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The Pharmaceutical List and the Northern Ireland Drug Tariff

1 Introduction

This paper provides a brief overview of 1) the Pharmaceutical List, which enables pharmaceutical services to be provided across Northern Ireland, and 2) the Northern Ireland Drug Tariff, which relates to the fees paid to community pharmaceutical contractors for dispensing health service prescriptions.

2 Entry to the Pharmaceutical List

There are currently 530 pharmacy premises in Northern Ireland.¹ A community pharmaceutical contractor (known as a community pharmacy or chemist) can only dispense health service prescriptions once they apply and are accepted onto the 'pharmaceutical list'. This list is maintained by the Health and Social Care (HSC) Board.²

¹ Northern Ireland Executive Website Press Statement "Health Minister announces new arrangements for setting medicines prices". Available online at <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dhssps/news-dhssps-march-archive-2011/news-dhssps-240311-health-minister-announces.htm> Website accessed 7.10.11.

² DHSSPS website under the section "Applications To Join The Pharmaceutical List" <http://www.dhsspsni.gov.uk/index/pas/pas-map/pas-nap.htm> Website accessed 3.10.11

Under **Article 63 of the Health and Social Services (NI) Order 1972**, the HSC Board is required to make arrangements for the provision of pharmaceutical services. These arrangements are secured in Regulations and must include provision for the preparation, publication and maintenance of lists of those providing pharmaceutical services. According to the DHSSPS³,

“Those applying to provide new pharmaceutical services must apply to the Board to be entered on the pharmaceutical list. Applications can be made by registered pharmacists or non-pharmacists, partnerships or bodies corporate, as long as a registered pharmacist is employed.”

The **HSC Board** decides whether it is “necessary or desirable” to grant an application in relation to the provision of pharmaceutical services, based on the local needs of the population.⁴ This is known as the “Control of Entry” test. Administrative procedures for the test are governed by the **Pharmaceutical Services Regulations (NI) 1997**.⁵

Applications are heard on behalf of the Board by its **Pharmacy Practice Committee**, which was formed under criteria laid down in the 1997 Regulations. The DHSSPS has also published a guide which sets out the procedures to be followed when dealing with applications concerning pharmaceutical services.⁶ It states:

“Decisions as to whether additional services should be provided, or additional premises opened, should take account of changing circumstances and should be based on whether it is necessary or desirable to grant the application to secure an adequate provision of service in the neighbourhood. There are no hard and fast rules or formulae for determining the number and distribution of pharmacies or other premises supplying health service pharmaceutical services.”⁷

If a new provider of pharmaceutical services is judged by the Pharmacy Practice Committee to be neither “necessary nor desirable”, the application is refused. Rights of appeal on decisions exist for both the applicant and the objectors. Appeals are undertaken by the **National Appeal Panel (NAP)**, an independent body established by the DHSSPS. The NAP will consider applications afresh and it does not use previous decisions taken by the PPC as a basis for its decisions. Although decisions taken by the NAP are final, they can be subject to challenge by judicial review.⁸

³ Personal correspondence from DHSSPS to the author following a request for information. Reply dated 30.9.2011

⁴ Pharmacy application forms are available at the following link: <http://www.hscbusiness.hscni.net/services/2052.htm>
Website accessed 3.10.11

⁵ Pharmaceutical Services Regulations (Northern Ireland) 1997 Available from Legislation.gov.uk website accessed 3.10.11

⁶ DHSSPS Pharmaceutical Services: A Guide To The Revised Arrangements For Considering Applications To Provide Pharmaceutical Services (1997).

⁷ DHSSPS as above, page 5.

⁸ DHSSPS website: National Appeal Panel: Available online at: <http://www.dhsspsni.gov.uk/index/pas/pas-map/pas-nap.htm>
Website accessed 3.10.11

To be eligible to practice, pharmacists must also register themselves (and their premises where applicable) with the Pharmaceutical Society of Northern Ireland, which is the regulatory and professional body for pharmacists in Northern Ireland.⁹ The current fees for this are summarised in Appendix 1.

3 What is the purpose of the NI Drug Tariff?

The Department has a statutory obligation under **Regulation 9** of the 1997 Regulations (S.R. 1997 No. 381) to compile and publish a statement known as the **Northern Ireland Drug Tariff** (see Appendix 2).¹⁰ The NI Drug Tariff sets out the range of dispensing fees available to pharmacists, and details the reimbursement figures paid to community pharmacy contractors towards the actual cost of drugs and appliances (e.g. gauzes, syringes, prosthetic adhesives) supplied against health service prescription forms.¹¹ The Drug Tariff prices are generally net cost prices calculated from the agreed wholesale price lists.¹²

Judicial Review Ruling in 2010

By law, community pharmacy owners are entitled to be paid fair and reasonable remuneration. In January 2010, following a judicial review, the High Court found that the arrangements that had been in place by the DHSSPS in respect of dispensing drugs did not meet that obligation and were unlawful.¹³ A brief outline of that dispute now follows.

