

CONSULTATION RESPONSE FORM NHS Dumfries & Galloway

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

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

This proposal assumes that the GMS contract introduced in 2004 as an interim model is still appropriate in 2014. If that is the case then the introduction of a 'Prejudice Test' would be welcomed as it is recognised that there will always be certain locations where a community pharmacy business would not be sustainable. In such locations dispensing GPs are needed and require a degree of security.

It should be the responsibility of Boards to identify their '*controlled localities*' taking into consideration population spread and numbers, geography, access to services and the sustainability of a community pharmacy in that area, not just because the location is remote, rural and island.

The Regulations would need to clearly define the "prejudice test" and its application as part of the decision making process

Consideration should be given as to whether the introduction of a "Prejudice Test" could automatically debar applications at the initial stage without considering the benefits to patients who would access pharmaceutical care service. Options for consideration could be satellite clinics, partnership working, remote robotic dispensing and shared premises.

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

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

If the designation of an area is introduced then the areas should be reviewed periodically to ensure the continued appropriateness of the designation. It may be that Boards would seek to align the review period with that of the Pharmaceutical Care Services Plan, which is currently reviewed annually but may more appropriately reviewed every 3 years.

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

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

Equity of pharmaceutical services is desirable for the whole population. However, the delivery of pharmaceutical care to patients of dispensing GPs is currently very limited. The introduction of supplementary provision of pharmaceutical care in these circumstances would provide patient benefit, but would incur additional resources which would require to be identified. Alternative methods of delivery using available technology should be explored.

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? No
Please tell us the reason for your answer in the box below

It is difficult to see how this could be implemented in practice. For example, how would a community representative be identified and how could the PPC be assured they were representing the community concerned?

The Regulations would have to clearly define the methodology to be used in identifying and selecting community representatives.

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

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

Past decisions have been appealed on the basis of a party not receiving a full and fair hearing, for example where they have been limited in time. Should the specific process be detailed in the Regulations this could provide for a standardised approach to PPC hearings.

Proposal 6:

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

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

The current restriction can potentially disrupt the flow of responses to questioning and allowing the 'assistant' to speak may allow for a more seamless approach. However, the roles of each would need to be clearly defined, including for example if both are able to participate in all aspects. It is suggested that only one representative should be permitted to present 'their' case.

The Regulations currently preclude the involvement of a solicitor, counsel or paid advocate from addressing the PPC and this should continue so as no party is advantaged by the level of assistance.

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

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

The Board is supportive of a pre-application stage as long as it is clearly defined in the Regulations what this entails and the decisions that can be made at this stage.

The second element regarding the consultation requires clear definition which will not routinely invite appeal due to the omission not to circulate in a particular 'free-sheet'. The proposal suggests that all residents are to be consulted and responses obtained – it is difficult to see how practically this may be implemented. Also, any requirement on Boards to advertise applications must be clearly defined within the Regulations.

Two consultations, initially by the applicant prior to application and subsequently by the Board for a further extended period may not result in the best return outcome from the consultation process and it may be worthy of considering whether these two elements may be combined in some way. The Regulations should allow the flexibility for the adoption of the most appropriate method of consultation including for example social media.

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? No

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

The Board disagrees with this proposal in this form. It is recognised that it is important to report accurately the basis of the decision and consider that this should be required to include the evidence considered from the community in determining the decision. The Regulations only allow for the views of the community to be considered where they influence the legal test.

[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

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

It is agreed that this would ideally be a consideration. However, it is not clear how this element would fit into the process, as a part of the PPC hearing or more realistically a separate more detailed consideration allowing for expert opinion re business and financial viability.

The application process would require the applicant to provide financial or business information which is potentially beyond the scope of their NHS service provision.

This is a complex area and the implications of the outcome would require to be considered in the context of the appeal process.

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

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

This proposal would provide for a standard approach and with allowance for exceptional circumstances should ensure hearings are conducted timeously. A timeframe for NAP response would be helpful.

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

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

If it is accepted that it is not appropriate for Board officials to act in a supporting and advisory capacity during the open session of the hearing then this seems the next logical approach to supporting the PPC. However, this will add to the cost and complexity of the hearing and will require to be resourced.