

**Applications to provide NHS Pharmaceutical Services**

**Review of the Control of  
Entry Arrangements -  
Summary Report**



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## **Review of the Control of Entry Arrangements - Summary Report**

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## CONSULTATION SUMMARY REPORT

### Background

1. Following a range of comments and concerns, the Scottish Government announced in 2009 that there would be a review of the Control of Entry arrangements for entry to the Pharmaceutical List. This review considered whether any changes were necessary to ensure they remained fit for purpose. The review began in June 2009 with a series of meetings between the Scottish Government Health Directorate officials and a number of NHS Boards as well as Community Pharmacy Scotland (CPS). Discussions also took place with other organisations including the Royal Pharmaceutical Society of Great Britain (RPSGB) and the Scottish General Practice Committee (SGPC) of the British Medical Association (BMA). The Scottish Government subsequently wrote to all NHS Boards and a variety of organisations seeking initial views.
2. This work informed the development of a consultation paper, *Applications to provide NHS Pharmaceutical Services - Review of the Control of Entry Arrangements*, published by the Scottish Government on 22 March 2010 considering a number of issues relating to these arrangements. This report summarises the comments received during the consultation process and provides the Scottish Government's response. Some of the issues raised and approaches suggested went wider than the scope of the current Regulations and review. This is picked up below in paragraph 10.

### Responses

3. A total of 142 responses were received to the consultation. A list of respondents is attached as **Annex A**. 16 respondents asked for their responses to be published, but to remain anonymous. 14 respondents asked for their responses not to be published, and 6 respondents did not return a Respondent Information Form confirming their wishes, or completed the form incorrectly; their responses have not been published. Where respondents have agreed to the publication of their response, they are published online on the Scottish Government website at: [www.scotland.gov.uk/Publications/2010/07/12155630/0](http://www.scotland.gov.uk/Publications/2010/07/12155630/0).
4. The responses can be broken down into the following categories:-

Responses by group	No.
NHS Boards/ CHPs/ LAs	18
GPs/ AMCs/ GP interests	36
Individuals/ patients/ patient interests/ community councils	58
Pharmacy contractors/ pharmacists/ interests	24
Others	6
<b>Total</b>	<b>142</b>

## **Consultation Proposals/ Questions and Scottish Government response.**

The following section of the report details each of the questions posed in the consultation and offers some detail around the responses received. The Government's response and intended approach is also provided. A summary of the Scottish Government's proposals is attached below as **Annex B**.

### Proposal/ question

**(No. 37) Do you believe that an NHS Board should be able to consider applications at a first stage and decide whether or not a full Pharmacy Practice Committee (PPC) is required or whether they can decide that current provision is adequate?**

### Feedback

The majority of responses to this proposal supported the idea of some form of first stage consideration. However in doing so, a variety of concerns were raised including the need to ensure any first stage was robust, standardised across the country and that it should be conducted within defined timescales. There were also concerns that it should not simply become a new layer of bureaucracy further adding to time and costs.

There was a consistent theme throughout many responses that the standard of information required in an application can often result in poor applications being made but which still went through the full process. A number suggested that a lot of applications were made to test the water and echoed the comments to this effect in the consultation. There were also comments that the applications form(s) didn't require a great deal of information and could be completed fairly easily without much effort.

It was suggested that where the quality of an application was not a concern, Boards should be able to approve certain applications without the need for an oral PPC hearing i.e. where there is an application which is widely supported by the Board/ public/ other interested parties and which receives few if any objections.

Finally, a small number of responses highlighted concerns that it is possible for an application to be made for a named premises without the knowledge of the owner(s) of the premises.

### SG Response

The main aim behind this proposal was to reduce the number of applications that result in a full hearing of a Board PPC in cases where the application is not well-researched or strong. Preparing for and holding PPCs is resource intensive for Boards. This is particularly frustrating where the application is subsequently refused or withdrawn.

Although current Regulations do not require Boards to convene an oral PPC hearing for each and every application, current practice tends towards that position. Whilst this maybe appropriate where applications are well researched, it can be frustrating where that is not the case. The Scottish Government intends to amend the Regulations to ensure Boards are as clear as possible that an oral PPC hearing may not be necessary in all cases. However, we remain clear that even in such circumstances, there will need to be an avenue for appeals against any related decisions.

