatment has been agreed between the patient and the clinician but the patient needs to lose a significant amount of weight (for example 6 stones) before it is

clinically safe to undergo their treatment. This would take some time; however, it will not be possible to determine precisely how long that patient will require to take to lose the necessary weight.

5.3.3 In such a case the patient's treatment time clock would not start. It will depend on the individual circumstance, but in such an example the patient may either be referred back to the care of their GP, or to a weight management clinic to help them reduce their weight. Once that weight has been lost the patient would be referred back to the appropriate clinician for their treatment.

5.3.4 However, a patient may become indefinitely unavailable once the treatment time clock has already started. In such a case the treatment time guarantee clock will stop and the treatment time guarantee cease to apply to that patient.

5.3.5 In either case where a patient is indefinitely unavailable (whether that be before or after the treatment time clock has started), the Board must ensure the availability of the patient for the agreed treatment is reviewed within 12 weeks from the date the patient became indefinitely unavailable for treatment and record the outcome of the review.

5.3.6 If the patient is still indefinitely unavailable following such a review, a second review must be undertaken within 12 weeks of the date of the first review. If, following the second review the patient is still indefinitely unavailable, the Board must refer the patient back to their GP. (Paragraph 4 of the Directions refers.)

5.3.7 If a patient subsequently becomes available during the review periods, then the patient will effectively start a new treatment time guarantee. That is, when a patient is indefinitely unavailable for treatment, the calculation of waiting time either does not start at all (regulation 3(3)(a)), or it stops and the treatment time guarantee ceases to apply to that patient, without prejudice to any future applicability of the guarantee to that patient (regulation 3(3)(b)). Where a patient subsequently becomes available for treatment as above, the start date for the calculation of waiting time will therefore be the date when it is agreed that the patient is available to proceed with the treatment.

5.3.8 In circumstances when a patient is indefinitely unavailable for treatment (whether that is prior to calculation of waiting starting or otherwise), the Board must record this information and note the reason for unavailability. Also, as part of a Health Board's obligation to provide

patients with clear and accurate information about how waiting time is calculated, the Board must write to patients to advise them if they are indefinitely unavailable for treatment (see paragraph 6(b) of the Directions).

5.4 “Known Unavailability”

5.4.1 Regulation 4(1) (a) of the Regulations refers to periods of time when a patient is unavailable for the agreed treatment for a known period (known unavailability). This is effectively a period of time when it is known that the patient would not be in a position to accept an offer of appointment due to “medical” or “patient advised” reasons.

5.4.2 Medical Unavailability – A patient is unavailable for the agreed treatment for a known period because a registered medical practitioner has advised that the patient has another medical condition which prevents the agreed treatment from proceeding for that period of time.

5.4.3 An example would be at the pre-assessment clinic 5 weeks into the treatment time wait the patient has high blood pressure and the clinician determines this will take around 10 weeks to resolve. The patient will be made medically unavailable and their waiting time clock will be paused for that period of time (10 weeks) in accordance with regulation 4(1) (a) (i). If, after that 10 week period, the patient’s blood pressure allows for treatment to go ahead, then the patient’s waiting time will restart from week 5 giving the Board a remaining 7 weeks to deliver the treatment time guarantee.

5.4.4 The start date of the period of unavailability is the date the clinician made the decision that the patient was medically unavailable. This must be recorded. Medical unavailability may only be applied by a clinician or a health professional or nurse working under protocol as part of a consultant lead service.

5.4.5 The end date when the clinician has estimated and thereafter confirmed that the patient is fit to undergo their treatment must also be recorded (see paragraph 3(1) (c) of the Directions).

5.4.5 The Board must also write to the patient informing them of the known period of unavailability that has been applied and how this will affect their treatment time clock (see paragraph 6 (c) of the Directions).

5.5 Patient Advised Unavailability

5.5.1 A patient is unavailable for the agreed treatment for a known period when the patient has advised the Health Board that he or she is unavailable for treatment for that known period of time.

5.5.2 An example of this is the patient is going to be unavailable for a few weeks because they are going on holiday. The start date will be the date when the patient has indicated the period of unavailability will start. The end date will be the date when the patient has indicated the period of unavailability will stop.

