

CONSULTATION RESPONSE FORM

Consultation Proposals - Part 1

Control of Entry (Pharmacy Applications) and Dispensing GP Practices

The stability of NHS services in remote and rural areas

Proposal 1:

The Scottish Government proposes amending legislation that will introduce the designation of '*controlled remote, rural and island localities*' for the purposes of considering pharmacy applications in these areas of Scotland and introducing a 'Prejudice Test' in addition to the test of 'necessary or desirable' (the adequacy test).

Do you agree with this proposal?

Yes

No

Please tell us the reason for your answer in the box below

The 'Context' in Section 1.4 is inaccurate. There is **clear written evidence** to show that at least 50 dispensing GP practices are now seen by predatory pharmacists as suitable for an application.

This additional complication which will require more work to administer and maintain is not the answer.

The adequacy test often referred to in PPC and NAP hearings as the 'legal test' is probably the worst and most undemocratic aspect of the current legislation. The fact that it is being proposed to be retained without amendment indicates very clearly that those concerned with the consultation exercise have simply not grasped the fact that it is neither desirable nor necessary in its present form. Something that patients have been saying for 5 years. Unless this aspect of the legislation is changed any introduction of a Prejudice Test is of little value in the final decision process as applicants will continue to argue the adequacy test is the primary consideration in determining PPOC and NAP outcomes.

Proposal 2:

The Scottish Government proposes that the designation of an area as a '*controlled remote, rural and island locality*' should be reviewed periodically by NHS Boards so that NHS provided or contracted services are responsive to

population changes, and changing healthcare needs and priorities both locally and nationally. It is proposed that the review should be carried out at a minimum of every three years.

Do you agree with this proposal?

Yes

No

Please tell us the reason for your answer in the box below

This will simply add to the current uncertainty about GP dispensing and will be seen as unacceptable by patients, GPs and the communities affected. Far better to introduce an as required survey of patients in those areas. It is the patients, not Health Boards, who have been remarkably reluctant to listen, who should have the right to say whether they feel services are adequate or not.

Proposal 3:

The Scottish Government is of the view that people living in remote, rural and island areas should have access to NHS pharmaceutical services and NHS primary medical services that are no less adequate than would be the case in other parts of Scotland.

Where the dispensing by a GP practice is necessary, it should be supplemented with pharmaceutical care provided by a qualified clinical pharmacist sourced by the NHS Board to ensure the person-centred, safe and effective use of the medicines. NHS Boards would be required to develop local plans sensitive to local circumstances to achieve this.

Do you agree with this proposal?

Yes

No

Please tell us the reason for your answer in the box below

If patients in rural areas had wanted the NHS services described above they would have asked for them. They have not done so. The many cases where communities have been or still are up in arms about imposed pharmacies have told NHS management at all levels that where it is a choice between a pharmacy and a dispensing GP they want the GP to remain. Does the NHS in Scotland still not realise that patients are telling them loud and clearly that what they want is what they had before all these predatory applications began? Whilst a co-located pharmacist and GP practice may offer the optimum solution that particular action should only be negotiated with consent of both parties as well as patients. Yet even this option is being denied to communities and the proposed legislation still does not encourage such moves

The proposal regarding employment of a qualified pharmacist is ridiculous. It seeks to maintain the myth that only a pharmacist can provide a safe and effective use of medicines. What actually happens in GP dispensing

practices often mirrors and sometimes improves upon the additional services offered by pharmacists. Whilst a pharmacist working with a GP is helpful if funded by Health Boards it is **not essential** and never has been. NHS funding can be better spent on other services.

Consultation Proposals - Part 2

Wider Pharmacy Application Processes

The proposals discussed in Part 2 apply to all applications to open a community pharmacy whether in a remote, rural or island area, or in other parts of Scotland.

Public consultation and the community voice

Proposal 4:

The Scottish Government proposes that the regulatory framework going forward will look to include a community representative among those who should be notified, as an 'interested party or persons', of any application to open a community pharmacy in the locality. The community would therefore in statute be considered as a body or party whose interests may be significantly affected by the pharmacy application.