To aid with this, we intend to revise the forms used to strengthen the initial application process and improve the standard of application by requiring applicants to provide more robust information and supporting evidence. The Scottish Government intends to amend the Regulations to introduce a requirement for applicants to complete an “*Applicant’s Assessment*” of their application which will require them to provide information supporting the application. This information will include: accessibility; the applicant’s views on what constitutes the neighbourhood and its boundaries; reasons and justification as to why they believe that the provision of pharmaceutical services are not currently adequate; details about the services they will provide; their intended hours of opening; when they intend to open the pharmacy; a declaration as to how they intend to meet equality legislation; and, any feedback they have sought and gained from people in the area prior to their application. Further, we intend to introduce a power for Boards to reject an application where they determine that the “Applicant’s Assessment” is not sufficiently detailed or robust.

As a result of some comments, the application forms will also include a requirement that the applicant has received a statement from the owner (or person legally in charge) of the named premises that they consent to the application being made. Further details of this and the other information that will be required will be detailed in the subsequent amendment Regulations.

Alongside these changes, Scottish Government intends to insert a statement in the Regulations that an application will not be complete unless it includes all of the relevant information such that the Board can - as an administrative first stage – reject applications that fail to meet the standard of information required by Regulations.

#### Proposal/ question

**PLEASE NOTE:** The questions/ proposals numbered 38, 39 and 40 all considered the aspect of adequacy of pharmaceutical services and we will respond to them together here. The questions were:

**(No. 38) 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?**

**(No. 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?**

**(No. 40) Scottish Government proposes an amendment to require Boards to consider their Pharmaceutical Care Services Plans (PCSPs) as part of their consideration as to the adequacy of current NHS pharmaceutical services in an area. Do you agree with this proposal?**

### Feedback

There was broad agreement with each of these proposals. The majority of respondents agreed that an applicant should be asked to outline what has changed significantly since a previous application was rejected, whether they made the previous application or otherwise. However, there were some concerns that a previous application might have failed due to it having been made poorly rather than rejected due to a decision that there was already adequate provision; although this should be clear from the decision.

There were also some comments suggesting that "significant/ material" needs a clear definition or guidance and it was further suggested that relocations be exempt. A number of responses suggested differences between urban and rural contexts in that change and the speed of change can differ. Some responses raised issues around whether proposed changes in an area should be considered when evaluating an application.

There was less agreement about what constitutes an acceptable length of time in relation to this proposal. Nearly half of the comments offered supported the proposed 12 months whilst the majority of others tended to support a longer timescale split fairly evenly between: more than 12 months but no specific figure given; 2 years; and, 3 years or more.

Finally, there was wide spread agreement that a properly prepared Pharmaceutical Care Services Plan (PCSP) should be considered by Boards as part of the application process. However, there were a number of caveats to this including a request for updated guidance in relation to their preparation as well as an identified need for them to be robust across the country, publicly available and periodically revised to reflect changing local needs. There was agreement that they should inform the decision making process and not determine it. Similarly, a large number of responses have stated that a Board's PCSP should include the services provided by dispensing GPs.

### SG Response

The objective of proposals 38-40 is to ensure that the applications made are more robust and require more consideration and effort by the applicant when there has been previous interest in opening a pharmacy in the neighbourhood. We also want to provide Boards with a potential to reject more applications without full hearings, particularly where previous applications have been rejected and where

circumstances have remained unchanged. Around half of respondents supported 12 months as the timescale whilst the majority of others supported the concept but suggested the timescale should be longer. On balance, and as this is a new approach, the Scottish Government feels that 12 months is a reasonable timescale.

As part of this, we intend to alter the Regulations and associated forms such that an applicant must state whether an application has been rejected in the neighbourhood in the previous 12 months, either by a Board Pharmacy Practice Committee (PPC) or by the National Appeal Panel (NAP). Where a previous application has been rejected within the previous 12 months, applicants will be required to provide evidence in support of their application being considered within that timescale showing that there has been a material change of circumstances. When evaluating the application and the evidence provided in support of the application, the Board will be able to consider whether an oral hearing is necessary. Where the Board judges that the supporting evidence does not demonstrate such a material change within the timescale, the Board may choose to reject the application without a full PPC hearing.

This will require Boards to publish the outcome of PPC hearings as a matter of course. Whilst some Health Boards already appear to publish these, the Scottish Government intends to require all to do so as a matter of course via an amendment to the Regulations. In so doing, the whole process should also become more transparent. [Note: This will introduce consistency with the NAP decisions as they already publish all their decisions via the Scottish Health Service Centre (SHSC) website as a matter of course.]

