



Response to:

**Applications to provide NHS Pharmaceutical
Services -
Review of the
Control of Entry Arrangements**

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Response from Community Pharmacy Scotland

Community Pharmacy Scotland (formerly known as the Scottish Pharmaceutical General Council) is the body recognised to represent Scotland's 1218 community pharmacy contractors. It negotiates on their behalf with the Scottish Government on all matters affecting terms of service and remuneration for contractors' NHS work.

Our prime focus in recent years has been the development of a new contract for pharmacy contractors, one which will call for the delivery of new services, potentially in novel ways, but continuing to place emphasis on the opportunity which community pharmacy offers in terms of access for patients to healthcare services throughout Scotland.

We welcome the opportunity to respond to this review of the current control of entry arrangements. In line with our response to the initial scoping exercise we take the view that the current legislation is, in general, fit for purpose but there is a need to tidy up some anomalies and to ensure that the procedures are followed in a rigorous and consistent manner.

We have no objection to our comments being made freely available.

Review of the Control of Entry Arrangements – Consultation Response Form

Volume of applications/repeat applications (paras 32-40)

37. Views are invited on these issues/ proposals. Do you believe that an NHS Board should be able to consider applications at a first stage and decide whether or not a full PPC is required or whether they can decide that current provision is adequate?

Community Pharmacy Scotland takes the view that it should be possible for the NHS Board via its PPC to take a decision without the need to proceed to a full hearing, except in those areas where a service was previously provided by a dispensing doctor. The current NHS regulations already provide for that within Schedule 3 where it states that "The Board may in accordance with this Schedule, determine any application in such manner as it thinks fit and may, if it considers that oral representations are unnecessary, determine the application without hearing any oral representations".

In order for this to be effective, SG will need to follow up on its intention to issue guidance on how the application should be considered, perhaps stating the need to take into consideration the point made at paragraph 38, and for the PPC to then provide a written response on why the decision was taken. The first stage should only apply where the application is considered to be frivolous.

It should also be restated clearly that a full hearing and/or site visit is not always required and that there should therefore be no automatic NAP Appeal Hearing in the event that a NHS Board took the view that a full hearing was not required.

In future it should be possible for a meeting of the PPC to have separate sessions where applications are considered in a closed session e.g. an application for a pharmacy in an area where repeated applications have been made and no significant change has been demonstrated, and then an open session for other applications.

38. Whether or not a first stage is introduced, Scottish Government proposes to introduce an amendment which would allow NHS Boards to consider applications and/ or appeals which have already been rejected in a specified time period as a relevant factor when considering the question of adequate provision. Do you agree with this proposal?

39. Do you agree that 12 months is an acceptable length of time (since a previous application was rejected/ failed at appeal) prior to which an applicant would be asked to establish that a significant change in the area/ neighbourhood had occurred?

We have chosen to address these two issues together. Community Pharmacy Scotland is in agreement that it should be possible for the NHS Board to take into account the previous history of applications in the area.

Our view then is that a new application for a pharmacy where a previous application was rejected/failed at appeal, should not be considered for a period of 12 months unless, in that interim period, the

applicant is able to demonstrate that there has been a change in relation to the factors which led to the rejection of the previous application.

Our reason for suggesting this is that we have concerns that it would be difficult for the PPC to determine what constitutes a significant change and that could open up the possibility of a judicial challenge. Where an applicant could demonstrate that there has been a significant change in the neighbourhood or for example that he/she has managed to secure alternative premises and the initial application was rejected because of the nature of the premises then a further application should be considered within the timeframe.

40. Scottish Government proposes an amendment to require Boards to consider their Pharmaceutical Care Services Plans as part of their consideration as to the adequacy of current NHS pharmaceutical services in an area. Do you agree with this proposal?

Community Pharmacy Scotland supports this proposed amendment subject to the proviso that existing plans should be updated by a set date and that there should be an obligation on the Board to revise them regularly. The Plan should be used to inform the decision taken not to determine it.

Relocations (para 41-45)

43. The Scottish Government proposes to alter the Regulations such that they refer to “no significant affect” and thus allowing room for Health Boards to consider this freedom in more circumstances. Do you agree with this proposal?

The question is misleading in that it does not specify that the proposed alteration relates only to the consideration of applications for minor relocations whereas the text in Paras 41-42 is more specific.

Community Pharmacy Scotland is supportive of this proposal in relation to applications for minor relocations within the existing neighbourhood only. Any application for a relocation which will have a significant effect must be subject to the necessary or desirability test as a relocation and not as an additional new contract.

45. Scottish Government proposes to alter the Regulations such that where a minor relocation is approved, the existing entry on the pharmaceutical list will be amended, rather than result in a new entry. Do you agree with this proposal?

