

**A Summary of new amendments  
to the  
2009 NHS (Pharmaceutical Services)  
(Scotland) Regulations  
effective from 1 April 2011**

## The PPC

### General:

Regulation 5(2): in the case of applications which are not relocations or the same pharmaceutical services from the same premises as the previously listed provider of pharmaceutical services, the applicant shall complete a consultation (Para 2B), before making an application to the Board.

### The consultation must:

- (a) assess whether the neighbourhood has adequate provision by **persons on the pharmaceutical list**, of some or all of the pharmaceutical services that the applicant intends to provide;
- (b) be completed within 20 working days immediately prior to the making of the application;
- (c) be advertised
  - (i) regarding relocation applications – through display in a prominent place in the existing premises;
  - (ii) regarding additional premises or new applications – through publication in a newspaper circulating in the neighbourhood where it is intended to provide the services;
- (d) be for a continuous period of not less than 20 working days from the date of the advertisement;
- (e) in the case of a relocation, make it clear that the existing premises will close and are not to be included in the assessment in para (a).

The Board/PPC shall summarily **refuse** an application (which is not a 'replacement' or a minor relocation, unless the application is accompanied by the applicant's assessment (para 2B)). However if the application does not comply with para 2C (provision of an assessment), the Board is not bound to refuse the application if the applicant within 5 working days of being asked by the Board, provides further information that meets the Board's requirements.

**The applicant's assessment – Form A** – must include, in terms of para 2C:

- (a) a written statement from the person who may grant possession of the premises (subject to negotiation) that the premises may be used for the provision of pharmaceutical services;
- (b) a description of any adjustments the applicant intends to make to the premises – section 29 of the Equality Act 2010 (discrimination/harassment/victimisation – includes religion/belief/sexual orientation);
- (c) a description of the boundaries of the proposed neighbourhood;
- (d) an assessment (detailed) of the current provision in the neighbourhood described by the applicant of services for which the applicant believes there is not adequate provision by **persons on the pharmaceutical list**, and evidence in support of that belief;
- (e) a description of the pharmaceutical services that the applicant intends to provide;
- (f) the date by which the applicant intends to commence the provision of services;
- (g) the hours in each day the applicant intends to provide such services;
- (h) a summary of the responses gathered by the applicant through the consultation;
- (i) where para 2D below applies, evidence of the significant change that has occurred (detailed) that means in the applicant's view that it is now necessary or desirable that an application be granted.

**The Board may refuse an application where there is no evidence of significant change, if previous application has been made within 12 months:**

**Reg 5 Para 2D:** the provisions of this paragraph apply where the Board (and not overturned by the NAP) or the NAP, **refused** the application in the previous 12 months – where the application relates to same or similar neighbourhood, and is not a refusal by the Board under para 2B – failure to include an applicant's assessment.

**Minor relocations:** para 5(6) – new provision - there will be no **appreciable change**, rather than 'significant' change in the neighbourhood.

**Publication of further particulars:** Regulation 15(1)(ba), the Board shall make available for inspection at its offices, its **pharmaceutical care plan** (a document prepared by the Board annually, comprising a summary of the pharmaceutical services provided in the area of the Board together with an analysis by the Board of where in its area it believes there is a lack of adequate provision of pharmaceutical services).

**Public consultation:** new notification to **dispensing doctors** – Sch 3, para 2A, the Board shall give written notice of the application under para 1(1), to any dispensing doctor who dispenses from premises in the neighbourhood to which the application relates.

**Determination of Applications:**

In considering applications: Sch 3, para 3, the Board shall have regard to:

- (a) the pharmaceutical services already provided in the neighbourhood of the premises named in the application by persons whose names are included in the pharmaceutical list;
- (b) the pharmaceutical services to be provided in the neighbourhood at the premises;
- (c) any representations received by the Board from those notified;
- (d) any responses received in the 60 days following the consultation;
- (e) its pharmaceutical care services plan.