The Regulations will also be amended such that Boards will now be required to prepare, publish and maintain a Pharmaceutical Care Services Plan (PCSP) and when they have done so, consider them when considering pharmacy applications. Guidance will be provided by the Scottish Government to aid Boards in the preparation and refresh of these planning documents.

#### Proposal/ Question

**PLEASE NOTE:** The proposals 43 and 45 both related to relocations and will be covered together below.

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

**(No. 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?**

## Feedback

The proposal to replace “appreciable” with “significant” was broadly supported. However, there was some concern that “significant” remained open to interpretation and was subjective and some responses suggest the need for greater clarity and definitions around the terminology. There was a query as to whether the Regulations should be relaxed to allow a relocation – even if it might result in a significant effect – if all the other pharmacies in the area were owned by the same individual/ corporate body.

There was support for the proposal that where a minor relocation is granted, the entry on the pharmaceutical list should be amended. Views were also offered in relation to relocations which the Board do not consider as minor. Boards must currently consider them as new applications but it was suggested that there should be an explicit requirement that the existing premises would close ensuring that the Board can consider the question of adequacy on that basis. It was suggested that otherwise, this can prevent progress and service improvements.

One Board also suggested that they would like increased powers so that they could consider redistributing pharmaceutical services across their Board area.

## Response

Given the responses to these questions and concerns raised that the current use of the word “appreciable” can prevent improvements to services, the Scottish Government intends to make the amendment detailed at no. 43. We will consider the need for additional guidance around this as well. Similarly, we intend to amend the Regulations so that approval of a minor relocation will result in the alteration to the respective entry on the Board’s pharmaceutical list. We also intend to make an amendment to this effect in respect of other relocations where the Board does not consider them to be minor. This will address the concerns raised in respect to the consideration of such relocations.

## Proposal

**(No. 47) The Scottish Government proposes to alter the Regulations to:- a) ensure that dispensing GPs are informed of an application in the locality where they operate, and b) ensure that CHPs are informed of applications. Do you agree with these proposals?**

## Feedback

The majority of responses supported these proposals. Some added that each group (particularly dispensing GPs) should be regarded as an ‘interested party’ and/ or have the right to make representations direct to the PPC and/ or appeal decisions. However, a small number disagreed whilst some questioned the need to require a Board to inform the Community Health Partnerships (CHP) as, for instance, the CHP provides functions on behalf of the Board.

## Response

Scottish Government intends to make this amendment as proposed. Health Boards will be required to inform dispensing GPs in the neighbourhood whose interests may be affected and relevant CHPs for information. A key concern previously expressed by those representing dispensing GPs was that they are not always informed by the respective Area Medical Committee in good time. Placing a requirement on the Board to inform dispensing GPs ensures that they will be made aware of an application as soon as possible. Whilst there were some questions around the need for a Board to inform the CHP of pharmacy applications, Scottish Government believes that requiring Boards to inform them will ensure wider knowledge of such applications.

We would not propose to make either of these groups an interested party on the basis that the right of appeal and representation to both PPC and any subsequent NAP will remain open to the Area Medical Committee who represent all GPs including dispensing GPs. If any subsequently wish representations to be made, they can discuss this with their Area Medical Committee as at present.

## Question

**(No. 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.**

## Feedback

A variety of comments were received in response to this question. A key issue raised relates to the recognition Boards are required to attach to the comments received from the public. A number of responses from individuals expressed frustration as they felt their views were not addressed as part of the application process. This was raised particularly by individuals and others with an interest in dispensing GPs. Many responses also highlighted the confusion and concern that is allowed to spread throughout communities when an application has been made, particularly again in areas where there is a dispensing GP. Indeed, a number of responses were written by individuals who mistakenly appeared to believe that the Scottish Government was proactively proposing to close their GP surgeries.

There were suggestions that certain aspects of the process for public consultation should be made clearer in the Regulations. This included suggestions that the time provided for public consultation should be clarified and whether specific groups (i.e. community councils) should be targeted for consultation. There were also a variety of comments relating to the need for Boards to take account of the views offered via consultation and in relation to the role of public views where an appeal is being considered.