5.5.3 Boards are not to estimate a period of patient advised unavailability – the patient should be clearly asked when the period of unavailability should start and end. Good communication is essential here to ensure the patient provides the appropriate information to the hospital.

5.5.4 The Board must also write to the patient informing them of the period of unavailability that has been applied to their treatment time clock and the consequences for the calculation of the patient's treatment time guarantee (see paragraph 6(c) of the Directions).

5.6 Patient Advised Unavailability (specific treatment locations)

5.6.1 The vast majority of patients will receive treatment in accordance with the treatment time guarantee at their local hospital in line with Government policy. However, it is not possible for Boards to provide access locally for all patients and for all services. Boards are, for example, constrained by geography and specialist services. Consequently Boards have agreements in place for other Boards or other providers to provide additional capacity and the Act allows for this.

5.6.2 It is therefore legitimate for a Health Board to meet the treatment time guarantee by arranging for a patient to receive the agreed treatment outside of the Health Board area. In offering any such treatment the Board would be expected to act reasonably. Ministers would also expect that in offering treatment outwith a Health Board area, that Boards take account of the policy of providing and protecting local services as much as possible.

5.6.3 A small number of patients, however, may prefer, rather than to accept an appointment for treatment outwith their Health Board area (within the TTG) to wait locally for treatment even though that may make the waiting time longer than the treatment time guarantee. This would be unusual and we do not expect large numbers of patients to request treatment at a particular location. Accommodating a request for a specific location of treatment cannot be guaranteed in any case.

5.6.4 Where a patient does prefer to wait locally for treatment, resulting in an overall waiting time of more than 12 weeks, then patients may request for a “period of unavailability” to be applied. It must be made clear that this is at the patient's request and that they are fully aware of the consequences of their decision. That is, it is the patient who is choosing to wait longer than 12 weeks in order to receive treatment in a specific location and this cannot be prompted by the Board.

5.6.5 In such circumstances, the treatment time clock must only be paused for the period of the wait over 12 weeks. That is, where a patient advises that they would prefer to wait over 12 weeks so that they may be treated locally (and the next possible appointment date with the local Health Board is known), this effectively amounts to a patient choosing and advising the Health Board that they will be unavailable for treatment for a known period beyond the 12 week maximum waiting time.

For example, at the time of agreeing treatment the patient advises they would prefer to wait 18 weeks to be treated locally, in such a case the period of patient unavailability will be 6 weeks: the difference between the actual wait and the 12 week treatment time guarantee. This ensures that the patient will receive their treatment within the period they have agreed with the Board.

5.6.6 Good practice is for Boards to specify how long the waiting time will be locally in such cases. In circumstances where a Health Board does not know when it will be able to offer an appointment in the specific treatment location, patients should be discouraged from choosing to wait for an indefinite period of time in order to receive treatment in a specific location. Health Boards should certainly not encourage patients to request a period of ‘indefinite unavailability’ in such circumstances.

5.6.7 Boards must write to the patient and confirm the period of patient advised unavailability (see paragraph 6 of the Directions). Good practice would be for Boards to also note the reason for that unavailability.

5.7 Patient Advised Unavailability (named consultant).

5.7.1 Policy across the NHS in Scotland is to have patients booked to a clinical team rather than referred to an individual consultant. However, a small number of patients may wish to request a named consultant even though that may make the waiting time longer than the treatment time guarantee. This would be unusual. Ministers do not anticipate that large number of patients will request a named consultant. Clearly this may

pose capacity issues, particularly if the named consultant is already booked to the maximum of the treatment time guarantee. Accommodating a request for a specific named consultant cannot be guaranteed in any case.

5.7.2 Nevertheless, some patients may wish to decline (at their own request) an offer of treatment within the treatment time guarantee, carried out by an alternative/unspecified consultant and prefer to wait to receive treatment by their named consultant.