Community Pharmacy Scotland supports the proposal to amend the existing entry on the pharmaceutical list when a minor relocation is granted.

The question does not however address what is to happen in relation to an application for a new contract involving a relocation of premises where either:

- a) the applicant has not provided reasons as to why the proposed relocation is minor or
- b) the Board has decided that the application will have an appreciable effect.

If the application is not for a minor relocation, but is in an existing neighbourhood and it is perceived that there will be a significant effect on other community pharmacies within the neighbourhood, then the

current procedure at the NAP is to treat is as a new application and assume that a new contract will be added in to the mix. Where the applicant has stated the intention to relocate then that is not the same as a new application. The application should be subject to the “necessary or desirable test” but when considering the adequacy of provision the aim should be to look at that in the context of where the new (relocated) premises will be, and the adequacy of the services left behind by the relocation, i.e. the pharmacy relocation should be treated as if the old site will close.

If such an application were then to be granted, the existing set of premises would be removed from the NHS Board list and a new entry made for the successful applicant.

Notice of a pharmacy application (paras 46-49)

47. The Scottish Government proposes to alter the Regulations to ensure that dispensing GPs are informed of an application in the locality where they operate, and b) ensure that CHPs are informed of applications.

Community Pharmacy Scotland is supportive of the proposal to alter the Regulations to ensure that dispensing doctors are informed, as a courtesy, of an application in the locality where they operate. Dispensing doctors are not however interested parties and do not have a right to make representations. The reason for this is that they do not provide pharmaceutical services as set out in the Regulations. The Area Medical Committee has the right to make representations.

Community Pharmacy Scotland does not support the proposal to amend the regulations to ensure that CHPs are informed of applications. The CHP is there to provide a function on behalf of the NHS Board and it should not be necessary to specifically state in regulations that it should be informed of applications. The NHS board should determine its own procedures for disseminating information.

49. The Scottish Government will continue to consider [public consultation arrangements] and whether any other changes are necessary in the future. Your comments are welcomed on the issue of public consultation. (Para 48 refers)

Community Pharmacy Scotland recognises the need for public consultation as part of the information gathering process. However the results of that consultation should then be measured against the regulations for validity. Our impression is that public opinion tends to support all pharmacy applications based on convenience, regardless of necessity or desirability, except in cases where a campaign is launched against them, e.g. because the provision of treatment for addicts is not wanted or because of a perceived threat to other services (GP services from a dispensing GP). Neither of these objections is valid in considering whether a pharmacy application is necessary to secure adequacy of pharmaceutical services.

It seems to us that when public consultation is carried out more guidance must be provided on the areas to be covered in the process and a brief synopsis given of current contractual arrangements for community pharmacy. The provision of information such as gathered for the Pharmaceutical Care Services plan could be useful in this arena.

Membership of PPCs (paras 50-54)

53. The Scottish Government therefore intends to remove the need for PPC nominations to be sought from specified bodies/ contractor groups. Rather, we intend to alter the Regulations such that a pool of PPC nominations is populated by Boards. Do you agree with this proposal?

In our response to the scoping exercise we did not see a problem with the make-up of the PPC, which consists of a mix of professional, contractual and lay interests, but we suggested that training/support was needed to keep members up to date. The question leads us to believe that some confusion seems to exist over the make-up of the PPC as opposed to the NAP.

Currently the make-up of the PPC is laid down in Paragraph 3 of Schedule 4, Part I to the NHS (Pharmaceutical Services) (Scotland) Regulations 2009. There are 3 pharmacist members, only one of whom has voting rights.

For the 2 pharmacist members who do not have voting rights the NHS Board seeks nominations from its subcommittee, the Area Pharmaceutical Committee (APC), **which is constituted to offer advice to the Board on pharmaceutical matters**. These pharmacist members must be either a person whose name is included on the pharmaceutical list or an employee of a person whose name is so listed. We do not understand the need to break that link. These contractor representatives nominated by the APC provide useful local knowledge but do not have voting rights.

When the regulations were originally drawn up RPSGB, as the professional and regulatory body for all pharmacists, was asked to nominate pharmacists for membership. These pharmacists are neither included in the pharmaceutical list nor an employee of a person whose name is so listed. These pharmacists do have voting rights. The problem which now exists is that RPSGB is about to hand over its regulatory function to the General Pharmaceutical Council and its future as a professional leadership body is uncertain. For that reason we support the removal of the statutory need to seek nominations from RPSGB. We need to explore alternative ways to find non contractor nominees.

We feel there needs to be greater clarity on the purpose of this question. Does SG propose to:

- retain the current provisions within the Regulations for the make-up and voting rights of the PPC and amend solely the need to seek nominations for the pharmacist members?
- or does it wish to consider the voting rights of all members?