## Response

The requirement that Health Boards consult with the public was reintroduced to the Regulations in 2009 following the removal of “Health Councils” via an earlier change to primary legislation. As part of that, the Board must have regard to the views offered when considering an application. However, they can only have regard to those views where they relate to the matter under consideration; the adequacy of provision of pharmaceutical services from premises on the pharmaceutical list. It is clear that the public would benefit from some form of clear information to ensure they can make fully informed judgements about the process. The Scottish Government will explore ways in which to ensure accurate and timely information is made available to the public in such cases.

Alongside this, the Scottish Government intends to make an amendment to the Regulations to clarify the timescales for public consultation and will also offer further guidance to Boards to help improve consistency across the country. We also intend to clarify how the National Appeal Panel should have regard to comments and feedback from the public in relation to applications.

Our overarching aim with these changes is to ensure that the public are involved in the process where they wish to be and where it may affect them and are helped to fully understand the process and associated issues.

## Proposal/ questions

**PLEASE NOTE:** The proposals numbered 53, 54 and 56 all relate in the main to Pharmacy Practice Committees (PPCs) and are considered together below.

**(No. 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?**

**(No. 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.**

**(No. 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.**

## Feedback

The proposal that a pool of members be established was broadly supported by those that responded and there was broad agreement that the preparation and use of such a pool would be beneficial. Responses also generally supported the proposal that specified bodies should not be invited to nominate members

although it was suggested that a Board's Area Pharmaceutical Committee should remain involved in the process.

Furthermore, a variety of comments were offered in relation to the specific provision which prevents any lay members from having had any experience as a health professional. Many strongly supported the need for the continued involvement of lay members, although there was no intention to remove their role. Most of those who commented on the specific provision that lay members should never have been health professionals questioned the need for that provision. Indeed, some suggest the experience of ex-health professionals might strengthen the process of consideration whilst some suggested that general practitioners should be members of the PPC. There was particular support for this from those with an interest in dispensing GPs. Alongside this however, others suggested that lay members should be entirely lay and should not come to the process with any professional experience of delivering health care. Finally, a number of comments were made around ensuring there should be no potential or perceived conflicts of interest.

There was a large variety of responses to the question about the issue of guidance including very wide support for the proposal that Pharmacy Practice Committee (PPC) members should receive regular training; some suggest training should be made compulsory. There were also a variety of comments across a number of other areas. A common theme was that guidance should be clarified with a view to improving consistency in the processes undertaken across the country. For instance, a number of responses raised concerns about the consistency of information provided in PPC decisions and related minutes. There was support for a more standardised format or more guidance as to what they need to cover, to aid the recording of proceedings at both PPCs and National Appeal Panel (NAP) hearings. Indeed, where raised, there was support for guidance that would help ensure the forms PPCs used offered consistent information and detail about the decision(s) made. Again with consistency in mind, it was suggested that there could be increased sharing of experience and knowledge amongst PPCs and members.

Some responses raised concerns in relation to the fulfilment of planning and equality legislation and a number of responses suggested that some of the terminology should be more clearly defined i.e. "secure", "necessary" or "desirable".

There were also some comments offered in response to this question in relation to areas in which pharmacy applications are made where there is currently a dispensing GP practice. These comments included suggestions that any guidance should require Boards to take account of the dispensing service provided by dispensing GPs when they consider pharmacy applications and that the possible effect on such dispensing practices should be considered.

### Response

We intend to amend the process which will result in Boards and their Area Pharmaceutical Committees populating a pool of members from which both

contractor and non-contractor pharmacist members would be drawn to make up the membership of PPCs.

We do not intend to remove the restriction that prevents PPC lay members from being ex-health professionals. We believe that these members should be entirely lay persons who should be asked to make judgements on that basis rather than representing specific parts of the health service. However, to ensure discussions of the PPC include a wider medical perspective where an application may affect a dispensing GP, we intend to alter the membership of such PPCs so that the Area Medical Committee of a Board is invited to nominate an individual to contribute to those discussions.

The key issue will remain in that the PPC considers the application in line with the relevant legislation which focuses on the adequacy of pharmaceutical services and that all members are adequately trained in this regard.

In response to a number of the issues raised above, the Scottish Government will issue refreshed guidance after draft Regulations are laid in Parliament. This guidance will pick up on a number of the issues raised and will include advice around the training of Pharmacy Practice Committee (PPC) members, conflict of interest and the potential use of standardised templates etc. It is important to note that the National Appeal Panel (NAP) currently offers training each year to PPC Chairs and members but uptake and attendance can be inconsistent. We also intend to clarify matters including issues around equality and other planning legislation.