**Notification of decisions:** Sch 3, para 4(2), the Board shall within 5 working days of receiving the decision of the PPC, publish the decision on its website and the reasons for it.

## Appeals to the National Appeal Panel

The grounds of appeal are limited to the circumstances listed below, or where the PPC has erred in law:

Para 5(2B):

- (a) there has been a **procedural defect** in the way the application has been considered by the Board/PPC;
- (b) there has been a failure by the Board/PPC to properly narrate the **facts** or **reasons** upon which their determination of the application was based;
- (c) there has been a **failure to explain** the application by the Board/PPC of the provisions of these Regulations to those facts.

### Notice of Appeal:

It shall contain a concise statement detailing the circumstances in para 5(2B) above, or other points of law in respect of which the appellant contends that the decision of the Board/PPC was erroneous.

### Summary dismissal:

Para 5(5):

The Chair may dismiss the appeal if the Chair is of the opinion that the notice of appeal discloses no reasonable grounds of appeal, or the appeal is otherwise frivolous or vexatious or may **remit the decision back to the Board/PPC** for reconsideration if the Chair is of the opinion that any of the circumstances in para 5(2B) above, have occurred. The decision of the Chair is final.

**BUT** where the Chair remits the decision back to the Board/PPC for reconsideration,

- (a) the Chair shall give to the Board/PPC such advice as appears to the Chair to be desirable with a view to remedying the defect or failure that has led to the decision to remit;
- (b) the Chair shall send a copy of the remitted decision and the advice issued, to the Scottish Ministers; and
- (c) the Board/PPC shall reconsider the application.

## **Form of Appeal:**

### **Sch 3, para 6:**

- (a) if an appeal can properly be determined without a hearing, the NAP may determine the appeal without a hearing;
- (b) if a hearing is required, then the NAP shall give 14 days' notice of the date and place fixed for the hearing;
- (c) interested parties may attend and be heard in person or be **represented by counsel or a solicitor or other representative**, and the Board/PPC may attend and be represented at the hearing by any duly authorised official or by counsel or a solicitor;
- (d) the Administrative Justice and Tribunals Council or its Scottish Committee shall be entitled to attend the hearing;
- (e) the NAP shall determine an appeal including its procedure as it thinks fit. Its decision shall be final.

## **Membership of PPC:**

### **Sch 4, para 3(1)(b)(i):**

The **pharmacist member** who is **not** on any pharmaceutical list, nor employed by anyone so listed, will no longer be appointed by the Royal Society of Great Britain but by the Area Pharmaceutical Committee.

### **Sch 4, para 3, (1A) & (1B):**

**Additional member:** where the premises that are subject of an application are located in the same neighbourhood as premises from which a dispensing doctor dispenses, then an additional member shall be appointed by the Board to the PPC from persons nominated by the Area Medical Committee.

### **Sch 4, para 6(2):**

**Voting:** only a member appointed by the Board, who is not a member of the Board, nor is, or has been a doctor, dentist, ophthalmic optician or a pharmacist – nor is an employee of such a person, may vote. The Chair may vote when a casting vote is required. The additional member appointed under Sch 4, para (1A) is not entitled to vote.

## **Membership of the NAP**

### **The Chair of the NAP:**

**Sch 4, para 10(1)** – the Chair shall be an advocate, solicitor or solicitor-advocate and shall not be or have previously been a doctor, dentist, ophthalmic optician, pharmacist or an employee of a person whose name is on the Pharmaceutical List.

**Membership of 3 persons:** the Chair as above, a pharmacist, and a person nominated by a Board through Scottish Ministers.

### **Notification of decisions:**

**Sch 4, para 15** - the Board shall within 5 working days of receiving the decision of the NAP, publish the decision on its website and the reasons for it.

The revisions to the 2009 Regulations only apply to applications received by PPCs after 31 March 2011.