This would be a nominated representative from, for example, the local Community Council or the local Residents Association or another appropriate local community representative body recognised by the NHS Board.

As an 'interested party' the community representative would be entitled to make written representations about the application to the Board to which the application is made within 30 days of receipt of the Board's notification of the application.

In addition, where the NHS Board PPC decides to hear oral representations, the community representative will be entitled to take part, together with the applicant and the other interested parties, and would be given reasonable notice of the meeting where those oral representations are to be heard. Once each interested party, including the community representative, has presented their evidence in turn they would then leave the hearing leaving the PPC to consider all the evidence presented.

As an 'interested party' the community representative will also have a right of appeal against the decision of the NHS Board PPC to represent the views of the local community.

Do you agree with this proposal? Yes No

Please tell us the reason for your answer in the box below

Anyone who has any knowledge of what has been happening in communities affected by predatory applications would realise that it is often very difficult to establish just who speaks for the community. In addition there is plenty of evidence to show how PPCs and NAPs have simply ignored all community input from **wherever** it was sourced in decisions over the last 5 years. This suggestion has not been thought through properly.

Yet this is the element that needs to be most seriously considered in these proposals. Far better to give due weight to the outcome of NHS local surveys of patient views in the decision process. Yet we see no evidence of this being a key determining factor in the proposed legislation and certainly not at least as important in its own right as the 'legal test'.

Until patient choice is recognised as a fundamental and preferably the overriding factor in determining applications nothing will change.

The fact that a applying pharmacist can present his or her case to the PPC but a GP, whose livelihood and service to his or her patients is at risk, cannot is totally without merit. I have spoken to many patients who feel unreservedly that this prohibition on the GP making a case must end. To date no valid reason has ever been provided for this restriction.

Proposal 5:

The Scottish Government is of the view that in the future PPC hearings should be handled in such a way so that no one person or organisation is able to dominate the entire hearing. This might include options such as limiting the time allocated to give oral representations or the issuing of guidance to PPCs. The Scottish Government thinks that all PPC meetings in future should follow a standard process in the management of PPC Hearings.

Do you agree with this proposal?

Yes

No

Please tell us the reason for your answer in the box below

To date the conduct of consideration of applications by PPCs in general has verged on the farcical so undemocratic, one sided and sometimes illogical has been their approach. One factor in this is the consideration that appointed 'lay members' may not be impartial to the application. This proposal may help to balance the procedure

The Scottish Government proposes that going forward those assisting in oral representations by the applicant; the community and other interested parties in attendance are able to speak on behalf of those they are assisting.

Do you agree with this proposal?

Yes

No

Please tell us the reason for your answer in the box below

In addition I would repeat that any affected GPs in a affected practice must have the same right as the pharmacy applicant to present a case for or against the proposal at any hearing.

Proposal 7:

The Scottish Government proposes that going forward those applying to open a pharmacy, for the purpose of providing NHS pharmaceutical services, should first enter into a pre-application stage with the NHS Board to determine whether there is an identified unmet need in the provision of NHS pharmaceutical services.

This would assist NHS Boards in determining the urgency of the demand for NHS pharmaceutical services identified by the applicant. NHS Boards Pharmaceutical Care Services Plans would need to reflect an assessment of service gaps and where need is most urgent.

Where an application proceeds, the applicant must be able to provide evidence to the NHS Board and the affected communities that every effort has been made to publicise the intention to open a community pharmacy and to consult and obtain responses from residents in the associated neighbourhood. Also, the notice must be advertised in a newspaper and all circulating local news free-sheets and newsletters in the neighbourhood in order to reach the vast majority of residents.

NHS Boards will also be required to do the same level of advertising in relation to its consultation activities.

Do you agree with this proposal?

Yes

No

Please tell us the reason for your answer in the box below

Most of this happens at the moment albeit usually in unrecorded and covert circumstances.
How can any NHS Board assess whether there is an unmet need without first involving the community and its patients? And what determines a need? The NHS Board's view may well be quite different to the patients' views as has been shown in the past. And what happens when the patients' views are overwhelmingly against the pharmacy proposal or overwhelmingly for it? All past evidence shows that in virtually every case the NHS Board totally ignores such input. I agree with consultation but the results of same should be properly considered, given due weight and openly published. This has not been the case to date.