### Proposal

**(No. 59) The Scottish Government proposes to strengthen the appeal process such that it [the NAP] can divert more applications back to the Board and, for example, request that they remedy any procedural issues. Do you agree with this proposal?**

### Feedback

There was broad agreement that too many applications ended up at an appeal which uses considerable resources. A number of responses to these proposals also emphasised that efforts should be taken to strengthen the original PPC decisions process to ensure hearings across the country are conducted more consistently and robustly. It is suggested that this in itself would help reduce the number of applications that might go to appeal. It was suggested that the NAP should regularly provide information to Boards about why appeals have been granted such that any errors in PPC/ Board processes can be remedied. Likewise, suggestions have been made that the PPC procedures need to be more explicitly laid out to improve consistency across the country.

A number of responses also offered concerns that the appeal heard cases afresh and in so doing considered any new evidence made available. Many instead suggested that appeals should only consider the original decision and the issue that has led to the appeal.

## Response

The Scottish Government intends that other amendments to the Regulations as well as refreshed guidance will help ensure PPC hearings are considered more robustly and consistently. As part of this, we will discuss with the NAP what more can be done to provide additional feedback to Boards about appeals that are heard. However, the Scottish Government also intends to make changes to the Regulations and processes so that appeals consider the original application and evidence of that application. This would be more in line with other appeal processes that do not hear cases afresh but focus their consideration on alleged errors in the original judgement.

## Proposal

**(No. 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?**

## Feedback

Whilst some support was offered for this, the majority of responses disagreed with the proposal, particularly those with interests relating to dispensing GPs. Some who responded suggested that although a third party right of appeal doesn't exist in other similar processes, it's continuance in here would maintain a balance in the process. However, some comments made highlighted that some appeals are requested simply because the appellant is unhappy with the decision, rather than having a justifiable complaint about the process. One response suggested that the right of appeal should be limited to interested parties who write to and attend the original Pharmacy Practice Committee (PPC), as opposed to those who offer only written representations.

## Response

Such third-party rights of appeal do not exist in a variety of other application processes and the Government was keen to seek views on the matter. However, as a result of the responses offered, the Scottish Government does not intend to progress this proposal at this time. Other changes in respect of the applications and appeals process are intended to reduce the number of appeals that are necessary. The subsequent impact of that and other amendments will be considered in due course.

## Proposal

**(No. 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?**

## Feedback

A variety of views were offered here but the majority clearly supported the idea that a Board could offer or be asked to offer views and information to the National Appeal Panel (NAP). Responses suggested this would help inform the NAP decision and ensure they heard the full range of views about the application. There were also some comments suggesting that this would help to ensure that the Board's policies/ views weren't misrepresented by appellants and/ or interested parties whether intentionally or otherwise. Support for this proposal was also offered by the Chair of the NAP although rather than making it a requirement, it was suggested that the NAP be empowered to seek comment(s) from the Board concerned if they thought it would be helpful. However, some concerns were expressed. For instance, there were some comments that the NAP should consider appeals entirely independently from the Board. Some who offered these comments suggested that the Board may wish to justify or defend the original PPC decision, or may be asked to do so.

## Response

The Scottish Government intends to make a number of changes in relation to the National Appeal Panel (NAP). The broadest of those changes relates to refreshing the role of the NAP such that it reviews the original decision made rather than considering applications afresh. However, as part of this, we do intend to enable the NAP to seek information from the Board where it determines that this may help with their consideration. However, we do not intend to make this a requirement for every appeal. Likewise, we intend to make a change such that Boards would be able to offer representations if they wished to do so, whether invited to do so or not. Any request for the Board to contribute would be such that it could answer any queries that the NAP might have or offer a view if necessary. It is not the intention that the Board be asked to defend or justify the original Pharmacy Practice Committee (PPC) decision. Indeed, the reasons for a PPC decision should be clear from the decision of the PPC hearing.

## Proposal

**(No. 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.**

## Feedback

There was broad agreement that the National Appeal Panel (NAP) is excessively large and this can act to make the process resource intensive. In responding to this proposal, the purpose of the NAP was raised by some – whether it is to review a previous decision or to make a fresh decision – and those who raised it tended

to suggest it should be the former. A number of responses made the link to the earlier proposal around providing for a pool of Pharmacy Practice Committee (PPC) members and it was suggested that the same pool then be used to seek NAP members. Some suggested this might also help share experience and skills across all PPC/ NAP members and improve consistency. The Administrative Justice Tribunals Council (AJTC) recommended a 3 person panel in line with standard practice with tribunals whilst a number of other responses also suggested the number should be reduced. Some competing views were offered which suggested that the current membership ensured wide and constructive debate of applications.