The dispute arose between the Department and the Pharmaceutical Contractors Committee (PCC, who are now called **Community Pharmacy Northern Ireland**), the representative body for community pharmacists in Northern Ireland, about the price of generic drugs set out in 'Category M' of the Drug Tariff.¹⁴

In 2005, new community pharmacy contract arrangements were introduced in England. According to the judicial review ruling, the effect of the new contract arrangements would "*reduce the prices for generic drugs in Category M*". Scotland introduced new arrangements in 2006 as did Northern Ireland. The Northern Ireland Drug Tariff was based on the Scottish Drug Tariff. However, the introduction of the new arrangements was problematic for Northern Ireland pharmacists and had left many facing financial hardship:

In Scotland, the prices included in the Drug Tariff were based on information available in respect of wholesale prices and volumes within that jurisdiction...In light of the pre-existing arrangement in relation to the use of the Scottish Drug

⁹ See Pharmaceutical Society of Northern Ireland website <http://www.psni.org.uk/index.php> Website accessed 12.10.11

¹⁰ See HSC Business Services Organisation website for details of the full Drug Tariff:

http://www.hscbusiness.hscni.net/pdf/Full_Searchable_DT_October_2011.pdf Website accessed 4.10.11

¹¹ Response to NI Assembly Question AQW 1372/11-15: Mr Jonathan Craig to ask the Minister of Health, Social Services and Public Safety what is the current prescription dispensing rate for pharmacists. Answered on 06/07/2011

¹² DHSSPS Northern Ireland Drug Tariff :General Notes page 2.

¹³ Northern Ireland Executive Website Press Statement "Health Minister announces new arrangements for setting medicines prices". Available online at <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dhssps/news-dhssps-march-archive-2011/news-dhssps-240311-health-minister-announces.htm> Website accessed 7.10.11.

¹⁴ For further details see Judicial Review Judgement (6 Jan 2010) Re Pharmaceutical Contractors Committee (NI) Ltd and others' Application for Judicial Review. Lord Chief Justice Morgan, Queen's Bench Division. 2010 NIQB 3.

Tariff, the Department [DHSSPS] continued to remunerate pharmacists on the basis of the revised Scottish Drug Tariff while recognising that this model was not suitable for Northern Ireland and resulted in considerable losses to pharmacists in this jurisdiction.¹⁵

Despite on-going negotiations between the DHSSPS and the PCC for new contractual arrangements for Northern Ireland, these had failed to reach agreement. In its submissions to the court, the judicial review judgement outlined both sides of the dispute:

The Department contends that the PCC has set its face against entering into a new and comprehensive settlement with the Department in order to retain the commercial advantages it enjoyed prior to the impact of Category M. For its part, the PCC complains that the Department has introduced a Drug Tariff which fails to fairly and reasonably remunerate pharmacists and continues to withhold the compensation which the PCC says is properly due to them.¹⁶

In his judgement, the High Court judge, Lord Chief Justice Sir Declan Morgan, ruled in favour of the PCC:

I consider that the applicants [the PCC] have demonstrated that the Department is now failing to comply with the statutory obligation found in regulation nine of the 1997 regulations and in those circumstances I make a declaration that the arrangements currently maintained by the Department of Health, Social Services and Public Safety for the remuneration of community pharmacies in respect of dispensing drugs are unlawful.¹⁷

Following the ruling in 2010, settlement compensation was agreed between the DHSSPS and the PCC, and compensation paid to the pharmaceutical contractors affected.¹⁸

Amended Drug Tariff 2011

On 1 April 2011, the Department introduced an amended Drug Tariff in order to provide fair and reasonable remuneration and to increase transparency in the payment system for community pharmacists.¹⁹ The amended Drug Tariff uses Part VIII of the English Drug Tariff as reference prices from 1 April 2011. It also includes revised dispensing fees which came into effect on 1 July 2011.

Judicial Review - 2011

More recently, the Department and the HSC Board engaged in negotiations and consultation with Community Pharmacy Northern Ireland (formerly PCC) in an attempt to agree community pharmacy remuneration arrangements for 2011/2012.

¹⁵ Judicial Review Judgement (6 Jan 2010) Re Pharmaceutical Contractors Committee (NI) Ltd and others' Application for Judicial Review. Lord Chief Justice Morgan, Queen's Bench Division. 2010 NIQB 3, paragraph 9.