5.7.3 Similar to what is said above about 'specific treatment locations', where a patient would prefer to wait for treatment with a named consultant, rather than receive treatment by another consultant within the treatment time guarantee, the patient may choose to request a period of "unavailability". It must be clear that this is at the patient's request and the patient must be made aware of the consequences of such a request on the calculation of their waiting time. It is the patient who is choosing to wait longer than 12 weeks in order to receive treatment by a named consultant and this cannot be prompted by the Board.

5.7.4 In such circumstances, the treatment time clock must only be paused for the period of the wait over 12 weeks. That is, where a patient advises that they would prefer to wait over 12 weeks so that they may be treated by a named consultant (and the next possible appointment date with the named consultant is known), this effectively amounts to a patient choosing and advising the Health Board that they will be unavailable for treatment for a known period beyond the 12 week maximum waiting time.

5.7.5 For example, at the time of agreeing treatment the patient advises they would prefer to wait 18 weeks to be treated by a named consultant, in such a case the period of patient unavailability will be 6 weeks: the difference between the actual wait and the treatment time guarantee. This ensures that the patient will receive their treatment within the period they have agreed with the Board.

5.7.6 Good practice is for Boards to specify how long the waiting time will be for the named consultant in such cases. In circumstances where a Health Board does not know when it will be able to offer an appointment with their named consultant, patients should be discouraged from choosing to wait for an indefinite period of time in order to receive treatment. Health Boards should certainly not

encourage patients to request a period of 'indefinite unavailability' in such circumstances.

5.7.7 Boards must write to the patient and confirm the period of patient advised unavailability (see paragraph 6 of the Directions). Good practice would be for Boards to also note the reason for that unavailability.

5.8 Visiting Practitioner Service

5.8.1 A visiting practitioner service is a service where one Board (the original Health Board) has an arrangement with another Board (the Commissioning Health Board) to provide a service in the commissioning Health Board's area. This often occurs in remote and rural areas, where services are relatively infrequent.

5.8.2 Regulation 4(2) (3) and (4) of the Regulations sets out how waiting time is to be calculated in the context of a visiting practitioner service. If a visiting practitioner service cannot be provided in the Commissioning Health Board area due to severe weather that prevents the visiting consultant (from the original Health Board) from travelling to the commissioning Health Board area, then the patient must be offered an appointment outwith the commissioning Health Board area within the treatment time guarantee (i.e. meaning in practice that the patient would have to travel for such an appointment).

5.8.3 However, if the patient decides, rather than to attend an appointment for the agreed treatment outwith the commissioning Health Board area, to wait until the next scheduled visiting practitioner service – then the period from the date the commissioning Health Board is made aware of the patient's decision to wait to the date of the next scheduled visiting practitioner service will not count towards the calculation of the treatment time guarantee.

5.8.4 The Board must write to the patient confirming the period of unavailability (see paragraph 6 of the Directions).

5.8.5 Ministers would also expect that, in offering treatment outwith a Health Board area, that Boards take account of the policy of providing and protecting local services as much as possible.

6. Treatment Out of Area

6.1 Section 8(4)(c) of the Act sets out further steps the Board must take to ensure the treatment time guarantee is delivered for each individual patient. This may be local or out of area. That is, if a Board is unable to deliver the treatment time guarantee within its own area, arrangements must be made to deliver the treatment through another Health Board or a suitable alternative provider (as specified in each Board's Local Access Policy).

6.2 Ministers' policy is that most services should be delivered as locally as possible for patients. However, it may not always be possible for Boards to provide access locally for all patients and for all services (due to constraints such as geography and specialist services and capacity in some Boards). Consequently Boards have agreements in place for other Boards or other providers to provide additional services outwith the Board area – the Act allows for this.

6.3 Each Board should clearly set out in their Local Access Policy the locations where treatment may reasonably be undertaken (including planned capacity outwith the Board area, and in some instances the private sector). However in offering treatment outwith the local Board area Ministers would expect Boards to act reasonably and to ensure that they remain patient centred.

6.4 It is important that patients are advised as early as possible of the likely need to travel for treatment, preferably at the time the treatment is agreed. Clear and unbiased communication in this area is important. Boards should ensure a standardised process for communicating with patients, such as the use of a written script for all staff contacting patients about an out of area treatment. This should also include making the patient aware of the consequences of not accepting the appointment offered.