There were also comments that there could be wider representation on the panel from across the health care profession as a whole. Throughout, there was support that the balance of membership on NAP should remain similar as at present. Some more specific comments suggested that consideration should be given to shaping membership dependant on the location of the application and appeal. For instance, it was suggested that a NAP considering an application which might affect a dispensing GP should have a member that is a dispensing GP. Other issues that were raised included the need to ensure that the NAP continues to act with impartiality and that it be seen to be so and that as far as possible, any potential conflicts of interest should be avoided.

### Response

There are currently 9 people on the NAP and there is a quorum of 5. The voting rights currently set by the Regulations provide that the 3 lay persons on the panel each have a vote and the 2 non-contractor pharmacists each have a vote. The Scottish Government believes that a membership of 9 is too large and therefore intends to reduce the size of the panel. In doing so, we intend to bring it more into line with other tribunals and as such propose a panel of 3. Further detail around these proposals will be brought forward in the amendment Regulations.

We will also ensure any amendments further avoid the potential of perceived conflicts of interest. We have considered the suggestion that a dispensing GP be a member of the panel where it is to consider an application in an area where there is a dispensing GP. However, there is a potential challenge between this and the view that the potential for perceived conflicts of interest should be minimised. As we are looking to reduce the number of members and as we also intend to alter the appeal process more generally (see proposal no. 59), this is not a change we intend to make. Similarly, we do not intend to amend the restriction that currently prevents a current or an ex-health professional being a lay member of the NAP as we believe these members should be entirely lay persons.

## **Additional Comments**

5. Responses to the consultation were broadly supportive of the majority of proposals made. However, for many respondents, concerns remain around the issue of applications to open pharmacies in areas where dispensing doctors operate. Indeed, the recent high profile cases have clearly raised concerns in some communities and this is reflected in the fact that the majority of responses to the consultation were from individuals or organisations that have an interest in dispensing doctors.
6. The consultation paper made clear our commitment to the important and continuing role that dispensing doctors play in Scotland's rural communities. The Scottish Government has given careful consideration to the issues raised in relation to applications to open community pharmacies in areas where dispensing doctor practices operate. Proposals are made in this report which we believe respond positively to some of those concerns. However, the Scottish Government remains committed to the principle that all patients in Scotland should have access to the full range of pharmaceutical services from conveniently located pharmacy premises.
7. Where a potential applicant decides an area can successfully support a pharmacy, it is likely that applications will continue to be made. The Scottish Government will continue to explore ways in which NHS Boards can be further empowered to consider these applications ensuring they continue to result in the enhancement of Primary Care provision. As part of this, Scottish Government will also continue to consider ways in which the NHS can ensure the full range of pharmaceutical services are made available across the whole country including in areas where a pharmacy is never likely to be viable.
8. The Scottish Government is also in negotiations with the British Medical Association – Scottish General Practitioners' Committee (SGPC) with a view to establishing future funding arrangements for dispensing practices. The impact of dispensing income on practices in remote and rural areas is being considered as part of this.
9. Alongside the comments made in response to the consultation, Scottish Government/ Ministers have previously been asked to suspend the pharmacy application process. A number of respondents to the consultation also reflected this view. The Scottish Government emphasises that Scottish Ministers cannot suspend the process in this way. The arrangements are laid out in Regulations which can only be amended with approval of the Scottish Parliament. Furthermore, the requirements are determined by the NHS (Scotland) Act 1978 and this legislation does not make provision for such a unilateral suspension.

## **Reviewing provision of Community Pharmacy Services**

10. Some of the changes sought by respondents to this consultation would require more substantial changes to control of entry. We are currently scoping out a more strategic review to the provision of community pharmacy services in

Scotland which could result in proposals to radically change the control of entry process. In addition we are also considering the timing of an existing commitment to review the community pharmacy network – this and other community pharmacy issues could be included in a more strategic review. The remit of this review will be discussed with stakeholders.

