

Applications to provide NHS Pharmaceutical Services: Review of the Control of Entry Arrangements relating to NHS Pharmaceutical Services.

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?

Response – Ideally a process should be developed in accordance with which a first stage might be to determine whether a full PPC was required. However care must always be taken to ensure that in any such process the interests of applicants and others is not prejudiced. A process which required the applicant to outline significant changes might be unreasonable where that would involve knowledge as to previous applications other than as may have been made by the applicant.

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?

Response – It is not unreasonable to exclude from consideration an application which has already been considered and rejected and where there has been no relevant and material change of circumstances in the interim.

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?

Response – 12 months is not an unreasonable period provided that the Board is able to consider representations, and provided that applicants are fully apprised by the Board of the circumstances in which any previous application may have been rejected.

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?

Response – This would seem to be a sensible provision.

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

Response – No comment.

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?

Response – Provided that it is clear to an applicant that relocation will necessitate the closure of the existing facility this proposal is unobjectionable.

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.

Response – Such notification is essential. The material interests of such bodies are bound to be affected by such applications. Public consultation is also desirable in the interests of protecting consumers in general.

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?

Response – The Scottish Committee does not in general terms support the development of tribunal or quasi tribunal structures in which the membership of the Tribunal is drawn from any group having an interest in the outcome of the process. In general terms the Committee would prefer that membership of decision taking bodies was separated from the body sponsoring the activity under consideration. The Committee accepts that this is not necessarily a workable resolution and that where decisions are in effect being taken as part of the ordinary service delivery function of a body then different rules might apply. However the Committee understands that the PPC specifically falls within the supervision of the Committee and therefore it would prefer some further consideration be given to the issue of constitution of PPCs.

The Committee believes that representation on a PPC of other health professionals might be valuable.

The Committee would be required to be consulted about any proposals to amend the Regulations specifically in relation to the appeal procedures.

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?

Response – The Committee would not demur from the proposition that the NAP might refer back minor procedural issues to the Board/PPC.

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?

Response - The Committee would be interested to consider further the matter of whether existing appeal rights were to be modified or withdrawn. In general terms the Committee would not support withdrawal of appeal rights.

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?

Response - The Committee would not object to the according of rights of representation to Boards. However any such move would have to be accompanied by leaving in place appeal rights for affected third parties (62 above) etc.

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.

Response – The Committee commented on this matter in its representations of 26 August 2009. The Committee believes that the NAP is larger than normal or appropriate for an appellate body. It is not aware of any critical factors which necessitate a seven member panel considering such issues, and would recommend consideration of restructuring to the more usual three member format.

Scottish Committee AJTC

1 June 2010