¹⁶ As above, paragraph 10.

¹⁷ As at 15, paragraph 18.

¹⁸ Chemist & Druggist, July 17, 2010 NI pharmacy gets £ 28m Cat M compensation. Settlement will relieve "immense financial hardship", says PCC

¹⁹ Northern Ireland Executive Website Press Statement "Health Minister announces new arrangements for setting medicines prices". Available online at <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dhssps/news-dhssps-march-archive-2011/news-dhssps-240311-health-minister-announces.htm> Website accessed 7.10.11.

However an agreement has not been reached.²⁰ Community Pharmacy Northern Ireland have successfully sought a further judicial review pertaining to the new remuneration and reimbursement arrangements, following the introduction of the amended NI Drug Tariff in April 2011.

During 'Question Time' in the Northern Ireland Assembly on 11 October 2011, Mr Poots, the HSSPS Minister answered questions in relation to cuts to the pharmacy budget and possible pharmacy closures.²¹ He responded:

Pharmacists have a key role in delivering healthcare, particularly in our rural towns and villages. Unfortunately, I inherited a legacy arrangement that was subsequently challenged through judicial review. Therefore, I have not been able to involve myself in arriving at an arrangement that will help us to ensure that we have pharmacies in rural areas and in many deprived areas in our cities. We have a pharmacy system that does not lead to the extensive costs that we currently have, because costs have been going up year-on-year and have got to the point where they are unsustainable. Therefore we need to challenge the cost structure in our pharmacies.

The Minister went on to say:

I can say clearly and unequivocally, that, irrespective of the court's findings, I am happy to engage with pharmacists as soon as the court case is over to arrive at a position that delivers a good quality service for the people of Northern Ireland and provides sustainable pharmacies for the future.

As dispensing fees and reimbursement arrangements are central to the ongoing judicial review, the DHSSPS and Community Pharmacy NI are at present not able to comment further on the situation.

²⁰ Personal correspondence from DHSSPS to the author following a request for information. Reply dated 30.9.2011

²¹ Official Report (Hansard) Northern Ireland Assembly, Tuesday 11 October 2011 Volume 67, No 4, page 201

Appendix 1

Pharmaceutical Society of Northern Ireland - Fees associated with registration of members and premises for 2011/12

Members

	2011/12 applicable from 1st June 2011
Application Fee	£121
Pharmacists practising in Northern Ireland	£372
Registrants first registered in GB	£372 + Application Fee
Registrants first registered in EEA	£372 + Application Fee
Restoration to the Register	
Restoration Fee (if removed from register)	£500
Restoration Fee (if withdrawn by request)	£121

Premises

	From 1st January 2011
Premises retention fee	£155
New Premises registration fee	£113
Premises Change of Ownership fee	£113
Premises reinstatement fee	£317

Appendix 2

Pharmaceutical Services Regulations (Northern Ireland) 1997

Regulation 9 – Drug Tariff

'9(1) For the purpose of enabling arrangements to be made for the provision of pharmaceutical services, the Department shall compile and publish a statement (in these Regulations referred to as "the Drug Tariff") which it may amend from time to time and which, subject to paragraph (2), shall include-

- (a) the list of appliances;
- (b) the list of chemical reagents;
- (c) the list of drugs for the time being approved by the Department for the purposes of Article 63 of the Order;
- (d) the prices on the basis of which the payment for drugs and appliances ordinarily supplied is to be calculated;
- (e) the method of calculating the payment for drugs not mentioned in the Drug Tariff;
- (f) the method of calculating the payment for containers and medicine measures;
- (g) the dispensing or other fees payable in respect of the supply of drugs and appliances and of the provision of supplemental services and of additional professional services;
- (h) arrangements for claiming fees, allowances and other remuneration for the provision of pharmaceutical services; and
- (i) the method by which a claim may be made for compensation for financial loss in respect of oxygen equipment.

(2) The Drug Tariff may state in respect of any specified fee falling within paragraph (1) (g), or any other specified fee, allowance or other remuneration in respect of the provision of pharmaceutical services by chemists, that the determining authority for that fee, allowance or other remuneration for those chemists is the Board, and in such a case paragraphs (4) and (5) shall apply.

(3) The prices referred to in paragraph (1) (d) may be fixed prices or may be subject to monthly or other periodical variations to be determined by reference to fluctuations in the cost of drugs and appliances.

(4) The Board shall consult the Local Pharmaceutical Committee before making any determination by virtue of paragraph (2).

(5) A determination made by the Board by virtue of paragraph (2) shall include the arrangements for claiming the specified fees, allowances or other remuneration, and shall be published by the Board in such manner as it seems suitable for bringing the determination to the attention of the chemists in its period.'