Proposal 8:

The Scottish Government proposes that going forward NHS Boards specify to what extent the views of the community have or have not been taken into account in their published decisions on the outcome of a pharmacy application.

Do you agree with this proposal?

Yes X **No**

Please tell us the reason for your answer in the box below

I would accept this proposal. Provided that patient views are given equal weight in the decision process and this is built into the proposed legislative changes. Ideally I would like to see patient views given priority over the 'legal test' as I believe the latter is being manipulated by pharmacists , particularly those who are not even located within the area of the application

Securing NHS pharmaceutical services

Proposal 9:

The Scottish Government considers that NHS Boards should be able to take into account how NHS pharmaceutical services would be delivered in practice in the long term after an application has been received. This includes taking into account the financial viability of the pharmacy business proposed. This is an important factor in securing these services in the long term.

Do you agree with this proposal?

Yes **No** X

Please tell us the reason for your answer in the box below

I don't agree with this proposal as it is too narrow in interpretation.

One of the biggest problems associated with current pharmacy application legislation is the fact that pharmacists, often operating outside the area of the application, are given quite unnecessary protection in the decision process. The revised legislation should exclude any input from any pharmacist not operating within the accepted neighbourhood of the GP surgery or within the

neighbourhood generally as in the case of Whitlawburn in Lanarkshire

It is quite clear from examination of dispensing income received by Scottish pharmacies over the past three years that protection of pharmacies out with the neighbourhood is ill founded and totally unjustifiable in the decisions made at PPC and NAP hearings. This is one of the biggest aspects of concern to all those thousands of patients who have been active in trying to block unwanted new applications as well as to those who seek to bring in a pharmacy to an area previously denied one such as Whitlawburn in Lanarkshire.

It is a matter of serious concern to many communities across Scotland that no audit of the effect of unwelcome pharmacies such as in Leuchars, Millport, Carstairs, Balmullo and their surrounding areas has taken place as part of the preparation for the consultation process. How can these proposals be justified when no full account of the impact on these communities is evaluated and considered ?

Timeframes for reaching decisions

Proposal 10:

The Scottish Government proposes that going forward the regulatory framework would require NHS Board PPCs to make a decision within 6 weeks of the end of the public consultation process and the NAP to make a decision within 3 months upon receipt of an appeal (or appeals) being lodged.

In more complex cases the timeframe would be made extendable where there is a good cause for delay.

Do you agree with this proposal?

Yes (in part)X No

Please tell us the reason for your answer in the box below

I would agree with the PPC timeframe but not with the NAP one which is far too generous. Having looked at the records of many NAP cases it is quite clear there is no reason for allocating 3 months from receipt of the Appeal for them to be considered. Any reasonably competent body could and should respond much earlier. Therefor I propose 6 weeks for the NAP timescale.

Expert advice and support to PPCs during deliberations

Proposal 11:

The Scottish Government proposes that going forward the regulatory framework would make provisions for the appropriate role of an independent legal assessor acting in a supporting and advisory capacity, including providing advice and guidance on technical and legal aspects of the application process during PPC deliberations.

Do you agree with this proposal?

Yes

No X

Please tell us the reason for your answer in the box below

Not necessary. If the legislation is that complicated it is unfit for purpose! What many would like to see is assurance from NHS Boards and NAPs that those serving as 'laymen' are truly independent and have **no connection with or vested interests** in any of the parties involved in the application. At present there appear to be no checks to establish this factor. Some recent PPC and NAP decisions give serious cause for concern on this aspect
As a final observation it appears to many patients that common sense and fairness are sadly lacking in many of the deliberations on new pharmacy applications over the past five years. So much so that the legislation has fallen into disrepute and faith has been lost in PPCs and NAPs as a result. This faith must be restored but the proposals give us little to have confidence that much if anything will change.