

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

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

In theory Medical Practices should be funded from the GMS envelope and this should not need to be subsidised from other sources. However, the reality, in remote, rural locations is that income from dispensing is used by the Practices to support improved patient access to GPs, and to enable the GPs to work with the Health Board to provide other medical services within their communities. The opportunity to introduce a "Prejudice Test" in addition to the existing adequacy test would therefore be welcomed by this Board

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?

No

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

It is accepted that a controlled locality should be subject to periodic review but this should be selected to integrate with existing reviews i.e. either an annual review to match the current Pharmaceutical Care Services Plan or every ten years to coincide with the National Census.

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

All people should have access to NHS pharmaceutical and primary medical services that are no less adequate than would be the case in all parts of Scotland. Where there is a GP dispensing service this should be supplemented with pharmaceutical care in line with patient need. However there is no clarity around the precise nature of the pharmaceutical care to be provided or how it will be funded.

There should be clear governance arrangements around the service and the Pharmacists providing the services should be contracted directly with the Health Board, whether as employees or as part of a contracted service from a neighbouring Community Pharmacy in order to avoid any commercial conflicts of interest. However it would not be unreasonable to suggest that the dispensing doctors should make a partial contribution towards the cost of the service.

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

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

Whilst agreeing with this proposal in principle there are some difficulties about the way in which it would be locally administered. Experience has shown that the majority of those in the local community have difficulty divorcing the facts which are relevant under the regulations from those which, whilst being important to the local Community, are not relevant for the PPC to consider.

It is suggested that a locally elected Council representative would be the appropriate person to represent the local community. However the concept of “representation” should be clearly defined in the regulations as it is not uncommon for the local community to be divided on the merits of a new Pharmacy opening in the area.

Proposed neighbourhoods frequently involve more than one Community Council and the use of Community Councillors should be avoided.

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? No

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

The Chair of the NAP has previously placed great importance on the laws of natural justice and restricting the time allocated to any party could be construed as disadvantaging their position.

However it would be helpful for guidelines to be developed for PPCs, applicants and interested parties, defining how the hearings are to be conducted and how the PPC chair may deal fairly with any excessive repetition.

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

If the regulations continue to allow the interested parties to be assisted at the hearing then there does not appear to be any useful purpose served by not allowing the assistant to speak. The current restriction impedes the normal flow of the hearing without any apparent advantage.

The existing restriction on the use of a solicitor, counsel or paid advocate in the role of assistant should continue.

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?

No

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

The existing Pharmaceutical Care Services Plan should already contain information about areas of unmet need. It would be entirely inappropriate for the Board to enter into negotiations with an applicant prior to the application as the PPC, which is a sub-committee of the Board, must be, and be seen to be, completely impartial.

If the applicant is only required to advertise the intention to open a Community Pharmacy and invite responses from the community this should be made clear in the regulations as local experience has shown that the use of the word "consultation" creates an expectation of a much wider and more interactive process.

The Board is currently dependant on what the applicant chooses to include in the summary of consultation responses. It would be more appropriate if all responses were directed towards the Health Board.

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

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

Copies of all correspondence are made available to the members of the PPC and it would not be unreasonable to expect them to comment on the general views expressed by the public. This would be especially helpful where the views of the public are based on information which is expressly considered to be not relevant under the regulations.

However it should be noted that any decisions should continue to be based on the facts as the pertain to the regulations and not to any referendum type scenario of the views of the local community .

[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

One of the shortcomings of the existing regulations where they are applied in small, remote, rural areas is that the PPC are not allowed to ask the applicant about the financial basis for the application. Whilst the members of the PPC do not necessarily have any business or financial expertise the applicant should be expected to provide an outline business plan to demonstrate that the evidence base for the financial viability of the Pharmacy is realistic.

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

Whilst broadly supporting this timeframe it should be acknowledged that there may be occasions when it is not possible to meet the deadlines e.g. holiday periods and other booked, unavoidable absences.

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?

No

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

Board officials have historically provided advice and support to the PPC and this should continue. However it would be helpful for the regulations to be more specific about the role and remit of the official, and whether or not they are allowed to be present during the private deliberations of the PPC.

Where Boards consider that they do not have existing capacity or expertise there should be the opportunity to include officials from other Boards. This would be a more efficient and cost effective way of providing support than employing independent legal advisors.

GENERAL COMMENT

Based on recent Western Isles NHS experience we would recommend that a section is included on the importance of confidentiality and the importance of avoiding prejudice and the appearance of prejudice.

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