11. In addition the Scottish Government has suspended new applications for Essential Small Pharmacy (ESP) status pending a review. The suspension applies to any new applications submitted to Boards to open a pharmacy from 1<sup>st</sup> September 2010. Pharmacy applications that are already being processed by Boards will be able to apply for entry to the ESP Scheme if they are subsequently approved either by the Board's Pharmacy Practices Committee (PPC) or following the outcome of any subsequent National Appeal Panel (NAP) decision. Scottish Government now intends to review the ESP scheme in conjunction with Community Pharmacy Scotland.

### **Next Steps**

- The Scottish Government intends to introduce amendments as outlined above to the current Regulations in the next session of Parliament.
- The Scottish Government intends to provide further guidance around the Regulations.
- The Scottish Government has already suspended the Essential Small Pharmacies (ESP) scheme with effect from 31<sup>st</sup> August pending a more comprehensive review of that scheme. From that date, new applications to open a pharmacy cannot subsequently apply for ESP status. Scottish Government is to review the scheme with Community Pharmacy Scotland.
- The Scottish Government will discuss with stakeholders the need for a strategic review of community pharmacy services in Scotland.
- The Scottish Government will continue negotiations with the British Medical Association's Scottish General Practitioners' Committee (SGPC) with a view to establishing future funding arrangements for dispensing practices. The impact of dispensing income on practices in remote and rural areas is being considered as part of this.

**LIST OF RESPONDENTS**

16 anonymous respondents

AH Tod Ltd (Edinburgh)  
Alan Beevers c/o Spynie Hospital, Patient Participation Forum (Elgin)  
Alan Black  
Alan Jones  
Alan Kennedy  
Ann McCarthy, Mrs  
Anne Brown  
Ayrshire and Arran Local Medical Committee (Kilmarnock)

Ballantrae Medical Practice (Ballantrae)  
Balmullo Community Council (St Andrews)

Carol Finnie  
Clan Chemists Ltd (Clydebank)  
Colinton Pharmacy Ltd (Edinburgh)  
Community Pharmacy Scotland (Edinburgh)  
Cumbrae Medical Practice (Isle of Cumbrae)

Dalhart Pharmacy (Biggar)  
David Baker  
Dickies Pharmacy (Balmedie)  
Dispensing Doctors' Association  
Doreen Hopkins  
Dounby Patients SOS Focus Group (Orkney)  
Dounby Surgery (Orkney)  
Dr RD Beveridge  
Drymen Health Centre (Drymen)

Edinpharm Ltd (Edinburgh)  
Eyemouth Medical Practice (Eyemouth)

Fife Area Pharmaceutical Committee  
Fife Independent Disability Network (Kirkcaldy)  
Fife Local Medical Committee Ltd  
Frances Daniels  
Frank Maguire

Gareth Jones  
George Taylor  
Gerry McGarvey

Hector McKinnon  
Hoy and Walls Health Centre (Orkney)

Ian Jarvie  
Isle of Cumbrae Elderly Forum (Millport)

John and Jackie Paddison  
John Woods

Katy Clark

L Kolatobwicz, Ms  
Larbert Pharmacy (Larbert)  
Leuchars Community Council (Leuchars)  
Lothian Area Pharmaceutical Committee (Edinburgh)

Mark Sharp  
Mary Ballantyne  
Mary L Thomson  
Michael Cook, Councillor, Scottish Borders Council  
Milngavie Apothecary's Co Ltd (Linlithgow)  
Morvern Medical Practice (Oban)

National Appeal Panel  
National Appeal Panel (Vice Chair, Michael Graham)  
National Pharmacy Association  
Newcastleton Health Centre (Newcastleton)  
NHS Ayrshire and Arran, Ailsa Hospital (Ayr)  
NHS Borders (Melrose)  
NHS Borders Public Partnership Forum  
NHS Dumfries and Galloway, Chief Pharmacist (Dumfries)  
NHS Fife (Kirkcaldy)  
NHS Forth Valley, Carseview House (Stirling) Ian Mullen  
NHS Forth Valley, Primary Care Contracts (Stirling) Evelyn Hadden  
NHS Grampian PPC (Aberdeen)  
NHS Greater Glasgow & Clyde (Glasgow)  
NHS Highland (Inverness)  
NHS Highland, Pharmacy Services (Inverness)  
NHS Lanarkshire, Strathclyde Hospital (Motherwell)  
NHS Lothian, Primary Care Contract Org (Edinburgh)  
NHS Orkney, Balfour Hospital (Kirkwall)  
NHS Tayside (Dundee)  
NHS Western Isles, Griminish Surgery (Benbecula)