54. Likewise a question was raised as to the necessity of the specific provision which requires that lay members must not be (or have been) health professionals. Indeed, it has been suggested that representation of another health profession could offer a helpful and complementary view of the decision being made. Comments are sought on this issue.

We do not agree that representation of another health professional could offer a helpful and complementary view. We believe it is correct to exclude potential members where there is even a

remote chance of bias or perceived bias. It would also be unreasonable to include other health professionals in the decision making process for the award of pharmacy contracts if there are not similar provisions in place when other healthcare provision is discussed.

The best candidates must be appointed, trained appropriately and their performance assessed to ensure that they are capable of dealing with the sometimes complex issues raised.

As mentioned in our response to Q.49 the concern is the lay members do not have an adequate grasp of the implications, both financial and local, from granting 'desirable' contracts.

The statutory test – “necessary or desirable” and related PPC processes (paras 55-56)

56. The Scottish Government will consider what guidance can be provided in light of responses to this consultation. We will also continue to explore those other related issues including training needs for PPC members and discuss this with Boards in due course. Comments are welcome.

The training of PPC members is fundamental to ensure that the decision-making process happens in an equitable and balanced way across Scotland. The need to explain how the statutory test of “necessary and desirable” is applied is paramount to every decision taken by the PPC.

We would strongly suggest that training should be compulsory for all PPC and NAP members and where that training has not been attended then those members should no longer be eligible to sit on a PPC.

Appeals process – the National Appeals Panel (NAP) (paras 57-65)

59. The Scottish Government proposes to strengthen the appeal process such that it can divert more applications back to the Board and, for example, request that they remedy any procedural issues. Do you agree with this proposal?

Community Pharmacy Scotland would support moves to strengthen the appeal process. The NAP should be able to refer applications back to the Board, include a summary of any procedural issues and a request that the PPC, as an independent committee of the Board, reconsider the application. This would also serve to highlight if problems were arising in any area.

This procedure would also clearly demonstrate to PPCs the need for a clear written summary of the proceedings, the decision reached and the factors which were taken into account. The emphasis would be firmly placed on the need for the PPC to ensure correct procedures at all times.

62. The Scottish Government proposes a change to the Regulations which would result in only the applicant themselves having a right to appeal the decision of the Health Board/PPC in relation to their own application. Do you agree with this proposal?

Community Pharmacy Scotland does not support this proposal. All interested parties should retain the right of appeal where a poor decision has been made by the PPC. It remains to be seen whether the

provision of guidance and training for PPC members improves the decision making process and as a consequence leads to a reduction in the number of appeals.

65. The Scottish Government proposes an amendment requiring the NAP to hear representation from affected Boards at NAP hearings. Do you agree with this proposal?

Community Pharmacy Scotland does not agree with this proposal. Paragraph 64 of the consultation document comments on the suggestions received as part of the scoping exercise that a representative of the involved Health Board/PPC could be asked to provide evidence in any subsequent NAP hearing. We do not have an objection to a representative being present to provide clarity on the matters discussed at the PPC. That is a separate issue from representation. The NAP should carry out an "independent review" of the case and there should be no opportunity for the Board to introduce bias into the decision making process.

Membership of the National Appeal Panel (NAP) (paras 66-69)

68. The Scottish Government proposes to alter the composition of the NAP. We are minded to do this with a view to reducing the number of members and with a view to removing the need to seek nominations from individual organisations. Likewise, we are keen to explore the potential of the membership including wider representation, although the consideration will need to remain in relation to NHS pharmaceutical services. We would be keen to hear views on these proposals.

Community Pharmacy Scotland sees it as important that the NAP retains a membership composition which will demonstrate the same wide knowledge and understanding of contractual arrangements as currently exists. Both professional and lay representation is required, and the balance between voting and non-voting professionals should be retained. The current provisions ensure that the lay members outbalance the voting professionals.

Community Pharmacy Scotland is willing to look at proposals for securing pharmacist representation on the NAP through the use of a pool of pharmacists nominated by the NHS Board. There will however have to be clear criteria which these pharmacists must meet and they must be capable of delivering the same level and knowledge of contractual arrangements. In addition the distinction between pharmacists who have voting rights and those who do not must be clearly defined.

In our view the number sitting at anyone time is not too large and ensures input from a wide variety of viewpoints. What is important is that all members are well trained and aware of the regulations. While having some sympathy with the concept of reduction in the number of members in line with other tribunals, it is possible that the measures being proposed elsewhere will lessen the need for the holding of Appeals.

In our response to the question at paragraph 54 we rejected the suggestion that the restriction on lay members not being or ever having been a health professional should be removed. We do not want to see any bias introduced into proceedings. In any event it would be iniquitous to incorporate this provision into the NHS Pharmaceutical Services Regulations without similar changes being made across regulations affecting all decisions on the siting of healthcare provision.