6.5 Ministers would also expect that in offering treatment outwith a Board area, Health Boards would pay due care and attention to the policy of providing and protecting local services as much as possible.

6.6 Travel Costs

6.6.1 Regulation 8(3) sets out that where a patient is treated outside of the Board area, in accordance with regulation 8(1), the responsible Health Board, subject to any agreement which that Health Board has with another Board / the alternative provider, is responsible for the cost of any transport and accommodation arrangements necessarily and reasonably incurred by the patient. Clarification of what a Board considers is necessarily and reasonably incurred should be set out in each Board's Local Access Policy.

6.6.2 By way of examples:

- If a patient's travel cost to a hospital in a neighbouring Health Board is less than the patient would have incurred if their treatment had been undertaken in their local Health Board, it is likely that this would not be considered a "cost reasonably incurred".
- If a patient's travel cost is more than the patient would have incurred had the treatment been undertaken at the local Health Board, it is likely that this will be considered a "cost reasonably incurred."

7 Offer of Appointment (Reasonable Offer) - Resetting the Calculation of Waiting Time/Referral Back to GP Referral Back to GP

7.1 Regulation 6(1) and (2) set out the action the Board may take if a patient refuses two or more offers of an appointment for the agreed treatment: These are:

- refer the patient back to their GP or referring clinician where it is reasonable and clinically appropriated, or
- where it is not reasonable or clinically appropriate to refer the patient back to their GP or referring clinician, reset the treatment time clock to zero, unless that would not be reasonable or clinically appropriate.

7.2 In deciding whether action under regulation 6(1) or (2) would be 'reasonable', Health Boards should have regard to the position that Ministers do not anticipate that it would generally be considered reasonable to take such action in circumstances where the appointment dates offered to the patient (and subsequently rejected) were not

'reasonable offers' of an appointment. The following paragraphs offer guidance as to what would be considered a reasonable offer of appointment.

7.3 As a guide, a reasonable offer of appointment is the offer of two or more appointments, each with a minimum of seven days notice from the date the offer is made to the date of appointment for treatment. Therefore, if a Health Board offers an appointment to a patient with less than seven days notice from the date the offer is made to the date of appointment for treatment, and a patient refuses two or more such appointments, it would not be considered reasonable for a Health Board to refer a patient back or reset the clock in accordance with regulation 6 in such circumstances.

7.4 Short notice appointment dates (i.e. those offered with less than 7 days notice) can be offered. If the patient accepts such an offer, then this would be deemed to be a reasonable offer of appointment. However if the patient declines such a short notice offer, it would not be considered reasonable for such a patient to be disadvantaged in terms of the calculation of that patient's treatment time guarantee.

7.5 When making a 'reasonable' offer it is good practice for:

- Appointment offers to be made as soon as possible after the patient agrees treatment, and ideally at least fourteen days before the proposed treatment date. (As above, the minimum period of notice for what is considered a 'reasonable offer' of appointment is 7 days).
- Boards to ensure that patient additional needs are taken into account and that appropriate support is put in place as required when offering an appointment date.

7.6 In offering appointment dates by letter, ideally (as a matter of good practice) the patient should receive the letter at least fourteen days prior and as a minimum seven days to the appointment date. The letter should be in a format appropriate to the patient's needs and should clearly set out details of how the patient can request an alternative date and a reasonable timescale to do so.

7.7 An offer of treatment beyond the 12 weeks treatment time guarantee will be a breach of the treatment time guarantee. If a Board

breaches the treatment time guarantee then section 10 of the Act will apply.

7.8 If a patient refuses a reasonable offer of appointment as set out in the Local Access Policy, the Board should ensure that the patient understands the implications of this and, in particular, the implications of refusing the reasonable offer of an appointment.

7.9 In accordance with regulation 10 of the Regulations, Health Boards must inform patients of the consequences of refusing such offers of appointment. Also, if a patient is referred back to their GP as per regulation 6(1) of the Regulations, the Board must write to the patient, the patient's referring clinician and, where appropriate the patient's carer to inform them of this. (See paragraphs 7 and 8 of the Directions regarding communication with patient).