Pat Shields  
Pharmacy Medicines Unit, Westholme Woodend Hospital (Aberdeen) Caroline Hind  
Pharmacy Medicines Unit, Westholme Woodend Hospital (Aberdeen) Terry Mackie  
Port Ellen Practice (Port Ellen)

Rhynie Medical Practice (Huntly)  
Richard and Linda Lucas  
Richard Fowles

Robert John Dronsfield  
Royal College of GPs Rural Forum (UK)  
Royal Pharmaceutical Society (Edinburgh)

Scottish Borders Council (Newtown St Boswells)  
Scottish Borders Public Partnership Forum  
Scottish Committee of the Administrative Justice and Tribunals Council  
(Edinburgh)  
Scottish General Practitioners Council (Edinburgh)  
Scottish Health Council (Glasgow)  
Shebburn Surgery (Dumfries)  
Shiskine Surgery (Isle of Arran)  
South Aberdeenshire LCHP (Banchory)  
South Lanarkshire Council (Hamilton)  
Southend Medical Practice (Southend)  
Stow and Lauder Health (Stow)  
Strathard Community Council (Aberfoyle)

Tarves Community Council (Ellon)  
Tesco(Pharmacy)  
The Compant Chemists' Association (Falkirk)  
The Medical Centre (Aberfoyle) Anne Lindsay  
The Medical Centre (Aberfoyle) William Pollok  
The Neidpath Practice, Haylodge Hospital/Health Centre (Peebles)  
The Scottish Parliament, John Lamont  
The Surgery (Arrochar)  
The Surgery (Ecclefechan)  
Thomas Gilchrist

Valerie Nailor

West Dunbartonshire Community Health Partnership (Dumbarton)  
Western Isles Carers, Users and Supporters Network (Stornoway)  
William McConnell

**SUMMARY OF PROPOSALS.**

The Scottish Government intends to amend the Regulations in a number of areas:

**The Application Process**

- Revise the application forms requiring applicants to provide more robust information and evidence in support of their application.
- Introduce a requirement for applicants to complete an “*Applicant’s Assessment*” of their application which will require that they provide information supporting the application.
- Require applicants to provide a statement of consent from the owner (or person legally in charge) of the named premises to make the application in the application form
- Require an applicant to state whether there has been an application which has been rejected in the previous 12 months, either by a Board Pharmacy Practice Committee (PPC) or by the National Appeal Panel (NAP). If so, require them to provide evidence in support of their application as to what has changed significantly since the previous application.

**Notification of applications**

- Require Health Boards to inform dispensing GPs and Community Health Partnerships (CHPs) in the relevant area/ neighbourhood.

**Consultation re applications**

- Production of clear information for the public to ensure they can make fully informed judgements about the process.
- Clarify the timescale which should be offered for public consultation.
- Clarify issues in relation to what regard the NAP should have to feedback from the public.

**Consideration of applications**

- Enable Boards to reject applications that fail to (a) provide the required information required by Regulations and (b) provide a sufficiently detailed or robust “*Applicant’s Assessment*”.
- Enable Boards to reject applications where they do not believe the evidence of “significant change” (since a previous application within 12 months) is sufficiently robust.
- Ensure Boards are aware that an oral PPC hearing may not be necessary in all cases.
- Make amendments to Regulations in relation to relocations including specifying that approval of a relocation will result in the alteration to the respective entry on the Board’s pharmaceutical list.

## Membership of Pharmacy Practice Committees (PPCs)

- Alter the nominations process.
- Include a nomination from the Area Medical Committee at PPC meetings where a dispensing GP practice may be affected as a result of the application.
- Issue refreshed guidance on a number of the issues including the training of PPC members, conflicts of interest and the potential use of standardised templates

## National Appeal Panel (NAP)

- Reduce the size of the NAP and bring it into line with other tribunals
- Alter the nomination process for membership
- Ensure the NAP does not hear cases afresh but considers an appeal on the original case.
- Strengthen the ability of NAP to divert more cases back to the Board/ PPC
- Explore how NAP can provide further information back to Boards about appeals that are heard.
- Enable the NAP to seek information from Boards if felt necessary

## Other issues

- Boards will be required to publish the outcome of PPC hearings as a matter of course.
- Require Boards to prepare Pharmaceutical Care Services Plan (PCSPs) and enable the PPC to consider the PCSPs where they are complete and published.









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Government**

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