7.10 It is important that the date the patient declined the reasonable offer is recorded and the actions taken i.e. refer back to GP or reset waiting time clock to zero. The reset to zero treatment time clock will start on the date the patient declines the offer.

8 Resetting the Calculation of Waiting Time/ Referral Back to GP (CNA/ DNA)

8.1 Patient Cancellation

8.1.1 Patient cancellation of appointment - this is referred to in regulation 5(a) of the Regulations.

8.1.2 If a patient has accepted an offer of appointment but then gives the hospital reasonable notice that they will be unable to attend that appointment (CNA), the Health Board may reset that patient's treatment time clock to zero, where it is reasonable and clinically appropriate to do so.

8.1.3 However, it is important to note that Health Boards are not required to reset the clock to zero in such circumstances. For example, should a patient requiring urgent treatment cancel an agreed appointment with a Health Board (giving reasonable notice to the Health Board), it is unlikely that it would be considered reasonable and clinically appropriate for the Board to reset the treatment time clock to zero. Generally, in such circumstances, it is likely that the Health Board would be expected to

offer another appointment to the patient within the treatment time guarantee without resetting the clock to zero.

8.1.4 If the patient cancels an agreed appointment (CNA) for the third time then the patient would normally be referred back to their GP in accordance with regulation 6(1)(c), as long as it is reasonable and clinically appropriate for the Health Board to do so. If it is not reasonable or clinically appropriate then the clock may be reset to zero once again in accordance with regulation 6(2) where this would be reasonable and clinically appropriate.

8.1.5 The resetting of the clock date must be the date the patient advised they were cancelling their agreed appointment. If the patient is to be referred back to their GP, the clinical advice must be sought to ensure it is appropriately and clinically reasonable to do so. The date of the decision to refer the patient back to their GP must be recorded. (See paragraph 3(e) of the Directions).

8.2 Patient “did not attend” (DNA)

8.2.1 Regulation 6(1)(a) of the Regulations sets out that if a patient “did not attend” an agreed appointment and has not given the Board reasonable notice of this, then the Board may refer the patient back to their GP/referring clinician and the treatment time guarantee will cease to apply, where this is reasonable and clinically appropriate. However, if, is deemed unreasonable or clinically inappropriate to refer the patient back to their GP then the treatment time clock may be reset to zero in accordance with regulation 6(2). Ministers would not expect to see multiple re-settings of the clock if a patient continually DNAs their appointment.

8.2.2 The date of the patient’s non attendance must be recorded. If the patient is being referred back their GP, the Board must record why this was reasonable and clinically appropriate. (See paragraph 3(f) and 5(b) of Directions).

8.6.3 Boards must write to the patient and their GP (and carer if appropriate) advising of their decision and the consequence of that decision on the treatment time guarantee (see paragraph 7 of the Directions).

9. Exceptions to the Treatment Time Guarantee

9.1 Exceptions to the Treatment Time Guarantee are set out in regulation 7 of the Regulations. These are

- assisted reproduction
- obstetrics services
- organ, tissue or cell transplantation whether from living or deceased donor
- designated national specialist services for surgical intervention of spinal scoliosis
- the treatment of injuries, deformities or disease of the spine by an injection or surgical intervention

9.2 The latter exception around spinal treatment is intended to be a temporary exclusion for a period of one year, and will be removed from the list of exceptions from 1 October 2013. This means Boards should now be working to ensure that there is the necessary capacity to deliver the treatment time guarantee for patients who require such planned inpatient and day case spinal treatment from 1 October 2013.

9.3 It is also intended to review the designated national scoliosis service with the aim of bringing it within the treatment time guarantee at a later date.

9.4 The above are the only exceptions to the treatment time guarantee - any other planned inpatient or day case treatment is covered by the treatment time guarantee. This means that treatments in mental health services and also in primary care will be covered by the guarantee where this treatment is planned and delivered on an inpatient or day case basis. (Scottish Government Health Directorate are currently working to determine the numbers and reporting arrangements for mental health services and services undertaken in primary care).

10 Breach of the Treatment Time Guarantee

10.1 Section 10 of the Act sets out the action a Health Board must take when it has breached the treatment time guarantee. In a service which admits around half a million patients a year for inpatient and day case treatment Ministers recognise that there is likely to be the occasional administrative error.

10.2 The Board must ensure that if it breaches the guarantee, then the relevant patient is offered the next available appointment having regard to the patient's availability and other relevant factors. In arranging the next available appointment the Health Board must not prioritise the start of the patient's treatment if that would be detrimental to another patient with a greater clinical need for treatment.

10.3 It is also important that the patient is provided an explanation of why the Board did not deliver the treatment time guarantee and this is set out in the Act. The Board is also required by the Act to provide the patient with details of the advice and support available including the Patient Advice and Support Service and on how to give feedback or raise a complaint.

11. Transfer to a Different Health Board

11.1 When a patient whose waiting time clock has already started, changes their ordinary residence to another Health Board area and that patient requests to be treated within that other Health Board area (i.e. the Board of their new residence) the new responsible Health Board may reset the calculation of waiting time to zero where that is reasonable and clinically appropriate. (See regulation 9 of the Regulations).

11.2 In such a case both Boards must record the date when responsibility transferred to the new Health Board (see paragraph 3(1) (h) of the Directions). The responsibility for the treatment time guarantee will cease for the original Board.

11.3 Normally the clock would be reset to zero in circumstances when the responsibility for a treatment time guarantee transfers to a different Health Board, albeit that that would be within the new responsible Health Board's discretion (regulation 5(b)). In practice, whilst the treatment for such a patient has already been agreed by the original Health Board in such a case, it is likely that the clinician in the new Health Board will consider it clinically appropriate to see the patient for him/herself before making arrangements for the delivery of the treatment.

11.4 In such circumstances, the clinician in the new Board may consider that the previously agreed treatment is not clinically necessary, in which case the treatment time guarantee will cease to apply to that patient.

11.5 The new responsible Health Board must ensure that the patient is provided with clear and accurate information as to the consequences of requesting to be treated in a different Health Board in terms of the calculation of their treatment time guarantee. In terms of good practice, the new Board should then write to the patient and advise them of the impact of the change of Health Board in relation to the calculation of the treatment time guarantee.

12. Communications with Patients

12.1 It is very important that patients are provided with such information and support as is necessary to enable them to participate in the decision-making process around their health and wellbeing.

12.2 Details around communications with patients in relation to the treatment time guarantee are set out in regulation 10 of the Regulations and paragraphs 6 to 8 of the Directions. Regulation 10 states that Boards must provide patients with clear and accurate information about how the waiting time is calculated and the consequences of certain actions on the calculation of waiting time. For example, the consequences on waiting for failing to attend an agreed appointment without giving the Board reasonable notice (DNA), being unavailable for treatment (whether for medical or patient advised reasons), cancelling agreed appointments or refusing to accept two or more offers of appointment for the agreed treatment.

12.3 The Directions set out what Boards must do to ensure that patients are provided with clear and accurate information in relation to the treatment time guarantee. For example the Board must advise in writing when a patient is eligible for the treatment time guarantee, or if they have periods of unavailability applied (more details are provided in paragraphs 6 and 7 of the Directions). Direction 8 of the Directions details the form of communication required to comply with the treatment time guarantee. Good communication with patients is essential.

13 Suspensions of the treatment time guarantee

13.1 A suspension will only be granted in very **exceptional circumstances**. (Section 12 of the Act refers).

13.2 Paragraph 9 of the Directions sets out the form of application for suspension of the treatment time guarantee. In applying it must be noted that a Direction from Scottish Ministers can only be authorised for

a suspension period up to 30 days. A longer period will require an order to be placed in the Scottish Parliament and will require its approval.

13.3 The Health Directorate are currently working on the process for handling such requests: further advice will be provided in due course. Paragraph 9 of the Directions sets out what information a Health Board must provide when seeking a suspension.